

CONTRACT STANDING ORDERS

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1. STATUS OF CONTRACT STANDING ORDERS

- 1.1 The Council's Contract Standing Orders are a requirement of section 81 of the Local Government (Scotland) Act 1973. They exist to ensure that uniform contracting procedures are laid down for use throughout the Council. Compliance with the Orders is mandatory. Use of the Orders promotes consistency, transparency, accountability, proportionality, fair opportunity and equality of treatment. Proper application of the Orders affords protection to those dealing with contracts.
- 1.2 All contracts let by or on behalf of the Council, regardless of whether any such contracts are otherwise exempted from the application of the Orders, shall be subject to an obligation on the relevant Chief Officer to seek Best Value for the Council and to be able to demonstrate fairness and transparency in the contract procedure chosen to all parties having an interest in that procedure.
- 1.3 The Procurement Board will issue Corporate Procurement Procedures which should be read alongside the Orders. The Procedures shall be reported to the Council for noting. Additionally, the Procurement Board will from time to time issue best practice guidance which should be read alongside the Orders and the Procedures.
- 1.4 Chief Officers must ensure that all officers involved with contracts within their Service understand the Orders and Procedures and have this confirmed in writing by them. Chief Officers must ensure that such officers are properly trained to undertake procurement in accordance with the Orders and Procedures. Chief Officers must ensure that such officers follow any best practice guidance on training issued by the Procurement Board.
- 1.5 In interpreting the Orders, reference should be made also to the Council's Policies and Procedures and, in particular to the Corporate Procurement Strategy, the Corporate Procurement Procedures, the Scheme of Delegation, Financial Regulations, the Councillors' Code of Conduct and the Code of Conduct for Employees.
- 1.6 The Orders shall be applied in such manner as will comply with Scots Law and where applicable, UK Law and European Community Law.
- 1.7 The Chief Governance Officer shall keep the Orders under review in light of developments in the field of public procurement and report any update to the Orders for approval periodically as required.

2. DEFINITIONS

- 2.1 The Interpretation Act 1978 will apply to the interpretation of these Contract Standing Orders as it applies to the interpretation of an Act of Parliament.
- 2.2 These definitions should be read in conjunction with those at paragraph 2 of Standing Orders Relating to Meetings. In the Contract Standing Orders the followings words and phrases shall be given the meanings stated hereafter.

Annual Procurement Report

means the statutory report the Council requires to publish in line with the Procurement Act on its regulated procurement activities as soon as reasonably practicable after the end of each financial year. The Council reports on all its procurement activities of a value of £50,000 and above.

The report must include:

- a summary of the regulated procurements that have been completed during the year covered by the report,
- a review of whether those procurements complied with the authority's procurement strategy,
- to the extent that any regulated procurements did not comply, a statement of how the authority intends to ensure that future regulated procurements do comply,
- a summary of any community benefit requirements imposed as part of a regulated procurement that were fulfilled during the year covered by the report,
- a summary of any steps taken to facilitate the involvement of supported businesses in regulated procurements during the year covered by the report,
- a summary of the regulated procurements the authority expects to commence in the next two financial years.

Best Value

shall be interpreted by reference to the Local Government in Scotland Act 2003 (see CSO 10).

Chief Officer

means the Chief Executive, the Directors of Services and other officers holding posts recognised by the Council as having chief officer status including Heads of Service and Depute Chief Officers.

Community Benefit Requirements

means the requirements as set out in sections 24 and 25 of the Procurement Act to consider whether to impose requirements in contracts relating to training and recruitment or the availability of sub-contracting opportunities or otherwise intended to improve the economic, social or environmental well-being of the Council's area in a way additional to the main purpose of the contract. The Council will generally look at the potential for Community Benefits for any contract of a value of £50,000 or above.

Concession Regulations

means the Concession Contracts (Scotland) Regulations 2016.

Contract Register

means the statutory register published and maintained by the Council in line with the Procurement Act of contracts entered into as a result of a regulated procurement. The Council includes in the Contract Register all contracts of a value of £10,000 and above.

Contract Value

means the level of expenditure authorised by any award of contract made in accordance with these Orders (see CSO 9) and to be published in any contract award notice.

Contracting Service

means the Service requiring any particular procurement exercise to be undertaken, and references to Chief Officer are to that of the Contracting Service unless the context requires otherwise.

Contractor

means the economic operator (as defined in the Regulations) who will provide the supplies, services or works under a contract.

Contract

means the contractual agreement for the provision of supplies, services or works and includes frameworks agreements, and arrangements for the execution of works, the supply of goods or the provision of services "in-house" by significant trading activities of the Council.

Contracts Regulations

means The Public Contracts (Scotland) Regulations 2015.

Corporate Procurement Strategy

means the Council's procurement strategy required by the Procurement Act. The strategy sets out the vision, objectives, and actions for procurement activity, providing a clear and consistent framework to ensure that procurement activities also support national and local priorities.

Corporate Procurement Unit (CPU)

means the team of officers within the Council's Corporate and Housing Services responsible for developing best practice procurement guidance and providing professional procurement advice and support across the Council.

Estimated Contract Value

means the value used to identify applicable Thresholds calculated in accordance with the Regulations and the Procurement Act and for publication in any contract notice.

Information Bulletin

means the standing item on the Council's agenda where, among other things, contract decisions taken under delegated authority are reported for information.

Orders

means these Contract Standing Orders unless the context indicates otherwise.

Procedures

means the Corporate Procurement Procedures relating to the Orders issued, and updated from time to time, by the Procurement Board. The Procedures explain and expand upon the context in which procurement is carried out within the Council and include detailed procedures and best practice guidance.

Procurement Act

means the Procurement Reform (Scotland) Act 2014.

Procurement Board

means the group of Chief Officers, which reports to the Council's Chief Executive, responsible for championing procurement best practice across the Council and ensuring the necessary availability of resources, support and commitment.

Procurement Regulations

means the Procurement (Scotland) Regulations 2016.

Public Contracts Scotland (PCS)

means the Scottish Government's official national portal for public sector contract opportunities. It is used by Scottish public sector organisations to:

- advertise future Prior Information Notices
- invite specific suppliers to submit quotations for low value / risk supplies and services through the online Quick Quote system.
- automatically post UK wide contract notices via the Find a Tender Service (FTS) for those contracts over threshold
- post below-threshold contract notices
- publish Contract Award Notices
- reserve suitable contracts for supported businesses.

Public Contracts Scotland – Tender (PCS-T)

means the Scottish Government's eTendering system that allows procurement officers and suppliers to manage tender exercises online. Procurement Officers can create tender documentation, evaluate tenders, manage contracts and supplier performance, using standard and legally compliant templates. Contract notices will state whether bidders have to respond to their tender via PCS or PCS-T.

Quick Quote

means the online quotation facility on the Public Contract Scotland website.

Regulated Contract

means a contract as defined by section 3 of the Procurement Act and subject to the requirements of that Act. (see CSO 8.2)

Regulations

means the Contracts Regulations, the Procurement Regulations and the Concession Regulations.

Sustainable Procurement Duty

means the duty imposed on the Council by section 9 of the Procurement Act, before and during procurement of a Regulated Contract, to consider how in carrying out the procurement it can improve the economic, social and environmental wellbeing of the Council area, facilitate the involvement of small and medium enterprises, third sector bodies and supported businesses in the process and promote innovation; and to act with a view to securing such improvements in the procurement.

Thresholds

means the monetary limits fixed from time to time under the Regulations and the Procurement Act that inform which rules will apply to any particular procurement. The Thresholds¹ at the date of the making of these Contract Standing Orders (December 2021) are:

Contracts Regulations

- supplies contracts £ 189,330
- services contracts £ 189,330
- works contracts £ 4,733,252
- Light Touch Regime £ 663,450

Procurement Act (Regulated Procurements)

- supplies contracts £ 50,000
- services contracts £ 50,000
- works contracts £ 2,000,000

Concession Regulations

- Concession contracts £ 4,733,252

3. SCOPE OF CONTRACT STANDING ORDERS

The Orders do not apply to:

- 3.1 Contracts excluded from the Scope of the Regulations. For example contracts of employment, contracts for the acquisition or rental of an interest in land, contracts for arbitrations or conciliation services.
- 3.2 Contracts for the funding of external organisations (e.g. voluntary/charitable organisations). These are situations where the Council provides funding to an organisation to assist them to operate on their own account. These funding situations are governed by the Financial Regulations (Regulation 10 – Following the Public Pound). Normally this will require the use of a Joint Working Agreement which will set out the conditions for the funding and the objectives to be achieved. This is distinct

¹ These are generally updated every two years. The next expected date for revised figures is January 2022. The Orders will be updated with the revised figures on an ongoing basis without the need for further Council approval.

from the organisation providing goods, services or works for the Council or on behalf of the Council, which will be subject to the Orders.

- 3.3 Contracts for the engagement of the services of artists (including performing artists).
- 3.4 Contracts where the Chief Officer certifies it is necessary to enter into a contract urgently for the prevention or alleviation of an emergency situation.
- 3.5 Contracts where the Executive decides that there are special circumstances for some or all of the Orders not applying.

4. COMPETITION

- 4.1 Provision for securing competition is required by s.81(3) of the 1973 Act. Competition is a fundamental principle of public sector procurement. Through competition the Council can demonstrate fairness and transparency in its procurement activities. Through competition the Council can demonstrate Best Value. Standard procurement will normally be through competition.
- 4.2 There will be circumstances where competition is not necessary or appropriate. Procurement without competition will be the exception and may only be done in accordance with the Orders.

5. EXCEPTIONS TO COMPETITION

These exceptions do not apply where the Regulations or the Procurement Act require competition.

- 5.1 Nothing in the Orders shall require competitive tenders to be invited in any of the following situations provided the Chief Officer ensures that Best Value is obtained, and the use of an exception is made in the best interests of the Council. The Chief Officer must clearly document in an auditable form their reasons² for using a particular exception and how they can nonetheless demonstrate Best Value (e.g. through benchmarking).
 - (a) The estimated value of the contract is less than £50,000.
 - (b) The Chief Officer of the Contracting Service deems it desirable to negotiate with an in-house service provider.

² That an exception exists is not necessarily a reason for using an exception. For example, competition will still be the norm for contracts below £50,000 in value and the fact that a contract is specialised does not mean there is only one specialised contractor.

- (c) In any of the circumstances set out in regulation 6 of the Procurement Regulations, regulation 72 of the Contracts Regulations and regulation 46 of the Concession Regulations.
- (d) Where the Chief Governance Officer in consultation with the Chief Finance Officer and the Chief Executive gives specific authorisation to use the exception to competition on the basis of special circumstances.

6. AWARD OF CONTRACTS

6.1 No contract shall be awarded unless:

- (i) There is an approved budget for the expenditure (whether from an approved general budget for certain types of expenditure or from a budget specifically approved by Committee for any particular procurement).
- (ii) The Chief Officer is satisfied as to the technical capability and/or professional competency of the contractor proportionate to the value and/or risk associated with the contract.
- (iii) Where the Contract Value is £1 million or more (or where the Chief Officer considers it appropriate) the Chief Finance Officer is satisfied as to the financial standing of the contractor proportionate to the value and/or risk associated with the contract.
- (iv) The Chief Officer is satisfied that the contractor is adequately insured with an approved insurance company in respect to employers' liability, public liability, product liability and/or professional indemnity as may be required.

6.2 Authority for the award of Contracts, including (a) framework agreements or (b) call-offs under framework agreements, shall be provided as follows:

(i) **Chief Officer**

Where the Contract Value is below **£500,000**.

(ii) **Chief Officer in consultation with the Chief Governance Officer (subject to the prior consideration by the Executive of any Major Contracts)**

Where the Contract Value is **£500,000 or above**.

In relation to Major Contracts this delegated authority is subject to there having been prior consideration by the Executive.

A Major Contract is a contract with an Estimated Contract Value of £7,500,000 or above, or is otherwise considered by the Chief Officer to be of such significance as to be appropriate for consideration under the prior consideration process.

Prior consideration is in relation to the approval by the Executive of the contract strategy for any Major Contract. This may include:

- What are the Council's requirements for the goods, works and services and why does it need them?
- What are the available options including internal provision, which is best and why?
- Can and should the Council afford it?
- Packaging – for example, is it appropriate for the contract to be packaged in different lots or geographical areas?
- What are the most appropriate selection and award criteria and quality/ price ratio?
- How does the Council monitor the performance and measure the benefits?

The Chief Officer of the Contracting Service shall report to the Executive their proposed contract strategy for any Major Contract, developed in conjunction with the CPU, for prior consideration.

Prior consideration in relation to external framework agreements will be focused on the participation itself given that the framework arrangement will have already been set up.

On a two monthly basis (or on an ad hoc basis if so required by a relevant Chief Officer) the CPU will notify Members of the Executive of planned procurements of £500,000 and above (the Planned Procurement Bulletin).

The Planned Procurement Bulletin will be based on planned procurements reported in the Council's Annual Procurement Report published in August each year identifying the procurements planned in the next two financial years. The main Planned Procurement Bulletin will therefore coincide with this date. Succeeding Bulletins will detail planned procurements that have subsequently become apparent.

To ensure the effectiveness and accuracy of the Planned Procurement Bulletin process, Chief Officers should notify the CPU of any planned procurement by June each year.

Any Member of the Executive may, within 14 days of the date of circulation of the relevant Planned Procurement Bulletin, approach the relevant Chief Officer for further information if they consider that any of the planned procurements might be of significance. Following any such approach by a Member of the Executive, the relevant Chief

Officer shall consider if it is appropriate to refer the planned procurement to the Executive.

(iii) **Chief Officer in consultation with the Leader of the Council and Leaders of the main opposition groups and the Chief Governance Officer**

Where the Contract Value is **£500,000 or above** and it is necessary to expedite the procurement process without inclusion of the procurement in a Planned Procurement Bulletin or, in exceptional circumstances, without reporting a Major Contract to Executive for prior consideration.

- 6.3 Where the appropriate authority for the award of any contract has been obtained, the contract may be signed by a Chief Officer of the Contracting Service (or of the procuring Service, if different), the Chief Executive, the Chief Governance Officer or one of the Legal Managers.
- 6.4 If the Contracts Regulations or Concession Regulations apply, a standstill period must be imposed between the notification of the decision to award the contract and the contract being entered into. Where a standstill period is not mandatory the use a voluntary standstill period should be considered as a matter of best practice.

Record Keeping and Reporting

- 6.5 In all cases the Chief Officer shall properly document the procurement process, the basis of the evaluation and the reasons for the selection of the successful tender. This information shall be incorporated into a report format appropriate to the level of authority required.

The main reporting requirements after the award of any contract are summarised below. Where a framework agreement and its Contract Value have already been reported, call off contracts do not require to be reported separately.

Contract Award Notices

Contract award notices must be published via PCS within 30 days of any contract award made under the Regulations.

Regulation 83 Reports

Regulation 83 of the Contracts Regulations sets out the information that requires to be recorded for contracts awarded under those Regulations.

Contracts Register

The Council maintains a Contract Register in line with the Procurement Act. This is to identify all contracts awarded by the Council of a Contract Value of £10,000 or above. Services must report the details of any contract award to the CPU within 30 days of the award for inclusion on the register

(where the PCS is used this information will be picked up automatically by the CPU from the system). The required information is:

- the date of award,
- the name of the successful contractor/s,
- the subject matter,
- the Estimated Contract Value
- The Contract Value
- the start date,
- the end date provided for in the contract (disregarding any extension option)
- the duration of any period for which the contract can be extended.

Information Bulletin

All delegated decisions, other than those with a Contract Value of less than £10,000, shall be reported by Information Bulletin to the next meeting of the Council. Services should submit copies of proposed Information Bulletin reports to the CPU at the same time as to Democratic Services.

7. ADVERTISING

- 7.1 Advertising is encouraged to promote competitiveness, fair opportunity and transparency.
- 7.2 If the Contracts Regulations or Concession Regulations apply, contracts must be advertised in the Find a Tender System (FTS), the UK's e-notification system. This will be done via the Public Contracts Scotland (PCS) portal. Notices must be published on the FTS before they appear on the PCS. PCS arrange this timing as a matter of course.
- 7.3 If the contract is governed by the Procurement Act (Regulated Contracts), contracts must be advertised on the PCS portal.
- 7.4 Should the procurement be linked to European Structural and Investment Funds (ESIF) advertising on the Official Journal of the European Union (OJEU) is required but would still be done through the PCS.

8. TENDERING PROCEDURES

8.1 Above Threshold Contracts

If the Estimated Contract Value equals or exceeds the relevant Thresholds, the Council must comply with all requirements specified in the relevant Regulations or the Procurement Act.

For standard procurements the most commonly used procedures will be the **open procedure** (all interested contractors may tender) or the

restricted procedure (only contractors who pass an initial selection stage are invited to tender).

Additional types of tendering procedures available according to particular circumstances are: **competitive procedure with negotiation, competitive dialogue procedure, innovation partnership, dynamic purchasing systems, electronic auctions and design contests.**

In limited circumstances there also exists **the use of the negotiated procedure without prior publication** of a contract notice for example in a situation of extreme urgency that was not foreseeable.

The Council may reserve the right to participate in a procurement to a **supported business** or to provide a contract or framework in the context of a **supported employment programme.**

Where a proposed procurement involves the purchase of any form of information communications technology, device or digital service, software or hardware, then engagement with the People, Technology & Transformation team must be sought at the earliest opportunity.

Advice on the most appropriate procedure should be obtained from the CPU. Further information is included in the Procedures and CPU best practice guidance.

8.2 **Regulated Contracts and Below Threshold Contracts**

Where the Estimated Contract Value is within the Thresholds set in the Procurement Act and Procurement Regulations, the Council must comply with the requirements of those provisions as a minimum. The value ranges for Regulated Procurements are:

- Goods and Services - £50,000 to £189,329
- Works - £2,000,000 to £4,733,251

These value bands represent the core areas of application of the Procurement Act. The Procurement Act does also apply to higher value regulated procurements (those governed by the Contracts Regulations) in certain aspects. For example, in relation maintaining the Contracts Register and publishing the Annual Procurement Report.

Where the Estimated Contract Value is below the Thresholds and is not a Regulated Procurement (i.e. below £50,000 for goods and services and below £2,000,000 for works) the procedures and principles outlined in the Regulations and the Procurement Act, statutory guidance and best practice guidance should be considered where appropriate and may be adopted and adapted where proportionate to the procurement in question (see also CSO 8.4 in relation to the use of the Quick Quote facility).

Where the Estimated Contract Value of a Works Contract is between £250,000 and £1,999,999 such a contract will normally be procured through advertising on the PCS and PCS -T in a tender process.

8.3 **Statutory and other Guidance**

Services engaged in procurement require to have regard to any statutory guidance on procurement matters and to other relevant guidance and best practice. Attention is drawn to: SPPN1/2021- Taking account of climate and circular economy considerations in public procurement, the Statutory Guidance on the Selection of Tenderers and Award of Contracts, and to The Fair Work First guidance, to be developed and adopted in procurements where lawful, relevant and proportionate. The Council's own Procedures and best practice guidance should also be referred to.

8.4 **Services and Goods Contracts below £50,000 and Works Contracts below £250,000 – Quick Quote**

For goods and services contracts with an Estimated Contract Value **below £50,000** there is the option to use Quick Quote.

Quick Quote may also be used for works contracts with an Estimated Contract Value **of up to £250,000**.

Where Quick Quote is used, Services should have in place procedures governing the selection of potential contractors from the Quick Quote system that promote reasonable access to procurement opportunities.

Advertising for tenders or quotations may also be considered under the Orders using PCS or PCS-T.

Reference should also be made to Financial Regulation 13 (Purchasing of Goods and Services).

8.5 **Framework Agreements**

Frameworks

Framework agreements may also be set up under the Regulations and the Procurement Act.

A framework agreement is an agreement between a supplier or suppliers on the one hand and a contracting authority or authorities on the other which sets out the terms and conditions under which call-off contracts can be made through-out the term of the agreement. A call off contract is the contract made for a specific purchase under the framework agreement.

Call off contracts can be on the basis of a range of mechanisms and combinations such as rank order, mini-competition and direct award. The rules for making any call off contract should be clear and transparent and in line with the Regulations.

Where the Contract Value of the framework agreement has been approved under CSO 6.2 the award of a call off contract that is within that Contract Value (or within the values detailed in CSO 15 (extensions and claims)) does not require additional approval.

External Frameworks

Where approved by the Chief Officer and the Chief Governance Officer, procurement may be through central purchasing agencies. Such agencies allow contractors to be selected from an existing framework arrangement which has already been subject to competition in compliance with the Regulations. Purchasing through such agencies may or may not require further tendering depending on the particular contract. In all cases value for money checks should be considered as Best Value cannot be assumed. Consultation with the CPU is required.

Scottish Procurement and Scotland Excel

Scottish Procurement is part of the Scottish Procurement Directorate of the Scottish Government and puts in place national contracts which can be used by Scottish public authorities.

Scotland Excel is the centre of procurement expertise for the local government sector. It is run by Joint Committee and the Council is a member. It puts in place contracts which can be used by Scottish local authorities.

The Council may procure supplies, services and works via Scottish Procurement and Scotland Excel where this offers Best Value for the Council and where authority to participate in the framework has been obtained in line with CSO 6.2.

8.6 Consortia

Where the Council participates in a Council-approved buying consortium with other local authorities and the tendering process has followed one of the other authority's contract standing orders, compliance with that other authority's orders will be deemed compliant with the Orders. It will still be necessary to obtain authority to award the contract in line with CSO 6.2 and the signing of any contract binding upon the Council shall still require to be by, or authorised by, a Chief Officer of the Council or one of the Legal Managers in terms of CSO 6.3.

8.7 Social and Other Specific Services

Procuring social care services is a complex area and as such it requires special consideration within the Council's overall approach to procurement. This recognises that the quality or availability of these services can have a significant impact on the quality of life and health of people who might use these services and also their carers. Special consideration also

acknowledges that many of these services are becoming increasingly personalised to better match individual needs.

For these reasons, these types of services are often purchased differently to other services. The Council needs to retain flexibility to decide how to procure these contracts on a case-by-case basis. This includes whether these require advertising and competition and also the form that this should take under the “light touch regime” (LTR).

The LTR is a specific set of rules for certain service contracts that tend to be of lower interest to cross-border competition. Those service contracts include certain social, health and education services, defined by Common Procurement Vocabulary (CPV) codes. The list of services to which the LTR applies is set out in Schedule 3 of the Contracts Regulations (and for Regulated Procurements there is a narrower list in the Schedule to the Procurement Regulations).

The LTR applies to Schedule 3 contracts which have an Estimated Contract Value of £663,450 and above. Contracts below that threshold, but which are worth at least £50,000 are regulated separately by the Procurement Act.

Often LTR procurements follow the main Contracts Regulations procedural requirements but as adapted. It is good practice to make such adaptations clear.

The LTR is also available for use in relation to design contests.

Advice on all LTR procurements should be obtained from the CPU.

9. CONTRACT VALUES

- 9.1 The Estimated Contract Value must be calculated in accordance with the Regulations and the Procurement Act and must be based on the total value including any potential extensions.
- 9.2 The reported Contract Value for any completed procurement provides the extent of the authorised expenditure approved under these Orders. That will most often also refer to the total value including potential extensions, avoiding the need for separate approval to be obtained, for example annually or in the exercise of an extension.
- 9.3 The Contracts Regulations require consideration of whether a contract may be appropriately broken down into separate lots (see regulation 47 of the Contracts Regulations and best practice guidance available from the CPU).

- 9.2 It is not permitted to deliberately divide any procurement exercise into two or more contracts if the intent in doing so is to avoid the application of any financial thresholds in the Orders, the Regulations or the Procurement Act.
- 9.3 The values stated are exclusive of any Value Added Tax that may be levied.

10. EVALUATION

- 10.1 The Council has a duty to secure Best Value by virtue of the provisions contained in Part 1 of the Local Government in Scotland Act 2003. Best Value represents continuous improvement in the performance of the Council's functions and in securing Best Value the Council must maintain an appropriate balance among –
- (a) the quality of its performance of its functions,
 - (b) the cost to the Council of that performance, and
 - (c) the cost to persons of any service provided by it for them on a wholly or partly rechargeable basis.

In maintaining that balance, the Council shall have regard to -

- (a) efficiency,
 - (b) effectiveness,
 - (c) economy,
 - (d) the need to meet the equal opportunity requirements,
 - (e) where appropriate, its Sustainable Procurement Duty and the Community Benefit Requirements.
- 10.2 Evaluation will be based on the concept of Best Value and will normally be on the basis of the most economically advantageous tender. This allows quality as well as price to be considered and may mean acceptance of a tender other than the lowest priced. For procurements over the Thresholds and Regulated Contracts, evaluation **must** be on the basis of the most economically advantageous tender on the basis of the best price-quality ratio. The Council cannot use price only or cost only as the sole award criterion for such contracts.

Tenders must be evaluated fairly and objectively in accordance with pre-determined and pre-notified criteria in line with the agreed contract strategy. There is an overriding obligation of equal treatment between tenderers. This might require non-compliant bids to be rejected.

Awarding work under a call off contract from a framework must be according to the rules set by the framework. Any mini-competition under a framework must be according to the criteria set by the framework (as adapted for mini-competition).

10.3 In relation to Works, officers should comply, to the extent compatible with the Orders, the Regulations and the Procurement Act, with either the NEC Engineering and Construction Contract Guidance Notes or the JCT Practice Note 6, Main Contract Tendering.

10.4 **Sustainable Procurement Duty for Regulated Contracts**

The Council must comply with the Sustainable Procurement Duty before and during procurement of a Regulated Contract.

10.5 **Community Benefit Requirements**

The Council must also discharge its duty to secure Best Value in a way which contributes to the achievement of sustainable development. Sustainable development includes sustainable procurement, one element of which is Community Benefits in procurement to which Falkirk Council has committed in its Strategic Community Plan (the Falkirk Plan). Chief Officers should consider whether such benefits could be achieved through the procurement process for any contract with an Estimated Contract Value of £50,000 and above and seek advice from the CPU. Community Benefit Requirements must be considered in the procurement of a Regulated Contract where the Estimated Contract Value is equal to or greater than £4 million, and if not used, the reasons why not must be explained in the contract notice.

11. **ELECTRONIC PROCUREMENT**

All procurement exercises subject to the Regulations shall be conducted via electronic means of communications (unless where the Regulations permit otherwise).

The procurement documents must be available electronically at the time of the publication of the relevant notice in accordance with the Regulations.

Electronic systems and communications used must be of a nature that protect the integrity of the procurement exercise. The Public Contracts Scotland portal has been designed with such protections and will be the main platform used. The Procedures detail the functions and protections required – see also regulation 23 of the Contracts Regulations.

Late tenders may be accepted at the discretion of the Chief Officer in consultation with the Chief Governance Officer provided that they are satisfied that late receipt does not place any tenderer at an advantage over any other.

During the period between the opening of tenders and any decision on the award of the contract being made public, an absolute obligation will lie with Members and officers not to disclose any details regarding the tenders and the possible outcome of the tendering process.

Where the use of electronic means is not mandated by the Regulations, the use of electronic means is still encouraged where appropriate. The Procedures detail the functions and protections required for any alternative means of communication.

12. CONTENT OF TENDER DOCUMENTS

Unless the Chief Governance Officer, on the submission of a Chief Officer, approves otherwise, the following information must be contained in all tender documents:

- (1) the **nature and purpose** of the contract for which tenders are invited,
- (1a) the **selection and award criteria** for the award of the contract (including the basis for making a call off contract from a framework agreement).
- (2) the **last date and the time** by which tenders should be received,
- (3) the **contact details** and the **means** by which tenders are to be **returned**,
- (4) that the Council reserves the right to accept a tender **other than the lowest tender** or **not to accept any tender** at all,
- (5) **details of the specification** relating to the contract in accordance with regulation 43 of the Contracts Regulations and regulation 11 of the Procurement Regulations where applicable. Where there is an appropriate standard used such as national standard transposing European standards, each reference shall be accompanied by the words “or equivalent”,
- (6) provision for the insertion by the tenderer of **the price** to be paid with a statement of discounts or other deductions,
- (7) the date of **commencement** of the contract or provision for the insertion of such date by the tenderer, as appropriate,
- (8) the **time or times within which the contract is to be performed** or provision for the insertion of such information by the tenderer, as appropriate,
- (9) that the Council will be entitled to **cancel** the contract and to recover from the tenderer the amount of any loss resulting from such cancellation if the tenderer or their representative (whether with or without the knowledge of the tenderer) shall have practised **collusion** in tendering for the contract or any other contract with the Council or shall have employed any **corrupt or illegal** practices either in the obtaining or execution of the contract or any other contract with the Council or shall have provided **misleading or inaccurate** information in tendering for the contract or any other contract with the Council,

- (10) that the tenderer shall be **prohibited from transferring or assigning** directly or indirectly, to any person or persons, whomsoever, any portion of the contract without the written permission of the Council and that sub-letting of any part of the contract, except to the extent permitted in writing by the relevant Chief Officer, shall be prohibited,
- (11) in the case of contracts where the Chief Officers deem that the date of completion or the date of delivery is of importance, that specified **liquidated damages** will be payable for failures to comply with the date of completion or delivery,
- (12) that before entering into a contract, the tenderer shall give an assurance, in writing, that to the best of their knowledge and belief they have complied with all statutory requirements in respect of ensuring **equal opportunity** in employment,
- (13) that before entering into a contract, the tenderer shall give an assurance, in writing, that to the best of their knowledge and belief they are **not unlawfully discriminating** within the meaning and scope of the equal opportunity requirements,
- (13a) that before entering into a contract, the tenderer shall give an assurance, in writing, that (i) any **payments to the tenderer's sub-contractors** (if any) in respect of the contract will be paid timeously and that, as a minimum, invoices rendered by sub-contractors will be paid within 30 days of receipt, unless formally disputed and (ii) the tenderer will impose a similar condition on its sub-contractors in respect of payments due to sub-sub-contractors (if any),
- (14) that the contract will be **subject to the law of Scotland**,
- (15) in the case of contracts where the Chief Officer deems it appropriate tenderers shall be required to enter into a **Bond** with a Bank or Insurance Company for a sum as stipulated by the Chief Officer for the due performance of the contract and/or in such circumstances as the Chief Officer may decide, a **parent company guarantee**. In the case of works contracts, a bond and/or parent company guarantee shall be obtained where the Contract Value is **over £1 million** unless the Chief Officer considers it unnecessary,
- (16) that the tenderer shall be **adequately insured** with an approved Insurance Company in respect of matters including Employers Liability, Public/Products Liability and/or Professional Indemnity as may be required. Copies of the relevant policies and premium renewal receipts shall be produced by the tenderer whenever required for inspection by the Council,
- (17) that, before entering into a contract, satisfactory evidence has been exhibited to confirm a **Health and Safety Policy** is in place and operational within the contractor's organisation,

- (18) that all contracts made with the Council shall provide that the conditions and obligations to be observed by contractors shall likewise apply to any permitted **sub-contractor** and that a tenderer shall be responsible for the observance of such conditions by any sub-contractor,
- (19) that the contractor shall confirm an awareness of the Council's **Environmental Policy** (or any other policy adopted by the Council) and intimated to the contractor) and adhere to the philosophy of that policy,
- (20) that, in so far as carrying out functions of the Council, the contractor will comply with the **Human Rights Act 1998** and will indemnify the Council in respect of any claims arising due to a contractor's breach of that Act,
- (21) where a contract requires data processing on the part of a contract it will be a condition of the contract that the contractor complies with the security obligations of the **Data Protection Act 2018 and the UK General Data Protection Regulation**,
- (22) that the contract is subject to the requirements for disclosure under the **Freedom of Information (Scotland) Act 2002**. Acceptance of conditions which unreasonably restrict disclosure is prohibited. In dealing with FOI requests, the Council subscribes to the guidance of the Scottish Procurement Directorate on Scottish Public Sector Procurement and Freedom of Information,
- (23) where the **Transfer of Undertaking (Protection of Employment) Regulations 2006 (TUPE)** are likely to apply in a change of service provision, a clause imposing a contractual obligation on the contractor to provide TUPE information in good time prior to the termination of the contract and potential future service provision change,
- (24) that, in so far as carrying out functions of the Council, the contractor will comply with the **Public Records (Scotland) Act 2011** and indemnify the Council in respect of any claims arising due to a contractor's breach of that Act,
- (25) that the contractor will take all measures necessary to comply with its obligations in the field of social, environmental and employment law,
- (26) where there is tendering activity exceeding £50,000 of contract value in areas identified by Police Scotland as vulnerable to infiltration by Serious Organised Crime Groups (SOCGs), that the two part **Declaration Of Non-Involvement In Serious Organised Crime or Relevant Convictions** is included as part of the pre-qualification process, and
- (27) that the contract will include a termination clause to permit effect to be given to regulation 73 of the Contracts Regulations.

13. CONTRACT MANAGEMENT AND MONITORING

- 13.1 The Chief Officer of the Contracting Service initiating any procurement will establish a process for managing, monitoring and reviewing contracts during the contract term and after their completion. This process will consider financial aspects of the contract (for example, monitoring the Contract Value and budget against spend as well as monitoring that invoices are in line with agreed contract values) and other relevant operational issues to establish a measure of the performance of the contractor. The degree of management and monitoring will be determined by the Chief Officer and will take account of the Contract Value, the subject matter, the duration and frequency, the complexity and risk rating of the contract, and relevant market conditions.
- 13.2 The Chief Officer will maintain records of the management and monitoring process to ensure Best Value and continuous improvement.

14. CONTRACT PAYMENTS BY INSTALMENTS

- 14.1 Where contracts provide for payment to be made by instalments, the Chief Finance Officer shall arrange for the keeping of a contract register or registers to show the state of account on each contract between the Council and the contractor together with any other payments and the related professional fees. Services shall provide the necessary information to the Chief Finance Officer.
- 14.2 Payments on account of the contract sum shall be made by the Chief Finance Officer within the time specified in the contract upon production of authorised certificates by the Chief Officer. Such certificates shall be in a form approved by the Chief Finance Officer.

15. VARIATIONS TO CONTRACT VALUES AND CLAIMS

- 15.1 Any material variation to a contract involving capital expenditure, whether it be by an addition or an omission, shall be authorised by the Chief Officer who having consulted with the Capital Section, Finance Services shall notify the contractor in writing by issuing an official variation order specifying the addition or omission and include the financial effect of any variation order on the contract price in any progress reports on that contract submitted to other Chief Officers.
- 15.2 For all contracts, any increase in expenditure beyond the Contract Value shall be authorised by the Chief Officer of the Contracting Service. The Chief Officer shall report the matter by way of the Information Bulletin as soon as possible if the cumulative effect of such increase in expenditure is to increase the Contract Value by:

- £50,000 if the Contract Value of the original contract is £500,000 or less; or
- 10% if the Contract Value of the original contract is over £500,000.

15.3 The Chief Officer must ensure that any variations to a contract or increases in expenditure are compliant with the Regulations or the Procurement Act and in particular regulation 72 of the Contracts Regulations. Records of any such variations or increases in expenditure require to be maintained by the Chief Officer.

15.4 Claims from contractors in respect of matters not clearly within the terms of any existing contract shall be referred to the Chief Governance Officer for consideration of the authority's legal liability and, where necessary, to the Chief Finance Officer for consideration, before a settlement is reached.

16. RETENTION OF DOCUMENTS

The provisions relating to the retention of tender documentation are set out in the Council's Retention Schedule.

- (1) All unsuccessful tenders will normally be retained for one year.
- (2) Successful tenders and consequent contracts shall normally be retained for five years after completion of the contract.
- (3) The information required in Regulation 83 reports of the Contracts Regulations should be retained for three years.
- (4) Contracts with historical significance should be referred to the Council's Archivist.
- (5) The Chief Officer may decide to retain contracts beyond the normal periods if particular circumstances require, for example, the risk of latent defects appearing in works.

These retention requirements go beyond the minimum requirements of regulation 82 of the Contracts Regulations.