

Inverclyde Council

STANDING ORDERS RELATING TO CONTRACTS

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1.0 DEFINITIONS

1.1 For the avoidance of doubt, it is understood that in these Standing Orders the following definitions and provisions shall apply:

- (i) “Corporate Directors” shall be deemed to include the Chief Executive;
- (ii) “appropriate committee” shall mean the committee to which the procuring Service generally reports in terms of the Council’s Scheme of Administration, except where the relevant contract is being procured through Scotland Excel or Procurement Scotland in which case the “appropriate committee” shall mean the Policy & Resources Committee (or its equivalent from time to time);
- (iii) the values specified herein are exclusive of any Value Added Tax that may be levied;
- (iv) “emergency” shall be deemed to mean an actual or potential event involving or likely to involve any of the following:
 - (a) danger to life or health;
 - (b) serious damage or destruction of property; or
 - (c) major financial penalties.
- (v) “the European Procurement Regime” means the various directives, regulations, formal guidance notes, interpretative communications and precedents which together form the legal and procedural framework relating to public sector procurement for public works, the supply of goods and materials and the supply of services.
- (vi) “social care services” means-

the provision of services for the performance of the Council’s functions under:-
 - (a) The Social Work (Scotland) Act 1968;
 - (b) Part 2 of the Children Act 1995;
 - (c) Sections 25 to 27 of the Mental Health (Care & Treatment) (Scotland) Act 2003; and
 - (d) Any other function of the Council covered by the definition of care service in Section 2(1) of the Regulation of Care (Scotland) Act 2001, not specifically mentioned elsewhere.

1.2 The title of every officer referred to in the Standing Orders shall be read to include any alternative title which the Council may from time to time ascribe to that officer. Further, in the event that functions ascribed at the date hereof to a particular officer are re-ascribed the relevant provisions herein shall stand assigned to that other officer(s).

2.0 EXTENT

2.1 General

2.1.1 These Standing Orders (which are referred to in the Council's Standing Orders as "Contract Regulations" and are hereinafter referred to as 'Orders') are made under Section 81 of the Local Government (Scotland) Act 1973 and shall apply, unless otherwise stated, to the making by the Council or on their behalf or on behalf of other persons/parties as part of a collaborative purchasing arrangement to all contracts for the supply of goods or materials or for the execution of works or for the provision of services. Any power exercisable by elected members and officials in terms of these Orders shall be subject to the provision of the Council's Scheme of Delegation whether or not referred to therein.

2.1.2 Officers must also have regard to the following:-

- (i) the Council's Financial Regulations. Where there is a conflict between the terms of these Orders and the Council's Financial Regulations, whether in relation to financial limits or otherwise, the terms of these Orders shall take precedence;
- (ii) the Corporate Procurement Manual and the procedure rules contained therein issued from time to time by the Corporate Procurement Manager;
- (iii) Rules of Procedure for National Contracts set up by Scotland Excel and Procurement Scotland; and
- (iv) the Guidance on compliance with the European Procurement Regime, issued from time to time by the Head of Legal & Democratic Services and/or the Corporate Procurement Manager.

2.1.3 These Orders shall also apply to all contracts which are subject to UK legislation or the European Procurement Regime provided that, where there is any conflict between these Orders and such legislation or rules, the legislation and rules shall take precedence over these Orders.

2.1.4 Where any tender is likely to:-

- (i) equal or exceed the thresholds for the application of the European Procurement; or
- (ii) exceed the thresholds applicable to lower value contracts.¹

the Corporate Director or the officers concerned shall refer the matter to the Corporate Procurement Manager, in consultation where appropriate with the Head of Legal & Democratic Services who will be responsible for ensuring that the various requirements of the European Procurement Regime are complied with fully.

2.2 Variation and Revocation

2.2.1 These Orders may from time to time be varied or revoked by the Council pursuant to a recommendation from the Policy and Resources Committee, meeting in its normal

¹ For advice on lower value contracts, please refer to Procurement Manual

cycle. Such alteration shall not be effected except on a resolution adopted by a majority of the Members of the Council.

- 2.2.2 The Corporate Procurement Manual and Guidance may from time to time be varied or revoked by the Head of Legal & Democratic Services and/or the Corporate Procurement Manager.

2.3 Suspension

- 2.3.1 The appropriate Committee, on receiving a joint recommendation from the relevant Corporate Director, the Head of Legal & Democratic Services and the Chief Financial Officer that there are special circumstances justifying suspension of one or more provisions of these Orders and that it is in the interests and within the powers of the Council to do so, may suspend the application of such provision(s) to any contract. Suspension in this regard shall be by a simple majority of members present and voting.
- 2.3.2 The Chief Executive, in terms of the specific delegation to him by the Council to deal with matters of urgency and following appropriate consultation, may authorise action which otherwise would require suspension of one or more provisions of these Orders.

2.4 Review

- 2.4.1 These Orders shall be reviewed at least every two years.

3.0 EXEMPTIONS

3.1 Thresholds

- 3.1.1 There shall be exempted from the provisions of these Orders but not from the requirement to seek competitive quotes or the requirement to comply with the Council's Financial Regulations, all contracts for the supply of goods and materials, including second hand goods or materials, or for the execution of works or for the provision of services where the estimated price of the contract does not exceed:

Supply of Goods or Materials:	£25,000
Provision of Services	£25,000
Execution of Works	£50,000

- 3.1.2 It is not permitted to divide any procurement exercise into two or more contracts to avoid the application of the financial thresholds referred to above, or those specified in the European Procurement Rules.

3.2 Excluded contracts

- 3.2.1 There shall be exempted from the provisions of these Orders **(but not exempted from the need to comply fully with the European Procurement Regime, where applicable):-**
- (i) any contract for the supply of goods or materials or for the provision of services or for the execution of works which, in the opinion of the Chief Executive, in consultation with the relevant Corporate Director & Statutory Officers, are urgently required for the prevention of damage to life or property

or the Chief Executive believes would avert, alleviate or eradicate the effects or potential of an emergency. Any such contracts, and the relevant circumstances, shall be reported to the appropriate Committee as soon as possible after the event;

- (ii) a contract which has been extended for a period of up to six months in terms of the Council's Scheme of Delegation (Officers);
- (iii) contracts of employment;
- (iv) the appointment of legal agents, except where such appointment relates to a specific project and adequate time is available to carry out a proper procurement exercise;
- (v) the appointment of legal counsel; and
- (vi) with the exception of Standing Order 22, any contract relating to heritable property which shall be subject to separate procedures contained within the Corporate Procurement Manual.

3.3 Contracts for Social Care Services

- 3.3.1 The Rules of Procedure contained within the Corporate Procurement Manual shall apply to contracts for the procurement of Social Care Services and in the event of any ambiguity between the Rules and any specific Order, the provisions of the Rules shall apply.

3.4 Collaborative Purchasing

- 3.4.1 In addition to clause 3.2 above and subject to the Financial Regulations, these Orders shall not apply to any contract for the supply of goods or materials or the provision of services made on behalf of the Council by Scotland Excel, Procurement Scotland or the Government Procurement Service or any successor body or bodies for whom the Council has approved its membership or participation in furtherance of collaborative purchasing or admission to contractual arrangements providing Best Value to the Council. For the avoidance of doubt, Order 12 shall apply in all other cases.
- 3.4.2 All contracts secured through collaborative purchasing in terms of Clause 3.4.1, irrespective of value, shall be signed on behalf of the Council by the Head of Legal & Democratic Services, and in her absence by a Legal Services Manager.
- 3.4.3 The appropriate Corporate Director or Head of a procuring service shall not separately seek tenders for the supply of goods and materials or the provision of services where arrangements for such collaborative purchasing have been established unless he believes that such collaborative purchasing is not achieving Best Value and he/she has confirmed the position with the Chief Financial Officer and the Head of Legal & Democratic Services.

4.0 ESTIMATES OF COST

- 4.1 No tender shall be invited or offer made or accepted for any contract for the supply of goods or materials or for the provision of services or for the execution of works

unless there is sufficient financial provision within approved budgets for the net estimated expenditure.

- 4.2 The values stated in these Orders are the total estimated values of the contract concerned, over the duration of the contract, and not the estimated annual value of the contract. Where it is likely that a supply of goods or services will be required on a continuing basis for a number of years, for example, a maintenance contract, the anticipated duration of the continuing supply shall be taken into account when estimating the value of the contract for the purposes of these Orders.

5.0 TENDERING PROCEDURES – EU PROCUREMENT

- 5.1 Where the European Procurement Regime applies to a particular contract, the appropriate Corporate Director or Head of Service shall in consultation with the Head of Legal & Democratic Services and the Corporate Procurement Manager have authority to decide, subject to complying with the terms of the European Procurement Regime, whether to adopt the open or restricted procedures.
- 5.2 Where it is considered that the use of competitive dialogue or the negotiated procedure is the most appropriate method of procuring a particular contract, the matter shall be referred to the appropriate committee for consideration.

6.0 TENDERING PROCEDURES - GENERAL

- 6.1 Subject to Order 6.6 hereof, all contracts over the values specified in Order 3 require to be advertised in a sufficiently open manner to ensure that the principles of openness, transparency and equality are fully met.
- 6.2 Public Notice shall be given of all contracts over the values specified in Order 3 on the Public Contract Scotland Portal. Where, in particular circumstances, the Head of Service considers it necessary, Public Notice may also be given in appropriate trade journals or newspapers.
- 6.3 A sufficient number of tenderers must be invited to tender to ensure genuine competition which must not except as hereinafter provided, be less than four. Where fewer than four contractors express an interest, all those contractors meeting the minimum evaluation criteria must be invited to tender.
- 6.4 The Corporate Procurement Manual shall contain guidance in relation to the selection of tenderers where inviting all those who have expressed an interest in submitting a tender would result in the Council incurring disproportionate costs.
- 6.5 Where tenders are invited by advertising the contract opportunity on the Public Contracts Scotland portal, no tender shall be considered unless it is submitted electronically through the portal, unless prior to such advertising the approval of the Corporate Procurement Manager is given to use the procedure set out at Order 6.6 below.
- 6.6 Subject to Order 6.5 above, in all other cases where tenders are invited, no tender shall be considered unless it is contained within a plain envelope securely sealed and bearing the word 'Tender.....' followed by the subject matter to which the tender relates. The envelope shall not bear any mark that identifies the tenderer.

6.7 All tenderers shall be advised which of Orders 6.5 or 6.6 will apply in the invitation to tender.

6.8 Evaluation

6.8.1 The evaluation methodology to be adopted in relation to a contract shall be transparent, fair, comply with Council guidance on Evaluation Criteria and shall be fully disclosed to prospective tenderers in the tender documentation.

6.8.2 In all contracts, whether above or below the European Procurement Thresholds, where the contract is to be awarded to the 'most economically advantageous tender', the balance between cost/quality shall not fall below 60/40, where 60 represents cost. Where the relevant Corporate Director is of the opinion that this ratio requires to be varied to the extent that cost represents a smaller percentage of the overall total, then prior to commencing the procurement process, he/she shall prepare a report for the consideration and approval of the appropriate committee. Any such report shall set out clear and robust reasons for the proposed variation and shall be prepared in consultation with the Chief Finance Officer and Head of Legal & Democratic Services.

6.9 Where the estimated value of the contract exceeds the European Procurement Thresholds, the requirements for advertisement, evaluation and selection specified within the relevant regulations shall apply.

7.0 LATE TENDERS

7.1 No tenders received after the closing date and time for submission shall be considered and arrangements shall be made for their rejection and return to the tenderer without further consideration. Tenderers shall be advised of this provision in the invitation to tender.

8.0 OPENING OF TENDERS

8.1 All tenders relating to a specific project shall be opened at the one time.

8.2 Tenders shall be opened in the presence of:

- (i) in the case of contracts where the estimated value is not more than £250,000, an officer within or acting on behalf of the procuring service and an officer within Legal and Democratic Services, both of whom must be at not lower than Grade I; and
- (ii) in the case of contracts where the estimated value or amount exceeds the levels specified in sub-para (i) above, an officer within the procuring Service and an Officer within Legal and Democratic Services, both of whom must be at not lower than Grade I and two Elected Members.

9.0 ACCEPTANCE OF TENDERS

9.1 Except as hereinafter provided, the lowest or the most economically advantageous tender shall be accepted.

9.2 Tenders may only be accepted on behalf of the Council:-

- (i) in the case of tenders where the value or the amount does not exceed £500,000 by the appropriate Corporate Director or the Head of Legal & Democratic Services;
- (ii) in the case of contracts where the value or amount exceeds £500,000 by the Head of Legal & Democratic Services with authority from the appropriate Committee²;
- (iii) in any case, regardless of value, where the tender recommended for acceptance is **not** the lowest/most economically advantageous only by the Head of Legal & Democratic Services with authority from the appropriate Committee; and
- (iv) in March and September of each year, each service shall prepare a note for members detailing all contracts which have been accepted in terms of SO 9.2 (i) and (ii) above.

9.3 **For the avoidance of doubt, it is specifically provided that no tender may be accepted unless it is the winning tender in terms of the relevant evaluation process.**

9.4 If the appropriate Corporate Director or Head of Service recommends that none of the tenders submitted should be accepted, the Head of Legal & Democratic Services or his/her authorised representative shall notify all tenderers accordingly.

9.5 No tender shall be accepted unless the appropriate Corporate Director or Head of Service and the Chief Financial Officer respectively are or have been satisfied as to the technical capability and professional fitness and financial standing of the tenderer.

10.0 REGISTER OF TENDERS

10.1 The Head of Legal & Democratic Services shall keep and maintain a register of all tenders received with the exception of those tenders relating to the procurement of Social Care Services under the value of £250,000 which shall be made available for inspection at any time, and in which shall be entered, in respect of each tender:

- (i) the number of tenders received in respect of each contract;
- (ii) the date and time of opening of each tender;
- (iii) the name and address of each tenderer, the value or amount of each tender and a statement as to the acceptance or otherwise of the tender; and
- (iv) a statement of the names and addresses of persons to whom tender documents were issued but who declined or failed to submit a tender.

² Following the consultation process referred to at Regulation 6.10 of the Council's Financial Regulations

- 10.2 The relevant Head of Service shall keep and maintain a register of tenders relating to Social Care Services containing the information (where relevant) outlined in (i) – (iv) above.

11.0 NEGOTIATED TENDERS AND EXTENSION OR TERMINATION OF EXISTING CONTRACTS

- 11.1 In **exceptional** cases, where the appropriate Corporate Director or Head of Service considers on the application of Best Value principles that a tender should be negotiated with one person, he/she shall, before entering into negotiations, obtain the approval of the appropriate committee both in respect of the negotiation and of the person with whom the tender is to be negotiated. In such cases, advice must be obtained from the Head of Legal & Democratic Services and the Corporate Procurement Manager before referring the matter to the appropriate committee.
- 11.2 An existing contract may only be extended provided its terms and conditions authorise such an extension.³
- 11.3 Where an existing contract was not let under EU Procurement Rules and a proposed extension to that contract will bring the total amount of the contract above the relevant EU Threshold, an extension to that contract is specifically prohibited.
- 11.4 In all cases where it is proposed to extend an existing contract, the relevant Head of Service must consult with the Head of Legal & Democratic Services and the Corporate Procurement Manager.
- 11.5 **Where the European Procurement Regime applies to a contract, the Negotiated Procedure and the Competitive Dialogue Procedure may only be used where permitted by and on a ground specified in the Regulations.**
- 11.6 Where an officer decides that a contract shall be terminated early/prior to the expiry date, a report on the circumstances prevailing shall be prepared in consultation with the Head of Legal & Democratic Services and submitted to the relevant Committee.

12.0 FRAMEWORK AND NON-EXEMPT COLLABORATIVE AGREEMENTS⁴

- 12.1 Where a Corporate Director or Head of Service deems it best value, they may enter into or participate in a Framework or non-exempt collaborative agreement provided, in the case of procurements where the Council's contribution exceeds the thresholds set out at Order 3.1.1, he/she has obtained the prior approval of the appropriate committee. Before doing so the Corporate Director or Head of Service shall consult fully with the Head of Legal & Democratic Services and the Corporate Procurement Manager.
- 12.2 A Framework or non-exempt collaborative agreement may be established/utilised by:
- (i) agreeing⁵ with another local authority or authorities or other public body or bodies to establish a Framework or otherwise work together for the purpose of co-ordinating a shared contract; or

³ This alteration has been made to reflect the EU Rules and also to aid transparency.

⁴ Exempt Collaborative Agreements are set out at Order 3.4.

- (ii) call off or by conducting a mini competition under an Framework that has been properly established by another local authority or authorities or any other agency of the UK or Scottish Government. Any such contracts must be entered into in accordance with the conditions applicable to the relevant Framework.

12.3 Where, in order to participate in an existing Framework of the type described in Standing Order 12.2(ii), the Council is required to enter into a participation agreement or other similar agreement regulating the use of the Framework by the Council, the Chief Executive shall have the authority to enter into the agreement on behalf of the Council, following discussion with the Chief Finance Officer and Head of Legal & Democratic Services.

13.0 POST TENDER CLARIFICATION

13.1 Where examination of tenders received reveals obvious errors or discrepancies which would affect the tender figures, these errors will be dealt with in the following manner:-

- (i) any obvious arithmetical errors will be rectified by the appropriate officer checking the tenders and the amount of tender shall be held to be the amount of the documents so rectified and the tenderer informed in writing of the corrected amount: and
- (ii) where there is an obvious and genuine error in rates occurring, the tenderer will be given the opportunity of either (a) confirming that they agree to their tender being considered with the error remaining, (b) correcting the error providing such course of action does not put other tenderers at a disadvantage or otherwise distorts competition, or (c) withdrawing their tender. This procedure must be undertaken in writing. Should the tenderer decide to withdraw their tender, it will not be considered for acceptance. **The tenderer must not be given the opportunity to submit an amended tender.**

13.2 A full written record shall be kept by the appropriate Corporate Director of all contracts where post tender clarification has been used and the written record will be retained with the original tender. The written record will include the justification for authorising post tender clarification, the nature of the clarification undertaken, the outcome of such clarification and shall detail any additional terms agreed by the Council.

14.0 CONSULTANTS

14.1 Where appropriate, it shall be a condition of engagement of consultants that:-

- (i) they shall comply with these Orders as though they were officers of the Council;

⁵ Such agreement, which should be in writing, should set out the rights and responsibilities of each party involved in the collaboration.

- (ii) at any time during the performance of the contract the consultant shall, on a request by the relevant Head of Service produce all records maintained by them in relation to the contract and on completion of the contract transmit all such records to the Council, if so required; and
- (iii) copyright and intellectual property rights in and to all documentation produced by or on behalf of the contractor in the course of providing the services shall vest and remain vested in the Council.

14.2 In the event that a Head of Service wishes to deviate from these requirements, he shall only do so with the agreement of the Head of Legal & Democratic Services and the Corporate Procurement Manager.

15.0 FORM OF CONTRACT

15.1 Except where otherwise agreed between the appropriate Corporate Director and the Head of Legal & Democratic Services, every contract shall be in writing and in the name of the Council, shall be signed by the Head of Legal & Democratic Services or other officer designated by him/her for the purpose and shall be subject to the Laws of Scotland.

16.0 FREEDOM OF INFORMATION

16.1 All tender documents shall clearly state that the Council is a body to whom the Freedom of Information (Scotland) Act 2002 applies in accordance with the procedure detailed in the Procurement Manual.

17.0 EUROPEAN STANDARDS

17.1 All tenders for the supply of goods and materials or for the execution of works shall be based on a defined specification except where the Council otherwise decides.

17.2 Where there is an appropriate European Standard current at the date of tender, every contract shall require, as the case may be, that all goods, materials used or supplied, and all workmanship shall at least meet the requirements of that European Standard.

17.3 Where there is no such European Standard, if there is an equivalent International Standard, that shall be used.

17.4 In the absence of either European or International Standard an appropriate British Standard "or equivalent" shall be used, where available.

18.0 EQUALITIES & PREVENTION OF DISCRIMINATION

18.1 No contract shall be awarded without the relevant Head of Service having obtained from the tenderer confirmation in writing that, to the best of the tenderer's knowledge and belief, the tenderer-

- (i) has complied with all statutory requirements relating to equal opportunities in employment; and

- (ii) is not unlawfully discriminating within the meaning and scope of the Race Relations (Amendment) Act 2000 in relation to discrimination in employment.

18.2 No contract shall be awarded unless the relevant Head of Service has obtained satisfactory information from the tenderer in relation to their statutory obligations under the Race Relations Act 1976 (as amended).

19.0 ASSIGNATION/NOVATION

19.1 Except where otherwise provided in the contract, a contractor shall not assign, novate or sub-let a contract or any part thereof without the previous written consent of the Council.

20.0 APPLICATION TO THIRD PARTIES

20.1 Any third party or person (not being an official of the Council) who is responsible to the Council for a contract on its behalf shall in relation to that contract:

- (i) comply with these Orders as though he/she were an official of the Council;
- (ii) at any time during the currency of the contract, produce on request to the appropriate Corporate Director all records maintained by him/her in relation to that contract, including evidence of insurances; and
- (iii) on completion of the contract, transmit to the appropriate Corporate Director all such records relating to that contract.

21.0 APPLICATION TO SUB-CONTRACTORS

21.1 All conditions to be observed by contractors in terms of these Orders shall mutatis mutandis also apply to sub-contractors, and all contractors shall be responsible for the observance of such conditions by such sub-contractors.

22.0 DISPOSAL OF LAND

22.1 Where the Council wishes to dispose of land, officers shall have regard to Section 74 of the Local Government (Scotland) Act 1973, the Disposal of Land by Local Authorities (Scotland) Regulations 2010 and the relevant Statutory Guidance, and any and all amendments which may from time to time be in force (the Framework).

22.2 In circumstances where the value of the land to be disposed is more than £10,000 and the difference between the proposed consideration and the best value consideration that can be obtained is greater than 25%, then the relevant Head of Service shall present a report to the appropriate committee which shall:-

- (i) appraise and compare the costs and other disbenefits with the benefits of disposal at less than best value consideration;
- (ii) state whether the disposal for the proposed consideration is reasonable and explain why it is reasonable; and

- (iii) outline whether the proposal is likely to contribute towards (a) promotion or improvement of economic development or regeneration, (b) health, (c) social well-being or (d) environmental wellbeing, for the whole or any part of the area in question or any person resident or present in that area of land.
- 22.3 In determining the best value consideration which could be achieved for land, the Framework provides that this should be determined by a suitably qualified valuer who shall:-
 - (i) be a chartered member of or authorised to practice by the Royal Institute of Chartered Surveyors;
 - (ii) be suitably experienced in the valuation of the type of property concerned with a reasonable knowledge of the locality concerned; and
 - (iii) take into account, when valuing the land, the requirements of the latest edition of the RICS valuation standards applicable at the date when he is undertaking the valuation.
- 22.4 The Corporate Procurement Manual shall contain detailed provisions which shall be applied in relation to the procedures to be followed in relation to the disposal of land.
- 22.5 For the avoidance of doubt, 'disposal of land' includes sale, lease, license to occupy or other arrangement whereby the Council cedes ownership or occupation of land and/or buildings.

23.0 DISPOSAL OF OTHER ASSETS

- 23.1 Subject to Order 22, prior to selling any other asset of the Council, advice must be sought from the Head of Legal & Democratic Services and the Corporate Procurement Manager in consultation with the Chief Financial Officer.

24.0 THE COUNCIL AS CONTRACTOR

- 24.1 The prior approval of the appropriate committee is required where a Corporate Director considers it appropriate to tender for external work and
 - (i) the contract will be with a private sector purchaser and the total estimated value of the contract will exceed £100,000; or
 - (ii) the contract will be with a public sector purchaser and the total estimated value of the contract will exceed £250,000.

In both cases, the report must specify any sub-contracting arrangements, if those arrangements will exceed the thresholds set out in Order 3.1.1

- 24.2 In all cases where a Corporate Director considers it appropriate to tender for external work, the Corporate Director shall consult fully with the Chief Financial Officer and the Head of Legal & Democratic Services to ensure that the proposal is financially prudent and legally competent and the Head of Organisational Development, Human Resources & Performance in relation to TUPE or other personnel issues.