

Standing Orders Relating to Contracts

July 2021



RESPECTFUL
SUPPORTIVE

Index

	Page
Introduction	<u>1</u>
1. Commencement	<u>2</u>
2. Glossary of Terms	<u>2</u>
3. Extent and Application	<u>4</u>
4. Exemptions and Special Arrangements	<u>6</u>
5. Disaggregation	<u>8</u>
6. Delegation of Duties under these Standing Orders	<u>8</u>
7. Maintenance and Repair of Council Buildings	<u>9</u>
8. Collaborative Procurement	<u>9</u>
9. Framework Agreements and Dynamic Purchasing Systems (DPS)	<u>10</u>
10. Procedures Prior to Commencing Procurement Exercise	<u>11</u>
11. Advertising of Contracts	<u>11</u>
12. Tendering Procedures	<u>12</u>
13. Submission of Tenders	<u>12</u>
14. Late Tenders	<u>13</u>
15. Opening and Recording Tenders	<u>13</u>
16. Checking, Clarification and Evaluation of Tenders	<u>13</u>
17. Post Tender Negotiations	<u>14</u>
18. Acceptance of Tenders	<u>15</u>
19. Contracts Register	<u>15</u>
20. Nomination of Sub-Contractor	<u>15</u>
21. Serial and Phased Works Contracts	<u>16</u>
22. Authority to Negotiate Contract without Prior Advertisement	<u>16</u>

23.	Periodic Supplies	<u>16</u>
24.	Contractual Matters	<u>16</u>
25.	Application to Procurement Consultants	<u>19</u>
Annex 1:	Procedures for Paper Tendering	<u>20</u>
Annex 2:	Procedures for Commissioning of Health or Social Care Services	<u>23</u>
Annex 3:	General Powers of Executive Officers under these Standing Orders	<u>26</u>

Introduction

The Standing Orders Relating to Contracts set out how contracts for all supplies, services and works will be made by or on behalf of the Council. For the avoidance of doubt, the term 'contract' includes any form of agreement, written or unwritten, to which the Council is a party which creates rights and responsibilities for any of the parties involved.

The purpose of the Standing Orders is to ensure that contracts are appropriate for their purpose, provide the right balance between price and quality, and are procured in an open way that demonstrates probity and compliance with the Council's policies.

These Standing Orders apply equally where payment is expected to be received by the Council as where payment is to be made.

In entering contracts for or on behalf of the Council, every Committee, Panel, Officer or such other person as may have the power of entering into contracts on the Council's behalf, regardless of whether any such contracts are otherwise exempted from the application of these Standing Orders, shall be subject to an obligation to seek Best Value for the Council and be able to demonstrate equal treatment, non-discrimination, proportionality and transparency in the process of awarding contracts.

Notwithstanding the provisions and requirements of these Standing Orders, all contracts must comply with:

- (a) The Financial Regulations of the Council;
- (b) The Scheme of Delegation to Officers;
- (c) The requirements of the Public Contracts (Scotland) Regulations;
- (d) The requirements of the Procurement Reform (Scotland) Act; and
- (e) All other relevant legislation including retained EU law.

Due consideration should also be given to all Guidance and Policy Notes issued by the Scottish Government, Scottish Procurement Directorate in respect of procurement matters including the Scottish Procurement Journey. Details can be obtained from the website - [Scottish Procurement Journey](#).

1. Commencement

- 1.1 These Standing Orders relating to Contracts ('Contract Standing Orders') shall apply and have effect as from 1 July 2021 and supersede the Standing Orders Relating to Contracts approved by the Council on 3 October 2019.

2. Glossary of Terms

- 2.1 **Best Value** means the optimum combination of price (whole life cost or acquisition cost, as appropriate) and quality for any particular requirement, and which supports the continuous improvement in the performance of the Council's functions having regard to (a) efficiency, (b) effectiveness, (c) economy, (d) equal opportunities and (e) sustainability.

- 2.2 **Call-off Contract** means a contract which is entered into between the Council and a Contractor on a Framework Agreement or Dynamic Purchasing Systems (DPS) to which the Council has access. A Call-off Contract shall be awarded in accordance with the terms of the Framework Agreement or DPS, which may provide for:

2.2.1 A direct call-off, Framework Agreement only, by application of the terms set out in the Framework Agreement (which shall be referred to in these Contract Standing Orders as a Direct Award); or

2.2.2 A mini-competition between the Contractors within the Framework Agreement or DPS that are capable of performing the proposed Call-off Contract (which shall be referred to in these Contract Standing Orders as a Mini-Competition).

- 2.3 **Collaboration (or Collaborative Procurement)** is where two or more Contracting Authorities, including the Council, aggregate demand for procurement purposes where it makes logical and commercial sense to do so. This results in the maximisation of procurement skills and resources while leveraging greater purchasing power and encouraging competition or innovation in the market place. For the purposes of these Standing Orders, Collaboration relates only to the procurement exercise and Tendering process up to the point of contract award.

- 2.4 **Contract Documents** means the documents to be used in any procurement exercise and where different those intended to form part of any contract following on from a procurement exercise. It includes, but is not limited to, the pre-qualification questionnaire, the invitation to either Tender for or negotiate a contract, the proposed conditions of contract, the specifications or the descriptions of the supplies, services or works required by the Council and any bill of quantities, and all supplementary documents.

- 2.5 **Contracting Authority** shall have the same meaning as provided for in the Public Contracts (Scotland) Regulations, which are available at the link provided at Standing Order 2.15 below.

- 2.6 **Contractor** means a Contractor or supplier or service provider (as the case may be) appointed by or on behalf of the Council under a contract to which these Contract Standing Orders apply.

- 2.7 **Executive Officer** means in any case the Chief Executive, the Director, Assistant Director or Head of Service with responsibility for the Council service which has the contract requirement, unless these Standing Orders provide otherwise. Where the contract is required for more than one service, the term shall refer to any one of the relevant Executive Officers.
- 2.8 **Framework Agreement or DPS** means an agreement or other arrangement between one or more Contracting Authorities and one or more Contractors, which establishes the terms under which a Call-off Contract may be agreed in the period during which the Framework Agreement or DPS applies.
- 2.9 **Health or Social Care Services** means a care service within the definition provided in regulation 5 of the Procurement (Scotland) Regulations 2016.
- 2.10 **Most Economically Advantageous Tender** means the Tender offer that is most economically advantageous from the Council's point of view having regard to the subject matter of the contract and may include matters such as quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost effectiveness, after-sales service, technical assistance, delivery date and delivery period or period of completion and other matters (as may be considered appropriate in relation to any particular contract).
- 2.11 **National Advertising Portal** means the national portal for advertising public sector contract opportunities in Scotland, which may be found at the [Public Contracts Scotland](#) website.
- 2.12 **Procurement Exercise** means any procurement process which is subject to these Standing Orders.
- 2.13 **Procurement Reform (Scotland) Act** means the Procurement Reform (Scotland) Act 2014 (as may be amended from time to time). These are available at <http://www.legislation.gov.uk/asp/2014/12/data.pdf>. Any reference to the Procurement Reform (Scotland) Act shall include where the context permits reference to any secondary legislation made and statutory guidance issued under the powers conferred in terms of that Act;
- 2.14 **Procurement Strategy** means a procurement strategy in terms of the Procurement Reform (Scotland) Act, section 15;
- 2.15 **Public Contracts (Scotland) Regulations** means the Public Contracts (Scotland) Regulations 2015 (as may be amended from time to time). These are available at: <https://www.legislation.gov.uk/ssi/2015/446/made/data.pdf>
- 2.16 **Retained EU law** means any retained EU law within the meaning of section 6(7) of the European Union (Withdrawal) Act 2018.
- 2.17 **Scottish Procurement Threshold** means the relevant contract value threshold specified under the terms of the Procurement Reform (Scotland) Act applicable to, as the case may be, contracts for the supply of goods, provision of services or works (all as may be amended from time to time). The current thresholds are set out under Standing Order 3.5.
- 2.18 **Tender** means a formal process undertaken during a Procurement Exercise where potential Contractors submit bid proposals for supplies, services or works.

2.19 **UK Find a Tender Service (FTS) Threshold** means the relevant contract value threshold specified under the terms of the Public Contracts (Scotland) Regulations, referred to previously as the EU Threshold, applicable to, as the case may be, contracts for the supply of goods, provision of services or works (all as may be amended from time to time). The current thresholds are set out under Standing Order 3.5.

3. Extent and Application

3.1 These Contract Standing Orders are made under Section 81 of the Local Government (Scotland) Act 1973, as amended.

3.2 The Contract Standing Orders shall be interpreted and applied having regard always to the General Rules of the Public Contracts (Scotland) Regulations and the Principles of equal treatment, non-discrimination, proportionality and transparency. All Council employees shall treat Tenderers equally and without discrimination and shall act in a transparent and proportionate manner at all times.

3.3 Subject to the exemptions contained in Standing Order 4 below and in accordance with the further provision at Standing Order 3.5, these Standing Orders shall apply to all contracts made by or on behalf of the Council with an estimated total price or value (which shall always be calculated excluding VAT and over the entire contract period, including any extension options) of or exceeding £50,000 for the supply of goods and materials and the provision of services or £200,000 for the execution of works.

3.4 These Standing Orders are subject to the over-riding provisions of United Kingdom and Scottish legislation, including the Procurement Reform (Scotland) Act, the Public Contracts (Scotland) Regulations and retained EU law. They are also subject to any UK Government or Scottish Government guidance on public procurement that may be issued from time to time. The rules and procedures that apply to the procurement of any particular contract will depend on the nature of that contract and its estimated total price or value over its duration. In the event of any conflict between these Standing Orders and any provision of United Kingdom or Scottish legislation or retained EU law, the legislative provision(s) shall prevail.

3.5 The following table details the different contract thresholds and, as appropriate, the procedures and legislation that apply at each level.

Type of contract	Threshold (excluding VAT)	Applicable procedures / legislation
Best Value Duty		
*All	< £10,000	Follow the relevant Route Zero procurement journey procedure at: https://thecore.south-ayrshire.gov.uk/article/301/Procurement-journey

<i>Type of contract</i>	<i>Threshold (excluding VAT)</i>	<i>Applicable procedures / legislation</i>
Quick Quote procedures		
Supplies and Services	£10,000 - £49,999	Follow the relevant Route One procurement journey procedure at:
		https://thecore.south-ayrshire.gov.uk/article/301/Procurement-journey
Works	£10,000 - £49,999	Follow the relevant procurement journey procedure at:
		https://thecore.south-ayrshire.gov.uk/article/301/Procurement-journey
Works	£50,000 - £199,999	Contact the Service Lead - Professional Design Services to progress with your requirement which must be concluded using appropriate construction contract terms and conditions
South Ayrshire Council Standing Orders		
Supplies & Services	> £50,000	Follow the procedures set out in these standing orders, and comply with any applicable legislation as detailed below
Works	£200,000 - £2,000,000	Follow the procedures set out in these standing orders, and comply with any applicable legislation as detailed below
Scottish Procurement Threshold		
Supplies and Services	> £50,000	Procurement Reform (Scotland) Act
Works	> £2,000,000	Procurement Reform (Scotland) Act
UK Find a Tender Service (FTS) Threshold		
Supplies and Services	> £189,330	Procurement Reform (Scotland) Act; and the Public Contracts (Scotland) Regulations
Works	> £4,733,252	Procurement Reform (Scotland) Act; and the Public Contracts (Scotland) Regulations
Social and Other Specific Services	> £663,540	Procurement Reform (Scotland) Act; and the Public Contracts (Scotland) Regulations

* 'All' is a reference to a supply, service and/ or works contract

3.6 All Council employees shall comply with the terms of the Contract Standing Orders and any failure to do so may result in disciplinary action.

- 3.7 The Head of Legal, HR and Regulatory Services shall have power to vary these Standing Orders but only in the following circumstances:
- 3.7.1 to reflect changes in job titles, reorganisations of departments and vacancies in posts;
 - 3.7.2 to change references to any piece of legislation where the legislation is repealed, and to insert references to new pieces of legislation where the new pieces of legislation largely re-enact the provisions of the repealed legislation;
 - 3.7.3 to change the financial values of the UK Find a Tender Service (FTS) Threshold or Scottish Procurement Threshold where referred to in these Standing Orders, to implement any changes made to those thresholds.

Any alterations made in terms of this Standing Order 3.7 shall be reported to the next meeting of the Council.

- 3.8 Other than alterations of a nature which fall within Standing Order 3.7, these Standing Orders may only be varied or revoked by the Council and any motion to vary or revoke these Standing Orders shall conform to the requirements of Standing Orders 18 and 19 of the Standing Orders Relating to Meetings.
- 3.9 Subject to the modifications contained in Annex 2 below and in accordance with the principles set down in the Statutory Guidance issued by Scottish Ministers in terms of the Procurement Reform (Scotland) Act 2014 as well as the Best Practice Guidance on the Procurement of Care and Support Services 2016 issued in terms of the Procurement Reform (Scotland) Act, these Contract Standing Orders shall apply to contracts for Health or Social Care Services subject to the special procedures set out in Annex 2.
- 3.10 Any query regarding the application or interpretation of these Contract Standing Orders must be referred in the first instance to the Head of Legal, HR and Regulatory Services.

4. Exemptions and Special Arrangements

- 4.1 It must be noted that whilst certain categories of contract are exempt from the Contract Standing Orders, they are not exempt from the application of the Procurement Reform (Scotland) Act, the Public Contracts (Scotland) Regulations or retained EU law, where these apply and all stated exemptions from Contract Standing Orders are subject to the proviso that such exemption is within the statutory powers of the Council and does not contravene any retained EU law or UK legislation including, for the avoidance of doubt, any Scottish legislation.
- 4.2 With the exception of Standing Orders 4.1 and 4.3 (which apply in all cases), these Contract Standing Orders shall not apply to:
- 4.2.1 Any contract for the execution of works, the supply of goods or materials or for the provision of services which, in the opinion of the Executive Officer, is urgently required to address a genuine emergency situation brought about by events which could not have been foreseen by the

Council. Lack of forward procurement planning shall not constitute an emergency requirement.

- 4.2.2 Any contract declared to be exempt by the Leadership Panel if they are satisfied that the exemption is justified by special and exceptional circumstances, such as where (a) the requirement is not readily obtainable from more than one Contractor and it can be demonstrated that no equivalent is available; or (b) the prices of the supplies, services or works are wholly controlled by trade organisations or government order and it can be demonstrated that no equivalent is available; or (c) the requirements are subject to intellectual property rights and it can be demonstrated 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.
- 4.2.3 Any contract of direct employment.
- 4.2.4 Any contract of engagement of consultants (including junior and senior counsel) for the provision of specialist legal or financial advice and skills within the meaning of regulation 11 (1) (e) and (f) of the Public Contracts (Scotland) Regulations, as may be procured on an ad hoc basis on the authorisation of the Head of Legal, HR and Regulatory Services (for legal advice and skills) or of the Head of Finance and ICT (for financial advice and skills).
- 4.2.5 Any contract for works, supplies or services procured and awarded on the Council's behalf by other Contracting Authorities, in accordance with Standing Order 8.5.
- 4.2.6 Any Direct Award placed in accordance with Standing Order 9.3 under the terms of a Framework Agreement which has been established by the Council; provided always that the terms of the relevant Framework Agreement are complied with. For the avoidance of doubt, these Standing Orders shall apply in respect of any Mini-Competition held under any such Framework Agreement or DPS.
- 4.2.7 Any Direct Award placed in accordance with Standing Order 9.4 under the terms of a Framework Agreement which has been established or is being utilised by any consortium, partnership, company or similar body of which the Council is a member or user, which body exists for the purpose of joint purchasing arrangements, and where such body has invited Tenders for the provision of supplies, services or works; provided always that the terms of the relevant Framework Agreement are complied with. For the avoidance of doubt, these Standing Orders shall apply in respect of any Mini-Competition held by the Council under any such Framework Agreement or DPS.

4.3 The foregoing exemptions shall not be deemed in any way to detract from the requirement of the Council and every officer of the Council to ensure that every contract is constituted only after full assessment that:

- 4.3.1 its terms comply with the duty to achieve Best Value;

- 4.3.2 the Financial Regulations have been complied with; and
- 4.3.3 a Request for Procurement Action has been submitted in accordance with Standing Order 10.2.2 (except in cases where Standing Orders 4.2.1 or 4.2.3 apply).
- 4.4 These Contract Standing Orders shall not apply to any proposals, transactions or contracts regarding the acquisition or disposal of lands or buildings by the Council.
- 4.5 These Contract Standing Orders shall not apply to any contract for works or services delivered under the South West Territory Hub arrangements. Any such contracts shall be let in accordance with the Council's duty to achieve best value. In advance of procuring and awarding any such contract under this Standing Order, a report shall be submitted in terms of the following:
 - 4.5.1 Where the contract is for works, goods or services up to the value of £500,000, a report on the procurement process followed shall be submitted to the Director – Place seeking approval to procure and award; or
 - 4.5.2 Where the contract is for works, goods or services of a value equal to or exceeding £500,000, a report on the procurement process followed shall be submitted to the Council or Leadership Panel seeking approval to procure and award.
- 4.6 These Contract Standing Orders shall not apply to any contract entered into on behalf of the Council by Strathclyde Partnership for Transport acting in their capacity as agents of the Council to secure the provision of school transport. All such contracts will be subject to the procedures of Strathclyde Partnership for Transport although the Depute Chief Executive and Director – People shall approve the award of all such contracts on behalf of the Council and shall, as soon as reasonably practicable after the award of the contract, submit a report to be included on the monthly Members' Bulletin and naming the successful tenderer, explaining the evaluation process undertaken and detailing the value of the successful tender. A copy of the report shall be sent by the Depute Chief Executive and Director – People to the Service Lead - Procurement.

5. Disaggregation

- 5.1 Contracts must not be disaggregated, packaged or split into separate smaller contracts or requirements to avoid the application of any provision of these Standing Orders, the Procurement Reform (Scotland) Act, the Public Contracts (Scotland) Regulations or any other legislative provisions including retained EU law.
- 5.2 In determining whether either the Scottish Procurement Threshold or UK Find a Tender Service (FTS) Threshold has been exceeded in respect of any single requirement for works, services or supplies, the value of that requirement will be aggregated across the whole Council.

6. Delegation of Duties under these Standing Orders

- 6.1 No officer may award a contract without written delegated purchasing authority from the Executive Officer.

- 6.2 Executive Officers may nominate, in writing, such other properly qualified officers as they consider appropriate to undertake any of the general duties set out in these Contract Standing Orders, as more fully detailed in the table at Annex 3 to these Contract Standing Orders, who will then have delegated authority to act in lieu of the Executive Officer in respect of the prescribed duties.
- 6.3 A note of all written nominations made in terms of Standing Order 6.2 shall be provided to the Director – Place for his/ her retention.
- 6.4 No officer who has a potential conflict of interest or a direct or indirect pecuniary interest in any Tender is permitted to be involved in the Tendering process.

7. Maintenance and Repair of Council Buildings

- 7.1 Subject to Standing Order 7.2, all planned maintenance and/ or responsive repairs to buildings or property owned by the Council shall be undertaken under the direction of the Asset Management service. Such work may, at the direction of the Director – Place, be undertaken either by the Council's Property Maintenance service in accordance with plans agreed with that service, or by external Contractor(s). No external Contractor(s) shall be appointed, to undertake any planned maintenance and/ or responsive repairs to buildings or property owned by the Council, by any officer other than the Director – Place or his/ her delegate.
- 7.2 All planned maintenance and/ or responsive repairs to Council houses shall be undertaken under the direction of the Housing service. Such work may, at the direction of the Director – Place, be undertaken either by the Council's Property Maintenance service in accordance with plans agreed with that service, or by external Contractor(s). No external Contractor(s) shall be appointed, to undertake any planned maintenance and/ or responsive repairs to Council Houses by any officer other than the Director – Place or his/ her delegate.

8. Collaborative Procurement

- 8.1 The powers set out in this Standing Order 8 shall be exercised by the Executive Officer through the Council's Procurement Service.
- 8.2 Following consultation with the Council's Procurement Service, where an Executive Officer considers that there is no suitable existing contract, Framework Agreement or DPS to meet the particular requirements of the Council, he/ she may seek to enter into a Collaboration with one or more other contracting authorities provided that it would be in the best interests of the Council and in accordance with Best Value to do so. The provisions of this Standing Order 8 shall apply.
- 8.3 A contract strategy (which shall be in the format of the template form available on the Procurement page of the intranet) shall be prepared in respect of every proposed Collaboration and shall detail the justifying reasons for the Collaboration. The contract strategy shall be approved by the Executive Officer.
- 8.4 Where it is proposed that the Council shall act as 'lead authority' in a Collaborative Procurement, the terms of these Contract Standing Orders shall apply to the Procurement Exercise and the written agreement of the other parties to the Collaboration shall be obtained to this effect.

8.5 Where another Contracting Authority acts as 'lead authority' in a Collaborative Procurement, the procurement and award process shall be conducted in accordance with the Standing Orders of the 'lead authority'. In every such case, the Executive Officer must first be satisfied (after consultation with the Procurement Manager) that the procurement and award of any such contract shall be carried out in accordance with Standing Orders equivalent in all material respects to and no less robust than these Standing Orders such that the principles of Best Value are adhered to and the best interests of the Council are served at all times in the Collaboration.

8.6 Prior to commencing any Collaborative Tender exercise, the Executive Officer shall agree the parameters for the Collaboration with the appropriate officers in the other Contracting Authorities and shall record this in writing. Appropriate monitoring arrangements shall be put in place to ensure the agreed terms for the Collaboration are adhered to by all parties.

9. Framework Agreements and Dynamic Purchasing Systems (DPS)

9.1 The powers set out in this Standing Order 9 shall be exercised by the Executive Officer through the Council's Procurement Service.

9.2 Where there is likely to be a repeated requirement for a particular supply, service or works, an Executive Officer may seek to establish or participate in a Framework Agreement or DPS in line with Standing Orders 9.3 or 9.4, where he/ she deems that offers Best Value. Before doing so, the Executive Officer shall consult with the Procurement Manager.

9.3 The Executive Officer may elect to establish a Framework Agreement or DPS to provide for agreement on the terms for future call-off contracts (whether through Direct Award, in the case of a Framework Agreement only, or by the acceptance of a Tender following a Mini-Competition) where permitted in accordance with the terms of that Framework Agreement or DPS. Standing Order 4.2.6 will apply to Call-off Contracts awarded in such circumstances.

9.4 The Executive Officer may elect to participate in an existing Framework Agreement or DPS that has been properly constituted by Scotland Excel, the Scottish Procurement and Commercial Directorate, another local authority, the Crown Commercial Service or any other public sector procurement agencies and may enter into Call-off Contracts (whether through Direct award, in the case of a Framework Agreement only, or by the acceptance of a Tender following a Mini-Competition) where permitted in accordance with the terms of that Framework Agreement or DPS. Standing Order 4.2.7 will apply to Call-off Contracts awarded in such circumstances.

9.5 Where, in order to participate in an existing Framework Agreement or DPS of the type described in Standing Order 9.4, the Council is required to enter into a participation agreement or other similar agreement regulating the use of the Framework Agreement or DPS by the Council, the Head of Legal, HR and Regulatory Services shall have the authority to enter into that agreement on behalf of the Council.

9.6 Any Mini-Competition run by the Council shall be conducted by means of electronic tendering for the purposes of Standing Order 13, and shall run in accordance with the procedures set out therein, unless contrary to any provisions set out in the relevant Framework Agreement or DPS (in which case, the terms of the Framework Agreement or DPS will have precedence).

10. Procedures Prior to Commencing Procurement Exercise

10.1 Prior to commencing with a Procurement Exercise, the Executive Officer shall check the Council's contract register to establish whether any existing contracts, Framework Agreements or DPS accessible to the Council might fulfil their requirement.

10.2 No Tender shall be invited or any contract negotiations commenced, unless:

10.2.1 The estimated expenditure thereon is within the budgetary provision previously approved by the Council and in compliance with the Council's Financial Regulations. The Executive Officer shall be responsible for ensuring that sufficient funds are available prior to the commencement of any Procurement Exercise;

10.2.2 A Request for Procurement Action (in the form made available on the Procurement page on the intranet) has been completed by the Executive Officer and returned to the Service Lead - Procurement;

10.2.3 In cases of Collaborative Procurement, the terms of Standing Order 8 have been complied with;

10.2.4 Where the estimated expenditure of goods and services contracts is above £50,000, or of works contracts is above £200,000, consultation with the relevant Portfolio Holder(s) has taken place; and

10.2.5 In cases of procurement that will involve the evaluation of both price and quality criteria, to determine the Most Economically Advantageous Tender, advice must be sought in advance from the Council's Procurement Service on the weighting of such criteria.

11. Advertising of Contracts

11.1 In terms of the Procurement Reform (Scotland) Act, the Public Contracts (Scotland) Regulations and retained EU law, the Council has a duty to ensure that contracts are procured in accordance with the principles of non-discrimination on grounds of nationality, equal treatment and transparency.

11.2 Contract opportunities that are subject to the requirements of the Procurement Reform (Scotland) Act or the Public Contracts (Scotland) Regulations must comply with the provisions relating to advertising of contracts set out in that legislation.

11.3 In relation to contract opportunities that are outside the scope of the requirements of the Public Contracts (Scotland) Regulations, and which therefore fall outside the scope of Standing Order 11.2, the Executive Officer (in consultation with the Procurement Manager) must assess, on a case by case basis, the degree of advertising necessary to ensure that the contract opportunity will be subject to open

competition, will satisfy the requirements of the principles of non-discrimination on grounds of nationality, equal treatment and transparency, and will achieve best value for the Council.

- 11.4 All contract opportunities shall be advertised using the National Advertising Portal; unless a decision has been reached by reason of either Standing Order 3.9 or Standing Order 22 that the contract opportunity is to be awarded without advertising.

12. Tendering Procedures

- 12.1 Procurement exercises shall be carried out by electronic means, unless the Director – Place considers that there are substantial reasons for not doing so (in which case Standing Order 12.2 shall apply).
- 12.2 The procedures set out in Annex 1 to these Standing Orders shall apply in place of Standing Orders 13 to 17 (*Submission of Tenders to Post Tender Negotiations*) in respect of the submission, opening and acceptance of non-electronic Tenders and communication with Tenderers in respect of any Procurement Exercise undertaken by the Council by hard copy means.

13. Submission of Tenders

- 13.1 Every set of Contract Documents shall state:
- 13.1.1 the nature and purpose of the contract for which Tenders are invited;
 - 13.1.2 that electronic tendering will be used in the procurement and that submission of Tenders will be subject to the Tenderer registering as a user of the particular e-tendering platform chosen to host the process;
 - 13.1.3 the last date and time (in all cases being twelve noon) when Tenders will be received (noting in particular that any such timeous submission of an electronic Tender requires the Tender to have been submitted and uploaded in full onto the electronic tendering platform before the closing date and time; partial submissions will not be accepted);
 - 13.1.4 the website/ system details/ electronic address through which the electronic Tender is to be submitted;
 - 13.1.5 the period during which Tenders must remain open for acceptance;
 - 13.1.6 the format in which Tenders are to be submitted;
 - 13.1.7 the award criteria and weightings to be used in the evaluation of Tenders received, which shall be based on the Most Economically Advantageous Tender, as assessed on the basis of criteria linked to the subject-matter of the contract and appropriate to securing Best Value for the Council. The award criteria and weightings must not be changed once agreed and published in the Contract Documents.
 - 13.1.8 that the Council is not bound to accept the Most Economically Advantageous Tender received;

13.1.9 any specific requirements regarding verification and authentication of the Tender submission and the signature of the person making that submission, as the Director – Place may direct as being necessary and appropriate;

13.1.10 the contact details and method of submitting all Tenderer queries during the Tender period; and

13.1.11 the duration of the contract period (including any extension options).

13.2 Every set of Contract Documents shall state that no Tender will be considered unless it is received at the website/ electronic address notified before the last date and time specified and is submitted in the format specified.

14. Late Tenders

14.1 No Tender submitted using electronic means will be considered unless it is received in the format and at the website/ electronic address specified in the contract documents and unless it is received prior to the deadline for the receipt of Tenders, all as stated in the Contract Documents.

14.2 Where a Tender is late due to a failure or lack of availability of the electronic tendering platform, and which is not attributable to the Tenderer or as the case may be their agent, the express approval of the Director – Place shall be required to admit the Tender for consideration.

14.3 Late Tenders, save where these have by exception been admitted for consideration in accordance with Standing Order 14.2 above, must remain unopened. The Tenderer must be advised as soon as possible (and in any event within 2 working days of all other Tenders being opened) that if the late Tender is not re-called within 14 days it will be deleted. At the same time, the Tenderer should be informed why the Tender is not being considered.

15. Opening and Recording Tenders

15.1 Tenders shall be kept unopened in a single secure electronic mailbox until after the expiry of the time limit for the receipt of Tenders.

15.2 All Tenders relating to the same contract shall be shall be opened immediately one after the other during one session, as soon as practicable after the time and date specified for return of Tenders, and shall be opened by an officer from Procurement authorised and nominated by the Director - Place.

16. Checking, Clarification and Evaluation of Tenders

16.1 All Tenders shall be subject to checking for completeness and errors by the Executive Officer. Any arithmetical errors that result in a change to the pricing submitted should be documented.

16.2 Between the last date and time for the receipt of Tenders and the date on which a decision is taken as to which, if any, Tender is to be accepted, the Executive Officer may instruct members of his/ her staff or consultants to contact a Tenderer in

respect of any Tender submitted in cases where such contact may be necessary to clarify the terms of the Tender or to effect any necessary adjustments but not otherwise for any reason.

- 16.3 Where any factor giving rise to post Tender communications is not specific to one tenderer, all Tenderers must be invited to participate in such communications. There must be no material change to the specification(s) and/ or criteria on which Tenders are to be assessed. If it becomes apparent that a material change is required, the Tender process must be recommenced with a revised specification or award criteria.
- 16.4 A full record of any contact between the Council and Tenderers (which shall include copies of all written communications) shall be kept and retained with each tenderer's original Tender.
- 16.5 This Standing Order shall not be used in any way to permit any Tenderer to amend their bid in a manner that allows them to improve their offer, nor to put other Tenderers at a disadvantage nor to distort competition. All Tenderers must be treated at all times equally and in an open, transparent and fair manner.
- 16.6 Tenders shall be evaluated strictly in accordance with the award criteria or price/ quality weighting agreed at the commencement of the Procurement Exercise and detailed in the Contract Documents.

17. Post Tender Negotiations

- 17.1 Once the evaluation of Tenders has been completed in accordance with Standing Order 16.6, the Executive Officer may instruct members of his/ her staff or consultants to enter into post Tender negotiations. Such negotiations shall take place only in circumstances where the Executive Officer:
 - 17.1.1 has identified the Tenderer who has submitted the Most Economically Advantageous Tender for a contract; and
 - 17.1.2 is satisfied that there is scope for improvement in the Tender received and that such negotiations will be in the best interests of securing Best Value and improved terms and conditions for the Council.
- 17.2 Post Tender negotiations may only be used with the Tenderer identified in terms of Standing Order 17.1.1.
- 17.3 Where it is considered possible that post Tender negotiations might apply, a clear indication will be given to prospective Contractors in the instructions to Tenderers that post Tender negotiations might be considered.
- 17.4 A full record (which shall include copies of all written communications) shall be kept by Procurement of all contracts where post Tender negotiations have been used and the written record will be retained with the original Tender. The written record will include the justification for authorising post Tender negotiations, the nature of the negotiations undertaken, the outcome of such negotiations and shall detail any additional terms agreed by the Council.

17.5 This Standing Order 17 shall not be used in any way to put any Tenderer at a disadvantage or to distort competition, and it shall not be used to make any change to the specification(s) and/ or criteria on which the identified Tender is to be assessed.

18. Acceptance of Tenders

18.1 Contracts shall be awarded subject to Standing Order 18.2 in accordance with the evaluation of award criteria.

18.2 Without prejudice to the specified award criteria for any Tender, authority to accept Tenders may be given by:

18.2.1 the Executive Officer in the case of Tenders for the supply of goods or materials and the provision of services (valued in excess of £50,000) or the execution of works (valued in excess of £2,000,000) where the value or amount is within the budgetary provision approved previously by the Council and the Tender to be accepted is the lowest priced and Most Economically Advantageous Tender received (after checking); or

18.2.2 the Executive Officer in the case of Tenders for the execution of works (valued below £2,000,000) where the value or amount is within the budgetary provision approved previously by the Council and the Tender to be accepted is the lowest priced (after checking) received; or

18.2.3 the Executive Officer on the authority of the Council or Leadership Panel in the case of Tenders which exceed the budgetary provision approved previously by the Council; or

18.2.4 the Executive Officer on the authority of the Council or Leadership Panel in any case where the Tender evaluated as the Most Economically Advantageous Tender is not the lowest priced tender received (after checking) by an amount exceeding 10 per cent of the lowest priced tender received.

18.3 If the Executive Officer recommends that none of the Tenders submitted should be accepted, he/ she shall notify all Tenderers accordingly, providing justification as to why the decision has been taken.

19. Contracts Register

19.1 The Director – Place shall keep and maintain a register of all awarded contracts having an estimated price or value of or exceeding £50,000. The register shall be compliant with the Public Contracts (Scotland) Regulations and the Procurement Reform (Scotland) Act and shall be referred to in these Standing Orders as the 'Contracts Register'.

20. Nomination of Sub-Contractor

20.1 Where a contract provides for the nomination by the Executive Officer of a Sub-Contractor or supplier for the execution of works or supply of goods or materials or for the provision of services, the provisions of these Contract Standing Orders shall

apply, (with the necessary changes having been made), to the procurement, Tender and award process.

- 20.2 The Executive Officer is hereby authorised to nominate the Tenderer of the Most Economically Advantageous Tender (as appropriate in accordance with the award criteria stated in the invitation to Tender documentation) as Sub-Contractor.

21. Serial and Phased Works Contracts

- 21.1 Where the Executive Officer considers that Tenders should be obtained for a series of related works projects or for phased works projects, he/ she shall first obtain the approval of the appropriate Panel to that course of action both in respect of the execution of the works and the proposed serial Tender process.

22. Authority to Negotiate Contract without Prior Advertisement

- 22.1 If, after consultation with the Head of Legal, HR and Regulatory Services, the Executive Officer decides that, in accordance with the terms of either the Procurement Reform (Scotland) Act or the Public Contracts (Scotland) Regulations, for contracts above the threshold at which these Standing Orders Relating to Contracts apply (see table at 3.5), £50,000 for goods and services and £200,000 for works respectively, there are circumstances or reasons which justify the negotiation of a contract with any Contractor, without prior advertisement and competition, he/ she shall, before entering into negotiations, first obtain the approval of the Leadership Panel in respect of the proposed negotiation of the contract to be awarded and the person with whom the contract is to be negotiated.
- 22.2 In seeking prior approval in terms of Standing Order 22.1, the Executive Officer shall submit to the Panel a report detailing the nature of the contract (including, where appropriate, the identity of any collaborative partners) and the reasons which are considered to justify the proposed negotiation without advertisement and competition, and which shall provide a fully reasoned assessment made in relation to the Council's obligations arising from the Procurement Reform (Scotland) Act and/ or the Public Contracts (Scotland) Regulations and/ or any retained EU law.

23. Periodic Supplies

- 23.1 Where a contract is for the supply of goods or services which will require to be delivered from time to time during a specified period the requirements of Standing Orders 8 to 19 shall be carried out only once prior to the commencement of such period. This will apply to term contracts and Framework Agreements where Call-off Contracts are ordered throughout the term of the contract.

24. Contractual Matters

24.1 *Form of Contract and Terms and Conditions*

Except where otherwise agreed by the Head of Legal, HR and Regulatory Services, every contract shall be in writing, shall be signed by the appropriate Executive Officer or other officer specifically authorised by him/ her for the purpose and shall be subject to the laws of Scotland and the jurisdiction of the Scottish Courts.

24.2 ***Equal Opportunity in Employment***

During the Procurement Exercise and before entering into a contract, the Council shall obtain from the Contractor an assurance in writing that, to the best of its knowledge and belief it has complied with all statutory requirements in respect of ensuring equal opportunity in employment; and that it is not unlawfully discriminating within the meaning and scope of the provisions of the on the Equality Act 2010 (or any statutory modification or re-enactment thereof) including but not limited to discrimination on grounds of gender, marital or civil partnership status, race, disability, gender reassignment, religion or belief, sexual orientation, age, pregnancy or maternity leave.

24.3 ***Prevention of Collusion and Corrupt or Illegal Practices***

Every contract shall contain a clause entitling the Council to cancel the contract and to recover from the Contractor the amount of any loss resulting from such cancellation if the Contractor or its representative (whether with or without the knowledge of the Contractor) 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.

24.4 ***Assignment and Sub-Contracting***

In every contract, there shall be included a provision whereby:

24.4.1 the Contractor shall be prohibited from transferring, assigning or sub-contracting a contract or any part thereof without the prior written consent of the Council; and

24.4.2 the Contractor shall be prohibited from changing any Sub-Contractors from those noted in the Contract Documents without the prior written consent of the Council.

24.5 ***Industry Standards***

Where there is a recognised international or British Standards Specification or British Standard Code of Practice applicable to any commodity or service at the date of the invitation to Tender, the Contract Documents shall require that, as the case may be, all goods and materials used or supplied, all services rendered, and all workmanship undertaken shall at least meet the requirements of that standard. In the absence of any such recognised standard, the Contract Documents shall require an appropriate equivalent standard be used.

24.6 ***Copyright***

The Executive Officer shall, in so far as practicable, ensure that in contracts for the commissioning of reports, research, graphics, design, media and other consultancy services to which copyright applies, that whilst copyright in the work vests in the Contractor, the Council has royalty free rights to utilise the information provided in relation to the continued development of the specific project and subsequent related projects.

24.7 ***Health and Safety***

- 24.7.1 Every Contractor appointed by or on behalf of the Council shall be required to comply with current Health and Safety legislation and approved Codes of Practice, as may be applicable to the contract. The Executive Officer will have the ultimate decision as to whether a Contractor's Health and Safety qualification is equal to that required by the Council or in an approved form.
- 24.7.2 In the case of contracts for construction type works, in addition to the aforementioned, Contractors appointed by or on behalf of the Council shall be required to hold either Contractors Health and Safety Scheme (CHAS), Safety Schemes in Procurement (SSIP) or equal and shall be required (prior to entering a contract) to exhibit an approved letter of compliance or accreditation certificate.

24.8 ***Insurance***

Every contract shall contain a clause requiring the Contractor to take out and maintain, for the duration of the contract, such insurance cover for such amounts as the Executive Officer may deem relevant to the contract, including, if appropriate, but not restricted to:

- 24.8.1 Employers Liability Insurance;
- 24.8.2 Public (Third party) Liability Insurance;
- 24.8.3 Professional Indemnity Insurance, which shall remain in force for a period of 6 years beyond the end of the contract;
- 24.8.4 Other such specialist classes of insurance as advised by the Head of Legal, HR and Regulatory Services.

24.9 ***Bonds and Parent Company Guarantees***

Where considered appropriate by the Executive Officer, the Council shall require the Contractor to take out a bond, obtain and deliver a formal parent company guarantee or provide other sufficient security for the due performance of the contract.

24.10 ***Sustainability and Community Benefits***

Where relevant and proportionate and in accordance with the terms of the Procurement Reform (Scotland) Act:

- 24.10.1 Every contract shall set out the Council's commitment to sustainable development, including sustainability in procurement and that the Contractor or supplier must take all reasonable steps to provide products and services that are designed for sustainability, as well as safety and minimise the environmental impacts that arise from their delivery or use.
- 24.10.2 Community Benefits clauses should be considered to cover, for example, training proposals, intentions regarding the provision of apprenticeships

and employment opportunities, local SME, social enterprise and supply chain development, proposals to generate local economic opportunities and development and general investment proposals for local communities. This list of examples is not exhaustive.

- 24.10.3 Every contract shall set out the Council's commitment to fair working practices, the Scottish Government's Fair Work framework and that the Council expects Contractors or suppliers to take a similarly positive approach as part of a fair and equitable employment and reward package for their staff. Every contract shall also set out that the Council is committed to proactively vetting our supply chain to ensure no instances of modern slavery are taking place.

24.11 ***Variation and Termination***

Every contract shall contain provisions allowing for the contract to be varied or amended, and allowing for the contract to be terminated in certain circumstances. The Executive Officer may exercise any power on behalf of the Council to:

- 24.11.1 Vary or amend any terms of a contract, provided: (i) the proposed variation or amendment will not in the view of the Executive Officer constitute a material difference to the terms originally agreed between the Council and Contractor; and (ii) the variation has been approved by the Head of Legal, HR and Regulatory Services; and
- 24.11.2 Terminate any contract or to terminate the Council's participation in a Framework Agreement or DPS, but only following consultation with the Head of Legal, HR and Regulatory Services and subject to their being satisfied that it is reasonable and in the interests of the Council to exercise that power.

25. **Application to Procurement Consultants**

- 25.1 Any agent or consultant (not being an officer of the Council) who is to be responsible to the Council for the procurement of a contract on its behalf shall, in relation to that contract:
- 25.1.1 comply with these Contract Standing Orders as though he/ she were an officer of the Council;
- 25.1.2 at any time during the carrying out of the contract, produce, on request, to the Executive Officer, all records maintained by him/ her in relation to the contract; and
- 25.1.3 on completion of the contract, transmit all such records to the Executive Officer.

1 July 2021

Procedures for Paper Tendering

A. Introduction

- A.1 In accordance with Standing Order 12.2, the following procedures are to apply in place of Standing Orders 13 to 17 in respect of any Procurement Exercise undertaken by the Council by hard copy means.

B. Submission of Paper Tenders

- B.1 Every set of Contract Documents shall state:
- B.1.1 the nature and purpose of the contract for which Tenders are invited;
 - B.1.2 the last date and time (in all cases being twelve noon) when Tenders will be received;
 - B.1.3 the address to which Tenders are to be sent;
 - B.1.4 the period during which Tenders must remain open for acceptance;
 - B.1.5 the award criteria and weightings to be used in the evaluation of Tenders received, which shall be based on the Most Economically Advantageous Tender to secure Best Value for the Council. The award criteria and weightings must not be changed once agreed and published in the Contract Documents.
 - B.1.6 that the Council is not bound to accept the Most Economically Advantageous Tender received;
 - B.1.7 the contact details and method of submitting all Tenderer queries during the Tender period; and
 - B.1.8 the duration of the contract period (including any extension options).
- B.2 Every set of Contract Documents shall state that no Tender will be considered unless it is received at the address notified before the last date and time specified and is submitted in a plain sealed envelope.

C. Late Tenders

- C.1 Tenders received after the closing date and time for submission or received at a place other than as stated in the Contract Documents shall not be opened or considered.
- C.2 Late Tenders shall be marked as late and returned to the Tenderer within 2 working days of receiving it, together with an accompanying letter explaining why the Tender is not being considered. Such Tenders may be opened to ascertain the name of the tenderer, but no details of the Tender shall be disclosed, and a statement to this effect shall be included in all Contract Documents.

D. Opening and Recording Tenders

- D.1 All Tenders relating to the same contract shall be opened immediately one after the other during one session, as soon as practicable after the time and date specified for return of Tenders, and shall be opened in the presence of:
- D.1.1 in the case of contracts where the estimated value or amount is below the relevant UK Find a Tender Service (FTS) Threshold, two officers nominated by the Director – Place, at least one of whom shall be an authorised officer from Procurement; and
 - D.1.2 in the case of contracts where the estimated value or amount equals or exceeds the relevant UK Find a Tender Service (FTS) Threshold, any member of the Council and an officer duly nominated by the Director - Place.
- D.2 The Tender Record Sheet (which shall be in the format of the template form available on the Procurement page of the intranet) shall be completed and signed by both officers or the Elected Member and officer, as the case may be at the time of opening the Tenders.
- D.3 In cases of urgency (during Council recess periods or otherwise), the Chief Executive shall be authorised to act in the absence of a member of the Council in terms of Standing Order D.1.2.

E. Checking, Clarification and Evaluation of Tenders

- E.1 All Tenders shall be subject to checking for completeness and errors by the Executive Officer. Any arithmetical errors that result in a change to the pricing submitted should be documented, signed and dated.
- E.2 Between the last date and time for the receipt of Tenders and the date on which a decision is taken as to which, if any, Tender is to be accepted, the Executive Officer may instruct a member of his/ her staff or consultants to contact a Tenderer in respect of any Tender submitted in cases where such contact may be necessary to clarify the terms of the Tender or to effect any necessary adjustments but not otherwise for any reason.
- E.3 Where any factor giving rise to post Tender communications is not specific to one tenderer, all Tenderers must be invited to participate in such communications. There must be no material change to the specification(s) and/ or criteria on which Tenders are to be assessed. If it becomes apparent that a material change is required, the Tender process must be recommenced with a revised specification or award criteria.
- E.4 A full record of any contact between the Council and Tenderer (which shall include copies of all written communications) shall be kept and retained with the tenderer's original Tender.
- E.5 This Standing Order shall not be used in any way to permit any Tenderer to amend their bid in a manner that allows them to improve their offer, nor to put other

Tenderers at a disadvantage nor to distort competition. All Tenderers must be treated at all times equally and in an open, transparent and fair manner.

- E.6 Tenders shall be evaluated strictly in accordance with the award criteria or price/ quality weighting agreed at the commencement of the Procurement Exercise and detailed in the Contract Documents.

F. Post Tender Negotiations

- F.1 Once the evaluation of Tenders has been completed in accordance with paragraph E.6 above, the Executive Officer may instruct a member of his/ her staff or consultants to enter into post Tender negotiations. Such negotiations shall take place only in circumstances where the Executive Officer has:

- F.1.1 identified the Tenderer who has submitted the Most Economically Advantageous Tender for a contract; and

- F.1.2 is satisfied that there is scope for improvement in the Tender received and that such negotiations will be in the best interests of securing Best Value and improved terms and conditions for the Council.

- F.2 Post Tender negotiations may only be used with the Tenderer identified in terms of Standing Order F.1.1.

- F.3 Where it is considered possible that post Tender negotiations might apply, a clear indication will be given to prospective Contractors in the instructions to Tenderers that post Tender negotiations might be considered.

- F.4 A full record (which shall include copies of all written communications) shall be kept by Procurement of all contracts where post Tender negotiations have been used and the written record will be retained with the original Tender. The written record will include the justification for authorising post Tender negotiations, the nature of the negotiations undertaken, the outcome of such negotiations and shall detail any additional terms agreed by the Council.

- F.5 This Standing Order shall not be used in any way to put any Tenderer at a disadvantage or to distort competition, and there must be no material change to the specification(s) and/ or criteria on which the identified Tender is to be assessed.

Procedures for Commissioning of Health or Social Care Services

A. Introduction

- A.1 In accordance with Standing Order 3.9, the Contract Standing Orders shall apply to the procurement of contracts for Health or Social Care Services subject to the special procedures set out in this Annex.
- A.2 These procedures are intended to accord with and reflect the principles set down in the Statutory Guidance issued by Scottish Ministers in terms of the Procurement Reform (Scotland) Act 2014 as well as the Best Practice Guidance on the Procurement of Care and Support Services 2016 issued in terms of the Procurement Reform (Scotland) Act.
- A.3 The term 'Executive Officer' means in the context of these Annex 2 procedures either the Depute Chief Executive and Director – People, the Director – Place or the Director - Health and Social Care.

B. Governing Bodies (Care Inspectorate)

- B.1 Unless the Executive Officer approves otherwise on a case by case basis, all Contractors providing Health or Social Care Services under a contract with the Council must be registered with Care Inspectorate (or its statutory successor(s)) or any other relevant regulatory bodies that are a mandatory requirement to the service provision.

C. Procedures for Procuring Contracts for Health or Social Care Services

- C.1 In accordance with Standing Order 11.2, a contract for Health or Social Care Services that has an estimated value in excess of the UK Find a Tender Service (FTS) Threshold for Social and Other Specific Services must be procured by following a procedure that satisfies the Council's duties set out in the Public Contracts (Scotland) Regulations.
- C.2 In cases of procuring a contract for Health or Social Care Services that has an estimated value below the UK Find a Tender Service (FTS) Threshold for Social and Other Specific Services, the Executive Officer shall be responsible for deciding whether the particular contract is one which may be awarded without advertisement and competition, in accordance with section 12 of the Procurement Reform (Scotland) Act.
- C.3 In determining whether a contract for Health or Social Care Services may be awarded without advertisement and competition in terms of paragraph C.2, the Executive Officer shall take account of the individual circumstances of the contract, including the subject matter and estimated value of the contract, the specifics of the service sector concerned and the geographic location of the place of performance of the contract to identify firstly whether there is likely to be a cross-border interest in the contract. The Executive Officer, following consultation with the Procurement Manager, may determine that there is no cross-border interest in the contract where:

- C.3.1 it can be demonstrated that the contract is of no interest to cross-border Contractors; and/ or
 - C.3.2 the total sum to be paid under the contract is so low that cross-border Contractors would not be interested in bidding for the contract; and/ or
 - C.3.3 the service is of such a specialised nature that no cross-border market of suitable Contractors exists; and/ or
 - C.3.4 advertising the contract would result in the loss of a linked service.
- C.4 Where the Executive Officer decides under paragraphs C.2 and C.3 above that a contract is likely to attract a cross-border interest, it should be procured by way of a competitive process and it will be advertised in accordance with Standing Order 11 unless the Executive Officer decides that there are special circumstances justifying a departure from that requirement. Such decisions will be taken on a case by case basis and advertising may not be required where, for example:
- C.4.1 the needs of the service user(s) concerned would be best met by a particular Contractor; and/ or
 - C.4.2 the existing Contractor(s) are the only Contractor(s) capable of delivering the service to meet the needs of the individual(s) concerned; and/ or
 - C.4.3 the nature of the service is such that it should not or cannot be adequately specified in advance because of the nature of the social care needs of the service user(s) concerned; and/ or
 - C.4.4 there are special circumstances such as ownership of land or property, geographic locations or particular skills or experience of Contractors of social care which limit the choice to one Contractor; and/ or
 - C.4.5 there are reasons of extreme urgency, brought about by unforeseen events which are not attributable to the Council.
- C.5 Where the Executive Officer decides under paragraphs C.2 and C.3 above that the principles of procurement from the Public Contracts (Scotland) Regulations do not apply to a contract for Health or Social Care Services, he/ she may also decide that Standing Order 12 shall not apply to that contract.
- C.6 The Executive Officer shall be required to maintain a list of all proposed contracts which he/ she decides do not require to be advertised on the basis of the determinations made under paragraphs C.2, C.3, C.4 or C.5 above. He/ she shall provide a copy of that list to the Elected Members once every 6 months. Any decisions taken under paragraphs C.2, C.3, C.4 or C.5, that neither advertising nor competition will be required for a particular contract shall be subject to review by the Executive Officer at regular intervals (and at least annually).
- C.7 The decisions (and subsequent review of those decisions) taken by the Executive Officer under this Annex 2 will all be fully documented. Any reasons for deciding that a proposed contract will not be advertised must be recorded and included on the list which is to go to the Elected Members under paragraph C.6.

C.8 In addition to demonstrating how Best Value will have been achieved, the contracting service will be responsible for evidencing the reasons referred to under paragraph C.6.

General Powers of Executive Officers
under these Standing Orders

SO Number	<i>Duty/ Power to...</i>
4.2.1	Determine whether a contract is urgently required to address a genuine emergency situation to prevent or mitigate risk to life or damage
8.2	Determine whether it is in the best interests of the Council and in accordance with best value to enter into a collaborative arrangement, for the purposes of Standing Order 9
8.5	Satisfy themselves that the principles of best value will be adhered to and the best interests of the Council will be served, in entering a collaborative arrangement where another public body takes the role as lead authority
8.6	Agree the parameters for the collaboration with appropriate officers in the other public bodies and to record this in writing
9.2	Seek to establish or participate in a framework agreement or DPS, where he/ she deems that offers best value. Duty to consult with the Service Lead - Procurement prior to acting under Standing Order 10.1
9.3	Establish a framework agreement or DPS and enter into call-off contracts, in accordance with Standing Order 10.2
9.4	Award call-off contracts under framework agreements or DPS to which the Council has access or is utilising
10.1	Consult the Council's contract register in order to establish whether any existing contracts, framework arrangements or DPS are accessible to the Council which would fulfil their requirement
10.2.1	Ensure that sufficient funds are available prior to the commencement of any procurement exercise
10.2.2	Complete a Request for Procurement Action and return the same to the Service Lead - Procurement
11.3	In consultation with the Service Lead - Procurement, assess the appropriate competitive procedure to follow to ensure that the contract opportunity will be subject to open competition, will satisfy the requirements of the principles of non-discrimination on grounds of nationality, equal treatment and transparency, and will achieve best value for the Council

SO Number	Duty/ Power to...
15.2	Nominate officers to open electronic Tenders, at least one of whom shall be an authorised officer from Procurement
16.1	Check all Tenders for completeness and errors
16.2	Instruct officers to contact a Tenderer in respect of any Tender submitted
17.1	Instruct officers to contact the Tenderer identified as offering the most economically advantageous, to enter into post Tender negotiations; where they are satisfied that there is scope for improvement in the price of the tender
18.2.1	Award a contract to the Most Economically Advantageous Tender (after checking)
18.2.2	Award a contract for the execution of works (valued below £2,000,000) to the lowest priced Tender (after checking)
18.2.3	Obtain the approval of the Council or Panel to award a contract in the case of a Tender exceeding the budgetary provision previously approved
18.3	Recommend that none of the Tenders submitted should be accepted, and to notify all Tenderers accordingly in such instances
19.1	Provide information to Procurement for Contracts Register, in relation to all contracts with an estimated price or value of or exceeding £50,000
20.2	Nominate the Tenderer of the Most Economically Advantageous Tender (as appropriate) as Sub-Contractor
21	Obtain the approval of the appropriate Panel before authorising a series of related works projects or phased works projects
22.1	Determine whether there are circumstances or reasons which justify the negotiation of a contract without prior advertising in accordance with law; Obtain the approval of the appropriate Panel before authorising the extension/ award of contract
22.2	Submit a report, to the appropriate Panel, detailing the nature of the proposed award of contract and the reasons for the proposed negotiation without competition
24.1	Sign contracts (subject to the Scheme of Delegation)
24.6	Ensure that, where applicable in relation to contracts for consultancy services, the Council has royalty free rights to utilise information provided in relation to the continued development of the specific project and subsequent related projects

SO Number	Duty/ Power to...
24.8	Determine what insurance cover, if any, is relevant to the contract and which the Contractor will be required to take out and maintain for the duration of the contract
24.9	Determine whether the Council shall require the Contractor to take out a bond, obtain and deliver a formal parent company guarantee or provide other sufficient security for the due performance of the contract
24.11.1	Vary or amend any terms of a contract, if satisfied that the variation or amendment will not constitute a material difference to the original terms
24.11.2	Terminate a contract or the Council's participation in a framework agreement or DPS, following consultation with the Head of Legal, HR and Regulatory Services
25.1.2	Request that any consultant (not being an officer of the Council) produce all records maintained by him/ her in relation to a contract
Annex 1/ B.2	Nominate officers to take custody of returned Tenders
Annex 1/ D.1.1	Nominate officers to open below UK FTS Threshold Tenders, at least one of whom shall be an authorised officer from Procurement
Annex 1/ D.1.2	Nominate an officer to open above UK FTS Threshold Tenders
Annex 1/ E.1	Check all Tenders for completeness and errors
Annex 1/ E.2	Instruct officers to contact a Tenderer in respect of any Tender submitted
Annex 1/ F.1	Instruct officers to contact the Tenderer identified as offering the most economically advantageous, to enter into post Tender negotiations; where they are satisfied that there is scope for improvement in the price of the tender
Annex 2/ C.2 and C.3	Determine whether the proposed contract is one to which the principles of procurement from the Public Contracts (Scotland) Regulations apply and consequently requires advertising and competition
Annex 2/ C.4	Determine whether there are special circumstances justifying departure from requirement to advertise proposed contract

SO Number	<i>Duty/ Power to...</i>
Annex 2/ C.5	Determine whether Standing Order 12 is to apply to the proposed contract
Annex 2/ C.6	<p>Maintain a list of all proposed contracts which he/ she decides do not require to be advertised on the basis of the determinations made under paragraphs C.2, C.3, C.4 or C.5;</p> <p>Provide a copy of that list to the Elected Members on an annual basis</p>
Annex 2/ C.7	Keep full records of decisions taken and reasons, and provide those on list to Elected Members under paragraph C.6