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<b>Report To:</b>	<b>Audit Committee</b>	<b>Date:</b>	<b>23 August 2016</b>
<b>Report By:</b>	<b>Head of Legal &amp; Property Services</b>	<b>Report No:</b>	<b>LP/103/16</b>
<b>Contact Officer:</b>	<b>Gerard Malone</b>	<b>Contact No:</b>	<b>01475 712710</b>
<b>Subject:</b>	<b>Review of Standing Orders Relating to Contracts</b>		

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## **1.0 PURPOSE**

- 1.1 The purpose of this report is to present the revised Standing Orders relating to Contracts to the Audit Committee for consideration prior to approval by the Council.

## **2.0 SUMMARY**

- 2.1 At its meeting on 10 December 2015, the CMT approved the review of the Council's key governance documents including the Council's Standing Orders relating to Contracts. The proposed Standing Orders relating to Contracts require submission to the Audit Committee for review and, thereafter, to the Council for approval.
- 2.2 The Standing Orders Relating to Contracts have been substantially modernised. The revisions take account of recent changes to procurement legislation and key procurement issues including fair work practices, community benefits, sustainability and lotting. The revisions also facilitate the involvement of SMEs and supported businesses in the Council's procurement exercises.

## **3.0 RECOMMENDATION**

- 3.1 That the Committee:
- (a) considers the revisions to the Standing Orders relating to Contracts; and
  - (b) makes any recommendations on further revisions required by the Committee.

**Gerard Malone**  
**Head of Legal & Property Services**

## **4.0 BACKGROUND**

- 4.1 The Council has adopted a Local Code of Governance which is consistent with the principles of CIPFA and the Society of Local Authority Chief Executives (SOLACE) Framework. The CMT has the responsibility for conducting, at least annually, a review of the effectiveness of its Governance Framework including systems of internal control and this is done through the Annual Governance Statement.
- 4.2 At its meeting on 10 December 2015, the CMT approved the review of the Council's key governance documents including the Standing Orders relating to Contracts. The Head of Legal & Property Services is, at the same time, undertaking a review of other key governance documents including the Standing Orders and Scheme of Administration and the Scheme of Delegation. The Chief Financial Officer is undertaking a similar review of the Financial Regulations.
- 4.3 The proposed Standing Orders relating to Contracts require submission to the Audit Committee for review and they will thereafter be submitted to the Council for approval.

## **5.0 STANDING ORDERS RELATING TO CONTRACTS**

- 5.1 The Council's Standing Orders relating to Contracts have been the subject of substantial revision. The revisals take account of recent changes to procurement legislation, remove anomalies which have developed and streamline approval and tender opening processes.
- 5.2 A copy of the revised Standing Orders relating to Contracts is attached as an Appendix for consideration.
- 5.3 There have been significant developments in procurement and this current review achieves the following:
  - It reflects the new European and National Procurement laws including the requirement to award a contract to the most economically advantageous bidder, and not the lowest bidder, where the new laws apply;
  - It highlights the requirement for officers to take account of laws and Council policy on matters such as sustainability, community benefits and workforce matters including the Living Wage and to facilitate the involvement of SMEs and supported businesses in the Council's procurement exercises;
  - It sets out the ethical standards for officers involved in procurement activity; and
  - It streamlines processes by (a) making revisions to permit senior officers to take decisions on operational matters which have no significant implications for or significant unplanned budgetary impact on the Council, thereby ensuring only significant decisions are referred to Committee and (b) removing the need for Elected Members to be present at tender openings, given the audit trail provided by the electronic tender opening process.

## **6.0 IMPLICATIONS**

### **Finance**

- 6.1 There are no direct financial implications.

#### Financial Implications:

One Off Costs

<b>Cost Centre</b>	<b>Budget Heading</b>	<b>Budget Years</b>	<b>Proposed Spend this Report</b>	<b>Virement From</b>	<b>Other Comments</b>
n/a	n/a	n/a	n/a	n/a	n/a

Annually Recurring Costs/ (Savings)

<b>Cost Centre</b>	<b>Budget Heading</b>	<b>With Effect from</b>	<b>Annual Net Impact</b>	<b>Virement From (If Applicable)</b>	<b>Other Comments</b>
n/a	n/a	n/a	n/a	n/a	n/a

### **Legal**

- 6.2 The Standing Orders relating to Contracts form part of the Council's key governance documents. This review ensures that the Council's Standing Orders relating to Contracts comply with recent legislative changes as well as meeting and supporting the strategic aims of the Council.

### **Human Resources**

- 6.3 There are no direct Human Resources implications arising from this report.

### **Equalities**

- 6.4 The corporate documentation assists the Council in meeting its responsibilities in terms of equalities legislation.

### **Repopulation**

- 6.5 There are no direct repopulation implications arising from this report.

## **7.0 CONSULTATIONS**

- 7.1 There has been direct consultation with all Heads of Service and the CMT and the corporate Procurement Manager in relation to the drafting of the Standing Orders relating to Contracts.

## **8.0 BACKGROUND PAPERS**

- 8.1 None

# Inverclyde Council

## **STANDING ORDERS RELATING TO CONTRACTS**

Approved  
February 2013  
Under revision 29 July 2016

# STANDING ORDERS RELATING TO CONTRACTS

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## **1.0 DEFINITIONS**

1.1 In these Standing Orders relating to Contracts the following definitions and provisions shall apply:

- (i) “Corporate Directors” shall include the Chief Executive and the Chief Officer of the Integration Joint Board;
- (ii) “appropriate committee” shall mean the committee to which the procuring Service reports in terms of the Council’s Scheme of Administration;
- (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;
  - (c) major financial penalties; or
  - (d) significant unforeseen and unplanned financial consequences.
- (v) “the European and National Procurement Rules” mean the various directives, regulations, statutory guidance, formal guidance notes, policy notes, interpretative communications and precedents which together form the legal and procedural framework and any codification or revision thereof relating to public sector procurement for public works, the supply of goods and materials and the supply of services; and
- (vi) “health and social care services” means any of the services listed in the Schedule to the Procurement (Scotland) Regulations 2016 relating to social work services, children’s services and mental health care and treatment services.

1.2 The title of every officer referred to in the Standing Orders relating to Contracts 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 transfer to that other officer(s).

## **2.0 PRELIMINARY MATTERS**

2.1 These Standing Orders relating to Contracts shall apply, unless otherwise stated, to the making by the Council or on its 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, the provision of services or for the execution of works. Any power exercisable by Elected Members and officers in terms of these Standing Orders relating to Contracts shall be subject to the provision of the Council’s Scheme of Delegation whether or not referred to therein.

2.2 Officers shall have regard to the following:-

- (i) the Council’s Financial Regulations.

- (i) the Corporate Procurement Manual and the guidance on the European and National Procurement Rules and procedural requirements contained therein issued from time to time by the Corporate Procurement Manager; and
- (ii) Rules of Procedure for National Contracts set up by Scotland Excel and Procurement Scotland.

2.3 These Standing Orders relating to Contracts shall also apply to all contracts which are subject to the European and/or National Procurement Rules provided that, where there is any conflict between these Standing Orders relating to Contracts and such legislation or rules, the legislation and rules shall take precedence.

Where any tender is likely to:-

- (i) equal or exceed the thresholds for the application of the European Procurement Rules from time to time<sup>1</sup>; or
- (ii) equal or exceed the thresholds for the application of the National Procurement Rules<sup>2</sup>,

the Corporate Director and relative Head of Service will remain responsible for complying with the requirements of the European and National Procurement Rules but will consult fully with the Corporate Procurement Manager and the Head of Legal & Property Services to ensure that (a) the various requirements of the European and/or National Procurement Rules are fully complied with and (b) where the European Rules apply to determine the appropriate procurement route: open; restricted; negotiation; competitive procedure with negotiation; or, competitive dialogue.

### **3:0 VARIATION AND REVOCATION**

3.1 These Standing Orders relating to Contracts may from time to time be varied or revoked by the Council..

3.2 The Corporate Procurement Manual may from time to time be varied or revoked by the Corporate Procurement Manager in consultation with the Head of Legal & Property Services and the Chief Financial Officer.

### **4:0 SUSPENSION**

4.1 The appropriate Committee, on receiving a joint recommendation from the relevant Corporate Director, the Head of Legal & Property Services and the Chief Financial Officer that there are special circumstances justifying suspension of one or more provisions of these Standing Orders relating to Contracts 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.

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<sup>1</sup> From 1 January 2016, the prescribed EU threshold values are £164,176 for goods and services and £4,104,394 for works contracts.

<sup>2</sup> The National Procurement Rules apply to any goods or services contract which is equal to or greater than £50,000 (excluding health and social care services contracts) and any works contract equal to or greater than £2million.

4.2 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 Standing Orders relating to Contracts.

## **5.0 REVIEW**

5.1 These Standing Orders relating to Contracts shall be reviewed at least every three years by the Head of Legal & Property Services.

## **6.0 EXCLUDED CONTRACTS**

### **Below Threshold Contracts**

6.1 Contracts for the supply of goods or materials, the provision of services or for the execution of works are excluded from the application of the Standing Orders relating to Contracts where the estimated price of the contract is less than:

Supply of Goods or Materials:	£25,000
Provision of Services	£25,000
Execution of Works	£100,000

6.2 Competitive quotes must still be sought for the excluded contracts referred to at Standing Order 6.1 above.

6.3 Officers must not contrive or deliberately divide any procurement exercise into two or more contracts to avoid the application of the financial thresholds referred to at Standing Order 6.1 or those specified in the European or National Procurement Rules.

### **Specific Exclusions**

6.4 The following specific contracts are excluded from the application of the Standing Orders relating to Contracts:-

- (i) any contract for the supply of goods or materials, 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, Head of Legal & Property Services and the Chief Financial Officer, are urgently required for the prevention of damage to life or property or which 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 by the relevant Corporate Director 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 or legal counsel except where the appointment exceeds the thresholds for the application of the European or National Procurement Rules in which circumstances the appointment made be made in accordance with the relevant Rules;

- (v) the allocation of direct payments or personal budgets under options 1, 2 or 4 of the Social Care (Self Directed Support) (Scotland) Act 2013;
- (vi) appointed guardians or legal services instructed by a court or tribunal from the panel of persons appointed by the Council under The Curators ad Litem and Reporting Officers (Panels) Scotland Regulations 2001 and the appointment of board members required by statute; and
- (vii) any contract relating to heritable property (which shall be subject to separate procedures contained within the Corporate Procurement Manual).

### **Contracts for Health and Social Care Services**

- 6.5 Contracts for health and social care services are excluded from the application of the Standing Orders Relating to Contracts. The Rules of Procedure for Social Care Contracts contained within the Corporate Procurement Manual shall apply to the procurement of health and social care contracts.

### **Framework and Exempt Collaborative Agreements**

- 6.6 Frameworks and Collaborative Agreements are excluded from the application of the Standing Orders relating to Contracts where the contract is for the supply of goods or materials, the provision of services or for the execution of works made on behalf of the Council by Scotland Excel, Procurement Scotland, the Government Procurement Service, Strathclyde Partnership for Transport or hub West Scotland 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, Standing Order 23 shall apply in all other cases.
- 6.7 Any participation contract required to secure the Council's right to participate in a particular collaborative purchasing contract set up by a body listed at Clause 6.6, shall, irrespective of value, be signed on behalf of the Council by the Corporate Procurement Manager.
- 6.8 Where arrangements for participation have been established under Standing Order 6.6, subject to Standing Order 6.9 below, the appropriate Corporate Director or relative Head of Service shall not separately seek tenders for the supply of goods or materials, the provision of services or for the execution of works.
- 6.9 If the appropriate Corporate Director or relative Head of Service believes that such collaborative purchasing is not achieving Best Value the Corporate Director or Head of Service must obtain the prior approval of the Corporate Procurement Manager in consultation with the Head of Legal & Property Services and the Chief Financial Officer for any alternative procurement route.
- 6.10 Any matter relating to the Council's membership of the bodies listed at Standing Order 6.6 shall be referred to the Council's Policy & Resources Committee or its equivalent from time to time.

## **7.0 ESTIMATES OF COST**

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

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

- 7.2 The values stated in these Standing Orders relating to Contracts are the total estimated values of the contract concerned for the duration of the contract and not the estimated annual value of the contract.
- 7.3 Where it is likely that a supply of goods or services or execution of works will be required on a continuing basis for a number of years the anticipated duration of the continuing supply shall be taken into account when estimating the value of the contract for the purposes of these Standing Orders relating to Contracts.
- 7.4 For purposes of any financial checks of tenders, the amount of the annual value shall be a sufficient and appropriate basis of assessment.

## **8.0 TENDERING PROCEDURES - GENERAL**

- 8.1. All contracts over the values specified in Order 6.1 require to be advertised in a sufficiently open manner to ensure that the principles of openness, transparency and equality are fully met.
- 8.2 Public Notice shall be given of all contracts over the values specified in Order 6.1 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.
- 8.3 Tenders must be 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 Standing Order 8.4 below.
- 8.4 Subject to Standing Order 8.3 above, 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.

## **9.0 SUSTAINABILITY**

- 9.1 The National Procurement Rules require that prior to procuring any contract for the supply of goods or materials or for the provision of services in excess of £50,000 or procuring any contract for the execution of works in excess of £2million, the Council must, in line with the sustainable procurement duty consider:
- (i) how its actions can improve the social, environmental and economic wellbeing of the Inverclyde Council area, focusing particularly on inequality and then procure in a manner which secures those identified improvements; and
  - (ii) seek to facilitate the involvement of SMEs, third sector bodies and supported businesses and support innovation in its procurement processes.
- 9.2 Advice must be sought from the Corporate Procurement Manager on this requirement prior to issuing a tender.

## **10.0 AWARDING CONTRACTS IN LOTS**

- 10.1 Where the European Procurement Rules apply, a contract may be awarded in the form of separate lots. Where the decision is taken not to award in the form of separate lots the main reason(s) for this must be explained in the Contract Notice.
- 10.2 Advice must be sought from the Corporate Procurement Manager on this requirement prior to issuing a tender.

## **11.0 RESTRICTING TENDERS TO SUPPORTED BUSINESSES**

- 11.1 The Council can restrict participation in a tendering procedure to providers operating supported businesses, supported employment programmes or supported factories where more than 30% of the workers are disabled or disadvantaged persons in accordance with the European Procurement Rules.
- 11.2 This right must be advertised in the Public Notice specified at Standing Order 8.2 above. Prior to exercising this right, advice must be sought from the Corporate Procurement Manager in consultation with the Head of Legal & Property Services and the Chief Financial Officer.

## **12.0 FAIR WORK PRACTICES AND COMMUNITY BENEFITS**

- 12.1 All procurement planning and tendering procedures and contractual arrangements entered into shall, in accordance with Council policy and guidance, encourage fair working practices and payment of the Living Wage and, where appropriate, shall include the use of community benefit clauses.
- 12.2 Advice must be sought from the Corporate Procurement Manager on this requirement prior to issuing a tender.

## **13.0 TENDER EVALUATION**

- 13.1 The evaluation methodology of tenders shall be transparent, fair, proportionate, comply with Council guidance on evaluation criteria contained within the Corporate Procurement Manual and shall be fully disclosed to prospective tenderers in the tender documentation.
- 13.2 Unless otherwise provided for in the Corporate Procurement Manual, each and every contract must be awarded to the 'most economically advantageous tender' and the balance between cost/quality must not fall below 60/40, where 60 represents cost and 40 represents quality.
- 13.3 Where the relevant Corporate Director is of the opinion that this ratio specified at Standing Order 13.2 requires to be varied to the extent that cost represents a smaller percentage of the overall total, then prior to commencing the procurement process, the Corporate Director shall prepare a report for the approval of the appropriate committee. Any such report shall be prepared in consultation with the Corporate Procurement Manager, the Head of Legal & Property Services and the Chief Finance Officer.

## **14.0 CONTRACT TERMS AND CONDITIONS**

- 14.1 Officers shall procure using current standard industry form terms and conditions and/or current framework terms and conditions. Where no such terms are available,

officers shall procure using the Council's current Standard Terms and Conditions of Purchase.

- 14.2 Officers shall give specific consideration to the inclusion of an arbitration clause in the terms and conditions of a contract if such a clause is not already included in the applicable terms.

## **15.0 LATE TENDERS**

- 15.1 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.

- 15.2 The Council expressly reserves the right to require any tenderer to provide additional written information supplementing or clarifying any of the information provided by that tenderer in response to requests for information or questions contained in the pre-qualification questionnaire, the European Single Procurement Document or invitation to tender.

## **16.0 OPENING OF TENDERS**

- 16.1 All tenders relating to a specific project shall be opened at the one time.
- 16.2 Tenders shall be opened in the presence of an officer within or acting on behalf of the procuring service and an officer within Legal & Property Services.

## **17.0 ACCEPTANCE OF TENDERS**

- 17.1 Except as hereinafter provided, the most economically advantageous tender shall be accepted.
- 17.2 The lowest price shall only be accepted if lowest price is permitted in terms of the Corporate Procurement Manual.
- 17.3 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 Head of Legal & Property Services;
  - (ii) in the case of contracts where the value or amount exceeds £500,000 by the Head of Legal & Property Services with authority from the appropriate Committee; and
  - (iii) in any case, regardless of value, where the tender recommended for acceptance is not the most economically advantageous by the Head of Legal & Property Services only with authority from the appropriate Committee.
- 17.4 The Head of Legal & Property Services shall, on a bi-annual basis, submit a report for noting to the relevant committee detailing all contracts which have been accepted in terms of Standing Order 17.3 (i) and all collaborative purchases under Standing Order 6.6.

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

17.6 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.

## **18.0 PROCUREMENT STRATEGY AND REPORTING**

### **Procurement Strategy**

18.1 The Corporate Procurement Manager shall, in consultation with the Head of Legal & Property Services and the Chief Financial Officer, prepare and publish a procurement strategy setting out how the Council intends to carry out procurements regulated by the National Procurement Rules.

### **Annual Procurement Report**

18.2 The Corporate Procurement Manager shall, in consultation with the Head of Legal & Property Services and the Chief Financial Officer, in relation to any financial year, prepare and publish an annual procurement report on procurements regulated by the National Procurement Rules as soon as reasonably practicable after the end of the relevant financial year.

### **Register of Tenders**

18.3 The Head of Legal & Property Services shall keep and maintain a register of all tenders received which register 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; and
- (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.

18.4 Standing Order 18.3 shall not apply to health and social care service contracts. The relevant Head of Service shall keep and maintain a register of tenders relating to health and social care services containing the information (where relevant) outlined in (i) – (iii) above.

## **19.0 DIRECT CONTRACT AWARDS**

19.1 Where the European or National Procurement Rules apply, a contract can only be awarded directly without competition if the direct award can be justified under the relevant Rules determined in accordance with Standing Order 2.3.

19.2 In exceptional cases and provided the proposed spend falls below the thresholds for the application of the European and National Procurement Rules, if the Corporate Director or Head of Service considers on the application of Best Value principles that a contract can be directly awarded without competition, the Corporate Director shall obtain the prior approval of the appropriate committee.

- 19.3 Any report required in terms of Standing Order 19.2 shall confirm the identity of the party to which the contract is to be directly awarded and the proposed contract terms.
- 19.4 Advice must be obtained from the Corporate Procurement Manager in consultation with the Head of Legal & Property Services and the Chief Financial Officer before submitting a report to the appropriate committee or making any direct award.

## **20.0 CONTRACT EXTENSIONS**

- 20.1 A contract extension affects the duration of the contract.
- 20.2 A contract can only be extended in certain defined circumstances:
- (i) the right to extend must have been referred to in the initial procurement advert for the contract and the terms and conditions of the contract must authorise such an extension; or
  - (ii) the extension constitutes a permissible and justifiable direct award under Standing Order 19.

In all other cases a contract extension is not permitted.

- 20.3 This Standing Order does not apply to contracts for the execution of works where extensions of time are expressly contained in standard industry terms and conditions of contract.
- 20.4 The relevant Head of Service must obtain advice from the Corporate Procurement Manager in consultation with the Head of Legal & Property Services and the Chief Financial Officer prior to extending any contract.

## **21.0 CONTRACT MODIFICATIONS**

- 21.1 A contract modification affects the scope of the contract.
- 21.2 Examples of when a contract modification may be required include circumstances where there is a need for additional works, services, goods or materials which were not specified in the initial procurement or where a new contractor replaces the contractor to whom the contract was initially awarded.
- 21.3 The European and National Procurement Rules set out when it is permissible to modify a contract to which the Rules apply. Where it is not possible to modify a contract, the contract must be re-tendered unless the modification constitutes a permissible and justifiable direct award under Standing Order 19.
- 21.4 The relevant Head of Service must obtain advice from the Corporate Procurement Manager in consultation with the Head of Legal & Property Services and the Chief Financial Officer prior to modifying any contract.

## **22.0 EARLY TERMINATION OF A CONTRACT**

22.1 All tender documents must include an early termination clause to permit effect to be given to Regulation 73 of the European Procurement Rules namely the Council must have the right to terminate the contract or framework early where:

- (i) the contract or framework has been subject to such substantial modification that a new procurement exercise is required;
- (ii) the tenderer has been in a situation which constitutes a ground for exclusion at the time the contract was awarded and should therefore have been excluded from the procurement process; and
- (iii) the European Court of Justice has declared that a contract or framework should not have been awarded due to a serious breach of the European Procurement Rules.

22.2 If the relevant Head of Service decides that an operational contract which has no significant implications for the Council and no significant unplanned budgetary impact, including a contract falling within the scope of Standing Order 22.1, requires to be terminated prior to the expiry date, the Head of Service must explain the circumstances and obtain the prior written approval for the early termination from the Corporate Procurement Manager in consultation with the Head of Legal & Property Services and the Chief Financial Officer.

22.3 In all other cases where the relevant Head of Service decides that a contract requires to be terminated prior to the expiry date, including a contract falling within the scope of Standing Order 22.1, the Head of Service must, in consultation with the Corporate Procurement Manager, Head of Legal & Property Services and the Chief Financial Officer, submit a report explaining the circumstances and implications for the Council and seeking the approval of the relevant Committee.

## **23.0 FRAMEWORK AND NON-EXEMPT COLLABORATIVE AGREEMENTS**

23.1 The Corporate Procurement Manager may seek the approval of the relevant committee to participate in framework or non-exempt collaborative agreements with a body or organisation which is not listed at Standing Order 6.6 for a maximum period of 3 years provided the Corporate Procurement Manager is satisfied that any such framework or non-exempt collaborative agreement:

- (i) has been established in accordance with the European or National Procurement Rules; and
- (ii) is achieving Best Value.

23.2 No further committee approval will be required to purchase from a framework or non-exempt collaborative agreement approved in terms of Standing Order 23.1 unless the value or amount of the contract will exceed £500,000 in which circumstances Standing Order 17.3(ii) will apply.

23.3 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 which has not been approved in terms of Standing Order 23.1 provided the Corporate Director or Head of Service has obtained the prior approval of the appropriate committee for the participation and level of spend. Before doing so, the Corporate Director or Head

of Service shall consult fully with the Corporate Procurement Manager, the Head of Legal & Property Services and the Chief Financial Officer.

- 23.4 Any participation, membership or similar agreement required to secure the Council's right to participate in collaborative purchasing contracts duly approved under Standing Orders 23.1 or 23.3 shall be signed by the the Head of Legal & Property Services in consultation with the Chief Financial Officer and the Corporate Procurement Manager.

## **24.0 POST TENDER CLARIFICATION**

### **Errors in computation**

- 24.1 Where examination of tenders received reveals obvious errors in the computation of the offer 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
  - (iii) 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, 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 be permitted only to amend the obvious or genuine error and must not be given the opportunity to amend any other part of their tender.

### **Requests for clarification**

- 24.2 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.

## **25.0 CONSULTANTS AND SPECIALIST SERVICE PROVIDERS**

- 25.1 Where appropriate, it shall be a condition of engagement of consultants and specialist service providers that:-
- (i) they shall comply with these Standing Orders relating to Contracts as though they were officers of the Council;
  - (ii) at any time during the performance of the contract, the consultant/specialist service provider 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 consultant/specialist service provider exclusively for the Council in the course of providing the services shall vest and remain vested in the Council.

25.2 In the event that a Head of Service wishes to depart from the requirements of Standing Order 25.1, the Head of Service shall only do so with the prior agreement of the Corporate Procurement Manager in consultation with the Head of Legal & Property Services and the Chief Financial Officer.

## **26.0 FORM OF CONTRACT**

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

## **27.0 PERFORMANCE BONDS**

27.1 A contract guarantee bond must be obtained from a building contractor for capital and infrastructure projects in the following circumstances:

- (i) where the total contract sum for the project exceeds £500,000; or
- (ii) where the Council as funder contributes more than £250,000 to the project.

27.2 The contract guarantee bond must have a minimum value of 10% of the total contract sum and must be based on the standard Association of British Insurers Model Form of Guarantee Bond duly amended to include the insolvency of the building contractor as a default.

## **28.0 COLLATERAL WARRANTIES**

28.1 A collateral warranty may be required where goods or materials, services or works are provided by a party which is not a party to the Council's main contract. A collateral warranty enables the Council to raise a contractual claim directly against the party which is not a party to the main contract.

28.2 Collateral warranties may also require to be provided in associated but separate or phased tender exercises. For example, a building contractor appointed by the Council may require a collateral warranty to be provided by a specialist consultant appointed by the Council to provide a specialist structural report. In such circumstances, the contractual terms of the original specialist consultant appointment must oblige the original specialist consultant to provide collateral warranties where required by other parties to the project.

28.3 Officers shall consider whether it is appropriate to obtain a collateral warranty or warranties including whether a collateral warranty or warranties may require to be provided as part of an associated but separate or phased tender approach.

28.4 Advice must be sought from the Corporate Procurement Manager in consultation with the Head of Legal & Property Services prior to issuing any tender or contract if collateral warranties may be required by the Council or another party.

## **29.0 FREEDOM OF INFORMATION**

29.1 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 Corporate Procurement Manual.

### **30.0 TECHNICAL STANDARDS**

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

30.2 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.

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

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

### **31.0 EQUALITIES & PREVENTION OF DISCRIMINATION**

31.1 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 Equality Act 2010 (or any statutory modification or re-enactment thereof).

31.2 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 said Equality Act 2010.

### **32.0 ETHICS AND STANDARDS**

32.1 Dealings with suppliers must at all times be transparent, honest and fair.

32.2 Any conflict of interest which arises in relation to an officer's official duty and their personal interest must be resolved so that any conflicted individual is not in a position to influence decisions made.

32.3 The actions of officers should not be, nor give the impression that they have or may have been, influenced by a gift or consideration to show favour or disfavour to any person or organisation.

32.4 Officers must be aware of their responsibilities when procuring and that there are criminal penalties for offences which are specified in the Bribery Act 2010.

32.5 Officers must keep sufficient records to establish an audit trail to demonstrate that ethical standards have been observed throughout any procurement process.

**33.0 ASSIGNATION/NOVATION**

- 33.1 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.