



## **EAST AYRSHIRE COUNCIL**

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

**Applicable from 1<sup>st</sup> June 2015**

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### STANDING ORDERS RELATING TO CONTRACTS

**The Chief Governance Officer is responsible for all contracting activity within the Council.** The Chief Governance Officer or his authorised representatives shall have the authority to:

- have access to all records, documents and correspondence relating to any contract, acceptance of quotations or any other purchasing activity of the Council.
- have the authority to investigate any matter in connection with contracts, quotations or any other purchasing activity and refer back to the appropriate Depute Chief Executive, Head of Service and/or Internal Audit.

### EXTENT, VARIATION AND REVOCATION

1. These Standing Orders are made under Section 81 of the Local Government (Scotland) Act 1973 and shall apply, unless otherwise stated, to the making by the Council or on its behalf of all contracts for goods, works and services, including consultancy contracts. These Standing Orders shall be read in conjunction with the provisions of the Council's Scheme of Delegation, however where there is a conflict these Standing Orders shall take precedence.
2. Where collaborative contracts are being awarded on the Council's behalf by other Authorities, Scotland Excel, Scottish Procurement, Crown Commercial Service, APUC or any other Government Department, such contracts will be procured and awarded in accordance with the awarding Authority's Standing Orders Relating to Contracts. For Scottish Procurement contracts, an 'Intention to Participate' will be signed, and for certain other collaborative contracts a 'Minute of Agreement' may be required
3. Where collaborative contracts are being awarded by the Council on behalf of other Authorities, such contracts will be procured and awarded in accordance with these Standing Orders Relating to Contracts.
4. (1) These Standing orders shall apply to all contracts which are subject to Scottish legislation or European Directives on public procurement provided that, where there is any conflict between (a) these Standing Orders and (b) such legislation or rules, the latter shall take precedence.  
  
(2) These Standing Orders may be varied or revoked by the Council and any motion to vary or revoke these Standing Orders (which motion shall conform to the requirements of Standing Order no 10 of the Standing Orders for regulating meetings and proceedings of the Council) shall, when proposed and seconded, stand adjourned without discussion to the next ordinary meeting of the Council.

## REMITTS

5. (1) **National Public Sector Contracts:** Category A commodities and services to be procured on the Council's behalf by Scottish Procurement and where the Council signs an 'Intention to Participate' or 'Agency Agreement' then the use of the contract will be mandatory once in place, unless the supplier/contractor/service provider fails to meet specific requirements. The Corporate Procurement Team will also investigate the use of other national public sector contracts available eg: Crown Commercial Services, APUC, ESPO, PFH, LHC to determine the most cost effective procurement options available.
- (2) **National Sectoral Contracts:** Category B commodities and services to be procured on the Council's behalf by Scotland Excel and where it is deemed to provide best value after consultation between Corporate Procurement and Service Departments, then the use of the contract will be mandatory once in place, unless the supplier/contractor/service provider fails to meet specific requirements.
- (3) **Local Collaborative Contracts:** East Ayrshire Council Contracts involving NHS, Police, Fire, North Ayrshire Council, South Ayrshire Council and occasionally other Councils, where one of the partners will adopt the lead role and be the Contracting Authority will award the contract on behalf of all the participating bodies on a project-by-project basis. The interests of East Ayrshire Council are to be secured by representation on the working groups by the Corporate Procurement Team and key users from the Service Departments and their use is mandatory.
- (4) **Facilities and Property Management Contracts:** The major property capital works programmes and other building-related ad hoc works are procured directly by Facilities and Property Management. Assistance must be sought from the Corporate Procurement Team for any contracts above the EU thresholds to ensure compliance with the Regulations at all stages of the process, in particular placing of the OJEU Notice, PQQ, tender selection, award criteria and tender evaluation.
- (5) **ARA Contracts:** The Roads Structural Maintenance Programme and other roads-related works are procured directly by the Ayrshire Roads Alliance (ARA). ARA must seek assistance from the Corporate Procurement Team for any contracts above the standing order and EU thresholds to ensure compliance with the Regulations at all stages of the process, in particular placing of the OJEU Notice, PQQ, tender selection, award criteria and tender evaluation.
- (6) **Corporate/Departmental Contracts:** Collaborative (supply and services) contracts, regardless of value, with other public sector bodies are the responsibility of Corporate Procurement. Cross-departmental contracts are also procured by the Corporate Procurement Team who are responsible for the procurement of all other departmental contracts (Cat C commodities, kitting out of new or renovated buildings where not included in the original works contract, services, supplies and consultancy contracts, ICT contracts), procured on behalf of the Council.

- (7) **Supported Businesses/Reserved Contracts:** The Council have the freedom within the EU Procurement Regulations to decide to reserve contracts to supported businesses only – the Corporate Procurement Team will consider the use of any/all such contracts when drafting the Commodity Strategy.
- (8) **Electronic Tenders:** Electronic tendering is a means of facilitating the complete tendering process via electronic means, including the exchange of all relevant documents in electronic format, electronic submission of competitive bids for the provision of the goods/works/services. The electronic tendering system currently in use is a fully auditable system and is facilitated through the Public Contracts Scotland and Public Contracts Scotland-Tender system, this system and access to the system will be managed by the Corporate Procurement Team.
- (9) **Use of Collaborative Contracts:** If there is a Council contract in place, this must be used as a first option even if there is a national collaborative contract in place. The use of any other collaborative contract eg: Scotland Excel (SXL), Scottish Procurement, the Crown Commercial Service (CCS), APUC, Procurement for Housing (PFH) etc. shall be limited and authority to use these contracts must be sought from the Corporate Procurement Team in the first instance.
- (10) **Quick Quote:** Quick Quote is a facility available on the Public Contracts Scotland website to electronically request and receive quotations. Quotations should only be sought for low value, one off items where no contract exists for the requirement. The Corporate Procurement Team and certain service department users, previously trained and subsequently approved to use the Quick Quote system will be provided access to the system. The use of Quick Quote is a **mandatory** requirement for all service departments.
- (11) **PCS-T:** Public Contracts Scotland Tender module is a facility available via the Public Contracts Scotland website. This website provides a simple, secure and efficient means for managing all tendering activities eg PQQ, ITT, tender evaluation etc, reducing the time and effort required for buyers and providing suppliers with instant access to new opportunities and supporting documentation. The use of this system will be restricted to the Corporate Procurement Team in the first instance until the system is phased in and embedded within the Council. Service department users will be identified by procurement to be trained and approved to use the system.
- (12) **Commodity Strategies:** For all procurement related activity over the value of £50,000, the Corporate Procurement Team will in conjunction with the service department/s complete a commodity strategy which will include (but will not be limited to) the following:
- Project background
  - Project objectives/benefits
  - Detailed market research/analysis/intelligence
  - Forward plan/demand analysis
  - Collaborative opportunities – internal/external
  - Social/Economic/Environmental considerations
  - Reserved/Supported Business
  - Savings targets

- Risk mitigation/management
- Procurement process including evaluation criteria
- Budget
- Stakeholder engagement
- P2P considerations
- Whole life costs
- Performance measurement/service level agreement
- Implementation plans
- Contract exit strategy

The development of a commodity strategy is a **mandatory** requirement. These will require to be signed off by the Corporate Procurement Team and service department/s prior to any tender exercise being conducted.

- (13) **Heads of Service:** As budget holders, Heads of Service are responsible for ensuring contract compliance both with their own service specific contracts and for spend on corporate and collaborative contracts. Where guidance is required, the Head of Service shall consult with the Corporate Procurement Team.
6. All Services must initially investigate internal options as a first choice before any tender exercise is instructed; for example, Corporate Print Room for printing; Ayrshire Roads Alliance (ARA) for footpaths and road repairs etc. Although in some cases internal charges may be slightly higher than outsourcing the requirement, the cost to the Council as a whole is less as the money is rotational within the Council.

## TENDER THRESHOLDS

7. The financial thresholds that determine whether quotations or tenders are required are as detailed below:
- (1) **Consultancy Commissions** (a consultancy is defined as '*a service that would not normally be carried out by Council Officers and where there is a specialist aspect to the service*'): Consultancy Commissions with a total anticipated value of over £10,000 are to be formally advertised and tendered by the Corporate Procurement Team (if no current contract exists). The Head of Service will be responsible for ensuring value for money and best value for Consultancy Commissions below £10,000, by obtaining a minimum of three quotations from reputable organisations who hold the required minimum insurance indemnity, relevant experience, competencies and who are financially stable (Experian rating of 50 or better, unless approval is given by Head of Service due to the low risk nature of the contract). All quotations must be issued via the Quick Quote system

In the interests of best value, officers are required to provide a robust justification prior to considering outsourcing services to external consultants, including an assessment of alternative options. All services must follow the instructions contained within the Accounting Policy Bulletin (APB) 31 prior to commissioning consultancy services.

- (2) **Goods, Works and Services:** With the exception of National/Sectoral procured contracts, all Goods, Works and Services with a total anticipated value in excess of £50,000 (calculated over the full term of the contract, including any extension options) are to be formally tendered by the Corporate Procurement Team. Capital Works projects will be tendered by Facilities and Property Management in consultation with the Corporate Procurement Team. The Head of Service is responsible for ensuring value for money and best value for Goods and Services with an aggregated value below £50,000, by consulting with the Corporate Procurement Team who will advise on whether formal tenders or a minimum of three quotations via Quick Quote are required. This Standing Order also applies to the nomination of sub-contractors or suppliers for fully tendered works contracts. Where the value of the Goods, Works or Service is below £500 the Head of Service will in the first instance check the contracts register to see if the requirement can be sought from one of the contracted suppliers/contractors/service providers. If the requirement cannot be sourced from one of the contracted suppliers/contractors/service providers, the Head of Service shall be responsible for ensuring best value, although the Council's interest shall be protected by ensuring that the contractor is competent and holds the minimum insurance requirement and holds the required minimum Health & Safety competencies (membership of SSIP scheme for works contracts).
- (3) **All Commissions and Contracts:** In addition to 7.1 and 7.2, all contracts that have an anticipated contract value in excess of the European Procurement Threshold ruling at the time of advertising (calculated over the full term of the contract, including any extension options) will have the procurement process managed by the Corporate Procurement Team who have sole responsibility for the placing of Contract Notices, including Contract Award Notices. The aggregated value is the total value of the consideration calculated over the entire term of the contract and use across the whole Council, including optional extensions (or four years in the case of arrangements with an indefinite period) where the considerations have similar characteristics or are for the same type of goods or services. The current thresholds as of 1<sup>st</sup> January 2014 are as follows:

(i)	Supplies	£172,514
(ii)	Services	£172,514
(iii)	Works	£4,322,012

It should be noted that the EU thresholds are revised every 2 years, it is the responsibility of service users to ensure that they check periodically with the Corporate Procurement Team of any revised changes. If you are initiating a new procurement process, please check the thresholds values.

Where there is uncertainty as to the anticipated value of the contract when calculating the aggregated value, the EU Procedures will be applied in full. Details are available from the Corporate Procurement Team.

## REPORTING OF TENDERS/AWARD OF CONTRACTS

8. (1) All tendering exercises will culminate with a Tender Outcome Report being produced by the Procuring Body (ie Corporate Procurement Team, Facilities and Property Management or Ayrshire Roads Alliance etc) leading the procurement exercise and this will be made available

to the Chief Governance Officer who will award the contract. This must also be made available to the appropriate Depute Chief Executive/Head of Service who are likely to have an interest in the contract.

- (2) All formal award of Contracts issued by the Chief Governance Officer are to be reported to Democratic Services stating the names and geographical location of all parties invited to tender, the tender outcome details and the value of the contract where lump sum, or the notional annual value if a Schedule of Rates Contract.
- (3) All awards of contracts, irrespective of value, must be advised to the Corporate Procurement Team immediately by the Service Department awarding the contract. All such awards will be recorded on the Contracts Database for audit and compliance purposes.

## **AUTHORITY TO CONTRACT**

9. The authority of officers to award contracts on behalf of the Council will be strictly restricted to the following:
  - (1) Only the Chief Governance Officer or his/her representative may formally award Contracts on behalf of the Council where the contract value is in excess of £50,000 or £10,000 in the case of Consultancy Contracts (subject to the Accounting Policy Bulletin 31 instructions being followed and agreed).
  - (2) In the case of formal extensions to a Contract term, for contracts where this option exists, only the Chief Governance Officer or his/her representative may issue the Letter of Extension on behalf of the Council.
  - (3) For construction related works contracts only, where the contract value is below £50,000, both the Head of Ayrshire Roads Alliance and the Head of Facilities and Property Management are responsible for awarding contracts on behalf of the Council.
  - (4) Heads of Service are responsible for accepting quotations/offers for goods and services where the total value is between £500 and £50,000, the Corporate Procurement Team must be advised prior to acceptance for aggregation purposes. Where the Corporate Procurement Team recognise an aggregation issue, the Head of Service will be advised and, where time permits, a tender exercise will commence.
  - (5) Where a Consultancy Contract has an estimated value less than £10,000 the Head of Service is responsible for the acceptance of the quotation/offer/proposal on behalf of the Council, although approval must be obtained by the Depute Chief Executive prior to acceptance.
  - (6) All leases, rental and external maintenance agreements (including ICT support and maintenance) must be approved by the Corporate Procurement Team and authorised by the appropriate Head of Service.
  - (7) All Operational and Finance Leases must be approved by the Head of Finance and ICT.

- (8) Where a collaborative contract is being procured on the Council's behalf by Scottish Procurement, the agreed protocols on authority to award will be complied with on all occasions, with final sign off by the Chief Governance Officer.
- (9) Where a collaborative contract is being procured on the Council's behalf by Scotland Excel, authority to participate in the contract will rest with the Corporate Procurement Team. Participation in these contracts will be reported to the Governance & Scrutiny Committee on an annual basis.
- (10) Where a collaborative contract is being procured by the Council on behalf of another Council/Public Body, authority to award the contract will rest with East Ayrshire Council's Chief Governance Officer. In all such cases a Tender Outcome Report will be produced by the Corporate Procurement Team and issued to the other Councils/Public Bodies, who will be required to confirm agreement by their lead officer, prior to award of contract.

## **ORDER & QUOTATION THRESHOLDS**

- 10. (1) All Authorised Officers may place Orders with compliant suppliers/contractors/service providers up to the value allowed in the specific Contract. Where no contract exists for a specific requirement, authorised officers may place an order for the supply of goods or services, where the requirement does not exceed £500 in so far as best value is deemed to be achieved.
- (2) Where no contract exists and there is a requirement for goods, works or services anticipated to have a value over £500 but not exceeding £50,000 a request must be sent to the Corporate Procurement Team who will advise the relevant Depute Chief Executive/Head of Service or his nominee of the sourcing options to meet the requirement, normally by seeking a minimum of three quotations via the mandatory use of the Quick Quote system, on the Council's terms and conditions, or where aggregation dictates, by means of a formal tendering process. The Corporate Procurement Team will respond with instructions/advice as to how to proceed within 3 working days of receipt of an e-mailed enquiry. Authorised Service Department Users will be given access to the 'Quick Quote' system for the purposes of obtaining 3 quotations (a minimum of 5 firms must be invited to quote to ensure that at least 3 quotations are actually received); if no access is available then the Corporate Procurement Team will obtain the quotations on behalf of the Service Department. Where 3 Quick Quotes are not received the remit will revert to the Corporate Procurement Team. In all cases the use of the Quick Quote system will be mandatory and the operation of the Quick Quote System will be the subject of ongoing monitoring by the Corporate Procurement Team to ensure compliance and best value.
- (3) Quotations should only be sought from reputable and competent organisations who hold the required minimum insurance indemnity (and SSIP in the case of works contracts) and by including the Council's standard Terms and Conditions at the time of quotation request.



- (4) Where no contract exists and there is a requirement for the supply of goods, works or services in excess of £50,000 a Commodity Strategy will be required and the Corporate Procurement Team will work in conjunction with the service department/s to complete and formally sign off on the strategy. The Corporate Procurement Team will be responsible for procuring a formal contract on behalf of the Council, with the exception of Facilities and Property Management and Ayrshire Roads Alliance for construction works. However, construction works where the value of any works are likely to exceed the European thresholds, the tender process will be managed by The Corporate Procurement Team.

## **FRAMEWORKS & TERM CONTRACTS**

11. (1) Where a compliant Framework Agreement is in place and where there is a provision to conduct periodic mini-competition exercises, these will be expedited by the Corporate Procurement Team, Facilities and Property Management have delegated approval to conduct mini-competition exercises within their framework and term contracts. In all instances, records of the revised bids received must be retained for audit purposes. Following the review after a periodic or ad hoc mini-competition, the Corporate Procurement Team are responsible for informing those who continue to be included in the Framework of their revised ranking, again unless the service department is approved by the team to carry out the function.
- (2) In the event of a mini-competition being required through a compliant framework or term contract, the use of the Quick Quote or PCS-T electronic system must be used.
- (3) Where a contract is for the supply of goods, works or services which will require to be delivered from time to time during a specific period, the requirements of these Standing Orders shall be carried out only once prior to the commencement of such Framework/Term Contract. This will apply to term contracts and Framework Agreements where call-offs are ordered throughout the term of the agreement/contract.

## **NOTICES**

12. Adequate publicity must be a consideration when deciding upon the procurement of all Goods, Works and Services, including Consultancy Contracts. All such Notices must be adequately advertised and at all times placed on the Public Contracts Scotland website by the Corporate Procurement Team, unless the team decides that only a local advert is required due to the specific requirement. Adequately advertising will be dependent on the requirement and this may include advertising in the National/Local Press.

## **END OF CONTRACT TERM OR EXTENSION OPTIONS**

13. Approximately 6 months (or approximately 8 months if TUPE is anticipated, or 12 months if complex requirement eg: ICT contracts) prior to the end of a contract term or available extension option, the Corporate Procurement Team will issue a Contract Review Form to the contract administrator which requires to be completed and returned to the Corporate Procurement Team by the relevant Head of Service. The Corporate Procurement Team will action as appropriate.

14. In the event of an unanticipated delay (ie: gap between the contract expiry date and the signing of any new contract or contract extension, the matter should be brought to the immediate attention of the relevant Head of Service who should consider, in conjunction with the contract administrator whether approval of Cabinet should be sought.

## PROCUREMENT GUIDANCE

15. Where a Service Department has any dubiety over the correct procurement routes, EU calculations regarding thresholds, packaging, procedures or strategies to be employed for a procurement process, it is the responsibility of the Head of Service to ensure that advice and guidance is sought from the Corporate Procurement Team at the earliest opportunity. The Corporate Procurement Team will assist the Service Department with its procurement activity.

## FORWARD PLANNING OF REQUIREMENT

16. (1) For all procurement projects that require to be advertised and comply with the Public Contracts (Scotland) Regulations 2012 (by which they are applied, extended, amended, consolidated or replaced and any re-enactment thereof), including Amendments (i.e. those in excess of the EU Thresholds) require the Depute Chief Executive/Head of Service to ensure that a Commodity Strategy is completed and all procurement requirements defined at least 6 calendar months prior to the required physical contract start date. Where TUPE is anticipated the notice period is a minimum of 8 calendar months. In the case of Integrated Health and Social Care contracts or complex contracts eg: ICT, works contracts, this may be a total period of 12 months due to the requirement to consult with Service Department and other external partners.
- (2) **Commodity Strategies:** For all procurement related activity over the value of £50,000, the Corporate Procurement Team will in conjunction with the service department/s complete a commodity strategy which will include (but will not be limited to) the following:
- Project background
  - Project objectives/benefits
  - Detailed market research/analysis/intelligence
  - Forward plan/demand analysis
  - Collaborative opportunities – internal/external
  - Social/Economic/Environmental considerations
  - Reserved/Supported Business
  - Savings targets
  - Risk mitigation/management
  - Procurement process including evaluation criteria
  - Budget
  - Stakeholder engagement
  - P2P considerations
  - Whole life costs
  - Performance measurement/service level agreement
  - Implementation plans
  - Contract exit strategy

Individual commodity strategies will commence on receipt of the Contract Review Form. In the event of a requirement which has never previously been tendered, the service department must provide a minimum 6 month notice period to allow the commodity strategy to be completed. All commodity strategies will require to be signed off by the Corporate Procurement Manager and service department/s prior to any tender exercise being conducted.

## **SPECIFICATION WRITING**

17. (1) In the case of non-construction (works) contracts, the Heads of Service are responsible for ensuring that adequately detailed specifications are prepared by his/her officers and that these are passed timeously to the Corporate Procurement Team who will assist in the fine tuning of the requirements and incorporate the specification into the tender documentation.
- (2) In the case of construction contracts, Facilities and Property Management and Ayrshire Roads Alliance are responsible for specifying the detailed requirements.
- (3) In all instances, the specifications shall define any characteristic required of a material, product or supply so that it fulfils the use for which it is intended. Characteristics may include levels of environmental and climate performance, design for all requirements (including accessibility for disabled persons), safety dimensions, testing and test methods, packaging etc. Unless justified by the subject matter of the contract, specification shall not refer to a specific make or source, or a particular process which characterises the products or services provided by a specific economic operator, or to trade marks, patents, specific origins or production with the effect of favouring or eliminating certain products or services. Only under exceptional circumstances (where a sufficiently precise description is not possible) can the specification be accompanied by the words “or equivalent”.
- (4) The Corporate Procurement Team reserve the right to cancel any procurement exercise for failing to comply with Standing Order 17 (3). The relevant Head of Service will be notified.

## **EXEMPTIONS**

18. (1) There shall be exempted from the provisions of these Standing Orders any contract for goods, works or services which, in the opinion of the appropriate Depute Chief Executive/Head of Service are required to address a genuine emergency situation (eg: a contractor/supplier/service provider going into liquidation or where a Health & Safety issue requires to be urgently addressed, where there is an emergency to ensure wind and watertight requirements in housing or tenants right to repair which would preclude the adoption of normal procedures. Lack of planning does not constitute an emergency requirement.
- (2) The Council may be exempt from the provisions of these Standing Orders or any part of them, any contract when it is satisfied that the exemption is justified by special unforeseen circumstances wholly out with the Council's control.

- (3) Goods, works and service contracts procured and awarded on the Council's behalf by other Authorities, Scotland Excel, Scottish Procurement, CCS etc are exempted from these Standing Orders.
- (4) Notwithstanding the provisions of paragraph 18 (2) hereof, Housing Asset Services are exempt from compliance in the cases of "Emergency" and "24 Hour" response categories. However, in such circumstances the Head of Housing and Communities and/or the Head of Facilities and Property Management will nevertheless be responsible for ensuring best value for all such requirements for Goods, Works and Services with a value of between £500 and £50,000 under these two time-critical response categories.
- (5) Notwithstanding the provisions of paragraph 18 (2) hereof, the Ayrshire Roads Alliance (ARA) service is exempted from compliance in cases of genuine emergency works where materials are required to be sourced immediately. However, the Head of Ayrshire Roads Alliance will nevertheless be responsible for ensuring best value for all such requirements for Supplies, Works and Services with a value of between £500 and £50,000 under these two time-critical response categories.
- (6) There shall be exempted from the provisions of these Standing Orders any contract of employment.
- (7) Contracts for the purchase, sale or lease of Heritable Property are governed by separate procedures and are exempt from these Standing Orders, unless where a formal procurement process is initiated.

## **OTHER REFERENCE**

19. These Standing Orders shall be supplemented by the current Corporate Procurement Strategy, Procurement Procedures and Guidelines and the Environmental and Sustainable Procurement Guidelines as and when approved by the Council.

## **PROCUREMENT PROCEDURES**

### **20. (1) Generally**

There are specific recognised Procurement Procedures (Routes) that are available to use, depending upon the nature of the requirement. Moreover, where the tendering process is in accordance with the Public Contracts (Scotland) Regulations, including Amendments (i.e. those above the EU Thresholds) the minimum timetables and transparency requirements must be complied with. However, Heads of Service are responsible for ensuring that his/her officers seek and adhere to guidance and instructions from the Corporate Procurement Team at the outset of the process, when considering the appropriate Procurement Process to adopt for each procurement project.

- (i) Open procedure
- (ii) Restricted Procedure

- (iii) Competitive Procedure with Negotiation
  - (iv) Competitive Dialogue Procedure
  - (vi) Innovation Partnership
- (2) The appropriate way forward and the detail of each Procedure shall be discussed with the Corporate Procurement Team at the outset. A minimum of 6 months is required for a straight forward tender exercise using the most common Procedures of Open or Restricted. Other Procedures are generally used for more complex requirements and must not be used due a lack of forward planning by Service Departments.

## **AUTHORITY TO EXTEND OR NEGOTIATE AWARD**

21. (1) Where the appropriate Depute Chief Executive/Head of Service considers that a tender should be negotiated with one person, he/she shall, before entering into detailed negotiations seek advice from the Corporate Procurement Team who shall have sight of any proposed report for submission to Cabinet, and contribute to prior to the approval of the Cabinet, both in respect of the negotiation and of the person with whom the tender is to be negotiated, stating the reasons for the proposed negotiated procurement route.
- (2) Where the appropriate Depute Chief Executive/Head of Service considers that an existing contract should be extended (except by the exercise of a pre-existing contractual option to extend the contract) with the existing contractor/supplier/service provider, he/she shall seek advice from the Corporate Procurement Team and Legal Services and then obtain the approval of Cabinet, both in respect of the extension and of the terms agreed with the existing contractor/supplier/service provider, stating the reasons for the proposed extension without competition.

## **ISSUE AND RETURN OF TENDERS**

22. (1) Tender documents shall state:-
- (a) The nature and purpose of the Contract for which tenders are invited.
  - (b) The latest date and time (in all cases being twelve noon) when tenders must be received. All tenders must be issued and received by electronic means using the Public Contracts Scotland tender portal.
  - (c) That the tender shall remain open for acceptance for the period specified in the tender documents.
  - (d) That the Council is not bound to accept the most economically advantageous, lowest or any tender received.
  - (e) The award criteria, weightings and scoring methodology to be used in the evaluation of all bids received.
  - (f) That all tender queries/clarifications must be submitted electronically via the Public Contracts Scotland portal and Council responses to all queries/clarifications must also be

issued via the system. Under no circumstances should tender queries/clarifications be answered via e-mail.

- (2) Where Requests for Quotations or Quick Quotes are issued for goods, works or services which have an estimated total aggregated value not exceeding £50,000, these will be issued, received, opened within the Corporate Procurement Team, or by those authorised users who have received the appropriate training on the Quick Quote system.

## **LATE TENDERS**

- 23. (1) No tenders received after the latest closing date and time for submission shall be considered.
- (2) For the purposes of electronic tenders, it should be noted that the system will not allow late tenders to be uploaded to the system beyond the deadline set. A register is to be kept by the Corporate Procurement Team of any requests by Tenderers to accept a late electronic tender.
- (3) In the event that the Public Contracts Scotland tender portal encounters technical issues and is not accessible to either buyers or suppliers, the Corporate Procurement Team must be notified immediately. In these exceptional circumstances Millstream (system administrators) will be contacted to request that the deadline for electronic tenders be extended.

## **OPENING OF TENDERS**

- 24. (1) Electronic tendering is used as the means to receive tenders across the Council, the Chief Governance Officer or his/her representative shall be responsible for ensuring that the lodging of electronic tenders is both secure and auditable.

## **CHECKING & EVALUATION OF TENDERS**

- 25. (1) All tenders must be evaluated using MEAT (most economically advantageous tender). All tenders will be appraised, checked and fully evaluated, with only non-compliant offers being discounted from the added-value tender evaluation process.
- (2) Tenders being evaluated against MEAT will have the quality elements of the offers appraised and scored by a Tender Evaluation Panel of not less than three scoring officers, with the process being scrutinised by an officer from the Corporate Procurement Team, who is responsible for the production of a Tender Outcome Report detailing the process undertaken and the results of the evaluation, this report will be submitted to the Chief Governance Officer, Depute Chief Executive, Head of Service and other senior officers, as appropriate prior to the issue of any letters of intent, letters of regret and letter of award/inclusion.

## COUNCIL APPROVAL TO CONTRACT

26. (1) No award of contract shall be made unless the estimated expenditure has been approved previously by the Cabinet through the budgeting process.
- (2) The Council will not be bound to accept the lowest or any tender received. Tenders may be accepted without further reference to Cabinet, provided the Best Value tender after checking and, where appropriate, identification of savings, does not when aggregated with other contracts where appropriate, exceed the budget allocation as approved by the Cabinet.
- (3) In the event that it is proposed to accept other than the Most Economically Advantageous Tender (MEAT) received after checking, then this must be referred to the Chief Governance Officer for approval.
- (4) Where it is determined in consultation with the Corporate Procurement Team and the service department that a tender is abnormally low and of the opinion that it is not possible for the tenderer to deliver the contract to the required standard for the price/quality offered, or where a tenderer has submitted material qualifications to the Conditions of Contract or Specification then such an offer may be rejected as non-compliant and the tenderer will be advised.
- (5) In the case of lump sum Works contracts under the Capital Programme, provided the proposed contract sum, following evaluation of tenders, does not exceed by more than 10% the approved expenditure under 26 (1) above, including any subsequent approval to incur additional expenditure, then Cabinet approval for the additional expenditure would not be required.

Where the value of the contract sum which is proposed to be accepted does exceed, by more than 10%, the level of expenditure previously approved by Cabinet within the Capital Programme then further Cabinet approval for the proposed additional expenditure must be obtained prior to award of the contract.

- (6) Following the issue of a contract acceptance for a contract in excess of £50,000 the outcome of that tender process will be included within the next regular report on Contract Awards to the Governance and Scrutiny Committee.
- (7) (i) In the case of lump sum Works contracts under the Capital Programme, where the final cost of a contract exceeds or is likely to exceed the accepted contract sum (including any subsequent authorised approval to incur additional expenditure) by more than 10% then this shall be reported to the Cabinet at the earliest possible date, together with an explanation of the reasons and circumstances and the financial, and any other relevant, implications for the Council.
- (7) (ii) Where, however, the 10% exceeds the contract sum over approved expenditure is less than £50,000 then standing order 26 (7)(i) above will only apply if the level exceeds more than 50% of the accepted contract sum.

## **CONTRACT REGISTER**

27. (1) The Corporate Procurement Team shall maintain a Contract Register of all formally awarded contracts, having an estimated value in excess of £50,000 and shall include therein the name and address of such successful tenderer, the value or amount of the contract and details of the contract award. The appropriate Depute Chief Executive /Head of Service shall ensure that all letters of acceptance issued by him/her or on his/her behalf shall be copied to the Corporate Procurement Team for recording purposes.
- (2) Where a contract is procured by a service department other than the Corporate Procurement Team, the appropriate Depute Chief Executive/Head of Service shall make arrangements for the secure retention of all successful and unsuccessful tenders and related tender documentation for a period of 6 years following final financial settlement of the contract. Upon expiry of the 6 year retention period, appropriate arrangements must be made by the appropriate Depute Chief Executive/Head of Service for the suitable secure disposal of such confidential documentation.
- (3) Where goods, works or services have been procured by means of obtaining a formal quotation through the mandatory quick quote process, service departments must complete the award notification process via the system (Public Contracts Scotland). This award information will be downloaded and recorded onto the Council's contracts register.

## **CONTRACT MANAGEMENT & MONITORING**

28. (1) The relevant Depute Chief Executive/ Head of Service shall ensure that all Contract Administrators and other officers within their respective services who utilise contracts (National, Sectoral, Collaborative, Corporate and Departmental) maintain copies of all contract documentation, records of the performance of contractors in the delivery of their contracts (it should be noted that the Council do not always receive copies of contract documentation for some national or sectoral contracts, contract management of these contracts can be problematic – the Corporate Procurement Team will, where possible, consult with partners to secure contract information which can be used to effectively manage the contract eg: KPI's). The systems to be used for the gathering and recording of information shall be the Councils Contract Management System or PCS-T (eContract Management module), unless a Service Department has a bespoke system which records additional information not capable of being recorded on the corporate Contract Management System or PCS-T. Where a Service uses their own bespoke system, they are responsible for managing the system and reporting performance to their Head of Service.
- (2) The identified Lead Users within Departments who act as Contract Administrators must be nominated by the Head of Service (for contract management to be efficient and effective, consideration of how many contracts are being managed by an individual contract administrator must be taken into consideration). Contract Administrators are responsible for the day to day management, monitoring and ongoing payment for each specific contract and shall refer to and maintain the contract documentation and any variations issued under the contract.



This will also include Contract Management information such as minutes of each quarterly/annual (as a minimum) review meeting/s, supplier performance, risk and issues log, lessons learned, exit strategy and any non-conformances which must be recorded on the Council's Contract Management System. A summary of Contract Administrator's duties and responsibilities is available on the Procurement pages of the Intranet.

- (3) The Deputy Chief Executives shall ensure that adequate reporting mechanisms are in place to inform Cabinet and Committee in respect of spend against individual Contracts. In addition, contractual financial reporting information will also be available from PECOS and the Corporate Procurement Team and will be provided to the Heads of Service as and when required.
- (4) A report shall be prepared by the appropriate Head of Service on the financial outcome of each completed capital works programme contract and submitted to the Governance and Scrutiny Committee.
- (5) The Depute Chief Executives will ensure that the monitoring procedures by the appropriate departments relating to the administration of Best Value/Value for Money in respect of service delivery to the Council, by the application of the approved Contract Management procedures.
- (6) In relation to the audit of contracts, the Chief Executive/Depute Chief Executives or his/her authorised Officers, whilst carrying out the monitoring of Performance and Best Value, shall have the authority, on production of identification, to:-
  - (i) obtain entry at all reasonable times to any Council premises, land or sites.
  - (ii) have access to all records, documents and correspondence relating to the audit in hand.
  - (iii) require and receive such explanations as are necessary concerning any matter under investigation.

## **PAYMENTS**

29. (1) Authorised payments will only be made by those officers who have been identified by the Heads of Service, who are responsible for supplying a list of authorised signatories for the certification of accounts to the Head of Finance and ICT.
- (2) Payments will only be made in accordance with the specific Conditions of Contract terms laid out in the Contract Documents for each particular contract.
- (3) Payments require to be made within 28 days of receipt of an invoice and the Head of Finance and ICT and the appropriate Head of Service are jointly responsible for ensuring timely payments.
- (4) Where the Council enters into a contract with a principal/main contractor and works are sub-contracted for the purpose of performing the Contract, payment requires to be made to the sub-contractor within the specified period as detailed within the terms

and conditions of contract. The Council encourage fair payment across the supply chain and will police sub-contractor payments in the event of any identified non-compliance and on receipt of complaints from the sub-contractor.

## **CONTRACTUAL MATTERS**

### **30. (1) Equal Opportunity in Employment**

During the procurement process and before entering into a contract, the Council shall obtain from the contractor/supplier/service provider assurance that, to the best of its knowledge and belief, it has complied with all statutory requirements in respect of ensuring equal opportunity in employment.

### **(2) Equality**

During the procurement process and before entering into a contract, the Council shall obtain from the contractor/supplier/service provider assurance that, to the best of its knowledge it is not unlawfully discriminating within the meaning and scope of the provisions of the Equality Act 2010, or any statutory modification or re-enactment thereof relating to discrimination.

### **(3) Form of Contract & Terms and Conditions**

Every contract shall be in writing and shall be subject to the law of Scotland, concluded by the issue of a formal letter of acceptance. Standard Forms of Contract shall be used where appropriate in conjunction with the Council's approved standard Terms & Conditions of contract to suit each specific requirement.

### **(4) 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/supplier/service provider the amount of any loss resulting from such cancellation, if the contractor/supplier/service provider or its representative (whether with or without the knowledge of the contractor/supplier/service provider) 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. Tenderers shall sign a declaration of non-collusion as part of its tender submission.

### **(5) Assignment/Sub-letting**

(a) Except where otherwise provided in the contract the contractor/supplier/service provider shall not assign a contract without the previous written consent of the Council.

(b) Except where otherwise provided in the contract, a contractor/supplier/service provider shall not change any sub-contractors from that noted in the tender documents without the written consent of the appropriate Depute Chief Executive /Head of Service.

(6) **European Standards**

Where there is a recognised European or international standard applicable to any commodity or service at the date of invitation to tender, the tender document shall require that the goods or service to be procured and all workmanship shall at least meet the requirements of that standard. In the absence of any such European or international standard, the tender document shall require an appropriate specified standard be used. In presenting evidence of equivalence, tenderers shall be required to provide a certified translation into English of the standard being used. The onus is on the Council to prove that the equal standard proposed by any tenderer does not meet with the stated requirement.

(7) **Copyright**

Depute Chief Executives Directors and Heads of Service shall in so far as reasonably practicable, ensure that in contracts for the commissioning of reports, research, graphics, design, media and other consultancy services to which copyright applies, that while copyright in the work remains vested 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.

(8) **Health & Safety**

Every contractor/supplier/service provider appointed by or on behalf of the Council will be required to conduct its undertakings in accordance with current Health and Safety Regulations and approved Codes of Practice. Guidance must be sought from the Health and Safety Team for all contracts deemed to have a high health and safety risk.

(9) **Bonds and Parent Company Guarantees**

Where considered appropriate by the Deputy Chief Executives /Head of Service, the Council shall require the contractor/supplier/service provider to take out a Bond, obtain a form of Parent Company Guarantee or other sufficient security for the due performance of the contract. The tender documentation shall specify the nature and amount and type of security to be provided.

(10) **Liquidated and Ascertained Damages**

- (a) Where considered appropriate by the Depute Chief Executives /Head of Service, contracts shall provide for liquidated and ascertained damages in the event of late completion of the contract.
- (b) The amount to be specified in each such contract shall be determined in terms of the estimated and substantiated losses likely to be incurred by the Council, in the event of late completion.

**(11) Insurance**

All contracts for goods, works and services shall require the contractor/supplier/service provider to maintain adequate insurance for the following as appropriate:-

- (a) Employers Liability Insurance (£10M minimum)
- (b) Public (Third Party) Liability Insurance (£10M minimum)
- (c) Professional Indemnity Insurance, where appropriate, shall remain in force for a period of 6 years beyond the end of the contract (£5M minimum), or the sum as agreed with the Council's Risk and Insurance section
- (d) Other such specialist classes of insurance as advised by the Risk & Insurance Manager

These insurance provisions shall be supplemented by rules of procedure relating to insurance, which shall be complied with as if they were part of these Standing Orders.

**(12) Confidentiality and Requests for Information**

All tender documentation, agreements or contracts shall not prohibit disclosure of information which would otherwise be disclosed in compliance with the Freedom of Information (Scotland) Act 2002 or the Environmental Information (Scotland) Regulations 2004 or any other legislation amending or replacing it or any guidance and/or codes of practice issued by the Scottish Information Commissioner in relation to such legislation.

**(13) Social/Economic/Environmental Benefits in Procurement**

Where appropriate, social, economic and environmental requirements should be specified or should form part of the award criteria. Also, where appropriate, community benefits clauses should be considered. Although not an exhaustive list, examples of the range of issues which can be incorporated into such provisions relate to promoting payment of the living wage, training proposals, intentions regarding the provision of apprenticeships, recycling, whole life costs, environmentally friendly waste disposal policies, reuse of materials, proposals to generate local economic opportunities and development and general investment proposals for local communities. Proposals to include any form of community benefit clause in any particular exercise should be discussed with the Corporate Procurement Team when drafting the Commodity Strategy. All community benefits received by the Council following the award of a contract must be reported to the Corporate Procurement Team who will record the relevant information on the Contract Management Database.

**(14) Business Continuity**

Service resilience is essential for the Council to ensure it can effectively manage risk and ensure continuity of supply and quality of service in the event of supplier/contractor/service provider failure or unusual incidents on local, regional, national or global scales. Where

appropriate, the Council will elect to use framework agreements to ensure that continuity of supply or service delivery is not affected.

In the event that the Council have entered into a contract with a single supplier/contractor/service provider and in the event of any failure or termination, the Council reserve the right to contact the suppliers/contractors/service providers who originally tendered for the requirement to enter into discussions regarding short term arrangements until such times as a re-tendering exercise can be completed.

#### **APPLICABLE TO PROCUREMENT CONSULTANTS**

31. (1) Any consultant who is commissioned to be responsible to the Council for the procurement of a contract on its behalf shall in relation to that contract -
- (a) comply with these Standing Orders;
  - (b) at any time during the procurement of the contract, produce, on request, to the appropriate Depute Chief Executive/Head of Service, all records maintained by him/her in relation to the contract; and
  - (c) on completion of the procurement process, transmit all such records to the appropriate Depute Chief Executive/Head of Service.
- (2) The Consultant and Service Department must liaise with the Corporate Procurement Team who will maintain responsibility for placing any OJEU Notice that may be required. The Corporate Procurement Team must have visibility of all tender documentation prior to its issue. All such tenders shall be issued and administered by the Corporate Procurement Team.

#### **e-PROCUREMENT**

32. (1) **Electronic Tendering:** All tendering exercises **must be** conducted using an e-Procurement system; the system approved for use by the Council is Public Contracts Scotland (PCS and PCS-T).
- (2) **Electronic Ordering (PECOS):** Is the electronic web-based system adopted by the Council for the placement of purchase orders and receipting of goods delivered. This system allows orders to be placed with contracted/selected suppliers. The use of PECOS is **mandatory** and all designated requisitioners and approvers who have been trained on the use of the system must use PECOS.
- (3) **Quick Quotes:** All requirements for goods, works or services between the value of £500 to £50,000 (if not covered by one of the Council's contracts) must be issued via Public Contracts Scotland. The use of this system will be **mandatory** across all service departments. Quotations received by any other means will not be accepted.

- (4) **Technology Forge:** Is the system used by Facilities and Property Management. This system **must only** be used for works contracts, all other purchase orders must be raised through PECOS.
- (5) **Servitor:** Is the system used by Housing Asset Services for the purchase of stock items. All non stock items **must be** ordered through the PECOS system.
- (6) **Saffron** – Is the system used by Facilities Management for the purchase of foodstuffs. All other requirements must be purchased through the PECOS system.

## NATIONAL AGENDA

33. (1) A review of procurement in 2008 within the Scottish Public Sector (The McClelland Report), commissioned by the Scottish Government, recommended major strategic changes that will have an ongoing impact on all Local Authorities within Scotland.
- (2) These changes include policy, structure and operating procedures and the formation of new central procuring organisations, namely Scottish Procurement and Scotland Excel. These organisations have responsibility for the co-ordination and tendering of major contracts for goods and services used across the public sector. Scottish Procurement have responsibility for tendering what are known as Category A items (all public sector) while Scotland Excel look after Category B items (local authorities only).
- (3) A report will be presented to Governance & Scrutiny Committee annually, in April, which will advise on the Category A and B contracts put in place which East Ayrshire Council are participating in.
- (4) In line with the recommendations of The McClelland Report and to comply with guidelines from the Scottish Procurement, East Ayrshire Council is continually reviewing its Procurement practices and the new Procurement Strategy for 2014 – 2019 was approved in May 2014.
- (5) The Procurement Reform (Scotland) Act 2014 will place an obligation on the Council to publish annual procurement reports. These will include but will not be limited to:
  - Summary of all regulated procurement activity and compliance statement
  - Community benefits
  - Involvement of supported businesses in procurement activity
  - Sustainability deliverables
  - Summary of all procurement projects to be undertaken over a 2 year period

On request, service departments will be required to provide the Corporate Procurement Team detailed information which will be used to support the annual procurement reports.

- (6) Procurement Capability Improvement Programme (PCIP): In support of the Council's procurement audit, the Corporate Procurement Team will request all Service Departments to provide documentary evidence

which will be presented to the Scottish Government Reform Team. It will be a mandatory requirement to provide evidence when requested.

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