



# **PROCUREMENT STANDING ORDERS**

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Director Corporate Service**

**SUMMARY OF KEY REQUIREMENTS WITHIN THE PROCUREMENT STANDING ORDERS**

**For all requirements:**

- Where there is an existing contract in place this must be utilised. Where there is an existing Framework Agreement in place this must be considered first.
- Contract Values must be calculated as detailed in Standing Order 7.

**Goods/Services/Works £0-£1,999.99 (one off requirement)**

*This process should be administered by Service Departments with no Procurement Team involvement required*

**Observe best value principles**



**A minimum of 1 quotation must be received**



Refer to Schedule 3 of the Procurement Standing Orders for full details

**Goods/Services/Works £2,000-£19,999.99**

*This process should be administered by Service Departments with no Procurement Team involvement required*



**Minimum of 4 suppliers (50% of which should be local where possible) should be invited to submit a quotation.**

***Note: When a quote is sought for a similar requirement, a different group of potential suppliers should be selected whenever possible.***



**Quotes may be sought via email or Public Contracts Scotland Portal quick quote facility.**

**A clear deadline when responses should be received must be provided. Tenders shall not be opened before the deadline.**



**Evaluate responses using evaluation criteria detailed in the invitation to quote**



**Contract awarded and unsuccessful notifications issued using templates provided by Corporate Procurement Team**

**Refer to Schedule 3 of the Procurement Standing Orders for full details**

Goods & Services £20,000-£49,999

Works £20,000-£149,999

*This process should be administered by Service Departments with no Procurement Team involvement required*



**Min of 6 suppliers (50% of which to be local where possible) must be invited to quote via the quick quote facility on Public Contracts Scotland Portal.**

**Template documents are available via the Corporate Procurement Team.**

***Note: Rotation of suppliers to invited to quote should take place where possible if quotations are being sought for a similar requirement.***



**Evaluate responses using evaluation criteria detailed in the invitation to quote**



**For works contracts over £50,000: A Contract Strategy (see Schedule 1) before inviting quotes and a Contract Award Authorisation Report (see Schedule 4) must be completed and sent to Corporate Procurement Team for approval and recording on the contract register.**



**Contract award notification to be issued in writing and a copy issued on the Public Contracts Scotland Quick Quote facility**

**Refer to Schedule 3 of the Procurement Standing Orders for full details**

Goods & Services £50,000-EU threshold  
Works £150,000-EU Threshold (as  
detailed in schedule 2)



A contract strategy must be completed (see  
Schedule 1).  
*Note: Generally the open procedure or the  
restricted procedure should be used.*



A contract notice shall be published on  
[www.publiccontractsscotland.gov.uk](http://www.publiccontractsscotland.gov.uk)  
unless in circumstances identified applying  
the guidance referenced in the next step



Guidelines must be applied to determine  
whether the contract is suitable for e-  
auction/ Mini Competition / Direct Award  
where a Contract Notice is not used.



The tender documentation is made  
available to all suppliers who have  
registered on the e-tendering system.



All responses should be submitted to the  
tender mailbox on Public Contracts Scotland.  
Tenders should be opened as soon as possible  
after the tender deadline by 2 council officers



The most economical Advantageous  
Tender (MEAT) is selected and a Contract  
Authorisation Report is created using the  
template in Schedule 4.



The contract award is published on  
[www.publiccontractsscotland.gov.uk](http://www.publiccontractsscotland.gov.uk)  
*Note: A contract award is to be published in all  
Tender types including framework call offs.*

Goods/Services/Works over EU threshold  
(value of which is detailed in Schedule 2)  
*must be led by the Corporate Procurement Team*



A contract strategy must be completed(see  
Schedule 1).  
*Note: Generally the open procedure and the  
restricted procedure will be used.*



A contract notice is published on  
[www.publiccontractsscotland.gov.uk](http://www.publiccontractsscotland.gov.uk) and  
<http://ted.europa.eu>



National Guidelines are used to determine  
whether the contract is suitable for e-auction/ Mini  
Competition / Direct Award where a Contract  
Notice is not required.



The tender documentation is made available to all  
suppliers who have registered on the e-tendering  
system.



All responses should be submitted to the tender  
mailbox on Public Contracts Scotland. Tenders  
should be opened as soon as possible after the  
tender deadline by 2 council officers



The most economical Advantageous Tender  
(MEAT) is selected and a Contract Authorisation  
Report is created using the template in Schedule  
4.



The contract award is published on  
[www.publiccontractsscotland.gov.uk](http://www.publiccontractsscotland.gov.uk)  
*Note: A contract award is to be published in all  
Tender types i.e. e-Auctioned / Mini competition /  
Direct Award*

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## **Procurement Standing Orders**

### **1. Introduction, Purpose and Ambit**

- 1.1 The purpose of Procurement Standing Orders (“the Standing Orders”) is to set clear rules and procedures for the procurement of goods, works and services for Dumfries and Galloway Council (“the Council”). The rules and procedures help ensure that the Council complies with its legal obligations and is fair, transparent and accountable in its dealings with contractors and suppliers. These Standing Orders are also intended to ensure that the Council obtains best value for money and that it is taking good care of the public pound.
- 1.2 The Standing Orders are made under Section 81 of the Local Government (Scotland) Act, 1973 and shall apply to the making of all contracts by or on behalf of Dumfries and Galloway Council. For the avoidance of doubt, the term “contract” includes any form of agreement, written or unwritten, to which the Council is a party which creates rights and / or responsibilities for any of the parties involved.
- 1.3 The Standing Orders are subject to any overriding requirements of:
  - a) EU Directives 2014/24/EU on public procurement; EU Directive 2014/23/EU on the award of concession contracts; and any Scottish legislation implementing these Directives (the “EU Procurement Rules”);
  - b) The Procurement Reform (Scotland) Act 2014 and all regulations and guidance made under and in terms of the Act (“the Procurement Reform Act”); and
  - c) The relevant provisions of the Treaty of the Functioning of the European Union particularly the principles of equal treatment, non-discrimination and transparency (“the Treaty Principles”).
- 1.4 These Standing Orders apply to all Council Departments. For the procurement of care and social services, the Scottish Government’s statutory guidance for Procurement for health and social care services shall also be followed.
- 1.5 No tenders shall be invited nor any offer made or acceptance until a Contract Strategy Document, including the information set out within Schedule 1 has been approved. Likewise, no contract shall be awarded without the approval of the Contract Authorisation Report, in the form set out within Schedule 4.

### **2. Definitions**

- 2.1 The following words and expressions used in these Standing Orders shall have the meanings hereby assigned to them:
  - a) “Act” means the Procurement Reform (Scotland) Act 2014 (as amended);
  - b) “Best Value” means the legal duty to secure continuous improvement in the performance of the Council’s functions as set out in section 1 of the Local Government in Scotland Act 2003;

- c) "Call-Off Contract" means a contract for the provision of goods, services or works to the Council which is procured under an existing Framework Agreement which the Council are permitted to use;
- d) "Collaboration Agreement" means the agreement which sets out the roles and responsibilities of all parties participating in a Collaborative Procurement;
- e) "Collaborative Procurement" means the procurement of goods, services or works by the Council in collaboration with one or more Contracting Authorities, as defined by the EU Procurement Rules, with the aim of achieving value for money for the Council through sharing expertise, resource and / or by securing benefits through economies of scale through the aggregation of spend to create greater buying power.
- f) "Contract Documents" means the documents to be used in any procurement procedure and where different those intended to form part of any contract following on from a procurement procedure. It includes, but is not restricted to, the ESPD, the invitation to tender for or to negotiate a contract, the proposed conditions of contract, the specification or the description of the goods, services or works required and the pricing document and includes any such documents or their equivalents issued using electronic means.
- g) "Contracting Authority" has the meaning given to it in Regulation 2(1) of the 2015 Regulations or as the case may be in Section 1 of the Act, typically for the purposes of these Procurement Standing Orders means the Council.
- h) "Contract Authorisation Report" means the document referred to in Standing Order 36.1, containing a summary of the tender process conducted and details of the contract recommended for award. This report shall be provided in the form at Schedule 4.
- i) "Contracts Register" means the register of contracts which the Council maintains, pursuant to Section 35 of the Act, and which applies to all contracts of £50,000 or greater in value, maintained by the Corporate Procurement Team.
- j) "Contract Strategy Document" means the document referred to in standing order 1.4 which sets out the procurement strategy for delivery of a requirement and is agreed jointly between Finance and Procurement and the procuring service. This report shall be provided in the form at Schedule 1.
- k) "Council" means the Dumfries and Galloway Council constituted under the Local Government etc. (Scotland) Act 1994.
- l) "Dynamic Purchasing System" means an electronic procurement system developed for commonly purchased requirements. Such a system shall be open to any economic operator, meeting the minimum selection requirements, throughout its duration. The number of operators placed on the system should not be restricted.

- m) "Electronic Means" means electronic equipment for the processing (including digital compression) and storage of data which is transmitted, conveyed and received by radio, by wire, by optical means or by other electromagnetic means.
- n) "ESPD" means the European Single Procurement Document. This document is mandated is consistently used throughout Europe and enables tenderers to provide self-declarations to confirm their ability to meet the minimum requirements through a selection procedure.
- o) "the EU Procurement Rules" is defined in Standing Order 1.3.
- p) "EU Thresholds" means the prescribed threshold values set by the EU Commission for supply, services or works contracts as they may be amended from time to time. Details of the full thresholds which apply to the Standing Orders are set out within Schedule 2.
- q) "Financial Regulations" means the Council's Financial Regulations and Codes which provide policies to handle the Council's finances in accordance with Section 95 of the Local Government (Scotland) Act 1973.
- r) "Framework Agreement" means any agreement which sets out terms and conditions under which specific purchases (Call-Off Contracts) can be made throughout the term of the agreement, where the Council have expressly been named to use the agreement within the contract notice at the time of setting up the agreement.
- s) "Head of the Procuring Service" means the head of a service in the department for which the procurement is required and where the procurement is required for more than one service department, the meaning includes any one or more of the relevant Heads of Service.
- t) "Health or Social Care Services" means any of the services listed in the Schedule to the Procurement (Scotland) Regulations 2016.
- u) "Public Contracts Scotland Portal" means the Scottish Government's official national portal for advertising public sector contract opportunities, which include the Quick Quote facility.
- v) "Quick Quote" means the online quotation facility on the Public Contracts Scotland Portal which allows Contracting Authorities to obtain competitive quotes electronically for low value requirements.
- w) "Quote" means a binding offer made by an organisation to provide goods, services or works to the Council. Typically a quote will only provide a price for delivery of the requirement specified by the Council in their invitation to submit a quotation.

- x) “Regulated Contract” means a contract for the provision of goods or services with an estimated value / spend over £50,000 in total or a contract for the provision of works with an estimated value / spend over £2,000,000 in total, unless the Contract is excluded under the Procurement Reform Rules.
- y) “Regulated Procurement” means (i) any procedure carried out by the Council in relation to the award of a Regulated Contract including, in particular, the seeking of offers in relation to the contract and the selection of suppliers; and (ii) the award of a Regulated Contract by the Council.
- z) “Signature” or “Signed” includes a reference to a signature or other form of formal confirmation using electronic means, such as a digital signature, encryption or other formally recognised authority for identification purposes. For the avoidance of doubt, facsimile signatures are not acceptable.
- aa) “Social and Other Specific Services” means the services listed in Schedule 3 of the Public Contracts (Scotland) Regulations 2015.
- bb) “Social Care” means the provision of care services or social work services as defined in sections 47 and 48 and schedules 12 and 13 of the Public Services Reform (Scotland) Act 2010 and the expression “Social Care Contract” shall mean a contract entered into for Social Care.
- cc) “Sustainable Procurement Duty” means the duty of that name under the Procurement Reform Act.
- dd) “Tender” means a formal legal document prepared by a supplier in response to an invitation to submit a tender to deliver goods, services or works to the Council. This will include specifics of how a requirement will be met and will generally include a price and response to qualitative criterion.
- ee) “the Threshold” for the purpose of these standing orders refers to the threshold under Article 4 (c) of Directive 2014/24/EU. The sterling equivalent is recalculated every second year on 1 January of that year. The next change is due on 1 January 2018. Details of the full list of thresholds applying from 1 January 2016 are set out in Schedule 2.
- ff) “Written” or “in writing” means any expression consisting of words or figures which can be read, reproduced and subsequently communicated. It may include information which is transmitted and stored by electronic means provided its provenance / authorisation can be proven.
- gg) “2015 Regulations” means the Public Contracts (Scotland) Regulations 2015.
- hh) “2016 Regulations” means the Procurement (Scotland) Regulations 2016.

- 2.2 Any reference in these standing orders to a statute, other legislation or European Directive shall include reference to any statute, legislation or Directive amending or replacing it.
- 2.3 Any reference in these standing orders to a contract shall include, where the context allows, reference to a sub-contract.

### **3. Compliance**

- 3.1 The procurement and award of all contracts, Framework Agreements or Dynamic Purchasing Systems by and on behalf of the Council shall comply with the Council's Procurement Standing Orders and Financial Regulations and Financial Codes.
- 3.2 In the event of conflict between these Procurement Standing Orders and the requirements of EU, UK and Scottish legislation, such legislation overrides the Procurement Standing Orders.
- 3.3 The procurement and award of all goods, services and works shall also comply with the following duties:
- a) All tenderers, suppliers and contractors shall be treated equally and without discrimination. Tenderers shall be provided with an equal opportunity when tendering for Contracts with the Council, based on the same information and criteria and tenders shall be evaluated in a non-discriminatory manner. The ongoing management of suppliers and contractors shall continue to be conducted in a non-discriminatory manner.
  - b) The Council shall act in a transparent and proportionate manner. Tenderers shall be informed in advance, of the evaluation criteria and the scoring methodology which will be used to assess tender responses and determine the successful tenderer. All evidence sought during the tender process shall be proportionate to the value, risk and nature of the requirement.

### **4. Variation, Revocation and Suspension of the Procurement Standing Orders**

- 4.1 These Standing Orders may be varied or revoked by Full Council. Any variation to or revocation of the Standing Orders shall be effective on the first working day after the conclusion of the Full Council meeting at which it was approved.
- 4.2 The Director of Corporate Services may approve variances to the Standing Orders in the following circumstances:
- a) To reflect changes in job titles, reorganisations of departments and vacancies in posts; or
  - b) To change references to legislation, where the legislation is repealed or amended, to insert updated references to the new legislation; or
  - c) To change the financial values of the EU thresholds where referred to in the Standing Orders, to implement any changes in these thresholds.
  - d) To amend the Contract Strategy Document template set out in Schedule 1.

- e) To amend the guidance notes on tender procedures, set out in Schedule 3, which set out the procedure to be followed where the estimated aggregate value of the proposed procurement is less than £50,000.
- f) To amend the Contract Authorisation Report template set out in Schedule 4.
- g) To amend the in-house/ outsourcing decision making record template set out in Schedule 5.

## **5. Exemptions**

5.1 Subject to standing order 1.4, there shall be exempted from the provisions of these Standing Orders all contracts for the supply of goods or materials for the provision of services or for the execution of works where:-

- a) The total estimated value of the proposed contract is less than £50,000 but the contract shall be let in accordance with the Council's Guidance on "Contracts with a Value of Less Than £50,000" as set out in Schedule 3.
- b) In the opinion of the Chief Executive or any Director or Head of Service, urgent action is required to prevent danger to life, serious risk to health or damage to property. In such circumstances a report will be submitted to the appropriate committee at the first available subsequent meeting detailing both the circumstances justifying use of this exemption and the action taken. In such circumstances, any relevant requirements of the Treaty Principles, the EU Procurement Rules and the Procurement Reform Rules shall be complied with. In all occasions where this exemption has been used, the Head of Finance and Procurement shall be notified and consulted as soon as is reasonably practicable.
- c) The contract relates to any of the functions being exercised by Scotland Excel on behalf of the Council, in which case the procurement standing orders for Scotland Excel shall apply.
- d) The contract is entered into by SWestrans to secure the provision of local transport services. All such contracts shall be subject to Swestrans Procurement Standing Orders.
- e) The services are the appointment of junior or senior legal counsel and Solicitor Advocates (for the avoidance of doubt the appointment of Solicitors is not exempt). However, any such contract must be let in accordance with the relevant requirements of the Act.
- f) Where in the Chief Executive's opinion it is essential that the contract is entered into for the settlement of any claim or litigation raised by or against the Council.
- g) The contract is for the disposal by the Council of surplus or scrap materials and equipment previously used by the Council. Best Value shall still be obtained.
- h) The contract is being funded by money provided by an external party (including funds from the National Lottery funding distributors, Scottish Government etc) and the award of that money to the Council is subject to such conditions that make it impractical for the Council to comply with these Standing Orders in letting the contract. In such circumstances, this will be included within the next procurement update report to the Policy & Resources Committee to explain the

procedure followed and justification for doing so. In advance of awarding a contract under this clause, agreement must be obtained from the Head of Finance and Procurement. In such circumstance, any relevant requirements of the Treaty Principles, the EU Procurement Rules and the Procurement Reform Rules shall be complied with. Otherwise externally funded contracts shall follow these Standing Orders.

- i) The contract is co-funded by the Council, and the Council's contribution is less than 50% in cash terms (i.e. discounting in-kind values). However, the Council shall ensure Best Value is obtained. Advice may be sought from Legal Services, who shall ensure these obligations shall be passed to the contracting authority.
- j) The contract relates to the performing arts. Where performing arts are commissioned by the Council, Best Value shall be obtained.
- k) Subject to any relevant requirements under the Act and in the opinion of the Director Children, Young People and Lifelong Learning in consultation with the Procurement & Commissioning Manager, who may consult with the Legal and Licensing Service Manager for advice, is satisfied the contract terms and conditions are acceptable, the contract is for social care and either:
  - I. A support person has selected his or her support pursuant to Option 2 and, so far as relating to that option, Option 4, of the Social Care (Self-directed Support) (Scotland) Act 2013; or
  - II. The nature of the care package being arranged for a person is unique and cannot be provided for under existing Council Framework Agreements or contracts.
- l) It is for a contract of employment, unless the contract is with an employment agency for the supply of staff.
- m) The contract relates solely to the transfer, acquisition or disposal of heritable property including a license to occupy or use heritable property.
- n) The spend relates to the award of a grant by the Council and not the procurement of a contract for the provision of goods, services or works to the Council. Specific advice in relation to the award of grants by the Council should be obtained from the Legal and Licensing Service Manager.
- o) The award of works or services concessions which:
  - I. Are subject to the application of the Concession Directive; or
  - II. Would be subject to the application of that Directive but for any provision contained therein.

Concession has the meaning given by Article 5 of the Concessions Directive 2014/23/EU.

- p) Where there is an in-house frontline delivery service or trading organisation, this must be considered and recorded using the in-house service provision decision making template provided at Schedule 5 of these Procurement Standing Orders before proceeding. Where the recommendation is to utilise the in-house frontline delivery service or trading organisation, approval shall be obtained from the Head of the Procuring Service and the Head of Finance and Procurement. The

use of this exemption is made in the best interest of the Council. Where this exemption is applied a clear document in an auditable form, in the format set out at Schedule 5, shall be prepared to set out the reasons for using this exemption and to demonstrate how Best Value is demonstrated. This exemptions shall not be applied where the majority of works would be sub-contracted by the in-house frontline delivery service or trading organisation.

- q) Where a trading organisation within the Council needs to obtain prices from suppliers to be able to prepare and submit a tender either to the Council or to another body, or to undertake work required by the Council, or another body, the trading organisation shall either:
- I. Follow these Standing Orders; or
  - II. If insufficient time is available to respond to the external contracting authority, the trading organisation may, with approval from the Procurement and Commissioning Manager, undertake a shortened procurement process which retains the principles of these Procurement Standing Orders. The Procurement and Commissioning Manager's opinion on this matter shall be final.

## **6. Financial Provision**

- 6.1 No tender shall be invited or accepted unless appropriate financial provisions have been made and approved in terms of the Council's Financial Regulations, or funding has been guaranteed to be provided by a third party.
- 6.2 Where tenders are required to be sought in circumstances where financial provision has not been secured, approval to do so is required from the Procurement and Commissioning Manager and tenderers shall be clearly advised of the basis that tenders are being invited.
- 6.3 The financial provision for the purposes of this Standing Order 6 must include for the full value of the contract, as calculated in accordance with Standing Order 7.

## **7 Valuing the Contract**

- 7.1 For the purposes of these Standing Orders, the value of a contract shall be calculated over the whole life of the contract not the annual value. Where it is likely that a supply of goods, services or works shall be required on a continuing basis over 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 Procurement Standing Orders. When it is not possible to anticipate the length, the annual contract value shall be multiplied by 4 to reach an indicative contract value.
- 7.2 Where there is a requirement for the same goods, services or works across the Council, the total estimated value of the contract concerned shall consider the Council wide requirement and not merely those of each individual Service Department.

- 7.3 The contract value includes the amount payable as a result of the procurement exercise of any form and any extension period as explicitly set out in the Contract Documents.
- 7.4 Where the Council provides for prizes or payment to third parties, these shall be taken into account when calculating the estimated contract value.
- 7.5 It is not permissible to disaggregate a contract in order to circumvent the requirements of these Procurement Standing Orders or the Act.
- 7.6 For the avoidance of doubt, the values stated are exclusive of any Value Added Tax that may be levied.
- 7.7 If the cost of a contract is only being met in part by the Council the total value of the contract including the funding from a third party shall be, for the purposes of these Procurement Standing Orders, calculated by totalling all the contributions to be made towards the contract cost.
- 7.8 Where a contract includes the provision of services or other funding in kind to the contractor / supplier by either the Council or a third party, the value of the contract shall be calculated by including the value of the services being provided and / or the funding in kind in addition to any monetary consideration.
- 7.9 The estimated value shall be the value estimated at the time at which the procurement is commenced, ensuring it is representative of the current market conditions and tender submissions that may be received.
- 7.10 In the case of the procurement of a Framework Agreement the estimated value shall be the total estimated value of all of the contracts envisaged thereunder pursuant to and for the total term of the Framework Agreement.
- 7.11 In the case of the procurement of a Dynamic Purchasing System the estimated value shall be the total estimated value of all of the contracts envisaged pursuant to and for the total term of the Dynamic Purchasing System.
- 7.12 In the case of an innovation partnership procurement, the estimated value shall be the total estimated value of the research and development activities to take place during all stages of the partnership together with the estimated value of works, supplies or services to be developed and delivered by the partner.
- 7.13 In the case of a public works contract the estimated value shall include the total estimated value of any supplies and services that are necessary for executing the works and that are to be provided by the Council to the contractor.

- 7.14 In the case of a procurement to be awarded in the form of separate lots, the estimated value shall be the total estimated value of all such lots.
- 7.15 In the case of a public supply contract relating to the leasing, rental, hire or hire purchase of products the estimated value shall be—
- I. in the case of a fixed term contract for a period of less than or equal to 12 months, the total estimated value of the contract;
  - II. in the case of a fixed term contract for a period of more than 12 months, the total value including the estimated residual value; and
  - III. in the case of a contract without a fixed term or the term of which cannot be defined, the monthly value multiplied by 48.
- 7.16 In the case of a public service contract for a service of a kind mentioned in this paragraph, the estimated value shall be calculated by reference to—
- I. for insurance services, the premium payable and any other form of remuneration;
  - II. for banking and other financial services, the fees, commissions payable, interest and any other form of remuneration; and
  - III. for design contracts, the fees, commissions payable and any other form of remuneration.

## **8. Best Value**

- 8.1 All procurement of goods, works or services shall be based on “Best value”. “Best value”, in this context, is defined as the optimum combination of whole life cost and quality (or fitness for purpose) to meet the user’s requirements. Additional guidance is provided within the guidance note for completion of the Contract Strategy Document.
- 8.2 No tender evaluations shall use price or cost as the sole contract award criteria, without prior approval from the Procurement and Commissioning Manager. No such approval shall be granted for Regulated Contracts.

## **9. Use of Existing Contracts**

- 9.1 Where the Council has an existing contract for the provision of goods, services or works, which has been competitively tendered and awarded, this contract shall be used for all requirements falling within the scope of that contract.
- 9.2 Where the Council has an existing Framework Agreement or Dynamic Purchasing System in place, this should be used where the requirements fall within the scope of the Framework Agreement or Dynamic Purchasing System. However, where an existing Council Framework Agreement or Dynamic Purchasing System will not

represent value for money, this shall be clearly documented within the Contract Strategy Document and an alternative route to market may be recommended.

- 9.3 Where another local authority or public sector body (including Scotland Excel) have an existing collaborative contract, Framework Agreement or Dynamic Purchasing System in place which can be utilised by the Council, this should be used. Advice from the Corporate Procurement Team shall be taken in conjunction with the Legal and Licensing Service Manager to ensure that the contract is one to which the Council can be party and that no further compliance procedures on the part of the Council are necessary. Where an existing Framework Agreement or Dynamic Purchasing System will not represent value for money to the Council, this shall be clearly documented within the Contract Strategy Document and an alternative route to market may be recommended.
- 9.4 Where there is no suitable existing contract, Framework Agreement or Dynamic Purchasing System, the Council may consider the use of a Collaborative Procurement provided it is in the best interests of the Council so to do. However, prior to utilising a Collaborative Procurement, the Procurement and Commissioning Manager shall enter into a Collaboration Agreement, the terms of which shall require to be approved by the Legal and Licensing Services Manager.

## **10 Extensions to Existing Contracts**

- 10.1 Where an existing contract includes the option to extend within the terms of the Contract, the Procurement and Commissioning Manager and the relevant Service Manager or Head of Procuring Service may authorise the exercise of the extension option on behalf of the Council. Such an extension may only be authorised where the value stated within the contract award report and contract award notice has not been reached, including the value of spend that may be spent on the contract during the extension period. The Legal and Licensing Services Manager shall be consulted as necessary on the scope of the extension option and any necessary notices or documents to be issued / entered into.
- 10.2 For the avoidance of doubt, where the contract does not make provision for the extension of the contract, the Procurement and Commissioning Manager and the Service Manager or Head of Procuring Service shall not authorise the extension of the contract. However, a new contract may be entered into if the use of the negotiated procedure without publication of a notice can be justified in terms of these Standing Orders in which case the procedure in Standing Order 19 shall be followed.
- 10.3 For the purpose of clause 10.1, an extension of a contract includes the option to increase the amount of supplies, services or works acquired under the contract as well as the option to increase the duration of the contract.

- 10.4 Where a contract has been advertised in accordance with the EU Procurement Rules and it becomes apparent that the indicative total value of the contract as previously reported within the contract authorisation report is likely to be exceeded, the Service Manager or Head of Procuring Service shall consult with the Procurement & Commissioning Manager for advice on what action requires to be taken.
- 10.5 Where a contract has not been advertised under the EU Procurement Rules and the increase in the value of the contract is such that the Threshold is likely to be exceeded, no further orders shall be made under the contract.

## **11. Indicative Total Values of Contracts**

- 11.1 Where a contract has been advertised in accordance with the EU Procurement Rules and it becomes apparent to the procuring service department that the indicative total value of the contract as previously reported to the appropriate Committee or relevant officers is likely to be exceeded, the Service Manager or Head of Procuring Service shall consult with the Procurement and Commissioning Manager for advice on what action requires to be taken. The Procurement and Commissioning Manager shall determine, in particular, whether there are any implications under standing orders 9 or 10.
- 11.2 Where a contract has not been advertised under the EU Procurement Rules and the increase in the value of the contract is such that the Threshold is likely to be exceeded, no further orders shall be made under the contract. The Service Manager or Head of the Procuring Service shall obtain advice from the Procurement and Commissioning Manager on what action requires to be taken.
- 11.3 In all cases the Procurement and Commissioning Manager shall determine what procedures require to be followed where the value of the contract exceeds the Threshold and / or the estimated net cumulative additional cost is more than 25% of the approved contract value. The Procurement and Commissioning Manager shall ensure that a summary on the matter is submitted as part of the next procurement update report to the Policy & Resources Committee.
- 11.4 Where any contract is awarded based on an indicative value, a condition must be inserted to the effect that the indicative total value of the contract cannot be exceeded without the approval of the Head of the Procuring Service and the Procurement and Commissioning Manager.
- 11.5 Contract variations for building/civil engineering works which exceed the provision for contingencies included within the approved Contract Authorisation Report, may not be instructed without prior approval by a The Head of the Procuring Service and the Head of Finance and Procurement.
- 11.6 In every contract which is a priced on a schedule of rates, prior to invitations to tender being issued, indicative quantities shall be provided. The indicative quantities shall be used to provide an indicative total value for the contract used for the tender evaluation. The relevant indicative total value shall also be set out in all reports and relevant contract notices.

## **12. Framework Agreements and Dynamic Purchasing System**

- 12.1 Where there is likely to be a repeated need for a particular supply of goods, services or works, this can be procured by way of a Framework Agreement or Dynamic Purchasing System. Appropriate assistance and guidance shall be obtained from the Corporate Procurement Team before proceeding by way of setting up or utilising a Framework Agreement or Dynamic Purchasing System.
- 12.2 No Framework Agreement or Dynamic Purchasing System shall last longer than 4 years except in exceptional circumstances justified under the Procurement Regulations and approved by the Procurement and Commissioning Manager and fully documented within the Contract Strategy Document.

## **13. Form of Contract**

- 13.1 Except in circumstances where the Procurement & Commissioning Manager and the Legal and Licensing Services Manager agree otherwise, every contract shall be:
- In the name of Dumfries and Galloway Council;
  - In writing;
  - Signed by an officer authorised by the Council to sign contracts; and
  - Subject to the Laws of Scotland.
  - The Contract Documents in respect of all contracts over EU Threshold shall be prepared by the Corporate Procurement Team and all Regulated Contracts shall be prepared by or reviewed by the Corporate Procurement Team.
- 13.2 The Corporate Procurement Team and procuring service departments may also make use of Contract Documents prepared by the Scottish Government, the Crown Commercial Services, Scotland Excel, or any other agency of the UK government, other Scottish Centres of Procurement Expertise; local authorities; and other collaborative bodies where the Council are eligible to use the Contract Documents and that these are suitable for the contract.
- 13.3 Other than the technical specification of the procurement requirements, which shall be decided by the Head of the Procuring Service, any dispute between officers in the Council regarding the proper form or content of the Contract Documents or any part of them may be referred to the Procurement & Commissioning Manager whose decision on the matter shall be final. Any disputes or queries regarding legal issues, including the extent to which the Treaty Principles, the EU Procurement Rules, the Procurement Reform Rules, and/or these standing orders apply to any contract shall be referred to the Legal and Licensing Services Manager, whose decision on such issues shall be final.

- 13.4 All tender documents shall clearly state that the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004 apply to all contracts arranged by or on behalf of the Council. This is to ensure that contractors / suppliers / service providers are aware that the Council may be required, as a matter of law, to release information to third parties which may include information that the contractor / supplier / service provider may wish to be treated as confidential.
- 13.5 The following rules shall apply when determining how to treat a mixed procurement of any contract for the supply of goods, provision of services and the carrying out of works:-
- (i) Services/Supplies  
Determining factor is the main subject matter identified by reference to the element which has the highest estimated value i.e. if the value attributed to services exceeds that attributable to supplies then it will be treated as a services contract.
- (ii) Services/Social and Specific Services  
Determining factor is the main subject matter identified by reference to the element which has the highest estimated value i.e. if the value attributed to services exceeds that attributable to the Social and Specific Services then it will be treated as a services contract
- (iii) Concession/ Works, Services and/or Supplies  
If the estimated value of the works/services/supplies element exceeds the EU Thresholds it will be treated as a public contract for works/services/supplies and not a Concession contract
- (iv) Works/ Services or Supplies  
Determining factor is the main subject of the contract in question regardless of the relative values of the elements and then the relevant EU Threshold applies to determine the applicable rules.

## **14. Nomination of Sub-Contractor**

- 14.1 Where a contract provides for the nomination of a sub-contractor, the appointment of a nominated sub-contractor shall comply with these standing orders.

## **15. Specification of Standards**

- 15.1 Where there is a recognised British, European or International Standard applicable to any contract which is current at the date of tender, the Contract Documents shall require that the goods, materials or services to be used or supplied and all workmanship shall at least meet the requirement of that standard.

## **16. Procedures**

- 16.1 All contracts shall be awarded in accordance with one of the procedures set out in these Standing Orders and shall comply with any guidance and templates issued by the Procurement & Commissioning Manager. Generally, the Open Procedure or Restricted Procedure will be used, however due to complexity of the requirements use of another procedure may be recommended and approved within the Contract Strategy Document.
- 16.2 The procedure to be used, along with the reasons for using that procedure, shall be recorded within the Contract Strategy Document provided at Schedule 1.
- 16.3 No tender shall be invited or offer made or accepted for any contract for the supply of goods, or the carrying out of works or the provision of services (including a call off from an internal or external Framework Agreement) without a contract reference number having been obtained from the Corporate Procurement Team.
- 16.4 A Contract Strategy Document shall be prepared for all requirements where the estimated aggregated value exceeds £50,000. The Contract Strategy Document shall record the procedure to be used and the reasons for the recommended use of that procedure.
- 16.5 Where the estimated value of any contract is likely to equal or exceed the higher Standing Orders threshold, advice shall be obtained from the Corporate Procurement Team on the appropriate threshold to be applied. Where tenders return over the threshold for the procedure utilised, approval to proceed must be obtained from the Procurement and Commissioning Manager. The Procurement and Commissioning Manager shall not authorise the award of the contract where the recommended contract value is greater than the relevant threshold plus 10%.
- 16.6 Where it is established that the EU Procurement Rules apply to any contract, the Corporate Procurement Team shall be consulted, which should ensure the appropriate procedure is followed in terms of those Rules.
- 16.7 Any contract that is not required to follow a procedure set out in the EU Procurement Rules shall be let in accordance with one of the procedures set out in these standing orders and shall comply with any guidance issued by the Head of Finance and Procurement or the Procurement and Commissioning Manager.
- 16.8 The ESPD shall be used in all procedures, unless otherwise agreed with the Procurement and Commissioning Manager for below EU threshold contracts.
- 16.9 All prior information notices, contract notices and contract award notices must be published via the Public Contracts Scotland website and OJEU (if applicable) in accordance with applicable provisions of the European Procurement Regulations, the Reform Act, the Reform Act Regulations 2016, any other Regulations made by the

Scottish Government under the Reform Act and any guidance issued by the Scottish Government under the Reform Act.

## **17. Open Procedure**

- 17.1 The Contract Strategy Document approval may authorise the use of the open procedure which shall be conducted in accordance with this Standing Order.
- 17.2 Where using the open procedure a contract notice shall be published on the Public Contracts Scotland Portal and where the estimated contract value is above the Threshold, the notice shall also be published on TED. Additional publicising of the contract opportunity may be placed, for example in local newspapers.
- 17.3 The date and time stated in the notice by which tenders must be received, shall be no sooner than 5 working days from the date the notice is published.
- 17.4 The Invitation to Tender template document provided by the Corporate Procurement Team shall be used.
- 17.5 Any queries received during the tender process shall be submitted and responded to utilising the question and answer facility of the e-tender platform, providing the response to all interested parties.
- 17.6 At the same time as a notice is published, the relevant contract documents shall also be available electronically.

## **18. Restricted Procedure**

- 18.1 The Contract Strategy Document approval may authorise the use of the restricted procedure which shall be conducted in accordance with this Standing Order.
- 18.2 Where using the restricted procedure, a notice shall be published on the Public Contracts Scotland Portal and where the estimated contract value is above the Threshold, the notice must also be published on TED. Additional publicising of the contract opportunity may be placed, for example in local newspapers.
- 18.3 All applicants responding to the notice issued in terms of Standing Order 18.2 shall be required to provide a completed ESPD by the date and time specified in the notice. This date and time shall take cognisance of the complexity of the subject matter of the contract and the time needed to prepare the ESPD.

- 18.4 No organisation shall be invited to tender unless they have successfully complied with the technical and financial checks in standing order 33 and have met the criteria to be invited to tender set out in the contract notice.
- 18.5 A sufficient number of organisations shall be selected to be invited to tender to ensure genuine competition; this in any event shall not be fewer than five for each contract / lot. Where fewer than five applicants express an interest, all those applicants meeting the minimum evaluation criteria, shall be invited to tender.
- 18.6 Invitations to tender shall be sent simultaneously to each applicant selected to tender for a contract and the invitation to tender shall be accompanied by a link to the Contract Documents which shall have been made available electronically.
- 18.7 The invitation to tender shall also include the final date and time for the receipt of tenders by the Council and the criteria to be used in evaluating the tenders.
- 18.8 The Invitation to Tender template document provided by the Corporate Procurement Team shall be used.

## **19. Negotiated Procedure without Prior Publication of a Notice**

- 19.1 The negotiated procedure without prior publication of a notice is only available in very limited circumstances and shall only be used where it is identified as the appropriate procedure in the Contract Strategy Document, following consultation with the Corporate Procurement Team.
- 19.2 The negotiated procedure without prior publication of a notice shall only be used with the prior written approval of the Head of Finance and Procurement. The Contract Strategy Document shall include a full explanation as to why the Head of Finance and Procurement considered it to be appropriate to use that procedure.
- 19.3 Where the EU Procurement Rules do not apply, the negotiated procedure without prior publication of a notice shall only be used in the circumstances stated in the Procurement Reform Rules (Regulation 6 of the Procurement (Scotland) Regulations 2016).
- 19.4 Where the EU Procurement Rules apply, the negotiated procedure without prior publication of a notice shall only be used on any grounds specified in those Rules.
- 19.5 For the purposes of these standing orders the negotiated procedure without prior publication of a notice means the direct negotiations with a single contractor or supplier or service provider without competition, with a view to awarding the contract to that contractor or supplier or service provider or to extend an existing contract.
- 19.6 Where the negotiated procedure without prior publication of a notice has been used the contract shall be awarded on behalf of the Council by the Corporate Procurement Team, with the prior approval of the Head of Finance and Procurement.

- 19.7 In all cases where the negotiated procedure without prior publication of a notice is used, a full written record of all contacts, discussions and communications with prospective contractor(s), supplier(s) or service provider(s) shall be kept by the Corporate Procurement Team.
- 19.8 A minimum of two Council officers, at least one of whom shall be from the Corporate Procurement Team, shall be present at all times during any discussions with prospective contractors.
- 19.9 The Corporate Procurement Team shall ensure that records of all discussions with prospective contractors are signed as such by all participants.
- 19.10 The Treaty Principles shall be observed at all times during the negotiations.

## **20. Competitive Procedure with Negotiation**

- 20.1 The Contract Strategy Document may recommend and authorisation of the Contract Strategy Document may elect to use the competitive procedure with negotiation where the restricted and open procedures in these standing orders are not appropriate for a requirement.
- 20.2 The competitive procedure with negotiation may only be used on one of the following grounds:
- a. Where the needs of the Council cannot be met without adaptation of readily available solutions;
  - b. Where the contract includes design or innovative solutions;
  - c. Where the requirement is complex in nature, in its legal and financial make-up or because of its risks;
  - d. Where the technical specifications cannot be established with sufficient precision; or
  - e. Where unacceptable or irregular tenders have been received following a restricted or open procedure.
- 20.3 The justification for use of the competitive procedure with negotiation shall be recorded in the Contract Strategy Document.
- 20.4 Where the competitive procedure with negotiation is used, the rules for such a procedure as set out in the EU Procurement Rules shall be followed. However, where the EU Procurement Rules would not otherwise apply to the contract, timescales that are applied to the procedure shall take into account factors such as the complexity of the subject matter of the contract.
- 20.5 In all cases where the competitive procedure with negotiation is used, a full written record of all contacts, discussions and communications with tenderers shall be kept by the Corporate Procurement Team.
- 20.6 A minimum of two Council officers, at least one of whom shall be from the Corporate Procurement Team, shall be present at all times during any discussions with tenderers.

- 20.7 The Corporate Procurement Team shall ensure that records of all discussions with tenderers are signed as such by all participants.
- 20.8 The Treaty Principles shall be observed at all times during the negotiations.

## **21. Competitive Dialogue Procedure**

- 21.1 The Contract Strategy Document may recommend and authorisation of the Contract Strategy Document may elect to use the competitive dialogue procedure where the restricted and open procedures in these standing orders are not appropriate for a contract.
- 21.2 The competitive dialogue procedure shall only be used on one of the grounds set out in standing order 20.2.
- 21.3 The justification for the use of the competitive dialogue procedure shall be recorded within the Contract Strategy Document.
- 21.4 Where the competitive dialogue procedure is used, the rules for such a procedure set out in the EU Procurement Rules shall be followed. However, where the EU Procurement Rules would not otherwise apply to the contract, timescales that are applied to the procedure shall take into account factors such as the complexity of the subject matter of the contract.
- 21.5 In all cases where the competitive procedure is used, a full written record of all contacts, discussions and communications with tenderers shall be kept by the Corporate Procurement Team.
- 21.6 A minimum of two Council officers, at least one of whom shall be from the Corporate Procurement Team, shall be present at all times during any discussions with tenderers.
- 21.7 The Corporate Procurement Team shall ensure that records of all discussions with tenderers are signed as such by all participants.
- 21.8 The Treaty Principles shall be observed at all times during the competitive dialogue.

## **22. Innovation Partnership**

- 22.1 The Contract Strategy Document may recommend and authorisation of the Contract Strategy Document may elect to use the innovation partnership procedure where there is a need for innovative works, products or service which cannot be met by solutions already available on the market.

- 22.2 The aim of the innovation partnership will be the development of the required innovative works, products, or services and the subsequent purchase of the resulting works, supplies, or services.
- 22.3 The estimated value of the works, supplies or services shall not be disproportionate in relation to the investment required for their development.
- 22.4 Where the innovation partnership procedure is used, the rules for such a procedure set out in the EU Procurement Rules shall be followed. However, where the EU Procurement Rules would not otherwise apply to the contract, the timescales that are to applied to the procedure shall take into account factors such as the complexity of the subject matter of the contract.

### **23. Quick Quote**

- 23.1 Where a contract is for works, and the estimated value is between £50,000 and £149,999.99, the Contract Strategy Document may elect to use the quick quote procedure. This procedure will generally be used for works contracts of this value.
- 23.2 The Quick Quote procedures to be followed shall be the same as those set out in paragraph 3 of Schedule 3 to these standing orders, notwithstanding that the value of the contract will be greater than £50,000.

### **24. Electronic Auctions**

- 24.1 For the purpose of these standing orders, the expression “electronic auction” means:- A repetitive process involving an electronic device for the presentation of new prices, revised downwards, and/or new values concerning certain elements of tenders, which occurs after an initial full evaluation of the tenders, enabling them to be ranked using automatic evaluation methods or utilising an existing framework agreement where the use of electronic auctions as a call off mechanism is permitted.
- 24.2 The Contract Strategy Document may recommend and authorisation of the Contract Strategy Document may elect to use an electronic auction where the possibility of the use of an electronic auction has been stated in the approved Contract Strategy Document and subsequent Contract Documents issued to suppliers and, where the EU Procurement Rules apply, in the contract notice published in OJEU.
- 24.3 Electronic auctions shall be considered for IT purchases.
- 24.4 For the avoidance of doubt, an electronic auction may be used where previous stages of a tendering procedure have not been undertaken using electronic means.
- 24.5 Before proceeding with an electronic auction, a full initial evaluation of the tenders shall have been made in accordance with the award criteria. All tenderers who have submitted admissible tenders shall be invited simultaneously by electronic means to submit new prices and/or new values.
- 24.6 Throughout each phase of an electronic auction the Council shall instantaneously communicate to all tenderers involved at least sufficient information to enable them to ascertain their relative rankings at any moment. The Council may also, at any time,

announce the number of participants in that electronic auction. In no case, however, shall the Council disclose the identities of the tenderers during any phase of an electronic auction.

24.7 Prior to the commencement of any electronic auction, the Council shall intimate to all tenderers involved the date and time fixed for the carrying out of the electronic auction and the proposed duration of the electronic auction together with any proposals for the extension of the duration of the electronic auction.

24.8 Any electronic auction shall be subject to such additional procedural requirements as the Procurement and Commissioning Manager considers necessary.

## **25. Framework Agreements**

25.1 Where the Council wishes to establish a Framework Agreement (“Framework”) to provide for agreement on the terms for future contracts for the purchase by the Council of goods, services and works, the following requirements shall be complied with:-

(a) Where the EU Procurement Rules apply, the Corporate Procurement Team shall establish the Framework in accordance with those Rules.

(b) In all other circumstances:-

i. The suppliers to be invited to tender shall be selected from those who have responded to a notice.

ii. The notice shall be published in accordance with the relevant procedure being followed.

iii. The notice shall mention:-

a. that the Council wishes to establish a Framework;

b. a description of the goods, service or works which are to be purchased under the Framework;

c. The conditions and call off procedure of the Framework and the applicable contract conditions that shall apply to contracts called off under the Framework.

25.2 Where a Framework has been established the Council may award a contract under the Framework without being required to seek further competition amongst the contractors on the Framework, where the call off procedure of the Framework permits them to do so and where the direct award Framework Agreement call off procedure has been approved as the procurement route in the Contract Strategy Document.

25.3 Where a Framework has been established but it does not lay down all of the terms of a proposed contract including, for example, where a new item can legitimately be added to the Framework, a mini competition procedure under the Framework in accordance with standing order 25.4 below shall be conducted, where use of the Framework Agreement has been approved as the procurement route within the Contract Strategy Document.

- 25.4 Any mini-competition procedure shall be conducted in accordance with the procedures laid down in the Framework and the following:-
- a) every contractor on the Framework capable of performing the contract shall be issued with an invitation to take part in the mini competition. All invitations shall be issued at the same time;
  - b) the invitations shall specify the closing date and time for submission of tenders under the mini competition procedure. The time limit fixed for the return of tenders shall take into account factors such as the complexity of the subject matter of the contract and the time needed to prepare a tender, but, in any event, shall be not less than 4 working days from the date the invitations are issued;
  - c) each tender shall be kept confidential until the expiry of the time limit for the receipt of tenders;
  - d) any award of contract shall be made to the contractor or contractors who submitted the best tender or tenders on the basis of the award criteria specified in the Contract Documents based on the Framework documents; and
  - e) any award of contract following a mini competition procedure shall comply with Standing Orders 33 and 36.
- 25.5 Where a Regulated Contract is awarded, following a direct award or further competition, under a Framework, an award notice must be published on the Public Contracts Scotland Portal.
- 25.6 Where, in order to participate in an existing Framework, the Council is required to enter into a participation agreement or other similar agreement regulating the use of the Framework by the Council, the Procurement and Commissioning Manager shall have the authority to enter into the agreement on behalf of the Council.

## **26. Dynamic Purchasing Systems**

- 26.1 The Procurement and Commissioning Manager may elect to establish and use a Dynamic Purchasing System (“DPS”) if satisfied that:
- a) it is in the interests of the Council to do so;
  - b) the DPS will only be used for commonly used purchases the characteristics of which, as generally available on the open market, meet the Council’s requirements; and
  - c) the costs of the DPS will not outweigh the likely benefits of using the DPS.
- 26.2 Any DPS established under this standing order shall be operated as a completely electronic process and, throughout its period of validity, shall be open for the admission of any suppliers who meet the selection criteria set.
- 26.3 Where the Contract Strategy Document elects to establish and use a DPS, the rules for such a procedure set out in the EU Procurement Rules shall be followed.

## **27. Concessions**

- 27.1 Where the Council intends to grant a services concession contract or a works concession contract (“concession”), the Head of the Procuring Service and the Head of Finance and Procurement shall be responsible for determining a best estimate of the financial value of the financial value of the concession which shall be in accordance with the EU Procurement Rules, if applicable.

27.2 Based on the best estimate of the financial value of the concession, the Procurement and Commissioning Manager shall determine the procedures that require to be followed in terms of these standing orders and, where applicable, the EU Procurement Rules.

## **28. Design Contests**

28.1 Where the Head of Finance and Procurement and the Head of the Procuring Service considers it appropriate to do so, a design contest may be held, which shall be a competitive procedure whereby plans and designs are invited under predetermined rules in terms of which the successful entry selected is awarded a contract.

28.2 Where a design contest is to be held, a notice shall be placed on the Public Contracts Scotland Portal and in addition may also be placed in one or more national newspapers circulating in the Dumfries and Galloway area and also in such Trade Journals as the may be considered necessary. The notice shall state:-

- a) that a design contest is being held;
- b) a description of the project;
- c) the place where a prospective competitor may obtain a copy of the rules; and
- d) the date not less than 14 days from the date of the publication of the notice by which the prospective competitor must intimate, in writing, their interest in being involved in the contest.

28.3 After the expiry of the period specified in the notice, invitations to tender shall be sent to at least three persons selected. If fewer than three persons have applied and are considered suitable, then invitations to tender shall be sent to all suitable persons.

28.4 Where only one suitable applicant has applied, the Head of Finance and Procurement shall decide either to abandon the contest or to negotiate with the sole suitable applicant for the award of the contract using the Negotiated Procedure without Prior Publication of a Notice in standing order 19.

28.5 For the purposes of these standing orders a design contest means a competition in which the Council:-

- a) invites the entry of plans and designs;
- b) establishes rules for the competition under which the plans or designs will be judged by a jury;
- c) may award prizes; and
- d) is enabled to acquire the use or ownership of plans or designs selected by the jury.

## **29. Procurement above EU thresholds**

29.1 All procurement which falls within this category shall be carried out in accordance with EU procedures.

29.2 Any procurement which falls or is likely to fall within this category shall be notified to the Corporate Procurement Team for advice.

### **30. E-Procurement**

30.1 This standing order shall apply to any tendering procedure (including for the avoidance of doubt a mini-competition under a framework agreement) or contract entered into using electronic means.

30.2 Unless in exceptional circumstances with approval from the Procurement and Commissioning Manager, all procurement exercises or negotiated procedures shall be conducted by electronic means ("e-procurement"), using a system approved by the Corporate Procurement Team.

30.3 The Procurement and Commissioning Manager shall consider whether it is appropriate to impose any specific requirements regarding verification and authentication of the tender submission and the signature of the person making that submission. Any such requirements must be stated in the Contract Documents.

30.4 No tender submitted using electronic means shall be considered unless it is received in the format requested and prior to the deadline for the receipt of tenders as stated in the Contract Documents and is submitted via the Council approved electronic tender system.

30.5 All tenders received shall be kept unopened in a single secure electronic mailbox that cannot be opened before the deadline for the receipt of tenders.

30.6 The Corporate Procurement Team shall ensure that insofar as is reasonably practicable the electronic tender system used does not allow the identity of the organisation(s) submitting the tender to be revealed prior to the tender being opened after the deadline for the receipt of tenders.

30.7 The Corporate Procurement Team shall ensure that for each procurement exercise the electronic tender system used shall keep and, if required, produce a record showing the time and date of receipt of all tenders received.

30.8 Late tenders shall be clearly identified as such by the system and shall be recorded as rejected on the system with the tenderer being notified to this effect.

30.9 Late tenders shall be rejected, however in special circumstances where a late tender is required to be received, approval to do so shall be granted from the Procurement and Commissioning Manager. This approval shall only be granted in circumstances where for example only one other offer has been received by the deadline, provided the other offer has not yet been opened.

30.10 The Procurement and Commissioning Manager shall extend the deadline for the submission of tenders:

- i) where additional relevant information, although requested by a potential tenderer in good time, is not supplied at least six days before the deadline; or
- ii) where significant changes are made to the Contract Documents.

- 30.11 The Procurement and Commissioning Manager may also elect to extend the deadline for submission of tenders where it is considered appropriate to do so.
- 30.12 Where the deadline for submission of tenders is extended by the Procurement and Commissioning Manager, the officer responsible for the administration of the tender process shall notify all potential tenderers of the extension and any tenderers who have already submitted tenders shall be given the opportunity to re-submit their tenders.
- 30.13 This standing order shall also apply to the receipt and custody of tenders for sub-contracts let using electronic means to be performed by nominated sub-contractors.

### **31. Opening of Tenders**

- 31.1 All tenders shall be opened as soon as is reasonably practical following the tender deadline.
- 31.2 All tenders for a procurement exercise shall be opened immediately one after the other during one session.
- 31.3 A minimum of two officers shall be present when tenders are opened. The officers present shall complete and sign a record to show who opened the tenders, who witnessed the process and the responses received.

### **32. Validation, Clarification and Correction of Tenders**

- 32.1 All tenders shall be subject to checking.
- 32.2 Between the last time and date for the receipt of tenders and the date on which a decision is taken as to which, if any, tender is to be accepted a tenderer may be contacted where it is necessary to validate or clarify the terms of the tender, including the withdrawal of any qualification to the tender or to effect any necessary adjustments. A full written record shall be kept of all such contacts and shall be retained with the original tender.
- 32.3 An arithmetical check of all tenders will be carried out and recorded as having been completed. Where examination of the tenders reveals arithmetical errors, or obvious errors in the rates tendered or discrepancies, the tenderer will be given the opportunity of confirming, amending (in the case of arithmetical errors only) or withdrawing his tender. All correspondence relating to such matters shall be in writing or in email and shall be retained with the original tender.

### **33. Technical and Financial Checks**

- 33.1 No organisation may be awarded a contract for the supply of goods, materials or services or the execution of works unless a satisfactory review of the proposed organisation has been carried out as to:-

- the technical capability of the tenderer; and
  - the financial standing of the tenderer.
- 33.2 It shall not be necessary to review the financial standing of proposed contractors where:
- the estimated value of the contract is £100,000 or below; or
  - it has been reviewed in the preceding 12 months from the date of the tender.
- 33.3 Assessment of a tenderer's technical capacity shall include a determination as to whether:
- a) the tenderer meets the selection criteria; and
  - b) any exclusion grounds under the Procurement Reform Rules, or where appropriate, the EU Procurement Rules, apply to the tenderer.
- 33.4 The assessment under standing order 33.3 shall be based initially on the ESPD submitted by the tenderer but, at any moment during the procedure, the Council may require the tenderer to submit all or any of the supporting documents where the Procurement and Commissioning Manager considers this is necessary to ensure the proper conduct of the procedure.
- 33.5 Where a procedure requires a shortlist of participants to be prepared, before a participant may be included on the shortlist the procuring service department and the Corporate Procurement Team shall:-
- a. verify that the participant whom he/she intends to shortlist meets all relevant criteria; and
  - b. require the participant to submit such means of proof and supporting documents that is considered to be necessary.
- 33.6 Before preparing any report to seek approval to award a contract, except a contract which is a direct award under a framework, the Corporate Procurement Team or the procuring service department shall:-
- a. verify that the participant who is the proposed contractor meets all relevant criteria; and
  - b. require the participant who is the proposed contractor to submit such means of proof and supporting documents that is considered to be necessary.
- 33.7 Where the Corporate Procurement Team or the procuring service department is unable to verify that an organisation meets all relevant criteria, or where an organisation fails to submit such means of proof and supporting documents as required, the organisation shall be excluded from the procedure.
- 33.8 A record showing the results of each check of the technical capacity and financial standing for each tenderer shall be retained on file by the Corporate Procurement Team. Procuring service departments shall provide copies of such records to Corporate Procurement Team where they were not directly involved in the evaluation.

#### **34. Abnormally Low Tenders**

- 34.1 Where during the commercial evaluation of tender submissions, the evaluators consider that a tender may be abnormally low, the Council's abnormally low tender procedure shall be followed.
- 34.2 The application of this procedure and the outcome must be documented within the contract authorisation report.

#### **35. Post -Tender Negotiations**

- 35.1 Once the evaluation of tenders has been completed, with the prior written agreement of the Head of the procuring service department, the Procurement and Commissioning Manager may instruct members of the Corporate Procurement Team or the procuring service department staff to enter into post tender negotiations. Post tender negotiations shall only be used in circumstances where the tender evaluation process has been conducted in accordance with the Standing Orders and has identified a tenderer who has submitted the most economically advantageous tender to the Council for a contract or part of a contract and is satisfied that there is scope for improvement in the offer received and that such negotiations will be in the best interests of securing value for money or improved terms and conditions for the Council. Post tender negotiations shall only be used with that tenderer so identified. The post tender negotiations shall not be used to put other tenderers at a disadvantage or to distort competition.
- 35.2 Where it is considered possible that post tender negotiations might apply, a clear indication will be given to prospective contractors in the instructions to tenderers that post tender negotiations might be considered.

#### **36. Notification of Award**

- 36.1 Following the evaluation of all tenders received, the Contract Authorisation Report provided at Schedule 4 shall be prepared and submitted for approval in advance of notifying tenderers of the outcome or awarding a contract.
- 36.2 The successful tender shall only be accepted on behalf of the Council in accordance with the Council's Scheme of Delegation.
- 36.3 The Head of Finance and Procurement may terminate any procedure at any time up to the award of the contract where instructed to do so by the Director of the procuring department or in any other circumstances where the Head of Finance and Procurement believes that justification exists for that course of action. Where a procedure is terminated, all tenderers shall be informed of the decision in writing as soon as reasonably practicable.
- 36.4 In accordance with the Procurement Reform Rules, where a tenderer is excluded from a procedure at any stage before submitting a tender, the tenderer shall be notified in writing and provide reasons as soon as reasonably practicable.

- 36.5 All tenderers shall be informed in writing of the success or otherwise of their tender as soon as is reasonably practicable after the approval of the successful tender and shall be provided with reasons in accordance with the applicable EU Procurement Rules or Procurement Reform Rules.
- 36.6 Where e-tendering has been used, the communication with tenderers in terms of standing order 36.5 above shall be undertaken using the Council's e-tender system.
- 36.7 Advice may be sought from the Corporate Procurement Team on the wording of these letters, or templates to be used where available.

### **37. Mandatory Standstill Period**

- 37.1 Where the EU Procurement Rules apply and authority has been granted for the acceptance of the successful tenders, no tender shall be accepted until the date when the mandatory standstill period in terms of those Rules has expired and the Head of Finance and Procurement and the Head of Legal and Democratic Services are satisfied that no valid challenge has been received to the contract award decision.
- 37.2 The mandatory standstill period is a period of at least 10 calendar days between the date of dispatch of the letters issued in accordance with the EU Procurement Rules and the date when it is proposed to enter into the contract.

### **38. Health and Safety**

- 38.1 No contract shall be awarded to a contractor unless the contractor, supplier or service provider satisfies the Council that they are operating health and safety policies which conform to the current legislation.

### **39. Equality**

- 39.1 No contract shall be awarded to a contractor unless the contractor, supplier or service provider satisfies the Council that they are complying with the Equality Act 2010.

### **40. Contracts Register**

- 40.1 Within 5 working days of the award of a contract, the officer who has responsibility for awarding or managing the contract shall ensure it is included on the Council's Contracts Register maintained by the Corporate Procurement Team.
- 40.2 The Corporate Procurement Team shall maintain a published contracts register with all Regulated Contracts awarded by the Council.

#### **41. Extension of Contract Duration**

- 43.1 Where appropriate and in conformity with EU legislation, provision can be made in a contract for a period of extension.

#### **42. Assignment, Termination and Modification**

- 42.1 In every contract, there shall be a provision whereby the contractor shall be prohibited from transferring or assigning to any person or persons whatever, any portion of the contract without the prior written consent of the Council. The Head of Finance and Procurement, in consultation with the Head of Legal and Democratic Services and the Director of the procuring service department shall have the power to consent on behalf of the Council to the assignment of a contract.
- 42.2 The Head of Finance and Procurement may exercise any power on behalf of the Council to terminate any contract or part of a contract or to terminate the Council's participation in a Framework Agreement or to agree to vary or amend the terms of any contract but only following consultation with the Director of the procuring service department and the Head of Legal and Democratic Services and subject to them all being satisfied that it is reasonable and in the interests of the Council to exercise that power.
- 42.3 Where it is proposed to modify a contract or framework, the Head of Finance and Procurement, taking advice from the Head of Legal and Democratic Services where appropriate, shall determine whether the proposed modification would require a new procurement procedure. For the avoidance of doubt, modification includes any changes to the scope; terms and conditions; value; or parties to the contract or framework.
- 42.4 Where the Head of Finance and Procurement determines that a modification would not require a new procurement procedure, the procedures under standing order 11 shall be followed.

#### **43. Pilot Projects**

- 43.1 These Standing Orders shall apply to any procurement related to pilot projects for which the Council has responsibility whether or not fully or part funded by the Council, the Scottish Government or another third party.

#### **44. Sustainable Development**

- 44.1 The Council are committed to achieving sustainable procurement outcomes and must ensure the Council fulfils its Sustainable Procurement Duty.
- 44.2 The Sustainable Procurement Duty will be considered in the development of every Contract Strategy Document for a Regulated Procurement, taking into account how the Regulated Procurement can:

- (a) improve the economic, social and environmental wellbeing of the Dumfries and Galloway area;
- (b) facilitate the involvement of small and medium enterprises, third sector organization and supported businesses in the Regulated Procurement; and
- (c) promote innovation.

#### **45. Submission of In house Tenders**

- 45.1 Where the Council has invited one of its own in-house services to tender, the other contractors who have been invited to tender shall be advised of this fact as soon as reasonably practicable after it becomes known. In such circumstances, all necessary steps shall be taken to ensure that the principles of fairness, equal treatment, non-discrimination and transparency are adhered to.

#### **46. Procurement Strategy and Annual Report**

- 46.1 In accordance with the Procurement Reform Rules, the Procurement and Commissioning Manager shall prepare and publish a procurement strategy setting out how the Council intends to carry out Regulated Procurements in the next financial year.
- 46.2 Where the Council's procurement strategy for the current financial year requires to be reviewed, the Procurement and Commissioning Manager shall make such revisions as are considered appropriate and publish the revised strategy.
- 46.3 The Procurement and Commissioning Manager shall prepare and publish an annual procurement report on the Council's Regulated Procurement activities in relation any financial year as soon as reasonably practicable after the end of that financial year, commencing after the end of financial year 2017/18.

#### **47. Commencement Date**

- 47.1 These Standing Orders shall come into effect on the first working day after the Full Council meeting at which they are approved.

# SCHEDULE 1 – CONTRACT STRATEGY DOCUMENT

## **SECTION ONE – CONTRACT SUMMARY**

<b>1.1 CONTRACT DETAILS</b> <i>(to be completed in line with the Contract Strategy Guidance Document)</i>	
Contract Title	
Contract No	
Created By	
Date Created	
Department	
Length of Proposed Contract Period (+ Optional Extension)	
<b>1.2 EXECUTIVE SUMMARY</b>	
<p>Consideration should be given to the following when completing the executive summary:            Brief synopsis of what is detailed in the report (no new information should be detailed here)            Key Findings,            Benchmarking and opportunities, options considered,            Recommendations and key actions,            Benefits, Justification and projected savings,            Key risks and resource implications.</p>	
<b>1.3 CONTRACT OBJECTIVE &amp; FORWARD PLAN</b>	
<p>This section should include a summary of the objectives of the contract based on the analysis undertaken prior to the completion of the commodity strategy. A question to consider here is 'What will this contract achieve'</p> <p>This section should also include a summary of the department/customer's strategy and their forward plan to ensure that the commodity strategy and the procurement approach is in line with their future plans. It is important that these are considered as part of the process.</p>	
<b>1.4 FINANCIALS</b> <i>(Information MUST be completed prior to contract strategy sign off)</i>	
Budget Amount:	Estimated Annual Contract Value:

Cost Centre		Account Code	
Other Funders/Additional Comments:			
<b>1.5 RESOURCES (CROSS FUNCTIONAL TEAM)</b>			
<b>1.5.1 KEY STAKEHOLDER GROUP</b>			
This section should include all key stakeholders details who are involved in the project. Project Owner / Sponsor – Director or Head of Service who are supporting the project. Project Lead – department lead working on the project			
<b>Project Role</b>	<b>Name</b>	<b>Department</b>	<b>Organisation</b>
Project Owner / Sponsor			
Project Lead			
Procurement Lead			
Health & Safety Representative			
Insurance Representative			
Legal Representative			
<b>1.5.2 EVALUATION PANEL</b>			
This section should include all key stakeholders who will be involved in the tender evaluation. Details of the task (roles and responsibilities) must be provided. <i>Officers are reminded that all members of the evaluation panel will be required to sign Annex B Confidentiality Undertaking and Conflict of Interest Declaration, contained within the tender opening procedure.</i>			
<b>Name</b>	<b>Job Title</b>	<b>Department</b>	<b>Task</b>

## 1.7 PROJECT PLAN

This section should include all key milestones as discussed and agreed with the key stakeholders.

Key Milestone	Planned Start Date	Anticipated Completion Date
Project Start / Risk Register ( <i>Appendix B</i> )		
Market Analysis/Scope		
Contract Strategy Completion Date		
Specification Deadline		
Stakeholder Consultation ( <i>e.g Insurance, H&amp;S Levels and Legal</i> )		
Advertisement & Tender Issue Date		
Tender Return Date		
Evaluation & Clarification Completion Date		
CAR/PSC Papers due for Approval by Stakeholders		
PSC Date (if applicable)		
Contract Award Letter and Notice Published		
Implementation Plan	Please reference <i>Appendix A</i>	
Contract Start Date		
Supplier on Site Date ( if applicable)		
Contract Completion Date		

## SECTION TWO – CURRENT CONTRACT INFORMATION

### 2.1 CURRENT SITUATION/CONTRACT STATUS & SPEND ANALYSIS

This section should include details of the present position (if the project is recurring) and highlight appropriate background information e.g. details of the current contract; start and end dates, incumbent supplier and contract spend. A detailed understanding of the current commodity spend should also be included using spend analysis on the Spikes Cavell Hub. A summary/description of the current contract scope should be provided with any TUPE implications (if applicable) and what the agreed exit strategy is.

New or Recurring Requirement		Choose an item.	
<i>If Recurring answer the following regarding the current contract;</i>			
Contract Start Date		Contract End Date	
Duration		Total Value/Spend	
Incumbent Supplier			
Expenditure by Commodity And Any Sub-Commodity ( <i>Spikes Cavell Hub can assist</i> )			
Expenditure By Department			
Summary/Description (scope, type of contract, contract owner, supplier etc)			
Political factors affecting the process			
TUPE implications			
Current Exit Strategy			

### **SECTION THREE – COMMODITY & SUPPLY MARKET ANALYSIS**

#### **3.1 COMMODITY ANALYSIS**

This section should include a summary of the market analysis undertaken as part of the strategy development process. It should detail the current position within the supply market with regards to the goods and/or services required. Market summary template attached for reference. [Market Summary Template](#)

Category	
----------	--

Commodity Summary	
-------------------	--

#### **3.2 SUPPLY MARKET STATUS (*inclusive of references*)**

A supply market analysis should be undertaken to develop a detailed understanding of key trends, major players, and overall market dynamics that could influence the development of the commodity strategy e.g. route to market, lotting strategy.

Market Summary – <i>trends, developments and growth</i>	
Market Intelligence summary (if market intelligence source used)	
Trade Associations	
Key suppliers	
Profile of suppliers in the market	
Financial appraisal of Key Suppliers	
Benchmarking Current Cost Against Market	
Has Market Consultation been carried out, if yes please provide details ( <i>must be in accordance with Regulation 41</i> )	
<b>TOTAL COST OF OWNERSHIP</b>	
Total Cost of Ownership (TCO) is the initial acquisition cost plus ownership/operation and disposal costs. Understanding this will help in identifying areas for improvement internally within the organisation and externally with potential suppliers. A guidance template is attached to help you consider the wider costs associated with the procurement. <b><u>Total Cost of Ownership Template</u></b>	
Acquisition	
Ownership	
Operation	
Disposal	

<b>3.4 SUPPLY MARKET RISKS</b>	
Summary of Supply Market Risks: <i>(should be transposed into section 8.3)</i>	
<b>3.5 COLLABORATION</b>	
This section should detail the collaboration opportunities that could be available for the required commodities and whether they are appropriate to be utilised by the Council. Where a collaborative contract is available then the commodity strategy relating to this contract should be obtained for review.	
Collaboration Opportunity	Choose an item.
Lead Authority	
Other Organisations involved	
Details / Justification	
<b>3.6 PREVIOUS TENDER EXPERIENCE</b>	
This section should detail all lessons learned from the previous tender experience.	
Lessons learned by Dumfries and Galloway Council or other local authorities	
<b>3.7 OUTSOURCING OPPORTUNITIES</b>	
This section should identify if in-house provision vs outsourcing has been considered and a summary of the In-House/Outsourcing Decision Making record should be provided.	
Outsourcing Opportunity	
Details / Justification	

## **SECTION FOUR – SUSTAINABILITY & COMMUNITY BENEFITS**

<b>4.1 SUSTAINABILITY (<a href="#">Sustainability Test</a>)</b>
<p>The Sustainable Procurement Duty outlined in the Procurement Reform (Scotland) Act 2014 requires that an Organisation must think about how they can improve the Social, Environmental and Economic wellbeing of the area in which they operate, with a particular focus on reducing inequality.</p> <p>Sustainable procurement is concerned with identifying the potential environmental, social and economic aspects that could be incorporated within a procurement process through the development of a relevant specification or through contract Ts and Cs. It can even be achieved through voluntary contract management.</p> <p>This section should include the potential sustainability areas that are relevant to the goods, services</p>

and/or works required and how they might be specified within the procurement process.	
<b>SUSTAINABILITY SUMMARY</b>	
Social Factors	
Environmental Factors	
Economic Factors	
Is there any legislation that could affect this procurement? (E.g. Environmental, Living Wage etc)	
Yes / No	
Details / Justification	
Do <a href="#">Government Buying Standards</a> specifications apply to this procurement?	
Yes / No	
Details / Justification	
Is this procurement suitable as a reserved contract?	
Yes / No	
Details / Justification	
Are there any diversity issues that need to be considered? E.g. accessibility needs. Religious needs, differing diets etc.	
Yes / No	
Details / Justification	

## **SECTION FIVE – PROCUREMENT PROCESS**

### **5.1 OPTION APPRAISAL**

This section should describe the strategic options which have been considered and the preferred option to be implemented.

This may include several option appraisal to demonstrate consideration for:

- Type of requirement (goods / services / works)
- Route to Market (open or restricted must be considered)
- Lotting considerations
- Use of e-auction for IT purchases.

### **5.2 AWARD CRITERIA**

This section should detail the award criteria that will be used. The attached guidance document will assist.		
Award Criteria (Quality/ Price Ratio)		
Area	Criteria	% Weighting
Scoring Methodology – Quality (1) (Contract Specific)		%
Scoring Methodology – Quality (2) (Contract Specific)		%
Scoring Methodology – Quality (3) (Contract Specific)		%
Scoring Methodology – Quality - Community Benefits	Community Benefit Outcomes offered should the Tenderer be successful in being awarded this contract	%
Scoring Methodology – Quality - Community Benefits	Tenderers must describe their approach to delivery of the community benefit commitments made above.	%
Scoring Methodology – Quality - Fair Working Practices	Tenderer to describe how you will commit to fair work practices for workers (including any agency or sub-contractor workers) engaged in the delivery of this contract.	%
Scoring Methodology – Price	Tenderers required to provide pricing against issued pricing schedule.  Details of what will provide the evaluation tender total are to be detailed.	%
<b>5.3 PURCHASE TO PAY</b>		
This section should contain details of the purchase to pay strategy for this procurement process. Consult with BOP team as appropriate.		
PECOS Information		
Catalogue use		
Statement Billing		
E-Invoicing		
Procurement Card Considerations		
Procurement Card Considerations Details / Justification		

Preferred Method of Payment	
Schedule of Payments	

## **SECTION SIX - PROPOSED CONTRACT BENEFITS**

<b>6.1 PLANNED SAVINGS TARGET</b>			
This section should detail the planned savings target.			
Value	Percentage	Description	Financial Year
Additional Comments:			
<b>6.2 PLANNED CONTRACT BENEFITS – NON – FINANCIAL</b>			
This section should detail the planned non-financial contract benefits such as added value elements			
Description		Comment	

## **SECTION SEVEN – CONTRACT AND SUPPLIER MANAGEMENT**

<b>7.1 CONTRACT MONITORING ASSESSMENT</b>	
The level of contract and supplier management required depends on the risk, value and complexity of the contract. This will help identify what the level of management to be applied.	
Management Level & Description	Comment
Choose an item.	
<b>7.2 CONTRACT MANAGEMENT CONSIDERATIONS</b>	
Contract management considerations such as; KPIs, resources, communication and exit strategy should be detailed here.	
What set of KPIs are to be used? Details should be provided.	
What are the resource arrangements for contract management?	

What will be the internal and external communication activities/plan?	
What is the exit strategy for the contract? <i>Contract Exit Strategy contained within appendix C must be completed</i>	

### **SECTION EIGHT - STRATEGY APPROVAL**

This section of the strategy required sign off. The relevant levels are detailed below:

- Contract Value less than £164,000 – Service Manager and Procurement and Commissioning Manager
- Contract Value between £164,001 - £499,999 – Head of Procuring Service and Procurement and Head of Finance and Procurement
- Contract value over £500,000 – Director of Procuring Service and Director of Corporate Services

#### **Procuring Service**

Name	
Title	
Signature (electronic signatures are not permitted)	
Date	

#### **Finance and Procurement**

Name	
Title	
Signature (electronic signatures are not permitted)	
Date	

**Appendix A of Contract Strategy - Contract Implementation Plan**  
**Contract Implementation Plan (Contract)**

**Contract Title:**

**Award letter dated :**

**Commencement Date :**

**Cross Functional Project Team :**

<b>Ref No</b>	<b>Activity / Milestone</b>	<b>Responsible Owner</b>	<b>Key Staff required to input to the activity</b>	<b>Start Date</b>	<b>Completion Date</b>	<b>Dependencies</b>	<b>Cost (if appropriate)</b>	<b>Relevant Risks (risk register reference numbers)</b>	<b>RAG</b>
01									
02									

**Appendix B of Contract Strategy - Risk Register**  
**Contract -**

**Award letter dated : : Commencement Date : Duration :**

**Risk Register**

**Key**

**Probability/Impact**

Very Low      1  
 Low            2  
 Potential      3  
 Likely         4  
 High            5

P - Probability  
 I - Impact  
 E - Effect

**STATUS**

Open  
 Closed

Ref	Date Raised	Risk	OWNER	Outset			Mitigating Actions	Current			Status
				P	I	E		P	I	E	
1											
2											

**Appendix C of Contract Strategy**  
**- Exit Strategy**

CONTRACT DETAILS	
Contract Title	
Created By	
Tender Document No/ PID Reference	Project number / ITT number(s)
Date Created	
BREIF DESCRIPTION OF THE NEED FOR EXIT PLAN	
<p>NOTE -: Exit plan will be required where some /all of the following elements occur -:</p> <p>TUPE, Service Continuity, Phased Implementation, Transfer of an Outsourced Service, Continuation of Grant Funded Projects, Transfer and Security of Data, Property Transfer, Costs, Contract Termination, Knowledge and Document Transfer.</p> <p>Please detail you exit strategy/plan below -:</p>	
Key activities and milestones	
Key Milestone	Completion Date
Contract start date	
Optional Extensions	
Contract duration review(s)	
Contract exit strategy implementation meeting with supplier	
Contract review meeting with internal stakeholders	
Contract review meeting with supplier	

Other key dates, for example data hand over, staff transfer, IPR	
Contract handover to Council / new supplier commencement	
Contract end date	
<b>ITEMS TO BE HANDED OVER</b>	
<p>This section must detail all items that must be handed over between all key parties.  Current holders may be the supplier or the Council.  Recipients may be the supplier, the Council, a new supplier or third party beneficiary.  <i>The items listed below are only examples and this must be updated for every contract.</i></p>	
Item	Current Holder
Assets such as mobile telephones, laptop etc	
Staff transferring under TUPE	
Data	
Intellectual Property	
Building / land ownership	

## **SCHEDULE 2 – EU THRESHOLDS**

### **Schedule 2 – EU Thresholds and Regulated Contract Thresholds under Public Contracts (Scotland) Regulations 2016 applicable to the Council from 1 January 2018**

#### **EU Thresholds**

Supply, Services and Design Contracts	£181,302
Works Contracts	£4,551,413
Social and other specific Services	£615,278

Thresholds will next be reviewed on 1 January 2020

#### **Regulated Procurement Thresholds**

Goods and Services	£50,000
Works Contracts	£2,000,000

## **SCHEDULE 3 – GUIDANCE NOTE FOR UNDER £50,000 CONTRACTS**



### **GUIDANCE NOTE**

**Minimum Procedure for placing all contracts with a value of less than £50,000**

## 1. Introduction

- 1.1 This guidance note details the Council's procedures for placing contracts with a total estimated value of less than £50,000, exclusive of VAT but only where no contract exists. Note that the use of existing contracts is mandatory.
- 1.2 Where the Council has a Framework Agreement or Contract already in place covering the requirement, the instruction must be awarded in terms of that Framework Agreement or Contract. Advice may be obtained from the Corporate Procurement Team.
- 1.3 This defines the minimum requirement for any such procurement exercise. However, the Procurement and Commissioning Manager may decide to follow the Council's Standing Orders relating to Contracts for any contract, regardless of its value
- 1.4 Expressions used in this Guidance shall have the same meaning as that given to them in the Council's Standing Orders Relating to Contracts, unless this guidance provides a different meaning

## 2. Contracts between £0 and £19,999.99 (ex VAT)

- 2.1 The following procedures are to be adhered to, subject to the commodity and value of the procurement exercise being undertaken.
- 2.2 Values are not to be deliberately disaggregated to avoid the rules and to bring the expenditure under the thresholds. The Corporate Procurement Team will carry out random checks.
- 2.3 The procuring service must seek Best Value for the Council and where applicable, must be able to clearly demonstrate transparency, non-discrimination and equal treatment within the chosen tender process and in the award of a contract.

### Supplies/Services/Works

Title	Threshold	Procedure
Best Value	£0 - £1,999.99 (ex VAT)	Low value tenders can be undertaken at council officers' discretion. A written quotation is not required provided that Best Value principles are observed.
RFQ	£2,000 - £19,999.99 (ex VAT)	Request for Quote (RFQ) carried out by council officers 1. 4 written quotations (including email) from competent suppliers to be sought; 2. Where only one supplier exists, see paragraph 4.2 below; 3. Where contracts are considered high risk and/or legally complex, consult with Corporate Procurement Team for advice; 4. Suppliers to be given

		<p>at least five working days to respond;</p> <p>5. RFQ response to include details of the supplier and the price quoted;</p> <p>6. Responses to be opened following the deadline for responses;</p> <p>7. Written quotations to be retained in accordance with the Council's document retention policy.</p>
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### **3. Contracts between £20,000 and £49,999.99 (ex VAT)**

- 3.1 Quick quote procedure must be carried out using the Public Contracts Scotland Portal ([www.publiccontractsscotland.gov.uk](http://www.publiccontractsscotland.gov.uk)) facility for quick quotes.
- 3.2 A completed Quotation Request Form must be completed and submitted to the Corporate Procurement Team. On receipt of the Quotation Request Form, the Corporate Procurement Team shall attribute a tender reference number to the contract which must be quoted on all tender and contract documents.
- 3.3 A minimum of six (6) suppliers will be invited to quote, (at least 50% of which should be local suppliers from the Dumfries and Galloway area where possible).
- 3.4 Suppliers shall be selected from those registered for that category on the PCS web portal and the selection shall not be restricted to existing suppliers
- 3.5 Where there are less than six (6) suppliers registered, a proportionate level of research to encourage new suppliers to register on PCS must be undertaken. Failing that, all qualifying suppliers will be invited to submit quotations, with agreement from the Procurement and Commissioning Manager. In the event that there is only one qualifying supplier, the negotiated procedure shall be used in terms of paragraph 4 below.
- 3.6 A written specification shall be prepared and issued with the Invitation to Quote document.
- 3.7 As a minimum the specification will incorporate:-
  - 3.7.1 a clear description of what the supplier will be expected to provide under the contract;
  - 3.7.2 information about how the Council will pay for what is to be provided under the contract;
  - 3.7.3 details of the level of service to be provided under the contract, including, but not restricted to, timescales for delivery or performance and any performance measures set by the Council;
  - 3.7.4 the evaluation criteria to be used for the award of the contract;
  - 3.7.5 the terms and conditions applicable to the contract;
  - 3.7.6 the appropriate level of insurance.
- 3.8 The timescale permitted for the return of quotations must be sufficient to allow all of those invited the same opportunity to respond.
- 3.9 Any contract shall be awarded to the supplier/s who has submitted the Most Economically Advantageous Tender (MEAT), taking into account the price offered and the supplier's response to any quality or other criteria set by the Council.
- 3.10 All tenderers who submitted a quotation must be notified of the outcome in writing as soon as is practically possible.

- 3.11 The contract award is to be published on the Public Contracts Scotland web portal, quick quote facility.

#### **4. Negotiated Procedure**

- 4.1 The Procurement and Commissioning Manager may authorise the use of the negotiated procedure, but only where the following limited grounds apply:
- 4.1.1 where as a result of the invitation of competitive tenders, no valid offer or only one valid offer complying with specification has been received; provided always that no significant changes are made to the tender documents that were previously issued; or
  - 4.1.2 where the Procurement and Commissioning Manager is satisfied that the requirement of the contract is unique or, after research, only one suitable source of supply can be identified; or
  - 4.1.3 where the Procurement and Commissioning Manager is satisfied that for reasons of technical complexity or compatibility or for reasons connected to the protection of exclusive rights, subsequent deliveries of equipment or goods or the provision of services require to be purchased from the original supplier; or
  - 4.1.4 where in the case of a supply contract, the goods to be purchased or hired are to be manufactured purely for the purpose of research, experiment, study or development, but not when the goods are to be purchased or hired to establish their commercial viability or to recover their research and development costs; or
  - 4.1.5 when (but only if strictly necessary) for reasons of extreme urgency brought about by events unforeseeable by and not attributable to the Council, it is not possible to comply with the procedures in paragraphs 2 and 3; or
  - 4.1.6 where in the case of a services or a supply contract, in the opinion of the Procurement and Commissioning Manager it is in the interests of the Council to take advantage of particularly advantageous bargain available for a very short period of time at a price considerably lower than normal market prices; or
  - 4.1.7 where pending the letting of a contract (“the main contract”) it is necessary to award a short term contract to cover the period up to the commencement of the main contract. However, the short term contract shall be for a period of no more than six months and shall not exceed £50,000.
- 4.2 In all cases where negotiated procedures have been used in terms of this paragraph 4, a full written record of all contacts, discussions and communications with prospective suppliers shall be kept by CPU or the Director, together with a full explanation as to why it was considered it to be appropriate to use the negotiated procedure.

#### **5. Extension to Existing Contracts**

- 5.1 Where the Director of the procuring department considers that an existing contract should be extended and the option to extend is given to the Council in terms of the contract, the Director may authorise the exercise of that option on behalf of the Council. For the avoidance of doubt, where the contract does not make provision for the extension of the contract, the Director shall not extend that contract unless the use of the negotiated procedure can be justified in terms of this Guidance and the procedure in paragraph 4 of this Guidance and, where appropriate, standing order 12 of the Council’s Contract Standing Orders have been followed.
- 5.2 For the purposes of paragraph 5.1 of the Council’s Contract Standing Orders an extension of a contract includes the option to increase the amount of supplies, services or works acquired under the contract as well as the option to increase the duration of the contact.

# **SCHEDULE 4 – CONTRACT AUTHORISATION REPORT TEMPLATE**

## **CONTRACT AUTHORISATION: [TITLE OF REPORT]**

### **1. Purpose of Report**

- 1.1 [**Guidance:** should include an outline of the purpose of the contract, state the reasons for tender, links to any National programmes and confirm when the Contract Strategy was approved and by whom.]

### **2. Recommendations**

- 2.1 [**Guidance:** State the supplier(s) name and registered address that you recommend to award the the contract, framework agreement or dynamic purchasing system to, the reference number attributed to the contract, the contract title, contract value and start / end dates and details of any extension timeframe applicable to the contract.]

### **3. Considerations**

- 3.1 [Summary: What Process was used (Open, Restricted, Negotiated, Framework Call Off, E-Auction etc.). State the number of companies to whom ITTs were issued/downloaded by but who failed to submit a bid and any reasons for this that have been recorded.]

- 3.2 [Market Engagement: Record actions and measures take for prior engagement with the market and record details where a supplier was excluded from tendering on this basis]

- 3.2 [Tender Information:

- i. Provide details of the qualitative selection criteria and reduction of number of tenderers where applicable. This must include the name of th selected tenderers and the reasons for their selection and the names of the tenderers rejected and the reasons for their rejection. Where a tender has been rejected as it was found to be abnormally low, reasons for this must be detailed. Where the minimum turnover threshold required was higher than two times the contract value, the reasons for this requirement must be provided.]
- ii. Provide details of the contract award criteria and the outcome of the evaluation. This should include a summary of the scoring for all tenderers considered at this stage using the table below:

	Price	Quality	Total
Supplier A			
Supplier B			
Supplier C			

- iii. The name of the successful tenderer and the reasons why its tender was selected.
- iv. Where it is known, details of sub-contracting arrangements must be recorded. This should include the share (if any) that the tenderer intends to subcontract to third parties and the names of the main contractor's subcontractors (if any).
- v. Where the competitive dialogue or competitive procedures with negotiation have been used, the circumstances justifying the use of the procedure should be recorded.
- vi. Where the negotiation procedure without prior publication procedure has been used, the circumstances justifying the use of the procedure should be recorded.

- vii. Where the recommendation includes the decision not to award a contract, framework or dynamic purchasing system following the tender procedure, the reasons for this must be provided.
  - viii. Where applicable, the reasons why means of communication other than electronic means have been used for the submission of tenders must be provided.]
- 3.3 [Financial: Give detail on original budget and state the savings against the budget or existing unit cost/benchmark.]
- 3.4 [Programme reference, where appropriate. e.g. Is the tender part of a Capital programme that has required prior board approval or need to be reflected in the award letter?]
- 3.5 [Commercial Specifics: Give detail on any bonding arrangements. e.g. Bonds, parent company guarantees, retentions, Insurances.]
- 3.6 [Where applicable: Statutory approvals obtained. e.g. has appropriate Planning permission been obtained. Are there any other permissions that should be considered or reflected in the award letter?]
- 3.7 [Where applicable: Council ownership or equivalent of site or buildings.]
- 3.8 [Sustainable considerations and committed outcomes: Provide details of sustainable outcomes that will be achieved. Where no commitments have been sought or provided explain reasons why].

**4. Governance Assurance**

- 4.1 [EU Compliance : Confirm any EU legislative routes that were followed, what the EU threshold were at the time of going to tender for the Goods Works or Services being purchased and the timescales involved. Does it fall under the light touch regime?]
- 4.2 [Standing Order Compliance: state the specific clauses that are being acted upon.]
- 4.3 [Where applicable, detail any conflicts of interest detected and subsequent measures taken].

**5. Impact Assessment**

- 5.1 [only to be used for reports which propose a change in policy/strategyplan/project]

**Author(s)**

NAME	DESIGNATION	CONTACT DETAILS

**Approved by**

[This section of the contract authorisation report required sign off. The relevant levels are detailed below:

- Contract Value less than £164,000 – Service Manager and Procurement and Commissioning Manager

- Contract Value between £164,001 - £499,999 – Head of Procuring Service and Procurement and Head of Finance and Procurement
- Contract value over £500,000 – Director of Procuring Service and Director of Corporate Services]

<b>NAME</b>	<b>DESIGNATION</b>	<b>SERVICE</b>
		<b>Council Procurement Team</b>
		<b>Service Department</b>

### **Appendices**

### **Background Papers**

**SCHEDULE 5 – IN HOUSE / OUTSOURCING DECISION MAKING  
RECORD**

Service Department:	
Requirements Description:	
Recurring / One Off:	
Previous or current arrangements for delivery of the requirements:	
In-house provision details (including details of current and predicted future capacity):	
Market research conducted:	
Budget details:	Include value, revenue / capital and relevant codes
Anticipated cost of in-house service delivery	
Anticipated cost of external service delivery	
Option Appraisal	
Recommendation	
Request Made By:	
Date of Request:	

**Approved by**

<b>NAME</b>	<b>DESIGNATION</b>	<b>SERVICE</b>
		<b>Head of Finance and Procurement</b>
		<b>Head of Procuring Service</b>