



**Clackmannanshire  
Council**

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Comhairle Siorrachd  
Chlach Mhanann

## **CLACKMANNANSHIRE COUNCIL CONTRACT STANDING ORDERS**

These Contract Standing Orders define the rules and procedures to be adopted when undertaking any procurement activity on behalf of Clackmannanshire Council and are effective from **1st June 2015**.

All procurement processes commencing from that date will observe the rules contained within these Contract Standing Orders.

Notwithstanding the dates, these Contract Standing Orders shall remain in full effect until such time as they are varied, replaced or superseded by a decision of the Council.

**Revised 20<sup>th</sup> October 2021**

**Section: 38. Approval to Accept & Award Contracts**  
**Name changes made due to Council organisational restructure**

**EU Exit and Procurement Journey Changes**

The UK has left the EU and as a result the trading transition period ended at 11 p.m. on 31 December 2020.

Most procurement processes and procedures have not changed (please refer to [SPPN 11/2020](#) for more information). However references to the EU and EU procurement legislation, as well as links to external websites, are being updated or removed from the Procurement Journey where appropriate.

This is a period of change and the Procurement Journey will continue to be updated with new developments throughout 2021/22 and CSO's will be updated accordingly

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# 1. Introduction

1.1 Procurement decisions are among the most important decisions Officers will make because the money involved is public money and the Council is obliged to ensure that we deliver high quality goods, works and services. It is the Council's duty to secure best value in its arrangements, and therefore efficient use of resources is an imperative. The Council's reputation is equally important and should be safeguarded from any suggestion of dishonesty or corruption.

1.2 The Contract Standing Orders provide a commercial, legal and operational framework to procurement activity on behalf of the Council.

For these reasons, it is a disciplinary offence to fail to comply with Contract Standing Orders and with Council's Financial Regulations where public money is being spent, including when contracts are being let. Employees have a duty to report breaches of Contract Standing Orders and with Council's Financial Regulations to an appropriate Head of Service and to the Strategic Director of Partnership and Performance .

1.3 The purpose of Contract Standing Orders is to set clear rules for the procurement of goods, works and services for the Council. The rules should ensure that the Council is fair and accountable in its dealings with contractors and suppliers. Contract Standing Orders are also intended to ensure that the Council obtains value for money and that it is taking good care of public funds.

1.4 Those who are responsible for procuring, managing or delivering major construction projects should follow the policy and procedural framework set out in the Scottish Construction Procurement Manual.

1.5 Contract Standing Orders protect the interests of the Council and they also protect the interests of Council Officers who are involved in procurement. It is the responsibility of each Head of Service to ensure that every officer who is involved in procurement has a good understanding of Contract Standing Orders and has access to the Corporate Procurement Process "The Procurement Journey".

1.6 The Procurement Journey provides guidance and wide ranging advice as to the purpose and practical application of Contract Standing Orders. Both documents will be kept under review by the Procurement Manager.

The Procurement Journey has been developed to support all levels of procurement activity and to help manage the expectations of stakeholders, customers and suppliers alike. It facilitates best practice and consistency across the Council. The processes, templates and guides provide support to all individuals involved in procurement and provide one source of documentation, which can be updated on a continual basis with any changes in legislation, policy and promotion of best practice

The Procurement Journey is available on the Clackmannanshire Council website and Intranet. Additional further advice is available from the Procurement Manager.

1.7 Where a third party such as a consultant procures works, goods or services on the Council's behalf Heads of Service must take steps to ensure that the third party acts in accordance with Contract Standing Orders.

1.8 Any dispute or difference as to the interpretation of Contract Standing Orders or the Procurement Journey shall be decided by the Strategic Director of Partnership and Performance .

1.9 Members must conform to the Code of Conduct for Councillors.

1.10 Officers must comply with the requirements of Section 68 of the Local Government (Scotland) Act 1973 (Disclosure by Officers of Interests in Contracts).

- 1.11 Officers, members or agents of the Council, acting on the Council's behalf in relation to any contractual matter shall conduct themselves in such a manner that the independence and integrity of the Council's procedures are, at all times, maintained and are seen to be maintained.
- 1.12 Public procurement can be defined as the acquisition, whether under formal contract or otherwise, of goods, services and works from third parties by Clackmannanshire Council. The scope of Clackmannanshire Council procurement ranges from the purchase of diverse, routine supplies or services, to formal tendering and placing contracts for large infrastructure projects.
- 1.13 If Clackmannanshire Council employ private sector agents to undertake procurement on their behalf they must be required to apply the provisions of Contract Standing Orders when engaging in any procurement activity and are required to:
- Comply with The [Procurement Reform \(Scotland\) Act 2014](#) replacement or revision;
  - Comply with the provisions of clause 1.10 of CSO's as if they were an officer of the Council
  - Ensure clear allocation of responsibilities; and
  - To obtain where appropriate the agent's indemnity against any costs incurred as a result of its failure to comply with the legal framework on its behalf.
- 1.14 Procurement" for the purposes of Contract Standing Orders is not intended to cover funding agreements or forms of co-operation between Clackmannanshire Council and other bodies which are non-contractual. However, it should be noted that relationships between Clackmannanshire Council may constitute contracts for the provision of goods, services or works in certain circumstances. Even where funding agreements or other forms of co-operation are not contractual and do not constitute procurement, normal commercial disciplines should be applied wherever possible.
- 1.15 The scheme of financial delegation forms an integral part of Clackmannanshire Council's control environment. No officer of the Council should undertake or authorise a transaction for which they do not have authority. It is the responsibility of managers to ensure that they have the appropriate level of authority to carry out their duties based on a set of principles. Adherence to these principles will ensure that financial delegations are effective and adequately controlled.
- The principles are set out below:
- All delegations to Council officers come from the Chief Executive.
  - All financial delegations must be compatible with the scheme of delegation to Directors and can only be top down.
  - Only those Officers who have been delegated a budget or have formal delegated authority to commit expenditure can delegate further.
  - Officers do not have authority to commit or spend funds outside the scheme of delegation
  - No officer is permitted to authorise their own purchase order and authorise any subsequent invoice
  - Although the officer delegating remains accountable, delegation of authority implies that responsibility for managing associated risks has also been delegated.
- 1.16 Invoice authorisation is covered in financial regulations section: 15. Payment for Goods and Services and have separate levels of authority which may be greater than Purchase order and contract levels of authority. Authorised signatories can only sign invoices, for which documented approval on an authorised signatory form can only be given by Head of Service or Director.

1.17 Segregation of duties is an important control procedure. Therefore, the following should be observed:

- The order or contract should be signed by someone competent who understands the requirement and has been given the delegated authority to place orders.
- The goods should be received and checked for correctness.
- The checking and certification of invoices should be by a different competent authorised member of staff.
- The payment of invoices should be by another competent member of accounts staff.
- This separation will ensure that individuals are fully protected against misunderstandings.

## 2. Definitions

In these Contract Standing Orders the following words and expressions will have the following meanings assigned to them:

Authorised Officer	The officer designated by the Chief Executive to deal with and be responsible for the procurement process and the contract in question
Agent	Any external individual or organisation acting on behalf of the Council.
Aggregation	Combining buying power within the Council or with others in order to gain best pricing and service agreements from suppliers (usually will require a commitment of volume).
Contract	An agreement between the Council and any contractor made by formal agreement or by issue of an official order, for goods, materials, works or services
Council	Clackmannanshire Council.
CSO's	These Contract Standing Orders
Day	A calendar day unless otherwise specified.
Freedom of Information	In relation to public procurement, the Freedom of Information (Scotland) Act 2002 provides a general right of access to information about all public contracts and procurement activity held by Clackmannanshire Council, subject to certain conditions and exceptions
FTS	UK e-notification system called Find a Tender System .
FTS Tender	A formal sealed bid procurement process that must comply fully with the requirements of the Scottish Regulations because the total aggregated value exceeds the value thresholds detailed within the Scottish Regulations.
GPA	World Trade Organisation's Government Procurement Agreement (the GPA)
Head of Service	A Head of Service within Clackmannanshire Council and includes the Chief Executive and any Officer of the Council with delegated authority to undertake specific tasks relating to procurement and contracts. Any such delegated authority must be documented by the relevant Council Service and be acknowledged by the relevant Officer in accordance with the Scheme of Delegation.
In-house Provision	This is considered to be provision by an existing service or services within the Council of the Procurement Officers requirements where the Council would use its own resources prior to committing to external expenditure.
Joint Buying Arrangement (JBA)	Procurement protocol with Falkirk and Stirling Councils
Most Economically Advantageous Tender (MEAT)	The best value for money proposal based on the optimum combination of price and quality (whole life cost or total acquisition cost), not simply price alone
PQQ	The Pre-Qualification Questionnaire used to assess applications for inclusion in the shortlist of applicants who will be invited to submit a final proposal in every Dual Stage or Restricted Procedure Procurement.
Procurement	The function responsible for acquiring by purchase, lease or other legal means, the goods, works and services used by the Council to discharge its functions in an effective, efficient and economic manner. The procurement process spans the whole life cycle of the procured goods, works or services – from the initial concept and definition of business needs, through to the end of the useful life of and asset or the end of a service contract.

Procurement Journey	The Corporate Procurement Process
Public Contracts Scotland	<a href="http://www.publiccontractsscotland.gov.uk/">http://www.publiccontractsscotland.gov.uk/</a> This portal enables the Council to advertise all contracting opportunities, irrespective of value. Adverts which must be published UK e-notification system called Find a Tender System will also be submitted through the portal
RFQ	A Request for Quotation, where potential suppliers, providers or contractors submit legally binding proposals for Supplies, Services or Works without the need to complete a formal, sealed bid tender exercise.
Scheme of Delegation	Any Officer of the Council with delegated authority to undertake specific tasks relating to procurement and contracts. Any such delegated authority must be documented by the relevant Council Service and be acknowledged by the relevant Officer in accordance with Financial Regulations
Scottish Procurement & Commercial Category "A" Procurements	Develop and advise on a range of procurement activity and commercial decision-making, including implementing procurement policy, promoting best practice in project delivery, and setting up contracts and framework agreements for itself and the wider public sector in Scotland.
Scotland Excel Category "B" Procurements	The Centre of Procurement Expertise for the local government sector who develop and manage collaborative contracts for products and services where a strategic requirement is identified across our sector. They facilitate the development and sharing of best procurement practice and take an active role in ensuring that the needs of our sector are understood within the wider landscape of procurement reform
Scottish Regulations	<a href="#">Procurement Reform (Scotland) Act 2014</a> , replacement or revision and/or (as the context requires) the Local Government in Scotland Act 2003.
Services	Services as defined in the Scottish Regulations
The Single Point of Enquiry (SPoE)	Set up to provide suppliers to public sector or publicly funded bodies with an impartial point of contact where they can ask for advice or raise concerns about public procurement practices in Scotland.
Supplier Development Programme	<a href="http://www.sdpscotland.co.uk/home.aspx">http://www.sdpscotland.co.uk/home.aspx</a> which provides a range of specialist business support activities including the provision of advice, information and training support with the aim of assisting businesses to become more capable of accessing and competing for public sector contracts.
Supplies	Supplies as defined in the Scottish Regulations
Threshold	The total aggregated value limits as defined within: <ul style="list-style-type: none"> <li>• The Scottish Regulations in the first instance;</li> <li>• Clackmannanshire Council Contract Standing Orders, where the Scottish Regulations do not apply as a result of GP thresholds not being exceeded or no cross border interest being in existence.</li> </ul>
Works	Works as defined in the Scottish Regulations
1973 Act	The Local Government (Scotland) Act 1973.

## GENERAL INFORMATION

### 3. Contracting Authority

The Council is the Contracting Authority for the purposes of the Scottish Regulations and in respect of all Procurement activity. This means that all contracts are let on behalf of the Council as a whole and that no Service, Team, Unit or other part of the Council has the legal capacity to enter independently into any contract.

The Council remains the Contracting Authority when entering into collaborative contracts where the Council procures goods, services or works jointly with other public sector organisations but may not complete the procurement process.

In all tender documentation, reference should be made to the Council as the legal entity and not a particular Service, Team or Unit.

### 4. Date of Commencement

These Contract Standing Orders define the rules and procedures to be adopted when undertaking any procurement activity on behalf of the Council and are effective **from 1st June 2015**. All procurement processes commencing from that date will observe the rules contained within these Contract Standing Orders.

Notwithstanding the dates, these CSO's shall remain in full effect until such time as they are varied, replaced or superseded by a decision of the Council.

### 5. Extent and Application of Contract Standing Orders

These Contract Standing Orders are standing orders made by the Council under Section 81(2) of the Local Government (Scotland) Act 1973 for the purposes of making contracts for the supply of goods or materials or for the execution of works.

These Contract Standing Orders will apply to all contracts for the procurement of all Goods, Services and Works by the Council, including non-contract, ad hoc, one-off requirements, and they will be applied by any employee or agent of Clackmannanshire Council undertaking any procurement activity on behalf of the Council.

The Contract Standing Orders apply to all public procurement expenditure by the Council irrespective of the funding source and includes expenditure that has been devolved in any way.

The only exemptions to these Contract Standing Orders are those detailed in Section 6 - Exemptions from the Application of Contract Standing Orders.

### 6. Exemptions from the Application of Contract Standing Orders

CSO's apply to all contracts entered into by procurement officers. In some circumstances however, exceptions may be granted and the general approach to this is outlined below. All requests must be made in writing, following the procedure detailed in Appendix 1. identifying the grounds for the request. Approvals must also be recorded in writing and given prior to any action not in accordance with CSO's being taken.

Such exemptions are not necessarily exempt from the application of the specific requirements of the Scottish Regulations, where they apply or any other rule of law.

Lack of sufficient planning and / or internal process delays will not constitute special, exceptional or emergency circumstances.



The following are exempt from the application of Contract Standing Orders.

1. Any contract of direct employment
2. The acquisition, disposal, lease or rental of land, existing buildings, other immovable property, any planning gain pursuant to a legal agreement under section 75 of the Town & Country Planning (Scotland) Act 1997 or any other interest in land. These courses of action must be formally documented through the Council's Governance Service. This does not extend to include contracts where there is an obligation on the acquirer to deliver Works or Services as part of the agreement (for example Development Agreements)
3. Any contract for the provision of financial services, subject always to the exception reporting procedure set out in CSO's.
4. An immediate need is created by a sudden, unforeseen, real and demonstrable emergency that requires immediate action to protect the interests of the Council.
5. The Council reserves the right to reserve a contract to a supported business as a result of the Public Contracts (Scotland) Regulations 2015 ("the Regulations"), the criteria to participate in a Reserved Contract tender exercise has been amended to a new two-part test. The first part of the test is that the main aim of the bidding organisation must be to socially and professionally integrate disabled or disadvantaged people, and the second part is that at least 30% of the employees of the bidding organisation must be disabled or disadvantaged persons. A bidding organisation that meets both parts of the test is known, for the purposes of public procurement legislation, as a Supported Business.
6. The purchase of a named product required to be compatible with an existing installation as approved by the Head of Service.
7. There is a genuinely justifiable case to use an existing contractor/supplier to maintain continuity of supply or site experience
8. The purchase of goods or materials, the execution of works or supply of services for which the procurement officer considers that no genuine competition can be obtained
9. The arrangement of works, goods or services to be delivered through an In-House Service Provider.
10. Purchase of works, goods or services from a supplier under an acknowledged public sector agreement such as Scottish Procurement, Scotland Excel or a collaborative procurement agreement arranged through another public sector body. Where more than one arrangement is identified a mini competition should be used to determine to arrangement offering best value for money for the Council.
11. The instruction of advice from or services provided by Counsel or instructions to solicitors to act on the Council's behalf other than in connection with services that is of a transactional nature and can readily be made the subject of competition. Counsel or solicitors can only be engaged with the prior approval of the Strategic Director of Partnership and Performance
12. The purchase of a work of art or museum specimen as approved by the Chief Executive
13. The purchase of special education or social care contracts but only where the conditions of Section 12 of the Procurement Reform (Scotland) Act and The Public Contracts (Scotland) Regulations 2015 Part 2 Chapter 3 Section 7 apply

## **7. Reporting on Exemptions from the Application of Contract Standing Orders**

Advice on any proposed exemption from Contract Standing Orders should be sought from the Procurement Manager and / or the Strategic Director of Partnership and Performance

The appropriate Head of Service must record their reasons in writing in the form of an exception report for a decision, which must be submitted to the Strategic Director of Partnership and Performance.. The Strategic Director of Partnership and Performance will maintain a central register of exceptions.

The Strategic Director of Partnership and Performance will consult the Chief Finance Officer (S95) and Procurement Manager before taking any action that binds the Council. Any such exception shall be reported retrospectively in full to the next Resources and Audit Committee, including the reasons that fully justify the exception. A summary of CSO exemptions will also be provided as part of the Annual Procurement report to Resources and Audit Committee.

The appropriate Head of Service will normally be the Head of Service that holds the budget for the requirement. Where there is a technical or competency issue, the appropriate Head of Service will be the one with responsibility for the professional aspects of the requirement.

In such an event, the requirement to comply with the Scottish Regulations remains. A voluntary award notice without competition will be published in Public Contracts Scotland for any exception granted, and where the exemption granted is above threshold, the procedures leading to the award under the Scottish Regulations must be followed.

## **8. Best Value**

The Council has a statutory duty to secure best value, which includes a contribution to the achievement of sustainable development. Effective procurement is one of the tools available to deliver best value.

Best value in procurement is the optimum combination of price and quality identified through the Most Economically Advantageous Tender (MEAT). In this context

(i) Price means the whole life cost or total acquisition cost of any requirement, not simply the price paid on acquisition. The price may include the purchase price and the costs of the purchase to pay process, operation, maintenance and disposal; and

(ii) Quality means the measurable qualities of a proposal, and need not refer to a subjective view of high or low quality, but simply the quality that is right for the Council.

Every procurement requirement will be awarded based on the Most Economically Advantageous Tender. No procurement requirement will be awarded solely based on price or quality alone unless authorised by the Procurement Manager.

Advice on the application of whole life cost and / or total acquisition cost can be found in the Procurement Journey available on the Council website and Intranet. Additional further advice is available from the Procurement Manager

For the purposes of these Contract Standing Orders, the value of a contract must be calculated over the life of the contract. It is not permissible to disaggregate a contract in order to circumvent the requirements of Contract Standing Orders that relate to competitive tendering

## 9. Authority to Undertake Procurement Activity

All employees whose role involves any significant procurement activity will require to be familiar with Financial Regulations and these Contract Standing Orders and must adhere to these at all times when undertaking any procurement activity. All such employees will undertake appropriate training when requested to ensure a standards, compliance, governance and best practice procurement is undertaken. Additional and specialist training will be required in more specialist procurement roles.

Once the appropriate training has been completed, employees undertaking procurement activity as part of their job role will be:

- Certified as a “procurement officer or contract responsible officer”
- Approved to complete specific procurement activities
- Included on the Procurement Officer Authority List and will have the following levels of access in Public Contracts Scotland.

Auth User - read only access to authority areas of the site

Editor - create notices for publication but not publish.

Publisher - publish site notices

Post-box Opener - open online electronic submissions

- Required to sign a certificate indicating that they have read and understood Contract Standing Orders and accepted the requirement to comply with the Contract Standing Orders at all times

Employees who have not undertaken appropriate training, are not certified procurement officers and are not included on the Procurement Officer Authority List will not be permitted to undertake procurement activity unless supervised by a procurement officer.

## 10. Collaborative Procurement

Collaborative procurement arrangements are encouraged where these can demonstrate best value to the Council. Collaboration can take place through established consortia or through collaboration on one-off requirements.

Where these contracts have been agreed for use they must be used as a “First Point” and only where they are found to be unsuitable or can not provide best value should an officer seek to establish another arrangement

Where the Council takes the lead procurement role in such informal arrangements, these Contract Standing Orders will apply to each procurement process carried out under the collaborative arrangement.

Where another public sector organisation takes the lead procurement role, its Contract Standing Orders, or equivalent, will apply. All procurement activity carried out in collaboration is required to meet the demands of the Scottish Regulations.

### 10.1 Formal Collaborative Arrangements

Where the Council enters into formal joint buying or consortia purchasing arrangements, the related agreement and procurement strategy must protect the Council to a level proportionate to the risk involved, whilst at the same time providing the basis for a partnering approach and delivery of best value.

As a minimum, the agreement should clearly state:

- the nature and extent of the arrangement
- legal responsibilities
- arrangements for governance, accountability and dispute resolution

- the exit strategy
- the auditing arrangements
- the process for the induction of new partners.

## 10.2 Informal Collaborative Arrangements

Where the Council enters into informal and ad-hoc joint buying or consortia purchasing arrangements where no strategic agreement exists, the Council must be protected to a level proportionate to the risk involved, whilst at the same time providing for flexibility and delivery of best value. As a minimum this will typically be compliance to all procurement legislation and regulation such as the Scottish Regulations and the ability to demonstrate delivery of best value.

## 10.3 Council Requirements

Where the Council is not the lead authority in the procurement process, the lead authority or other public sector organisation is required to comply with all relevant procurement legislation and with its own internal rules in undertaking the procurement exercise. The appropriate Officer within the Council who is dealing with the contract is required to satisfy themselves, as far as it is feasible to do so, that this requirement is met.

In addition, where the Council is not leading the procurement process, Officers are required to ensure that a unique reference number should be sought from the Governance Service via the use of a procurement form 1. This reference must be noted on all documentation and the Governance Service shall maintain a list of Tenders for administrative and audit purposes.

Approval to accept a proposal or tender through a collaborative arrangement must follow the process set out in CSO section - Approval to Accept & Award of Contracts. No contract can be awarded for the Council before approval to accept has been sought and obtained, as outlined in CSO section - Approval to Accept & Award of Contracts. This will be done via the use of a procurement form 2

Tender award letters will be issued from Legal and signed by an appropriate authoriser.

# 11. Part B Services

A key change to the public procurement rules is that the former distinction between Part A and Part B service contracts has been abolished and a new 'light-touch' regime has been introduced for certain services. This includes health and social care services

## Scope and General Guidance

The Light Touch Regime (LTR) outlines specific rules for certain service contracts, that are generally of lower interest to cross-border competition. These services are specified in [Schedule 3 to the Public Contract \(Scotland\) Regulations 2015](#). The following guidance does not relate in any way to Social Care, Health or Utilities procurement exercises, only to the other range of service areas covered by the Procurement Journey that include amongst others, services such as Education Services, Security Services and Postal Services.

Organisations must determine on a case by case basis whether they expect that there will be bidders from other states interested in a particular procurement and take this into consideration when deciding whether the LTR (particularly in respect of using appropriate advertising) is applicable.

A higher threshold value applies to these defined light touch services and when commencing a relevant procurement exercise, Procurement Officers must also assess the expected value (including any extensions) to determine what rules will apply to the process:

For contracts at or above the threshold of £663,540, the LTR will apply in line with regulations 74-76 of the Public Contracts (Scotland) Regulations 2015.

For contracts valued between £50k and £663,540, the Procurement (Scotland) Regulations 2016 will apply.

In all cases, Procurement Officers must have regard to the relevant Statutory Guidance and the requirements of the Procurement Reform (Scotland) Act 2014.

#### **Procedures at or above Threshold (£663,540)**

Where a relevant service contract is valued at or above the Threshold of £663,540, Procurement Officers must meet all of the LTR provisions laid out. Specifically, they must:

- Publish a Contract Notice or Prior Information Notice (PIN) if used as a call for competition (unless it is a direct award without competition) on Public Contracts Scotland (PCS) for onward transmission
- Publish a Contract Award Notice (these can be grouped quarterly)
- Apply reasonable and proportionate time limits to any stages of the procurement
- Assess successful bidder(s) to identify any instances where mandatory exclusion grounds may apply.

There is no set procedure laid down for the conduct of LTR procurement processes other than the requirements above and Organisations are largely free to use the tools, techniques and procedures of their choice when following the LTR. Importantly, a procedure must be developed by procurement officers, set out in the contract notice and subsequently followed. The approach must be determined on a case-by-case basis and in each instance be proportionate and appropriate to the scale and type of procurement process being conducted.

The procedure should cover the essentials required including information such as timescales, evaluation methodology and any scope for change / change management procedures. It must be developed in line with any internal governance requirements and in accordance with the principles of transparency and equal treatment.

While Organisations are largely free to use the tools, techniques and indeed procedures of their choice when following the LTR, you must use an approach that is proportionate and appropriate to the scale and type of procurement process being conducted.

Procurement Officers must ensure that any award is made on the basis of MEAT and not based on price alone. Furthermore it remains necessary for all procedures to include fundamental considerations such as fair work matters, community benefits and sustainable procurement.

#### **Regulated Procedures between £50k and £663,540**

Where a relevant service contract is valued below the Threshold of £663,540, but at least £50k, Procurement Officers must conduct their procurement process fully in line with the Procurement (Scotland) Regulations 2016 and the Procurement Reform (Scotland) Act 2014.

Route 2 of the Procurement Journey provides full guidance in line with these requirements and should be followed by Procurement Officers conducting this category of procurement exercise.

To minimise the risk of challenge on the basis that the procurement process could be considered unreasonable or anti-competitive, the procurement of Social Care Services, should still where appropriate be treated as normal Services and a tender procedure undertaken. This ensures that competition, openness, fairness, transparency and accountability can be clearly demonstrated.

For the avoidance of doubt, all instructions for the provision of Legal Services out with Resources and Governance must be referred to and approved by the Head of Legal Services prior to the commencement of a procurement process or appointment of advisors.

## 12. Council Policy Objectives

The Council can use its buying power to help it achieve its policy objectives. The Council's policy objectives will be considered in every procurement process and, where appropriate, incorporated into the contract strategy, evaluation model and terms and conditions of contract.

The Council has a clear vision to make Clackmannanshire a better place to live and work by having better services, better opportunities and better communities. The Council aims to provide a range of services, activities and facilities which make a difference to people's health and well being, to sustaining economic growth and to the strength and vibrancy of communities.

To achieve these outcomes, the Council works with local people and groups, as well as many partners in the public, business and voluntary sectors. The Council will focus resources on its priorities given the challenging financial environment and its commitment to providing best value for money for the people of Clackmannanshire.

Clackmannanshire offers great potential for individuals, families, businesses and employers. The Council wants to help improve life chances for individuals and families, as well as create a more positive environment for local businesses and employers. The Council will invest to create the right environment for everyone in Clackmannanshire to succeed and reach their maximum potential by: proactively supporting new businesses and existing businesses by reducing bureaucracy and red tape. The Council will while aim to maximise the local benefit of all monies spent through its Procurement Contract policies and protocols to assist as many local businesses as possible to obtain Council contracts.

The use of community benefit and wealth building clauses will be incorporated in tenders as the default position unless there are explicit reasons why this is not appropriate.. This will provide a more systematic picture of the social and community benefits that can be delivered both directly and through the supply chain

Where applicable employment practices and "workforce" matters, including payment of the living wage, shall be considered in the course of a public procurement exercise.

Where possible the Council will reserve contracts to supported businesses without having to resort to full tendering exercises.

**The Council and the Fair Work Convention recognise pay as a clear way that an employer can demonstrate a commitment to their workforce alongside wider Fair Work First criteria.**

Payment of the real Living Wage to workers on public contracts can be applied by all Scottish public contracting authorities and It is possible to require the real Living Wage to be paid to workers on public contracts, where:

- Fair Work First practices, including payment of the real Living Wage, is relevant to how the contract will be delivered;
- it does not discriminate amongst potential bidders;
- it is proportionate to do so; and
- the contract will be delivered by workers based in the UK.

## 13. Sustainable Procurement

Sustainable Procurement contributes to the achievement of environmental, economic and social outcomes (as defined in Clackmannanshire's Sustainability and Climate Change Strategy) through procurement processes.

All procurement shall be carried out in accordance with the sustainable procurement policy where relevant and proportionate.

Sustainable procurement outcomes should be incorporated in a way which does not result in the inappropriate exclusion of potential suppliers, or in anti-competitive behaviour on the part of the Council.

Sustainable outcomes cannot be used as the sole criteria for award of contract and must be relevant and proportionate. It is recommended that not more than 10% of the total available score is allocated to this section. Further guidance and template questions can be found in the Procurement Journey.

Where appropriate Government Buying Standards (formerly known as Buy Sustainable Quick Wins) should be used as they are designed to make it easier for buyers to buy sustainably. They include:

- Official specifications that all buyers must follow when procuring a range of products;
- Information about sustainable procurement and how to apply it when buying;

## 14. Freedom of Information (Scotland) Act 2002

The Freedom of Information (Scotland) Act 2002 was introduced by the Scottish Parliament to ensure that people have the right to access information held by Scottish public authorities. The 2002 Act states that any person can receive information that they request from a public authority, subject to certain exemptions such as protection of personal data and commercial interests, or national security.

If a request for information is refused or ignored, people have the right to ask the Council to review their decision. If they are still unhappy with the response they have the right to appeal to the Commissioner, who will investigate their case. The Commissioner has powers to force the Council to release any information that is not exempt under the Act.

There is a presumption that contractual information should be made available for disclosure if requested. However, Officers should be aware of the potentially anti-competitive implications of disclosing detailed contractual information in the period around a procurement process taking place and in particular the provisions of the Scottish Regulations prohibit disclosure of information during a live procurement process.

Officers should seek advice from Resources and Governance if FOIs are received during a procurement process and at any other time if they are unsure if information is disclosable.

## **15. Appointment of Agents to Act on Behalf of the Council**

It is a condition of appointment that any consultant, architect, surveyor, engineer or any other external agent appointed to act on behalf of the Council and / or who is responsible for completion of a procurement process and / or the supervision of a contract on the Council's behalf will:

- Comply in full with the requirements of the Scottish Regulations, the Council's Contract Standing Orders, all relevant legislation and all Council policies.
- Provide evidence that they are trained in and competent in public procurement.
- Ensure that any modification to the procedure for opening tenders is approved in advance by the Governance Manger
- Produce to the appropriate Head of Service or nominated Council Officer on request all relevant records and documentation related to the contracted service and / or contract being supervised on behalf of the Council.

On completion of the contract service and / or contract, provide to the appropriate Head of Service all relevant records and documentation related to the contracted service and / or contract supervised on behalf of the Council.

Every appointment of a consultant, architect, surveyor, engineer or any other external agent to act in any capacity on behalf of the Council is required to have a contract condition that ensures that copyright in respect of anything created or completed by that external agent in relation to the appointment will be the property of the Council, or that the consultant grants an unconditional royalty free licence to use the documents.

Where issues arise in respect of copyright, Officers are required to seek guidance and advice from Legal Services.

## **16. Breach of Contract Standing Orders**

### **16.1 Reporting and Disciplinary Action**

Any non-compliance to or breach of Contract Standing Orders will be reported immediately on discovery to the Strategic Director of Partnership and Performance.

Failure to report any known non-compliance or breach may result in disciplinary action being taken against the employee who failed to report the non-compliance or breach.

The Strategic Director of Partnership and Performance may authorise an investigation where deemed necessary. The investigation findings will be reported to the Chief Finance Officer (S95), Procurement Manager, the relevant Head of Service, the Chief Executive and the Resources and Audit Committee as appropriate.

If there is a recommendation for disciplinary action to be taken, where a serious or repeated breach of Contract Standing Orders is identified, it will be referred to the appropriate Line manager

### **16.2 Contractual Implications**

Any non-compliance or breach of Contract Standing Orders can seriously impact upon the legal standing of the contract and can increase the ability of unsuccessful bidders / tenderers to seek redress through the courts.

Furthermore, officers are reminded that a third party is protected under section 81(4) of the 1973 Act where a contract is entered into regardless of whether the officer had authority, or where the procurement process has not been followed. It is therefore imperative that officers should not accept any quotes, offers or tenders except in accordance with Contract Standing Orders.



## **17. Review of Contract Standing Orders**

Contract Standing Orders will be reviewed and updated as required by changes to procurement legislation and regulation or on an annual basis where there has been no change to procurement legislation and regulations. Until such time as CSO's have been amended or reviewed by Council in accordance with this requirement, these CSO's will apply to all procurement processes undertaken.

Contract Standing Orders may be varied or revoked by the Council at any time following a resolution passed upon notice duly given in terms of those Standing Orders (not Contract Standing Orders) that regulate the meetings and proceedings of the Council.

Whilst changes to Contract Standing Orders will require the approval of Council, changes to the Corporate Procurement Processes and any changes in legislation may be implemented by the Procurement Manager without further reference to Council.

## **LEGAL FRAMEWORK**

### **18. Compliance to Scottish Procurement Legislation and Contract Standing Orders**

As a result of the UK's exit from the European Union on 31 December 2020, various deficiencies have arisen within domestic legislation. These have been addressed through a number of different pieces of amending legislation which provided the necessary technical changes to the relevant legislation – namely  
the Public Contracts (Scotland) Regulations 2015 (PC(S)R 2015),  
the Concession Contracts (Scotland) Regulations 2016 (CC(S)R 2016),  
the Utilities Contracts (Scotland) Regulations 2016 (UC(S)R 2016),  
the Procurement Reform (Scotland) Act 2014 (PR(S)A 2014) and  
the Procurement (Scotland) Regulations 2016 (P(S)R 2016).

The Scottish Regulations take precedence over the Contract Standing Orders and any local procurement arrangements put in place must comply with these. In the event that a procurement officer is unsure of the regulations that apply, they should contact Procurement Manager in the first instance.

The Scottish Regulations also identify specific monetary thresholds at which the full processes and procedures detailed within the Scottish Regulations apply. These thresholds are revised every two years, and procurement processes that involve an anticipated spend above this level are commonly referred to as Regulated and "above threshold" contracts and by law must follow the appropriate procurement Journey.

Every procurement process commenced and subsequent contract entered into or order placed by or on behalf of the Council will comply fully with the requirements of the Scottish Regulations and these Contract Standing Orders. Therefore every procurement process undertaken on behalf of Clackmannanshire Council will comply with the requirements of the procurement legislation where such requirements apply.

## 19. EU Directives

These no longer apply due to the UK's exit from the European Union (EU).

## 20. Case Law

There is a growing body of case law relating to public procurement, as public policy and regulation has eased access to legal remedies for unsuccessful applicants for public contracts. Some of this case law has had a significant impact on procurement procedure.

Contract documentation is held by the Procurement Manager and is available on "The Procurement Journey" This is updated to meet new legal requirements arising from case law. Therefore any Procurement Officer undertaking procurement activity is required to use only the current version of the model documents, as available in The Procurement Journey.

Where the contract subject matter is a contract for Works, Procurement Officers should use the most up to date standard form building contracts issued by Scottish Building Contracts Committee, with any Schedule of Amendments as appropriate for the type of contract. Officers should consult with Legal Services if they are unsure of the relevant contract terms.

## 21. Bribery Act

As of 1 July 2011, the Bribery Act 2010 came into full force and effect, consolidating and updating the previous provisions under the Public Bodies Corrupt Practices Act 1889, the Prevention of Corruption Act 1906 and the Prevention of Corruption Act 1916.

Under the Bribery Act 2010 (the "2010 Act"), there are a number of offences which are created and these are summarised below:

### (a) Bribing another Person

There are two cases set out under the 2010 Act, which are described as Case 1 and Case 2.

A Case 1 offence arises where a person offers, promises or gives a financial or other advantage to another person with the intention to induce that person to improperly perform a relevant function or activity or to reward a person for such improper performance of such a function.

A Case 2 offence arises where a person promises or gives a financial advantage to another person and that person knows or believes that the acceptance of the advantage would itself constitute the improper performance of a relevant function or activity.

For the purposes of the 2010 Act, a relevant function includes the exercise of any function of a public nature that are required to be performed in good faith or performed impartially. For the avoidance of doubt, this includes any activities carried out by any officers under the Council's Contract Standing Orders.

### (b) Being Bribed

There are four cases set out under the 2010 Act, which are described as Cases 3,4,5 and 6.

A Case 3 offence arises where an officer requests, agrees to receive or accepts a financial or other advantage intending that a relevant function or activity should be performed improperly (whether by that officer or another officer).

- A Case 4      offence arises where an officer requests, agrees to receive or accepts a financial or other advantage and by doing so this constitutes the improper performance of that officer of a relevant function or activity.
- A Case 5      offence arises where an officer requests, agrees to receive or accepts a financial or other advantage as a reward for the improper performance (whether by themselves or another person) of a relevant function or activity.
- A Case 6      offence arises where, in anticipation of or in consequence of an officer requesting, agreeing to receive or accepting a financial or other advantage, a relevant function or activity is performed improperly by the officer or by another officer at that persons request or with their acquiescence.

Each of these offences occur where the advantage arises directly or through a third party, or where the benefit is for the officer or another person. In Cases 4,5 and 6, it does not matter whether the officer knows or believes that the activity in question is improper.

Should any Officer become aware of any potential contraventions of the Bribery Act 2010, they should report their concerns to their Head of Service and the Monitoring Officer. Further guidance on the 2010 Act is available from the Council's Governance Service.

All officers should note that under the Scottish Regulations, should any potential supplier have been convicted of offences under the 2010 Act (or the previous legislation), or similar offences of dishonesty or fraud, then it is a legal requirement that they must be de-selected from the procurement process. Should this matter arise in the course of a procurement process, the procurement officer should seek guidance from Resources and Governance in the first instance.

## **22. TUPE the "Transfer of Undertakings (Protection of Employment) Regulations 2006" as amended by the "Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014".**

The TUPE Regulations apply to contracts in respect of the provision of services where there are an organised grouping of employees whose principal purpose is carrying out that particular service on behalf of the Council (whether directly or through a contractor) and either:

- (i) the service ceases to be provided by the current contractor and are instead carried out by a subsequent contractor;
- (ii) the service ceases to be provided by the current contractor and are instead taken on by the Council; or
- (iii) the service ceases to be provided directly by the Council and is put out to tender through a procurement process

In a practical context, where there is an incumbent service provider, should the service provision change, the assigned employees of that service provider would transfer to the incoming provider as a consequence of the TUPE Regulations. As a result, during the procurement process, some bidders may qualify their tenders in respect of any liabilities that may arise under the TUPE Regulations, which may cause the Procurement Officer difficulties in evaluating tenders. The TUPE Regulations also apply in circumstances where an external service is proposed to cease and be delivered through In-house Provision. Procurement Officers should also consider the application of TUPE where service contracts are put out to tender for the first time.

Should a Procurement Officer identify that the TUPE Regulations may apply in the course of a procurement exercise or through proposals for In-house Provision, the officer should seek guidance from Resources and Governance in the first instance. Procurement Officers should refer to the Procurement Journey for further detailed guidance.

## 23. State Aid

### The UK's exit from the European Union

The UK and European Union have agreed to terms on a Trade and Cooperation Agreement (TCA), which came into force on 1 January 2021. This agreement contains provisions related to subsidy control.

The EU State aid regime was effectively revoked from UK law from 1 January 2021, therefore any reference to State aid should be removed from all websites/offer letters etc.

We draw your attention to the guidance issued by DBEIS: [Complying with the UK's international obligations on subsidy control: guidance for public authorities](#). Please be aware this is a living document and may be updated by BEIS as time progresses.

## PLANNING A PROCUREMENT PROCESS

Detailed advice is available within the Corporate Procurement Policy "the procurement journey."

## 24. Contract Value and Aggregation

The calculation of the estimated value of a procurement within the meaning of Contract Standing Orders shall be based on the total amount payable, net of VAT, including any form of option and any renewals of the contract.

The choice of the method used to calculate the estimated value of a procurement may not be made with the intention of excluding it from the scope of this CSO. Thus, no works project or entirety of supplies and/or services may be subdivided with the effect of preventing its coming within the scope of this CSO, unless justified by objective reasons.

This estimate must be valid at the moment at which the call for competition is sent, or, in cases where such notice is not foreseen, at the moment at which the Council commences the contract award procedure, in particular by defining the essential characteristics of the intended procurement.

With regard to framework agreements, the value to be taken into consideration shall be the maximum estimated value net of VAT of all the contracts envisaged for the total term of the framework agreement.

Procurement Officers are required to consider and include the value of similar requirements in other parts of the Council when calculating a contract value. There are no exceptions to the application of the aggregation rule and this obligation is imposed on the Council under the Scottish Regulations.

## 25. Thresholds

See the table below for the processes to be adopted according to the value of the contract:  
Detailed advice is available within the Procurement Journey.

Value <i>(calculated over a four year period where appropriate)</i>	Procurement Journey	PCS Notice and place of published
<b>Less than £10,000</b>	None	Best Value evidence required (e.g. 3 competitive quotes)
<b>£10,000 - £49,999</b> Supplies/Services/Works (including Health & Social Care contracts where decision taken to seek quotes) <sup>1</sup> (Unregulated procurement)	Procurement Journey Route 1 Use Request for Quick Quote	Publication in Public Contracts Scotland Select this option to create a notice for publication on Public Contracts Scotland only. This type of notice will NOT be published in the UK e-notification service Find a Tender.
<b>£50,000 - £177,896.99<sup>2</sup> (excl. of VAT at 20%)</b> <b>(inc. of VAT £213,476.99)</b> Supplies & Services Regulated Procurement <sup>3</sup>	Procurement Journey Route 2 Use ITT Goods & Services from £50,000	Publication in Public Contracts Scotland Select this option to create a notice for publication on Public Contracts Scotland only. This type of notice will NOT be published in the UK e-notification service Find a Tender.
<b>£50,000 - £4,447,446.99 (excl. of VAT at 20%)</b> <b>(inc. of VAT £5,336,936.99)</b> Works Regulated Procurement <sup>4</sup>	Procurement Journey Route - See Construction Procurement Handbooks Use ITT Works from £50,000	Publication in Public Contracts Scotland Select this option to create a notice for publication on Public Contracts Scotland only. This type of notice will NOT be published in the UK e-notification service Find a Tender.
Health and Social Care - where decision is taken to tender <sup>5</sup> <b>£50,000 to £552,949.99 (excl. of VAT at 20%)</b> <b>(incl. of VAT £663,539.99)</b> Regulated Procurement	Procurement Journey Route 2 and also see – Care & Support Services Use ITT Goods & Services from £50,000	Publication in Public Contracts Scotland Select this option to create a notice for publication on Public Contracts Scotland only. This type of notice will NOT be published in the UK e-notification service Find a Tender.
<b>From £177,897 (excl. of VAT at 20%)</b> <b>(inc. of VAT £213,477)</b> Supplier & Services Higher Value Regulated Procurement	Procurement Journey Route 3 Use ITT Goods & Services from £50,000	Publication in PCS with onward transmission to UK Find a Tender service. Select this option to create a notice for publication on Public Contracts Scotland and for onward transmission for publication in the UK e-notification service, Find a Tender.
<b>From £4,447,447 (excl. of VAT at 20%)</b> <b>(inc. of VAT £5,336,937)</b> Works Higher Value Regulated Procurement	Procurement Journey - See Construction Procurement Handbooks Use ITT Works from £50,000	Publication in PCS with onward transmission to UK Find a Tender service. Select this option to create a notice for publication on Public Contracts Scotland and for onward transmission for publication in the UK e-notification service, Find a Tender.
Social and Other Specific Services (including Health & Social Care and Education) <b>From £552,950 (excl. of VAT at 20%)</b> <b>(incl. of VAT £663,540)</b> Higher Value Regulated Procurement	Procurement Journey - See Care & Support Services and Additional Resources Light Touch Regime Use ITT Goods & Services from £50,000	Publication in PCS with onward transmission to UK Find a Tender service. Select this option to create a notice for publication on Public Contracts Scotland and for onward transmission for publication in the UK e-notification service, Find a Tender.

<sup>1</sup> Subject to Council Standing Orders Health & Social Care contracts can be directed awarded up to £552,949.99 (excl. of VAT at 20%) (incl. of VAT £663,539.99) in terms of Section 12 of the Procurement Reform (Scotland) Act 2014.

<sup>2</sup> From 01/01/2022 VAT must be included when calculating the estimated contract value to decide whether or not the GPA thresholds are met or exceeded. Values provided will be updated from 01/01/2024

<sup>3</sup> Regulated in terms of the Procurement Reform (Scotland) Act 2014 and the Procurement (Scotland) Regulations 2016

<sup>4</sup> Follows internal decision by Clackmannanshire Council to treat works as a Regulated Procurement from £50,000

<sup>5</sup> See Footnote 1. Health and Social Care Contracts are those with the following CPV codes - 75200000-8; 75231200-6; 75231240-8; 79611000-0; 79622000-0 (Supply services of domestic help personnel); 79624000-4 (Supply services of nursing personnel) and 79625000-1 (Supply services of medical personnel) from 85000000-9 to 85323000-9; 98133100-5; 98133000-4; 98200000-5; 98500000-8 (Private households with employed persons) and 98513000-2 to 98514000-9 (Manpower services for households, Agency staff services for households, Clerical staff services for households, Temporary staff for households, Home-help services and Domestic services).

## 26. Contract Strategy

Officers are required to select a contract strategy for all procurements that are over 50k in value over the life time of the requirement. Market research is required, which should not be limited to sales literature from potential suppliers. This may include references, trade journals or third party company market research

The contract strategy should consider a range of commercial and technical considerations, including:

- Is there an in-house provider capable of undertaking the work?
- If there is an in-house provider have they been offered to opportunity to take up the work?
- The value of the contract relative to the input from Council Officers and suppliers
- Roles and responsibilities for the administration and evaluation of the RFQ / Tender
- The variety, positioning and number of potential suppliers
- Market maturity, stage of development and technical innovation
- The level of supplier investment required by the contract
- The minimum requirements of the prospective supplier
- The commercial attractiveness of the contract and any collaborative opportunities
- The scope for the achievement of additional policy outcomes within the contract
- The suitability of the available procurement procedures
- The most appropriate Price / Quality ratio to deliver best value for the requirement
- Past experience of sourcing and contractual difficulties with similar goods, services or works
- The measurement of effective contract performance
- Contract management resource requirements, roles and responsibilities

Where there is an in-house provider capable of doing the work they must in the first instance be given the opportunity to take up the work.

If the in-house provider does not take this up then the requirement will be subject to the appropriate procurement journey.

Where direct competition is deemed appropriate and the in-house provider is competing, the in-house provider must be given the opportunity to compete on equal terms with external providers.

The following will be considered essential elements of competition irrespective of whether direct or indirect:

- staff and their representatives will be consulted
- performance standards and monitoring strategies will be developed
- cost information will be properly identified and collected
- innovation will be encouraged
- social values and the Council's policy objectives will be protected
- probity, accountability and competitive neutrality will be ensured
- the responsibilities and accountabilities of all parties must be explicit

Services already subject to direct competition will be continually reviewed against the requirements of this policy, to ensure that the manner in which the service is provided remains the most appropriate to deliver Best Value.

These considerations should be reflected in the finalised Quote / Tender documentation.

## 27. Procurement Procedure Selection

The Scottish Regulations specify the procurement procedures that can be undertaken. The Restricted Procedure and the Open Procedure are the most commonly used procedures, and the Restricted Procedure is recommended for the majority of requirements.

When undertaking any Open Procedure, it may be advisable to seek to limit the number of proposals submitted by identifying minimum criteria applicable to the contract.

### 27.1 Using an Open or Single Stage Procedure

When an Open or Single Stage procedure is used, all organisations and businesses expressing an interest in the contract opportunity are entitled to receive the Tender documents. They are entitled to submit a proposal / tender, and to have their submission fully evaluated.

An Open or Single Stage procedure should be used when no pre-qualification is required and no PQQ or SPD is issued for completion.

The risks of securing a supplier through this method should be fully evaluated in advance of the commencement of the procurement exercise. Risk mitigation measures should be reflected in the Tender Questionnaire, in any minimum criteria adopted, and in the evaluation criteria.

### 27.2 Using a Restricted or Dual Stage Procedure

When a Restricted or Dual Stage Procedure is used, all organisations and businesses expressing an interest in the contract opportunity are entitled to receive a Pre-Qualification Questionnaire (PQQ) or SPD. They are entitled to submit their PQQ or SPD and to have it fully assessed.

The PQQ or SPD is used to identify a bidder's suitability to perform the contract, and the assessment identifies the most appropriate bidders for the purposes of establishing a list of applicants who will be issued with RFQ / Tender documents.

The following may be used as selection criteria at PQQ or SPD stage, but cannot be used for assessment at any other stage in the Tender:

- Bidder's experience
- Staffing / manpower levels
- Equipment
- Ability to perform the contract by the anticipated deadline

Procurement Officers should take care to ensure that the criteria used to assess PQQs or SPD's and to evaluate subsequent proposals are different: the same criteria are not permitted to be considered and applied twice within one procurement process.

Applicants who have been unsuccessful at PQQ or SPD stage are required to be notified of their rejection at that time. Applicants are also entitled to feedback on the assessment of their PQQ or SPD in the same way as unsuccessful tenderers are entitled to receive written feedback and a debrief, should it be requested.

A Restricted or Dual Stage Procedure can only be used where there is a need for pre-qualification and a PQQ or SPD is issued and completed. PQQs or SPD's are assessed to arrive at a shortlist of applicants who will be invited to submit proposals. It is imperative that any process for limiting the number of candidates inviting to tender is set out in the PQQ or SPD and if a Restricted Procedure, within the Contract Notice. A Restricted or Dual Stage Procedure is to be used in conjunction with a PQQ or SPD, and is not used where there is no requirement to pre-qualify, and no PQQ or SPD is issued or used.

### 27.3 Alternative Procedures

Other procedures are available within the Scottish Regulations. These are significantly more complex and can only be applied in specific circumstances. Guidance must be sought from the Procurement Manager on the use of these procedures due to the very strict rules relating to their use.

## **28. Timescales**

All Tender processes subject to the Scottish Regulations are required to respect the statutory timescales which must be followed on all occasions. These are minimum timescales and should be used as a starting point for planning an appropriate timetable and having regard to the complexity of the requirement.

The timescale for advertising an opportunity below the threshold to the deadline for the receipt of completed proposals should reflect the complexity of the requirement, but should be sufficient for the supplier to make a considered response and must be undertaken in a manner which ensures integrity of the process with appropriate timescales.

Pre-planning is critical for all purchasing. In considering how much time is required preparation time should be allowed to consider the amount of time and resources required to draft the relevant technical and legal documents.

Account should be taken of internal procedural requirements such as approvals and despatch processes as well as appropriate timescales to allow contractors to fully prepare their responses.

Different timescales will apply according to the nature and complexity of the purchase being made. A complex requirement that falls below threshold should be subject to a minimum 21 day period between advertisement and return.

## **29. Framework Agreements**

Framework Agreements are most suited to contracts where:

- The Council can benefit from on-going competition throughout the contract term
- The quantity to be purchased is variable and / or unknown over the contract period
- There is a significant and competitive market to provide the required good, services or works

Framework Agreements may be awarded to a sole supplier or to 3 or more suppliers. Where multiple suppliers are awarded a contract, the process of selecting one supplier at the point of purchase should be clearly stated in the Tender documentation.

Framework Agreements are generally limited to a maximum contract period of four years. Further guidance is available from the Procurement Journey.



## UNDERTAKING A PROCUREMENT PROCESS

### 30. Contract Monitoring and Reporting – Proposed Procurement Requirement

ALL Contracts regardless of value must be supported with a Clackmannanshire Council Purchase Order Number. Orders **must** be provided to the supplier in advance of any work, goods or services being provided to the Council and all orders and internal requisitions must be approved by an authorised signatory. **NOT when you receive an invoice**

All Contracts with a value in excess of £1,000 must be set out in writing.

Contracts or orders with a value below £1,000 may be agreed verbally but then must be supported with a Clackmannanshire Council Purchase Order Number to enable Heads of Service to demonstrate what has been agreed between the parties in the event of legal proceedings following on from a dispute or in the event of their being required to demonstrate the terms on which the contract was agreed for the purposes of audit. In this case the Purchase Order must contain the wording "Confirmation Order"

All proposed procurement requirements with a value of over £10,000 will require a Procurement Form 1. This RFQ/tender authorisation must to be completed/submitted by the contract responsible officer, before any tender process commences or to take part in any national or collaborative contract. This includes SLA arrangements with other Local Authorities. Services must ensure an approval signatures prior to submission and any advertising or contact with potential suppliers. This must be completed for all contractual arrangements with a value of 10K or above over the lifetime of the requirement.

A Procurement Form 2. The contract Award Report requires to be completed/submitted, after the tender evaluation has been completed or before a direct award can be made. Services must ensure an approval signature prior to submission to the Service Accountant for financial sign off and then the legal Officer who will issue a tender award letter. No contract can take place with the successful supplier until all documentation has been completed and an official Purchase order and award letter is sent to the supplier.

### 31. Advertising

All contract opportunities valued at over £10,000 are required to be advertised through Public Contracts Scotland as detailed in the Procurement Journey.

Contract opportunities below £10,000 in value should be considered for advertising where this will support the Council's policy objectives and the exercise can demonstrate best value as detailed in the Procurement Journey. Three quotes are required for all requirements above £1,000 and £10,000

### 32. Issuing Documentation

Prior to issuing a tender document a unique reference number should be sought from Legal (2/6/\*\*\*\*). This reference must be noted on all documentation and advertisements. The Governance Service shall maintain a list of Tenders for administrative and audit purposes.

All tender documentation must be sent out Using Public Contracts Scotland Portal. Where the files or drawings are too large to be submitted through the portal they must be sent within 5 days of any request for such being received by the appropriate Officer.

### **33. Return and Opening of Tenders and Quotes**

The Public Contracts Scotland tender Post-box must be used as an online submission facility to allow the officer to receive responses from suppliers electronically in a secure environment.

Responses are submitted through the portal and held in the secure Post-box until the deadline for responses has expired. Two staff from Resources and Governance and a nominated Officer(s) then unlock the Post-box to access the submissions.

The Post-box can be used for receipt of completed tender documents in an open or single stage procedure or completed PQQs in a restricted or dual stage procedure. It can also be used for the second stage in a restricted dual stage procedure.

A full audit trail is kept of all access to the Post-box and a complete record of all supplier submissions are stored.

Where exceptional circumstances require an email submission then completed proposals must be returned to [procurement@clacks.gov.uk](mailto:procurement@clacks.gov.uk) by the closing time and date.

The tender proposals sent by email must not be opened until after the closing time and date as per the notice in Public Contracts Scotland

At least two authorised officers, one from Resources and Governance, must be included on the authorised openers in Public Contracts Scotland

No officer who has a direct or indirect pecuniary interest in the contract may open any of the proposals.

Proposals found to be unsigned, incomplete or submitted by an organisation will not be considered.

### **34. Late submission of Tenders and Quotes Proposals**

Any proposal received after the date and time for receipt of proposals may be considered only if no other proposal has been opened or received and if approved by the Strategic Director of Partnership and Performance where:

- There are good and sufficient reasons for the late receipt of the proposal; and
- The late receipt and acceptance does not place any bidder at an advantage over any other bidder.
- Tenders submitted once the deadline has passed unless the Council is satisfied that there is a technical issue with the Public Contracts Scotland system beyond the control of the tenderer

No one other than the Strategic Director of Partnership and Performance, or an officer with formal delegation from him, can approve acceptance of proposals received after the stipulated date and time.

Any proposal received after the opening procedure has commenced or rejected under any of the provisions above will be immediately returned to the bidder by the Strategic Director of Partnership and Performance. Proposals may be opened to ascertain the name and contact details of the bidder, but no further details can be recorded or disclosed.

## **35. Confidentiality of Tenders and Quotes Proposals**

During the period between the opening of proposals and / or tenders and the award of a contract, all details of the proposals submitted must remain secret and be treated as confidential. It is the responsibility of those involved in the process to ensure complete confidentiality during this period.

Where the contract value requires Council Approval, the evaluation panel may disclose the outcome of the exercise to the appropriate Strategic Director that the contractual requirement relates to. All reports must be put to Council as exempt reports under the section 50A(2) of the 1973 Act.

The requirement for confidentiality during this period applies to any external agent acting on behalf of the Council. Failure to meet the confidentiality requirements will be reported to the Strategic Director of Partnership and Performance and / or the appropriate committee and may result in disciplinary action.

## **36. Evaluation of Tenders and Quotes Proposals**

Evaluation of proposals must be based on quality and whole life cost or total acquisition cost.

Evaluation of proposals must be completed using the Price / Quality weighting and individual evaluation criteria and scorings agreed during the planning stage completed prior to the commencement of the process and detailed in contract advertisements and documentation.

All criteria, sub-criteria and scoring must be detailed individually so that all bidders / applicants know what scores are attached to each criteria area. Under no circumstances should Procurement Officers use sub criteria which has not been published to evaluate proposals.

Weighting and criteria must not be changed once agreed and published and must be applied consistently across all proposals

Records are to be kept of positive and negative reasons for scores, and a record made of the characteristics of each bid, as agreed by the evaluation panel, together with a summary of the relative advantages of the proposal to be accepted. The evaluation sheets must be signed and dated by all of the evaluation panel.

This information will be sent to rejected bidders / tenderers once a contract has been awarded (or prior to the implementation of the standstill period where "above threshold").

The model used to evaluate proposals must be a Prior Overall Weighting (POW) model to ensure transparency and accountability in the event of a challenge or complaint. You should use the source documentation in the Procurement Journey to ensure you are always using the most recent guidance and templates on an ongoing basis

Where Pre-Qualification is required, the evaluation criteria used to pre-qualify applicants must not be used again in the final evaluation of proposals.. Questions within a PQQ or SPD should relate to previous experience of candidates in delivering similar goods/services and the criteria used to award contracts should relate to project delivery requirements only. Procurement officers should consult the Procurement Journey or the Procurement Manager if in any doubt.

For the evaluation of construction and civil engineering proposals, in addition to the above, the appropriate discipline principles, guidance and industry good practice in force at the time of the requirement must be used for the examination and evaluation of proposals.

## 37. Procurement Reports

Tender and Procurement Reports will be submitted to the Council, Chief Executive or Strategic Directors as appropriate.

Where deemed appropriate and / or requested, a report can be referred and / or submitted to an alternative committee or to the full Council.

## 38. Approval to Accept & Award Contracts

The contract value is the total value of the contract, excluding VAT, over the entire lifetime of the contract. Requirements cannot be "split" into contracts of lower value, or contracts reduced in duration, to avoid the need to advertise/conduct a full tender exercise.

It is not permissible to disaggregate a contract or a Purchase Order in order to circumvent the requirements of Contract Standing Orders that relate to competitive tendering and Delegated Authority

Approval to accept a proposal or tender can only be given in accordance within the following levels of delegated authority::

<b>Position</b>	<b>Contracts</b>	<b>Invoices</b>
<b>Chief Executive</b>	<b>Unlimited</b>	<b>Unlimited</b>
<b>Strategic Director of Place</b>	<b>Unlimited</b>	<b>Unlimited</b>
<b>Strategic Director of Partnership and Performance</b>	<b>Unlimited</b>	<b>Unlimited</b>
<b>Strategic Director of People</b>	<b>Unlimited</b>	<b>Unlimited</b>
<b>Chief Finance Officer (S95)</b>	<b>Unlimited</b>	<b>Unlimited</b>
<b>Chief Officer Clackmannanshire &amp; Stirling Health &amp; Social Care Partnership)</b>	<b>£1,500,000</b>	<b>£1,500,000</b>
<b>Chief Officers – including Statutory roles</b>	<b>Up to £449,999</b>	<b>Up to £1,500,000</b>
<b>Senior Service Manager Grade 12</b> Authority to delegate within their teams but not over their specified level	<b>Up to £149,999</b>	<b>Up to £449,999</b>

The Tender Accepted and Contract Award Report Form 2 must be completed and approved by the relevant delegated officers. Once this is completed it must be sent to the delegated officer as noted above as per their level of delegated authority.

No contract can be awarded before approval to accept has been sought and obtained, as outlined above.

All Tender award letters will be issued by Legal and signed by an appropriate authoriser as noted above.

#### **Abnormally low tenders or errors**

If tenders appear to be abnormally low, the Council may choose to reject those tenders. The Council will not exclude an abnormally low tender “automatically” without first asking for an explanation of the tender and allowing for a verification procedure.

On being provided with details of errors of arithmetic discovered in a tender, a tenderer will be allowed, with the approval of the Monitoring Officer after the date fixed for receipt of tenders, and before acceptance of tenders only:

- to confirm without amendments or withdraw the offer before any tender for that contract is accepted; or
- to amend the tender to correct genuine arithmetic error(s) provided that in this case, apart from these genuine arithmetic errors, no other adjustment, revision or qualification is permitted.

All Invitations to tender must state which method will be used for dealing with errors in tenders.

## **39. Mandatory Standstill Period**

A Mandatory Standstill Period must be applied to all contract award procedures for all tenders with a total aggregated contract value that requires a Route 3 Procurement

There will be a minimum period of 15 days between the date that unsuccessful bidders receive notification that their bid has not been accepted and the date that the contract is to commence. The Procurement Manager and/or the Strategic Director of Partnership and Performance may extend this period on cause shown.

#### **All letters will be issued by legal**

For every contract the lead Procurement Officer shall draw up a written report which shall include at least the following:

- the name and address of the contracting authority, the subject-matter and value of the contract, framework agreement;
- the names of the successful candidates or tenderers and the reasons for their selection;
- the names of the candidates or tenderers rejected and the reasons for their rejection;
- the reasons for the rejection of tenders found to be abnormally low;
- the name of the successful tenderer and the reasons why his tender was selected and, if known, the share of the contract or framework agreement which the successful tenderer intends to subcontract to third parties;
- if necessary, the reasons why the contracting authority has decided not to award a contract or framework agreement..

A full debrief will be offered to any bidder / tenderer and if requested will be provided within the prescribed timescales.

**Under no circumstances should Contracts commence within the standstill period.**

## **40. Contract Monitoring and Reporting - Contract Award**

Once the approval to accept has been received and the contract has been awarded, a signed letter issued by Legal complete with a signed purchase order completed, the contract will awarded in Public Contracts Scotland Portal.

## **41. Tender File**

On completion of the Tender process, all related documentation will be filed in a master file and retained for a period appropriate to the contract.

## **42. The Use of Standard Documents**

Standard documents for the procurement of goods and services are maintained and updated by the Procurement Manager. Procurement Officers are required to use the source documentation in the Procurement Journey to ensure that they are always using the most recent guidance and templates on an ongoing basis for each procurement process undertaken

Not all of the Contract Terms and Conditions contained within the standard documents may be appropriate to the contract requirement and some may therefore be deleted. This is subject to Clauses 44, 45 & 46 below and subject to consultation with Legal Services and the Procurement Manager.

The Contract Terms and Conditions contained within the standard documents may be insufficient to the contract requirement and may be added to or developed further, subject to consultation with Legal Services and the Procurement Manager.

Guidance and advice on the appropriateness of the Contract Terms and Conditions should be sought from Legal Services and / or the Procurement Manager prior to any amendment being made.

## **43. Pre-Qualification Questionnaires (PQQs) or SPD**

Where a Dual stage or Restricted process is being applied, the Standard PQQ or SPD, should be used as the template for the PQQ or SPD to be issued. Officers are required to use the source documentation in the Procurement Journey and Public Contracts Scotland to ensure you are always using the most recent guidance and templates on an ongoing basis for each procurement process undertaken. Failure to follow the standard process will result in the procurement process being terminated and recommenced using the correct documentation.

## **44. Standard Quote Documentation – Goods and Services**

All Quotes require to include:

- Clackmannanshire Council Contract Terms and Conditions
- Specification Schedules
- Pricing Schedules
- Commercially Confidential Information Schedules
- Quotation Completion Details

## 45. Standard Tender Documentation – Goods and Services

All Tenders require to include:

- Instructions to Tenderers
- Clackmannanshire Council Contract Terms and Conditions
- Form of Tender
- Certificate of Non-Collusion
- Method Statements
- Delivery Schedules
- Specification Schedules
- Specification Compliance Schedules
- Pricing Schedules
- Commercially Confidential Information Schedules
- Returned Documentation Checklist

Where an Open or single stage procedure is being conducted, a Tender Questionnaire is also to be included in the Tender Pack. Officers are required to use the source documentation in the Procurement Journey to ensure that they are always using the most recent guidance and templates on an ongoing basis for each procurement process undertaken

## 46. Mandatory Clauses

The following clauses from the standard Contract Terms and Conditions may not be deleted from the documents, and are to be included in all contracts for goods and services and all works contracts:

- No assignation of the contract without the prior written consent of the Council.
- No sub-contracting of the contract without the written consent of the Council.
- Cancellation in the event that gratuities, inducements or any other type of consideration in relation to the contract are offered to an employee or member or agent of the Council.
- Compliance with all relevant legislation, including:
  - The Equality Act 2010
  - Any Act, rule, etc, etc amending or replacing the above Acts
  - Any other statute, statutory instrument, etc, etc to prevent unlawful discrimination
- Compliance to Health & Safety regulations
- Termination
- Indemnity and Insurance
- Confidentiality and the Freedom of Information (Scotland) Act 2002
- Data Protection
- TUPE
- Disputes procedure
- Authorised Users
- Governing Law
- Set Aside Provisions
- Employee Vetting, typically Enhanced Disclosure, PVG where appropriate and permitted by law. Alternatively, the Procurement Officer must be satisfied that the candidates have a sufficient risk appraisal system to ensure their compliance with PVG legislation.

Where any contract provides for the appointment of a nominated sub-contractor, the responsible Council Officer or agent must ensure that the contract also includes for the following:

- The main contractor is subject to the same payment terms as the Council, thereby assisting in the elimination or minimisation of sub-contractor SME cash flow problems.
- The main contractor is responsible for ensuring that the nominated sub-contractor is subject to and meets the same requirements as the main contractor, including:

- The mandatory clauses identified in these Contract Standing Orders
- Supporting the local economy and promotion of local employment.
- Payment of the Living Wage
- Vetting to Enhanced Disclosure level where required and permitted by law.

## **47. Tender Documentation - Works Contracts**

Guidance and advice on works documentation must be sought from Legal Service before any procurement process commences.

Only Legal Officers of the Council acting in accordance with the Scheme of Delegation may negotiate and agree the terms and conditions for leases and/or the sale/purchase of land or heritable property.

## **48. Supplier Contract Terms and Conditions**

Officers are not permitted to enter into contracts on the Supplier's Contract Terms and Conditions and should take care that they do not inadvertently enter into a contract on the Supplier's Contract Terms and Conditions.

In the rare event that a Supplier refuses to accept the Council's Contract Terms and Conditions, or proposes amendments to the Council's Terms and Conditions or any standard form building contract, any such amendments or the Supplier's Contract Terms and Conditions are to be referred to Legal Services for review and possible approval.

## **49. Contracts Register**

A Council Contracts Register will be maintained that provides a central point for contract information.

All contracts awarded on behalf of the Council that have a total aggregated value in excess of £10,000 will be recorded in the Council Contracts Register, using information contained in Public Contracts Scotland.

Services and the member of staff responsible for completion of the tender will be responsible for ensuring recording and submission to the Procurement Manager of the final actual contract cost compared to the original estimated contract cost, detailing the reasons and justification for any overspend or underspend.

## **50. Contract Monitoring and Management**

Contracts awarded by or on behalf of the Council must be monitored and managed throughout the contract term to ensure delivery of the contracted goods, services or works in accordance with the contract requirement and standard.

Contract monitoring and management arrangements agreed during the procurement process will be determined by the complexity and risk associated with the contract, conditions in the relevant market and must consider both financial and quality aspects. Further details are available in the Procurement Journey



## 51. Contract Extensions

### 51.1 Users

Contracts awarded on behalf of the Council can be used by ALL Council Services.

### 51.2 Period

Contract periods can only be extended where the option to do so has been incorporated into the original advertisement and contract documentation returned by bidders / tenderers.

### 51.3 Value

Contracts cannot be extended beyond the value incorporated as detailed in the advertisement and contract documentation returned by bidders / tenderers. Once the advertised value has been reached, the requirement is subject to further competition and requires to be tendered. It is essential therefore that the contract is managed to ensure when or if this threshold is nearing its advertised value steps are taken to go out to tender if there is still a requirement

### 51.4 Additional Work – Goods Contracts

Where there is potential for additional work to be carried out subsequent to the completion of a contract, then that additional work is to be incorporated into the original contract. If additional work is not included in the original contract, the scope of that contract cannot be extended.

### 51.5 Additional Work – Services and Works Contracts

Additional works or services up to a maximum of 50% of the original estimated value may be purchased, but only where the original contract notice stated that additional works or services may be awarded. The additional 50% can relate to the contract scope, the contract value or the contract term.

## 52. Contract Variations / Modification

Allowing and regulating contract variations should be a standard feature of all contracts. Although a supplier may request a contract variation, the ability to vary the contract must be approved, managed and controlled by the customer.

You should provide a method for contract variations to be agreed between the customer and the supplier. This should be in writing through a formal amendment of the contract. This practice is also known as a "change management process", "change control procedure" or something similar

It is critical that no-one involved in managing and administering the contract agrees to informal contract amendments on their own. All potential contract variations/changes must be fully explored with the appropriate contract managers/stakeholders. Any agreed variations should be undertaken in line with the change management process.

The reasons for the variation should be clearly documented. Variations should not be used to mask poor performance or serious underlying problems. The variation impact on original timeframes, deliverables and value for money should be assessed. If the effects are significant, senior management and other stakeholders must be consulted.

Variations should be planned accordingly. Customers should be aware of the risk multiple contract changes make to a contract over time i.e. this may shift the overall allocation of contract risk or transfer particular risks to the Council.

It is important to analyse all consequences of a proposed contract amendment. Make sure there are no detrimental effects to the contract or service levels.

Contract managers must ensure contract variations do not significantly change the contract requirement and/or substantial parts of the original transaction. This is referred to as a 'substantial modification' under The Public Contracts (Scotland) Regulations 2015. If this is the case, you must undertake another procurement exercise. This is because the revised arrangements are substantially different from those selected through the original procurement. If a new procurement is not undertaken your Organisation may be open to challenge from another supplier.

In these circumstances, Officers are required to report the variation in accordance with Standing Order 53 below, and may also be required to commence a new procurement as stated above.

## **53. Reporting and Authorisation**

The factors and projected financial impact must be reported to the Head of Service, who must then report same to the:

- Strategic Director of Partnership and Performance , Chief Finance Officer (S95) and Procurement Manager
- Internal Audit
- Audit Committee
- Where during the course of a contract additional contract costs in excess of £50,000, other than variations authorised within the contract, are identified, details of the additional costs must be reported to the Strategic Director of Partnership and Performance , Chief Finance Officer (S95) and Procurement Manager
- and:
- Where the additional costs exceed 10% of the original contract value, to the Chair of the Audit Committee.

Subject to the provisions of the contract, every extra or variation will be evidenced and authorised in writing by the Council Officer responsible for the contract or the agent acting on behalf of the Council.

Every extra or variation must be reported to the Strategic Director if the cumulative effect of the extras or variations result in an increase or decrease to the original contract price of 7% or £25,000, whichever is the greater.

On completion of the contract, a final summary of the extras or variations must be recorded and submitted to internal audit.

## **54. Bids for external contracts authorisation**

Where a Service within the Council wishes to submit a bid to provide Supplies, Services or Works to a third party and the proposal:

- Has a total aggregated value in excess of £50,000 and / or
- will utilise in excess of 10% of the total staff resources within that Service

Before any bid can be submitted to a third party

- Approval to proceed must be sought from the Strategic Director of Partnership and Performance
- Any conditions attached by the third party to the submission of bids are required to be referred to and approved by Legal Services.

All such proposals submitted to Third Parties are required to follow any and all relevant industry good practice and adhere to guidance issued by the appropriate Strategic Director

## Appendix 1: Exception Procedure Process

CSO's apply to all contracts entered into by Procurement Officers. In some circumstances however, exceptions may be granted and the approach to this is outlined below. All requests must be made in writing, identifying the grounds for the request. Approvals must also be recorded in writing and given prior to the action being taken.

Stage	Requirement	Caveat	Timescale
1.	<p>Submission of Exception Request from originating officer to the Strategic Director of Partnership and Performance in consultation with the Chief Finance Officer (S95) and the Procurement Manager</p> <p>Submission is lodged with The Legal Team and copied to the Strategic Director of Partnership and Performance the Chief Finance Officer (S95) and the Procurement Manager from there.</p> <p>Date of receipt by The Legal Team is confirmed initial date of receipt and meeting set up.</p> <p>Exception Request logged and acknowledged on initial date of receipt</p>	<ul style="list-style-type: none"> <li>To be in report format.</li> <li>Must Contain sufficient information to enable the Strategic Director of Partnership and Performance in consultation with the Chief Finance Officer (S95) and the Procurement Manager to complete Exception Response (see Appendix 2).</li> <li>Requires Head of Service / Director Sign Off.</li> <li>Allow sufficient time for Stage 2.</li> <li>Failure to supply sufficient information at this stage may lead to delays at Stage 2.</li> <li>Consideration should be given to pre-submission discussions with Legal, Finance and Procurement.</li> </ul>	
2	<p>Consideration of Exception Request by the Strategic Director of Partnership and Performance in consultation with the Chief Finance Officer (S95) and the Procurement Manager</p>	<ul style="list-style-type: none"> <li>Where further information is requested the Strategic Director of Partnership and Performance in consultation with the Chief Finance Officer (S95) and the Procurement Manager may delay their decision until the information has been provided.</li> </ul>	10 working days from initial date of receipt or 10 working days from date of receipt of any additional information requested.
3	<p><i>Where applicable</i> request for further information from the Strategic Director of Partnership and Performance in consultation with the Chief Finance Officer (S95) and the Procurement Manager</p> <p>Requests for further information will be routed back to originating officer from The Legal Team</p> <p>Receipt of further information will be logged and acknowledged on date of receipt.</p>	<ul style="list-style-type: none"> <li>Additional information should be provided as soon as possible to avoid delays in implementing proposals.</li> </ul>	
4	<p>The Strategic Director of Partnership and Performance in consultation with the Chief Finance Officer (S95) and the Procurement Manager routed through The Legal Team</p> <p>The decision logged and acknowledged on date of receipt.</p>	<p>Strategic Director of Partnership and Performance in consultation with the Chief Finance Officer (S95) and the Procurement Manager will make final comparison of Legal Decision and Finance Decision. Failure to agree will result in Exception Request being refused.</p> <ul style="list-style-type: none"> <li>Where appropriate the Strategic Director of Partnership and Performance in consultation with the Chief Finance Officer (S95) and the Procurement Manager will compile list of conditions to be attached to Exception Request approval to reflect position of Legal and Finance.</li> </ul>	
5	<p>Exception Request Decision The Strategic Director of Partnership and Performance routed to originating officer through The Legal Team.</p> <p>Decision logged by The Legal Team.</p> <p>Decision copied to the Originator</p>	<ul style="list-style-type: none"> <li>Decision should be regarded as conclusive.</li> <li>Where an Exception Request is refused, Head of Service seeking Council approval must incorporate copy of Exception Request Decision Notice with Council Report.</li> </ul>	Within 1 working day of the Strategic Director of Partnership and Performance submitting their decision to The Legal Team

## Appendix 2: Exception Request Decision Notice

	Question	Y/N Qualified	Comment
1.	Does the Exception Request require a suspension/invocation of Contract Standing Orders?		
2.	Does the Exception Request contain a paragraph detailing the reasons for the request to suspend /invoke Contract Standing Orders?		
3.	Do the reasons in the Exception Request justify the proposed action?		
4.	Has a competitive exercise been carried out and if so how many organisations are going to be or have been invited to tender?		
5.	Is there an in-house provider capable of undertaking the work?		
6.	If there is an in-house provider have they been offered to opportunity to take up the work? If so what was their response?		
7.	Does the Exception Request advise of the consequences of not approving the request, provide details of alternatives and a note of cost implications?		
8.	Is/are Contract Standing Orders properly quoted in the Exception Request?		
9.	Is/are the proposed contractor/s included in an approved list of contractors i.e. .A Trade Creditor in the Financial System		
10.	Is there an acknowledged public sector agreement such as Scottish Procurement, Scotland Excel or a collaborative procurement agreement arranged through another public sector body for the contract proposed?		
11.	Is there evidence that a financial and technical appraisal of the proposed contractor has been carried out?		
12.	Is there an approved budget for the proposal and if so where is this recorded?		
13.	Where tenders have been received is the project within budget?		
14.	Is the contract above the World Trade Organisation's Government Procurement Agreement (the GPA) tendering threshold for goods, services & works?		
15.	Has the originator demonstrated that the proposals represent value for money?		
16.	Have all necessary consents for the project been obtained?		

### Decision

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### Conditions

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Strategic Director of Partnership and Performance

Date