



**STIRLING COUNCIL  
CONTRACT STANDING ORDERS**

**October 2018**

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## **1. Preliminary**

### **1.1 Introduction**

1.1.1 The purpose of these Contract Standing Orders of Stirling Council ("Council") is to provide a structure within which procurement decisions are made and implemented and which ensure that the Council:

- furthers its corporate objectives;
- uses its resources efficiently;
- purchases quality goods, services and works;
- safeguards its reputation from any implication of dishonesty or corruption through a system of transparency, integrity and accountability; and
- meets its legal obligations.

1.1.2 These Contract Standing Orders do not provide guidelines on the best way to procure works, supplies (goods) and services. They set out minimum requirements to be followed. Further information and guidelines are set out in:

- the Council's Procurement Procedure;
- the Council's Procurement Strategy;
- the Council's Code of Ethical Standards.

Council Officers should be aware of how these policies interact with the Contract Standing Orders.

1.1.3 The Contract Standing Orders must be read in conjunction with, and all Council Officers must comply with, the Council's Standing Orders, the Scheme of Delegation the Council's Financial Regulations, and the Procurement Procedure on the Council's intranet.

1.1.4 These Contract Standing Orders are subject to the overriding provisions of European Union, United Kingdom and/or Scottish legislation. They are also subject to any EU Commission, UK Government or Scottish Government guidance on public procurement that may be issued from time to time.

1.1.5 These Contract Standing Orders must be interpreted in accordance with the key principles of transparency, equal treatment, non-discrimination and proportionality.

1.1.6 Any query regarding the application or interpretation of these Contract Standing Orders should be made in the first instance to the Chief Officer - Strategic Commissioning & Customer Development.

1.1.7 Disciplinary action may be taken against a Council Officer who fails to comply with Contract Standing Orders where public money is being spent, including when contracts are being let. Council Officers have a duty to report breaches of Contract Standing Orders to the Chief Governance Officer. Failure to report any known non-compliance or breach may result in disciplinary action being taken.

### **1.2 Application**

1.2.1 The Council makes these Contract Standing Orders in terms of section 81 of the Local Government (Scotland) Act 1973.

- 1.2.2 These Contract Standing Orders apply from 5<sup>th</sup> October 2018.
- 1.2.3 These Contract Standing Orders apply to all contracts made by or on behalf of the Council for the procurement of the execution of works, the supply of goods and materials to the Council, and/or for the provision of services (including consultancy services) including all purchase orders, concessions and contractual arrangements entered into by or on behalf of the Council. They apply to all procurement expenditure by the Council, irrespective of funding source, and includes expenditure that has been devolved in any way. This includes non-contract, ad hoc, one-off requirements, and should be applied by Council Officers or any agent of Stirling Council undertaking any procurement activity on behalf of the Council, except for following specific types of contracts and purchasing methods which are exempted:-
- 1.2.3.1 contracts of employment;
  - 1.2.3.2 contracts solely relating to the acquisition, disposal, lease or other transfer of an interest in heritable property;
  - 1.2.3.3 the allocation of direct payments or personal budgets under options 1, 2 or 4 of the Social Care (Self-Directed Support) (Scotland) Act 2013;
  - 1.2.3.4 appointed guardians or legal services designated by a court or tribunal, any persons appointed under The Curators ad Litem and Reporting Officers (Panels) Scotland Regulations 2001 and the appointment of board members required by statute;
  - 1.2.3.5 internal service provision;
  - 1.2.3.6 Contracts with statutory or public bodies on the basis of an exclusive right enjoyed by law;
  - 1.2.3.7 contractual arrangements with other local authorities or similar bodies where the Council is not the lead authority in which case the lead authority's Standing Orders shall prevail;
  - 1.2.3.8 those contracts excluded by the 2015 and/or 2016 Regulations, for example arbitration or conciliation services;
  - 1.2.3.9 any contract with a total aggregated value of less than £5,000. It should be noted that contracts with a total aggregated value less than £5,000 continue to be subject to the obligation to demonstrate Best Value and a requirement that the Service Area Lead put in place a written contract without delay, and, where applicable, ensure that appropriate plans are made to seek competition.

### **1.3 Definitions and Interpretation**

- 1.3.1 **“Act”** means the Procurement Reform (Scotland) Act 2014;

- 1.3.2 “**Best Value**” means the legal duty to secure continuous improvement in the performance of the Council’s functions as set out in section 1 of the Local Government in Scotland Act 2003;
- 1.3.3 “**Contract Standing Orders**” means these contract standing orders including the Schedules and “Contract Standing Order” shall be interpreted accordingly;
- 1.3.4 “**Convener**” means the Convener of the Council, a committee or sub-committee of the Council;
- 1.3.5 “**Co-production**” means the real and meaningful involvement of the citizens of Stirling including future recipients of the services and key stakeholders and suppliers (both current and potential) in how and what community services and related works and goods are delivered with regard to the National Standards for Community Engagement;
- 1.3.6 “**Council Officer**” means an employee of Stirling Council;
- 1.3.7 “**Directive**” means Directive 2014/24/EU of the European Parliament and of the Council on public procurement and repealing Directive 2004/18/EC;
- 1.3.8 “**Chief Executive**” means the Chief Executive, or for the purpose of exercising any powers set out in these Contract Standing Orders, such senior manager as the Chief Executive has nominated, from time to time, in accordance with the Scheme of Delegation and / or the Chief Executive’s Scheme of Sub-Delegation;
- 1.3.9 “**Economic Operator**” means any person or organisation offering to supply products, services or execute works on the market;
- 1.3.10 “**EU Thresholds**” means the prescribed threshold values set by the EU Commission for supply, services or works contracts as they may be amended from time to time. The EU Thresholds at the date of making these Contract Standing Orders are set out in Schedule 2 and, for the avoidance of doubt, are set out below and the Chief Executive shall have authority to amend these Contract Standing Orders to update the said threshold values as varied from time to time, subject to notifying all Elected Members of such amendment:-
- £181,302 (€221,000) (supplies contracts)
  - £181,302 (€221,000) (services contracts)
  - £4,551,413 (€5,548,000) (works contracts), and
  - £615,278 (€750,000) (for contracts falling under the Light Touch Regime).
- The up-to-date current thresholds can be found at  
<http://www.gov.scot/Topics/Government/Procurement/policy/10613>.
- 1.3.11 “**Framework Agreement**” means an agreement between one or more contracting authorities and one or more economic operators, to establish the terms governing public contracts to be awarded during a given period;
- 1.3.12 “**Full Council**” means a quorate meeting of the Elected Members of Stirling Council;

- 1.3.13 “**Legislative Exemptions**” means an exemption from the application of procurement rules under EU law, the Act and Regulations, and principles developed through case law and other means;
- 1.3.14 “**Light Touch Regime**” means specific set of procedural rules for Social and other Specific Services as more particularly set out in Regulations 74-76 of the 2015 Regulations;
- 1.3.15 “**Living Wage**” means the nationally agreed but non-binding amount of income necessary for a worker to meet basic living standards, calculated annually by the Resolution Foundation and overseen by The Living Wage Commission;
- 1.3.16 “**OJEU**” means the Official Journal of the European Union;
- 1.3.17 “**Portfolio Holder**” means the Convener of the relevant Committee, together with any other Councillor/s, who are allocated to a particular area of responsibility, as more fully set out in Appendix 8 of Stirling Council’s Scheme of Delegation;
- 1.3.18 “**Procurement Owner**” means the nominated Council Officer procurement professional from within the Strategic Commissioning Team with overall responsibility for a particular contract, including dealing with supplier performance and contractual matters;
- 1.3.19 “**Procurement Procedure**” means all internal guidance produced by the Council in relation to these Contract Standing Orders and the Council’s procurement practices more generally;
- 1.3.20 “**Procurement Requirement**” means an identified business need as set out in the Procurement Requirement Form. For the avoidance of doubt this includes a procurement requirement which can be sourced from an existing collaborative agreement.
- 1.3.21 “**Procurement Requirement Form**” means a document setting out as a minimum:-
- the Council’s requirement for the goods, works or services and why we need it;
  - approval to proceed to procurement following a make or buy decision;
  - confirmation that a financial viability assessment has been carried out and there is sufficient budget to meet the costs;
  - the proposed supplier management arrangements and the identity of the nominated Procurement Owner; and
  - How the benefits will be tracked, measured and accounted for.
- 1.3.22 “**Quote**” means the result of a request for quotation, giving the stated price for a job or service;
- 1.3.23 “**Regulated Procurement**” means a procedure to award a regulated contract being a public contract which is equal to or greater than £50,000 (other than works or health or social care contracts or £2million for works contracts) and “Regulated Procurement Thresholds” shall be construed accordingly;

- 1.3.24 “**2015 Regulations**” means the Public Contracts (Scotland) Regulations 2015 or successor legislation (as amended from time to time);
- 1.3.25 “**2016 Regulations**” means the Procurement (Scotland) Regulations 2016 or successor legislation (as amended from time to time);
- 1.3.26 “**Schedule**” means a schedule to and forming part of these Contract Standing Orders;
- 1.3.27 “**Service Area Lead**” means:-
- (a) For a contract with an aggregated value of less than £25,000, the Council Officer from the Service Area where the Procurement Requirement originated who is responsible for the procurement process for the Procurement Requirement; and/or
  - (b) For a contract with an aggregated value of £25,000 or more, the Council Officer from the Service Area where the Procurement Requirement originated who will act as technical lead for the procurement process in conjunction with the Procurement Owner.
- 1.3.28 “**Social and other Specific Services**” means a public contract or framework for social and other specific services as defined by the 2015 Regulations including:-
- 1.3.29.1 Health, social and related services;
  - 1.3.29.2 Administrative social, educational, healthcare and cultural services;
  - 1.3.29.3 Other community, social and personal services;
  - 1.3.29.4 Legal services;
  - 1.3.29.5 Investigation and security services;
  - 1.3.29.6 Postal services.
- 1.3.29 “**Shared Service**” means shared services involving public sector bodies working or joining together to pool knowledge, skills and resources in the development or delivery of services;
- 1.3.30 “**Supported Business**” means an economic operator who operates a supported business, supported employment programme or supported factory as further specified in the Act and/or the Regulations; and
- 1.3.31 “**Tender**” means formal offer to carry out work, supply goods or services for a stated price.

#### **1.4 General Principles**

- 1.4.1 The Service Area Lead shall, prior to commencing any procurement process, ensure that an appropriate Procurement Requirement Form is completed and signed and provided to the Strategic Commissioning Team to enable commencement of the procurement process. The Procurement Requirement Form must demonstrate that

the procurement and resulting contract will meet the strategic and service objectives of the Council that Best Value will be achieved, that it complies with relevant sustainable development and equality requirements required by law and that Co-production with stakeholders is planned.

- 1.4.2 The Service Area Lead shall ensure that a completed and signed Procurement Requirement Form for all Procurement Requirements with a value greater than £25,000 is provided to the Strategic Commissioning Team to enable commencement of any procurement process.
- 1.4.3 The Procurement Owner shall consider, and where appropriate, consult with other Council service areas to ensure where there is a need for the same or similar services that they are jointly procured where appropriate.
- 1.4.4 All potential contracts above the EU Thresholds and Regulated Procurements must comply with the general principles of equal treatment, non-discrimination, transparency and proportionality. Procurements must not be designed with the intention of unduly favouring or disadvantaging any potential tenderer.
- 1.4.5 Throughout the life of a contract, the contract should:-
  - 1.4.5.1 comply with the minimum standards set out in the Council's Procurement Procedures;
  - 1.4.5.2 be managed by the Service Area Lead and the Procurement Owner in respect of:-
    - 1.4.5.2.1 performance;
    - 1.4.5.2.2 compliance with the specification and other terms of the contract;
    - 1.4.5.2.3 cost and benefits;
    - 1.4.5.2.4 Best Value requirements;
    - 1.4.5.2.5 equality requirements;
    - 1.4.5.2.6 delivery and risk management;
    - 1.4.5.2.7 continuous improvement and Co-production principles.
- 1.4.6 All procedures for initiating procurement, developing procurement plans, inviting and receiving tenders, approval of contracts, and all contractual arrangements entered into shall comply with the Council's equality and sustainability requirements and policies, shall encourage fair working practices and payment of the Living Wage, and where appropriate, contractual or procurement arrangements shall include the use of community benefit clauses, in accordance with Standing Order 7 [Community Benefits].
- 1.4.7 Standard terms & conditions shall be used in all contracts to which these Contract Standing Orders apply where Stirling Council is the lead procurer. The standard terms & conditions relevant to a Procurement Requirement are set out in the Council's Procurement Procedure. Any amendments to standard terms and conditions must be approved by Legal Services prior to issuing any documentation.
- 1.4.8 All expenditure must comply with the Council's Financial Regulations.



## **2 Waiver of Contract Standing Orders**

- 2.1** The requirement to comply with any provision of these Contract Standing Orders may be waived in accordance with the table at Schedule 3 if, on considering a written report by an appropriate Council Officer, it is considered that the waiver is considered to be in the Council's best interest having regard to:-
- 2.1.1 Best Value;
  - 2.1.2 any potential risk of successful legal challenge;
  - 2.1.3 the principles of transparency, equal treatment, non-discrimination and proportionality; and
  - 2.1.4 prevention of damage to life and property;
  - 2.1.5 artistic or technical reasons which dictate that the contract may only be awarded to a particular provider.
- 2.2** The Chief Officer - Strategic Commissioning & Customer Development and the relevant senior manager, chief officer or Chief Executive (as applicable) will consult the Chief Finance Officer in respect of contracts with an aggregated value in excess of £50,001 and, where appropriate, the Convener of the relevant Committee, before taking any action that binds the Council.
- 2.3** A record of the decision approving a waiver must be kept by the Chief Officer - Strategic Commissioning & Customer Development who shall, where appropriate, make an entry in the contract register and any other appropriate register.
- 2.4** Where prior approval of a waiver of these Standing Order has not been obtained in advance the reason for this must be contained in the waiver or Committee Report. In line with public procurement regulations, lack of sufficient planning and/or internal process delays will not constitute special, exceptional or emergency circumstances.
- 2.5** Where a waiver, committee approval or procedure permitted by this Standing Order 2 [Waivers] allows the direct award of a contract which exceeds £50,000 in value, then a contract award notice must be recorded on the Public Contracts Scotland portal and an entry made on the contract register and any other appropriate register.
- 2.6** Where these Contract Standing Orders have been waived in accordance with this Standing Order 2 [Waivers], and in the absence of an existing contract:-
- 2.6.1 For contracts with an aggregated value below £5,000 the Service Area Lead shall put in place a written contract without delay, and, where applicable, ensure that appropriate plans are made to seek competition;
  - 2.6.2 For contracts with an aggregated value between £5,000 and £24,999, the Service Area Lead, in consultation with the Procurement Owner, shall put in place a written

contract without delay, and, where applicable, ensure that appropriate plans are made to seek competition;

2.6.3 For contracts with an aggregate value in excess of £25,000, the Procurement Owner, in consultation with the Service Area Lead, shall put in place a written contract without delay, and, where applicable, ensure that appropriate plans are made to seek competition.

**2.7** The requirement to waive these Contract Standing Orders is not required where:-

2.7.1 a procedure or specific situation other than the open or restricted procedure is permitted by the 2015 Regulations, 2016 Regulations, the Act, EU law or relevant case law. In deciding whether the use of another procedure or specific situation is permitted the relevant advice shall be sought from the Chief Officer - Strategic Commissioning & Customer Development and/or Chief Officer Governance;

2.7.2 the circumstances of the proposed contract are covered by legislative exemptions, for example, certain research and development services; or

2.7.3 the proposed contract is with another public body for the purposes of ensuring co-operation with the aim of providing public services.

### **3 Procedures**

**3.1** In addition to the obligations in Standing Order 1.4.2, before commencing a tendering procedure or making a purchase where no contract exists, the Service Area Lead must consult with the Strategic Commissioning Team to establish:-

3.1.1 whether any existing contracts or framework contracts accessible to the Council may fulfil their requirements; or

3.1.2 where existing internal provision (including the Council's significant trading operations) or other resources exist, these are being used.

**3.2** The procedure for the award of any contract shall depend upon the estimated aggregated value of that contract excluding VAT. The EU rules on aggregation of contracts shall apply and the artificial splitting of purchase orders or requirements to avoid the application of these Contract Standing Orders and/or the relevant legislation as amended from time to time (for example, the Act, the 2015 Regulations and/or the 2016 Regulations) is not permitted.

**3.3** Subject to Standing Order 2 [Waivers], or where otherwise legally permitted, if the proposed contract exceeds the Regulated Procurement thresholds or the EU Thresholds, the minimum associated tendering procedures that must be applied are detailed in Schedule 1.

**3.4** Health, social care and community services shall be procured in accordance with the procedural options available in terms of the Act, the 2015 Regulations, the 2016 Regulations, the Procurement of Care and Support Services 2016 (Best Practice) Guidance and any statutory guidance issued under the Act and the principles of Co-production. For all

purchases in excess of €750,000 the procedure shall be sufficient to comply with the principles of transparency and equal treatment of Economic Operators.

- 3.5** For all Regulated Procurements, the Council must adhere to the sustainable procurement duty set out in the Act. The Council must consider how it can improve the social, environmental and economic wellbeing of the area in which it operates, with a particular focus on inequality, and should act in a manner that secures these improvements. The sustainability duty includes facilitating the involvement of small and medium enterprises, third sectors and supported business and the promotion of innovation. Sustainable procurement outcomes must be incorporated in a way that does not result in the inappropriate exclusion of potential suppliers, or in anti-competitive behaviour on the part of the Council. Sustainable procurement outcomes cannot be used as the sole criteria for contract award.
- 3.6** The general EU principles of equal treatment, non-discrimination, transparency and proportionality requiring a degree of advertising to enable open competition apply to all public contracts. Certain specified contracts are, however, subject to a different procurement regime. These services are referred to in the Procurement Procedure together with guidance on how to procure these services, which must be applied.
- 3.7** The Strategic Commissioning Team must determine if the procurement requirement falls under the rules for Supported Businesses and Reserved Contracts and may follow the procedure in Contract Standing Order 15 [Supported Businesses] below.
- 3.8** Where legally permissible the Council shall seek to ensure that for purchases or contracts of an estimated value of £49,999 or less that at least one Small or Medium Enterprise (SME) from the Stirling Council Area or an SME who is a significant employer within Stirling Council Area is invited to tender in any process.
- 3.9** Direct purchasing above £5,000 without seeking quotes is permissible only in those circumstances that would be permitted by the Act, the 2015 Regulations, the 2016 Regulations or in accordance with Contract Standing Order 2 [Waivers].
- 3.10** The Strategic Commissioning Team shall be consulted in relation to community benefit clauses, described more fully in Contract Standing Order 7 [Community Benefits].
- 3.11** The Strategic Commissioning Team shall be consulted in respect of procurement arrangements for any proposed contracts with an estimated value between £5,000 and £24,999.
- 3.12** The Strategic Commissioning Team shall advise on and make all procurement arrangements for any proposed contracts with an estimated aggregate value in excess of £25,000.
- 3.13** If an unsuccessful tenderer brings a written or formal challenge against the Council in relation to a tender exercise or questions the integrity of the procurement process, the recipient of the notice of challenge or query must inform the Chief Officer - Strategic Commissioning & Customer Development. The Chief Officer - Strategic Commissioning &

Customer Development must inform the Chief Officer Governance as to potential legal challenges.

#### **4 Publication of Contract Notices and Award Notices**

- 4.1** For the avoidance of doubt, no Procurement Requirement with an aggregate value in excess of £25,000 should be advertised before the Procurement Requirement has been reported to Elected Members through the Information Bulletin.
- 4.2** The Council must publicise its intention to seek offers and each award of contract as part of a Regulated Procurement on the Public Contracts Scotland website and carry out all associated duties under Section 23 of the Act.
- 4.3** All contract opportunities valued at over £25,000 must be advertised through the Public Contracts Scotland website. This site is linked so that advertisements also appear on the Council's website.
- 4.4** Contract opportunities below £25,000 in value should be considered by Service Area Leads for advertising through the Public Contracts Scotland website where this will support the Council's policy objectives and demonstrate the exercise of Best Value.

#### **5 Tender Documents**

- 5.1** The tender documents shall clearly set out the proposed method of evaluation as well as the scope, timing, quality and quantity of the works, services and supplies required by the Council.
- 5.2** Standard terms & conditions shall be used in all contracts to which these Contract Standing Orders apply where Stirling Council is the lead procurer. The standard terms & conditions relevant to a Procurement Requirement are set out in the Council's Procurement Procedure. Legal Services should be consulted on conditions of contract for particularly significant or complex projects or contracts.

#### **6 Technical Specification**

- 6.1** Formal specifications or statements of requirement shall be developed, in compliance with Regulation 43 of the 2015 Regulations for Regulated Procurements above the EU Threshold and Regulations 11 and 12 of the 2016 Regulations for Regulated Procurements below the EU Threshold, by the Service Area Lead with support from the Procurement Owner for all tendered or quoted requirements for supplies, services (including each and every consultancy requiring competitive action), or works, which will fully define what the Contractor, Supplier, or Service Provider is to provide. Specifications shall not be accepted as final until the Procurement Owner and/or Service Area Lead, where appropriate, are satisfied as to their affordability.
- 6.2** The Service Area Lead must ensure that technical specifications for Regulated Procurements give equal access to all interested parties and do not create unjustified obstacles to the opening up of public procurement to competition or encouraging innovation. The Service Area Lead shall specify requirements for award criterion in generic, technical or performance terms. Technical specifications must not refer to materials or goods of a specific make or source or to

a particular process or trademark, patent, type, origin or means of production which has the effect of favouring or eliminating particular suppliers.

**6.3** This requirement may only be dispensed with in exceptional circumstances, where the subject of the contract cannot otherwise be described by reference to technical specifications which are sufficiently precise and intelligible to all suppliers. However, where this exception applies, any such references in the technical specification must be accompanied by the words “or equivalent”. Where a technical specification does make such a reference, a written justification shall be provided as part of the contract notice or invitation to participate or quote, including an explanation as to why it was not possible to describe the product by reference to technical or performance characteristics.

**6.4** The Service Area Lead may include references in specifications to mandatory technical rules which go beyond the relevant EU standards, provided these are non-discriminatory, without prejudice to the relevant European standards or specifications and otherwise compatible with EU community law.

## **7 Community Benefit**

**7.1** A community benefit clause must be included as a contractual requirement for a Regulated Procurement of which the estimated value is equal to or greater than £50,000 but less than £4,000,000 and where the Procurement Owner has decided that a community benefit is appropriate.

**7.2** The Procurement Owner, where s/he determines that there is an opportunity to deliver a community benefit, must include in the contract notice relating to the procurement a summary of the community benefit requirement s/he intends to include in the contract. If there is no community benefit, the notice must give reasons for that.

**7.3** The Council must ensure the requirements are in line with the EU procurement rules and general EU law, the Council must ensure that the community benefit clause does not amount to direct or indirect discrimination.

**7.4** The Procurement Owner must ensure that robust arrangements are in place to monitor the community benefit elements of a contract and the outcomes recorded.

## **8 Electronic Procurement**

**8.1** Requests for quotations and invitations to tender should be issued and/or received by electronic means as detailed in Schedule 1.

## **9 Eligibility to Tender and Exclusion of an Economic Operator**

**9.1** The Chief Officer - Strategic Commissioning & Customer Development, having due regard to legal advice from the Chief Officer Governance, may treat a potential tenderer as ineligible to tender where there are reasonable grounds to conclude that the contractor or potential tenderer:-

9.1.1 has committed an act in the course of their business or profession which renders its integrity questionable;

- 9.1.2 has shown significant or persistent deficiencies in the performance of a substantive requirement under a prior public contract which led to early termination of that prior contract, damages or other comparable sanctions, subject to consideration by the Council of any measures taken to demonstrate reliability;
- 9.1.3 falls within one or more of the other exclusion grounds set out in the 2015 Regulations or the 2016 Regulations (as applicable).
- 9.2** The Chief Officer - Strategic Commissioning & Customer Development, having due regard to legal advice from the Chief Officer Governance, must treat a potential tenderer as ineligible to tender where it is established by admission, or following a judgement from a competent Court, that the potential tenderer has compiled, used, sold or supplied a prohibited list which: (i) contained details of persons who are or have been members of trade unions or persons who are taking part or have taken part in the activities of trade unions, and (ii) was compiled with a view to being used by employers or employment agencies for the purposes of discrimination in relation to recruitment or in relation to the treatment of workers, within the meaning of the Employment Relations Act of 1999 (Blacklists) Regulations 2010 (as amended from time to time).
- 9.3** The Council must exclude an economic operator from a Regulated Procurement below the EU Threshold where the Council has established or it is otherwise aware that the Economic Operator or an officer of the Economic Operator or a representative thereof have been convicted of an offence specified in Regulation 8 of the 2016 Regulations. The Council must exclude an economic operator from a Regulated Procurement above the EU Threshold where the Council has established or it is otherwise aware that the Economic Operator or an officer of the Economic Operator or a representative thereof have been convicted of an offence specified in Regulation 58 of the 2015 Regulations.
- 9.4** The Council must as soon as practically possible notify an Economic Operator of its decision to exclude the Economic Operator from the procurement process, specifying the criteria used for the exclusion.
- 9.5** The Chief Officer - Strategic Commissioning & Customer Development must report any actions taken in accordance with this Standing Order 9 to the next meeting of the Council's Finance & Economy Committee.

## **10 Selection of Tenderers**

- 10.1** Regulations 57 – 66 of the 2015 Regulations set out the minimum standards which must be applied to choice of participants in Regulated Procurements above the EU Threshold and Regulations 9 and 10 of the 2016 Regulations set out the minimum standards which must be applied to choice of participants in Regulated Procurements below the EU Threshold.
- 10.2** The Council can require contractors who deliver public contracts to adopt policies which demonstrate how they comply with relevant employment, equality and health and safety law, human rights standards and adhere to relevant collective agreements. This must be proportionate to the nature, scope, size and place of the performance of the contract.

## **11 Evaluation of Tenders and Quotes**

**11.1** Tenders and quotes shall be evaluated on the basis of most economically advantageous tender, taking account of the following factors:-

11.1.1 the Council must identify the most economically advantageous tender on the basis of the best price-quality ratio, which must be assessed on the basis of criteria linked to the subject-matter of the public contract in question, and must include the price or cost, using a cost-effectiveness approach which may include life-cycle costing. Lowest cost will only be permitted for contracts below EU Thresholds or contracts placed under frameworks where Best Value has already been established; and

11.1.2 the Council is not bound to accept the most economically advantageous, lowest or any tender received. A statement to this effect should be included in all tender documentation.

**11.2** Tenders and quotes received after the closing date and time stipulated for return of tenders, or tenders which are incomplete or in an incorrect format will not be opened or considered unless the Council, acting proportionately, decides that there are circumstances which allow it to exercise discretion in allowing consideration of the tender. The Chief Officer - Strategic Commissioning & Customer Development must be consulted if tenders are submitted late, incomplete or in an incorrect format and are to be evaluated.

11.2.1 Where there is any question as to whether or not a tender is late due to exceptional circumstances, the express approval of the Chief Officer for Strategic Commissioning and Customer Development shall be required to admit the tender for consideration. This rule shall apply, for example, where the reason advanced for a tender being submitted late is that there was a failure or lack of availability of the e-procurement platform which was not attributable to the tenderer or the tenderer's own agent, contractors, etc.

11.2.2 Late tenders, save where these have by exception been admitted for consideration in accordance with Standing Order 11.2.1 above, must remain unopened.

**11.3** Tenders shall be evaluated by a tender evaluation panel which should comprise Council Officers having sufficient knowledge and technical ability to enable them to evaluate detailed tenders appropriately. The evaluation process shall follow any guidance issued by the Chief Officer - Strategic Commissioning & Customer Development and be fully and appropriately documented.

**11.4** The Procurement Owner may contact a tenderer after all tenders have been received to clarify aspects of the tender where some information is unclear or it contains minor errors. This clarification may involve matters of quality or specific terms and conditions of contracts. All information relating to the particular Tender must be kept confidential at all times to avoid undermining the tender. Negotiations in relation to price or other areas where improvements may be possible shall not take place during clarification, unless the Council is in competitive dialogue or the competitive procedure with negotiation, and an audit trail shall be maintained to ensure that the process remains fair and transparent.

**11.5** The Procurement Owner, in consultation with the Chief Officer - Strategic Commissioning & Customer Development and the relevant Category Manager, may contact the preferred

supplier for post tender negotiation to refine and improve the bid in order to increase competitiveness. This may include terms of payment, quality of goods or services, supply and cost of spare parts and any topic specific to the bid which achieve better value for money. Particular care must be taken to assess whether any adjustments proposed during negotiation might have led to a different outcome in the competition. Such negotiations would create a significant risk of challenge from the other bidders.

At all stages the competing tenderers will be treated in an honest, fair and ethical manner, whilst retaining confidentiality of their bids, subject to the Council's obligations under the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004. Any variations to a Quote/Tender should be confirmed in writing by the tenderer. The variation will then become part of the offer.

- 11.6** It is important that all post-tender communication, whether in the form of clarification or negotiation, is carefully recorded and, above all, that proceedings are conducted in a manner fair to all relevant parties.

## **12 Abnormally Low Bids**

- 12.1** Investigating abnormally low bids is a mandatory obligation. Any Tender or Quote considered to be an abnormally low bid in relation to either the proposals or the anticipated contract value must be investigated and clarified. Any such proposal should be excluded from any further consideration in the event that investigation and clarification fails to resolve identified issues.

## **13 Non-Compliant Proposals**

- 13.1** Where any proposal is considered to be non-compliant for any reason, the Strategic Commissioning Team must be consulted before the proposal is formally excluded from further consideration.

## **14 Acceptance and Award of Contract**

- 14.1** Following the conclusion of the procedure for awarding contracts set out in these Contract Standing Orders and, where applicable, the expiry of the mandatory standstill period, the resulting contract between the Council and successful tenderer shall be entered into following the approval process detailed in Schedule 4. The signing of the contract document or letter of acceptance shall be in accordance with the Council's Scheme of Delegation and / or the Chief Executive's Scheme of Sub-Delegation.

## **15 Supported Businesses & Reserved Contracts**

- 15.1** The Council may restrict participation in a Regulated Procurement irrespective of its duties under Section 8 of the Act except in relation to EU Regulated Procurement.
- 15.2** The Council may reserve the right to participate in a tendering procedure to providers operating a Supported Business. Where this right is exercised by the Council the contract award procedures provided by the Regulations and Act shall be followed.
- 15.3** Where the Council decides to restrict participation in a Procurement to Supported Businesses it must state that fact in the contract notice.



## **16 Roles and Responsibilities**

**16.1** The Chief Executive retains responsibility for selecting and appointing contractors, providers and suppliers, but shall seek guidance, as appropriate, from the Chief Officer – Strategic Commissioning & Customer Development. The Chief Officer – Strategic Commissioning & Customer Development shall be consulted at the earliest opportunity to ensure that all purchasing arrangements are made in compliance with these Contract Standing Orders. The Chief Executive is accountable to the Council for the performance of his/her duties in relation to contract letting and management, which are:-

- 16.1.1 ensuring compliance with these Contract Standing Orders and Procurement Procedure;
- 16.1.2 consult with Elected Members on matters reasonably considered politically, reputationally or financially sensitive in relation to proposed procurement activity; and
- 16.1.3 make appropriate arrangements for the opening of tenders and their secure retention so as to protect the integrity of the procurement process and, where tenders are received in paper form, to ensure they are opened in the presence of an officer nominated by the Chief Officer - Strategic Commissioning & Customer Development together with a witness;
- 16.1.4 ensure that all relevant staff putting in place a contract have read and understood and are familiar with these Contract Standing Orders and the Procurement Procedure or other guidance issued in respect of these Contract Standing Orders.
- 16.1.5 ensuring that no quote or tender is sought by any Council Officer outwith the Strategic Commissioning Team for a contract with an aggregate value greater than £25,000;
- 16.1.6 prepare and approve, where required by these Contract Standing Orders, an appropriate Procurement Requirement Form for each proposed purchase or contract. The Procurement Requirement Form should be submitted to the Strategic Commissioning Team at the earliest opportunity to ensure that all procurement arrangements can be made timeously and in compliance with these Contract Standing Orders;
- 16.1.7 For contracts with an aggregated value below £25,000, to enter all appropriate information onto the relevant Council financial system and, where appropriate, purchasing system, prior to the works, service or goods being delivered;
- 16.1.8 ensure that all necessary contract information for contracts of an aggregated value between £5,000 and £24,999 for goods and services and works is provided to the Chief Officer - Strategic Commissioning & Customer Development within one week of entering into such a contract, for the purposes of maintaining an up-to-date contract register via submission of a Notification of Contract Award up to £24,999 Form;
- 16.1.9 ensure all relevant Council Officers comply with these Contract Standing Orders and the Procurement Procedure;
- 16.1.10 to take timely action in the event of a breach of these Contract Standing Orders or the Procurement Procedure;

**16.2** The Chief Officer - Strategic Commissioning & Customer Development retains responsibility for:-

- 16.2.1 ensuring that appropriate contract security (for example guarantees or performance bonds) is obtained where required or considered prudent;
- 16.2.2 to prepare appropriate contract and tender documents which clearly specify the scope, quality and quantity of the works, goods or services;
- 16.2.3 checking whether there is any existing Council or other collaborative framework that can appropriately be used to achieve Best Value for the Council before undergoing a further competitive tender process;
- 16.2.4 keeping all bids confidential subject to any legal requirements;
- 16.2.5 taking appropriate measures to prevent, identify and remedy conflicts of interest arising in the conduct of procurement procedures so as to avoid distortion of competition and to ensure equal treatment of tenderers;
- 16.2.6 ensuring that any evaluation panel is suitably qualified and trained to assess tenders;
- 16.2.7 ensuring that no supplier is requested by the Council to provide goods, services or works without first having a valid purchase order in place;
- 16.2.8 entering, for contracts with an aggregated value in excess of £25,000, all appropriate information onto the relevant Council financial system and, where appropriate, purchasing system, prior to the works, service or goods being delivered;
- 16.2.9 maintaining an up-to-date contracts register;
- 16.2.10 ensuring contracts and any appropriate contract security documents are signed before work, services or supply provision commences;
- 16.2.11 putting in place arrangements for efficient supplier management including the identification of a Procurement Owner and monitoring of benefits and performance, for the entire duration of the contract;
- 16.2.12 retaining a copy of the contract and keep proper records of all contracts and tenders, including minutes of tender evaluation panels and other meetings.

## **17 Contract Extension, Variation, Suspension or Termination**

**17.1** The Chief Officer - Strategic Commissioning & Customer Development may exercise any legally permissible extensions of any contract, in writing, in accordance with the express or implied terms of the contract, and may also take such further action with regard to any contract as the Council is legally entitled to take.

**17.2** The Chief Officer - Strategic Commissioning & Customer Development may terminate, suspend or vary a contract, in writing, in accordance with the express or implied terms of the contract, and may also take such further action with regard to any contract as the Council is legally entitled to take.

**17.3** The Chief Officer - Strategic Commissioning & Customer Development will take all actions and,

where appropriate, report any actions taken in accordance with Contract Standing Order 17.2 to the next meeting of the relevant Committee. For the avoidance of doubt, the Chief Executive will, in consultation with the Chief Officer - Strategic Commissioning & Customer Development, report any extension or variation of a building, engineering and/or associated works contract to the next meeting of the relevant Committee where such extension or variation results in an increase or decrease in contract value of 10% of the approved contract value or £25,000, whichever is the greater, in accordance with Clause 27.4 of Stirling Council's Financial Regulations.

## **18 Contract Value Overspend / Underspend for Building, Engineering and Associated Works Contracts**

**18.1** During the course of a contract for Building, Engineering and/or Associated Works, factors may arise that may result in a significant overspend or underspend on the contract value. In these circumstances the Service Area Lead, in conjunction with the Procurement Owner, are required to report the variation in accordance with the procedure in Contract Standing Order 18.2 below, and may generate a new Procurement Requirement in accordance with Contract Standing Order [19] below.

**18.2** The factors and projected financial impact must be reported to the Chief Executive, who must then report same to the Chief Officer Finance and the next meeting of the Finance and Economy Committee, in terms of Clause 27.5 of the Council's Financial Regulations. The following rules shall also apply:-

18.2.1 Where, during the course of a contract, significant additional expenditures, as prescribed, are identified (other than variations authorised in terms of the contract), the estimated additional cost shall be reported to the Chief Officer Finance and:-

18.2.1.1 Where the expenditure exceeds 5% of the approved net estimated cost, to the relevant Portfolio Holder(s);

18.2.1.2 Where the expenditure exceeds 10% of the approved net estimated cost, to the Finance and Economy Committee;

18.2.1.3 Any overspends on such contracts should be reported to the Finance and Economy Committee and Full Council as part of the regular Revenue budget and Capital Programme monitoring reports.

18.2.2 On completion of the contract, a final summary of the extras or variations is to be recorded by completion and submission of a final contract value to the Strategic Commissioning Team.

## **19 Modifications of Contracts during their Term**

**19.1** Modifications to a contract or framework agreement which do not require a new procurement process are set out in Section 72 of the 2015 Regulations. Any other material amendment to any contract or framework agreement constitutes a new Procurement Requirement and requires a new procurement process to be undertaken.

## **20 Collaborative Contracts**

**20.1** 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.

- 20.2** Where the Council takes the lead procurement role in such arrangements, these Contract Standing Orders will apply to each procurement carried out under the collaborative arrangement. Where another public sector organisation takes the lead procurement role, its Contract Standing Orders, or equivalent, will apply.
- 20.3** Where the Council does not take the lead procurement role, the Service Area Lead (for contracts with an aggregate value in excess of £25,000) must ensure that a Procurement Requirement Form is completed, signed in accordance with the signing authority thresholds set out in Schedule 4 and submitted to the Strategic Commissioning Team to enable the requirement to be notified to the Council's Information Bulletin.

## **21 Utilisation of Framework Contracts**

- 21.1** In order to procure from National Frameworks such as those put in place by Scotland Excel or Scottish Procurement without delay Council Officers may make purchases under that framework where it can be demonstrated that this option represents Best Value.
- 21.2** The relevant call-off procedure for contracts with an aggregate value of less than £25,000 should be applied by the Service Area Lead according to the process set out in the collaborative contract concerned.
- 21.3** The relevant call-off procedure for contracts with an aggregate value of more than £25,000 should be applied by the Procurement Owner according to the process set out in the collaborative contract concerned.
- 21.4** At completion of any call-off the Service Area Lead or Procurement Owner, as applicable, should ensure that a properly signed Contract Award Recommendation Report is completed and submitted to the Strategic Commissioning Team to enable the contract to be noted on the appropriate contract register and, where appropriate, the relevant Contract Award Notice generated on Public Contracts Scotland.

## **22 Review, Amendment and Revocation of Contract Standing Orders**

- 22.1** These Contract Standing Orders shall be reviewed and updated from time to time as required by changes to procurement legislation, regulation and case law, or in any event on an annual basis, by the Chief Officer - Strategic Commissioning & Customer Development in consultation with relevant Council Officers.
- 22.2** The Chief Officer - Strategic Commissioning & Customer Development will be responsible for securing the implementation of any approved change to Contract Standing Orders and the updating of the electronic version on the Council's website.
- 22.3** Procurement Procedure may be revised, supplemented, expanded or deleted from time to time to reflect changes in procurement practice or legislation.

These are the Schedules referred to in the foregoing Contract Standing Orders

**SCHEDULE 1 – PROCUREMENT PROCEDURE – Route to Market**

Value (Exc Vat)	Route	Strategic Commissioning involvement	Advertising on Public Contracts Scotland	Tender publication on PCS-T
Up to £4,999	Direct Purchase	No	No	No
£5,000 to £24,999	3 Quotes (including 1 SME, Local Business)	Service must consult Strategic Commissioning.	PCS preferred but not mandatory	No
£25,000 to £49,999	Formal Quick Quote – minimum 3 quotes (including 1 SME/Local Business, where appropriate)	Strategic Commissioning leads.	Mandatory	No
Over £50,000	Formal Tender/ Mini-Competition	Strategic Commissioning leads.	Mandatory	Mandatory
OJEU Threshold	Formal Tender/ Mini-Competition	Strategic Commissioning leads.	Mandatory	Mandatory

**SCHEDULE 2 - EU PROCUREMENT – LOCAL AUTHORITY THRESHOLDS as at 1<sup>st</sup> January 2018**

	<b>Supply, Services and Design Contracts (Ex VAT)</b>	<b>Works Contracts (Ex VAT)</b>	<b>Light Touch Regime (Ex VAT)</b>
<b>Local Government</b>	£181,302 (€221,000)	£4,551,413 (€5,548,000)	£615,278 (€750,000)

### SCHEDULE 3 - RELEVANT VALUES FOR WAIVER APPROVAL REQUIREMENTS

Value	Approval Procedure
£5,000-£49,999	Chief Officer - Strategic Commissioning & Customer Development and the relevant Senior Manager.
£50,000 and above	Chief Officer - Strategic Commissioning & Customer Development and the Chief Executive (or Senior Manager, Chief Officer or such other Council Officer to whom the Chief Executive has properly delegated their powers in accordance with the Council's Scheme of Delegation and / or the Chief Executive's Scheme of Sub-Delegation.

**SCHEDULE 4 - RELEVANT VALUES FOR APPROVAL TO ACCEPT A PROPOSAL OR TENDER**

Total value for duration of contract or purchase and allowed extensions (aggregation rules apply) ( Ex VAT)	Approval of contractual obligation and award of contract	Committee Approval
Below £5,000	Not Required – however a valid purchase order requires to be authorised by a Council Officer with sufficient budget authority.	Not required
£5,001 to £49,999	Chief Executive, Senior Manager or Chief Officer, or such other Council Officer to whom the relevant Chief Executive, Senior Manager or Chief Officer (as the case may be) has properly delegated their powers in accordance with the Council’s Scheme of Delegation and / or the Chief Executive’s Scheme of Sub-Delegation, in consultation with the Chief Officer - Strategic Commissioning & Customer Development.	Not required
£50,000 to £1,499,000	Chief Executive, Senior Manager or Chief Officer or such other Council Officer to whom the relevant Chief Executive, Senior Manager or Chief Officer (as the case may be) has properly delegated their powers in accordance with the Council’s Scheme of Delegation and / or the Chief Executive’s Scheme of Sub-Delegation, in consultation with the Chief Officer - Strategic Commissioning & Customer Development.	Not required
£1,500,000 and above	Chief Executive, Senior Manager or Chief Officer or such other Council Officer to whom the relevant Chief Executive, Senior Manager or Chief Officer (as the case may be) has properly delegated their powers in accordance with the Council’s Scheme of Delegation and / or the Chief Executive’s Scheme of Sub-Delegation in consultation with the Chief Officer - Strategic Commissioning & Customer Development.	Required <sup>1</sup>

<sup>1</sup> Where approval is sought in relation to delivery of those integrated services and statutory functions delegated by Stirling Council to the Clackmannanshire and Stirling Health and Social Care Partnership pursuant to the Clackmannanshire and Stirling Integration Scheme, approved by Scottish Ministers, as may be varied from time to time, authority to approve acceptance of a proposal or tender sits with the Clackmannanshire and Stirling Integration Joint Board (or such Council officer to whom the Clackmannanshire and Stirling Integration Joint Board has properly delegated their powers) without further recourse to Stirling Council or any Committee thereof.