

EAST AYRSHIRE COUNCIL

COUNCIL – 24th MARCH 2011

STANDING ORDERS RELATING TO CONTRACTS

Report by the Executive Director of Finance and Corporate Support

1. PURPOSE OF REPORT

- 1.1 To apprise Council of the proposed changes to Standing Orders Relating to Contracts for consideration and implementation.

2. BACKGROUND

- 2.1 Members will recall that at a meeting of the Council on 21st June 2007 formal approval was given to proceed with the introduction of revised and updated Standing Orders Relating to Contracts.
- 2.2 Since that time, Members will also be aware that the outcomes of the McClelland Review in 2006 have in turn led to the formation of the Public Procurement Reform Board (PPRB) and the Public Procurement Reform Programme (PPRP) as a vehicle and governance framework for improving the scope of Public Procurement in Scotland.
- 2.3 In addition to the PPRP, since the last review East Ayrshire has been continually improving the uptake of electronic systems for Procurement related activities in particular including e-tendering, Quick Quotes, Public Contracts Scotland (to provide visibility and opportunity for SME's) and PECOS. As a result of advances in technology and changes to methods of advertising and receiving tender documentation and thereafter operational processing of purchase orders a complete review of Standing Orders Relating to Contracts has been undertaken.

3. STANDING ORDERS RELATING TO CONTRACTS – SUMMARY

- 3.1 In order to improve control of procurement activities and embrace developments in national Procurement systems the Standing Orders Relating to Contracts have accordingly been updated to reflect areas such as:
- The adoption of the Public Contract Scotland Portal (including Quick Quotes, etendering etc)
 - The scope of responsibilities for major contract areas
 - Changes to reporting of contract award
 - Clarification on Quotations
 - Contract Registers
 - Contract Management & Reporting Arrangements
 - Sustainable Procurement/ Community Benefits/ SME
 - Requirement for all 'section 21' contracts to be notified to
 - Procurement for review prior to seeking Cabinet approval.

3.2 With these changes it is anticipated that:

- There will be the availability of enhanced procurement information
- The Corporate Procurement Unit will have visibility of all Procurement activity throughout the Council
- Staff will be clear as to where Contract Management Responsibilities lie
- Methods of advertising contracts / opportunities will be consistent
- SME's will be afforded more opportunity to tender directly, where possible, or will be made aware of possible subcontract opportunity
- Optional Appraisals will be conducted in terms of retendering activity
- Risk will be factored into tendering to ascertain method of award and type of contract (via Contract Register analysis)
- Visibility of contracts will be increased both internally and externally
- Procurement will be involved in all 'above threshold' decision to ensure that due process has been followed, particularly in terms of 'negotiated awards'

4. STANDING ORDERS RELATING TO CONTRACTS – DETAILS OF MAIN CHANGES

4.1 The Council Tender Thresholds, section 7, remain unchanged. All expenditure above £30,000 will continue to be subject to contract following competitive tender, with the exception of Consultancy Services which have a lower threshold of £10,000. All non contracted expenditure between £500 and £30,000 will require to be progressed by means of a minimum of 3 quotations, albeit which will in future require to be advertised where possible on Public Contracts Scotland (Quick Quotes) Website which will create greater transparency and access for SME's.

4.2 Changes have been made in respect of Quotations and Order Thresholds in section 10. The Council has ceased to maintain a Standing List of Contractors in respect of capital programme and minor works activities. This process is being replaced by minor works frameworks for specific service areas and specialisms (eg roads minor works).

4.3 Additionally in section 10 where no contract exists and the anticipated spend is between £500 and £30,000 a sourcing request must be sent to Procurement via the Central Purchasing Unit to conduct quotations using the Quick Quote Facility in Public Contracts Scotland. Use of the Quick Quotes system will be devolved to specialist areas, such as Highways construction for use in same method. This will assist SME's in securing lower threshold opportunity where a formal tender is not required, whilst ensuring consistency and visibility of all opportunity above £500. The system and process may also be used for sub £500 opportunities but it is not intended that this be mandatory at this time.

4.4 In addition to the requirement to formally obtain quotes for non contracted goods, works and services, the requirement to ensure that prospective contractors have appropriate insurances and Health and Safety provision at the time of quotation request is stipulated. Where appropriate, and for all such Works related contracts, contractors must be Health and Safety

accredited by means of the Site Safety In Procurement (SSIP) scheme e.g. Construction Health & Safety (CHAS), Construction line etc.

- 4.5 In terms of section 15 Executive Directors/Heads of Service are required to conduct formal options appraisal to establish the nature and demand for the commodity prior to the initiation of a tendering exercise and/or the retendering of existing contracts.
- 4.6 Where a Framework Contract exists with mini competition arrangements (e.g. annual mini tender), such competitions will be expedited by Corporate Procurement via electronic means, unless a specific service has been nominated and duly authorised by Procurement to conduct this operation as part of the service Contract Administration duties.
- 4.8 Section 21 pertaining to authority to extend contracts or negotiate award has been updated to reflect a requirement to report such proposals to Procurement for consideration prior to seeking Cabinet approval. This will ensure that due process has been followed in respect of Procurement Legislation.
- 4.9 As the Council has embraced new technologies and adopted National programme solutions Public Contracts Scotland has become the standard method of advertising contracts. All contract opportunities where practicable will be advertised by this method. Where responsibility for Procurement Process lies with a service (eg Highways contracts, Construction contracts etc) final publication release authorisation to the public domain via PCS will be conducted by Corporate Procurement. This allows devolved responsibility where appropriate, but will retain visibility and control on Procurement matters.
- 4.10 In support of developments in Public Contracts Scotland the Council has developed its e-tendering capability and will tender by electronic means by default. Provision has been made in this respect within Section 22, and specific reference has been made in respect of treatment of Late Tenders and the Opening of Tenders for the purposes of electronic tendering in terms of Sections 23 and 24.
- 4.11 The process currently conducted, by Asset Improvement Services in the main, of using NJCC Code of Procedure for Single Stage Selective Tendering has been removed to harmonise tender selection methods across the Council. This method previously allowed services to restrict tender checking to the lowest 3 tenders in each submission.
- 4.12 The updates to Contract Registers contained within section 27 will ensure that Procurement maintain an up to date list of all formally awarded contracts having an estimated value in excess of £30,000. Heads of Service will be required to submit copies of all letters of acceptance, regardless of value to Corporate Procurement for retention and inclusion in the Contract Register for future reference. A public copy (restricted fields and information) of the Contract Register will be made available on the Councils Public Website allowing visibility of contracts and expected expiry dates allowing transparency and advance awareness for contracting parties, including SME's and local suppliers.

- 4.13 Arrangements related to Contract Management and Monitoring in section 28 have been improved to ensure that contract issues are recorded and acted upon in a measured manner. Additionally, specific duties and responsibilities in respect of Contract Management arrangements for staff acting as Contract Administrators are outlined. Reporting responsibilities in respect of reporting mechanisms are put in place to inform Members, and Heads of Service, to allow visibility of on and off contract spend fall to the Executive Director of Finance & Corporate Support. These are anticipated to assist in driving contract compliance and managing off contract spend. Management information will be provided in respect of Procurement spend on a 4 weekly (period end) basis to Heads of Service for information and action as appropriate.
- 4.14 Clarity on the role of the Central Purchasing Unit (CPU) and use of PECOS are developed in Section 32, highlighting a requirement to use the Councils electronic purchasing system (PECOS) when making purchases. This is in support of section 5(10) restricting use of paper order books. Contract Administration functions and support of the CPU for operational services, particularly in the case of collaborative contracts, or where there is a requirement to formally quote for requirements with a value of over £500 are outlined in section 10.
- 4.15 The Council commitment to sustainable procurement permeates the revised Standing Orders, with a view to increasing opportunity for the SME community by creating greater access, options appraisal, visibility of opportunity through contract packaging strategies and sustainable terms and conditions, where appropriate.

5. FINANCE/POLICY/COMMUNITY PLANNING IMPLICATIONS

- 5.1 None arising directly from this report.

6. LEGAL IMPLICATIONS

- 6.1 None arising directly from this report..

7. RECOMMENDATIONS

- 7.1 It is recommended that Council:-
- (i) consider and approve, the proposed revisions to the Council's Standing Orders Relating to Contracts;
 - (ii) thereafter, as appropriate, approve and adopt the revised Standing Orders Relating to Contracts; and
 - (iii) otherwise, note the contents of the report.

Alex McPhee
Executive Director of Finance and Corporate Support
9th March, 2011

Members wishing further information should contact David Mitchell, Head of Legal Procurement & Regulatory Services on Extension 6061.

Implementation Officer: David Mitchell, Head of Legal, Procurement & Regulatory Services



EAST AYRSHIRE COUNCIL

STANDING ORDERS RELATING TO CONTRACTS

Applicable from 1st April 2011

March 2011

EAST AYRSHIRE COUNCIL

STANDING ORDERS RELATING TO CONTRACTS

The Head of Legal, Procurement & Regulatory Services is responsible for all contracting activity within the Council. The Head of Legal, Procurement & Regulatory Services or his authorised representatives shall have the authority to:

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

EXTENT, VARIATION AND REVOCATION

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

REMITTS

5. (1) **National Public Sector Contracts:** Category A commodities and services to be procured on the Council's behalf by Procurement Scotland and where the Council signs the 'Intention to Participate' then

the use of the contract will be mandatory once in place, unless the contractor fails to meet specific requirements.

- (2) **National Sectoral Contracts (ie Councils):** Category B commodities and services to be procured on the Council's behalf by Scotland Excel and where it is deemed to provide best value after consultation between Procurement and End Users, then the use of the contract will be mandatory once in place, unless the contractor fails to meet specific requirements.
- (3) **Local Collaborative Contracts:** East Ayrshire Council Contracts involving NHS, Police, Fire, North Ayrshire Council, South Ayrshire Council and occasionally other Councils, where one of the partners will adopt the lead role and be the Contracting Authority will award the contract on behalf of all the participating bodies on a project-by-project basis. The interests of East Ayrshire Council are to be secured by representation on the working groups by the Corporate Procurement Team and key End Users and their use is mandatory.
- (4) **Building Contracts:** The major property capital programmes and other building-related ad hoc works are procured directly by Asset Improvement Services. Asset Improvement Services must seek assistance from the Corporate Procurement Team for any contracts above the EU thresholds to ensure compliance with the Regulations at all stages of the process, in particular placing of the OJEU Notice, PQQ, tender selection, award criteria and tender evaluation.
- (5) **Highway Contracts:** The Roads Structural Maintenance Programme and other highway-related works are procured directly by Roads & Transportation. Roads & Transportation must seek assistance from the Corporate Procurement Team for any contracts above the EU thresholds to ensure compliance with the Regulations at all stages of the process, in particular placing of the OJEU Notice, PQQ, tender selection, award criteria and tender evaluation.
- (6) **Corporate/Departmental Contracts:** Collaborative (supply and services) contracts, regardless of value, with other public sector bodies are the responsibility of the Corporate Procurement Team. Cross-departmental corporate contracts are also procured by the Corporate Procurement Team who is also responsible for the procurement of all other departmental contracts (Cat C commodities, kitting out of new or renovated buildings where not included in the construction contract, services, supplies and consultancy contracts) procured on behalf of the Council.
- (7) **Electronic Tenders:** Electronic tendering is a means of facilitating the complete tendering process via electronic means, including the exchange of all relevant documents in electronic format, including the electronic submission of competitive bids for the provision of the goods/service/works. This is a fully auditable system and can be facilitated through the Public Contracts Scotland website or the BiP e-Tendering system and will be managed by the Corporate Procurement Team.
- (8) **Use of Collaborative Contracts:** If there is a Council contract in place, this must be used as a first option even if there is a National

Collaborative contract in place. The use of the Office of Government Commerce (OGC) contracts shall be limited and authority to use these contracts must be sought from Procurement in the first instance.

- (9) **Quick Quotes:** Quick Quotes is a facility available on the Public Contracts Scotland website to electronically request and receive quotations. Quotations should only be sought for low value items where no contract exists for the requirement. The Procurement Team and certain Service Units, previously approved and trained by Procurement, will have access to the Quick Quote system.
 - (10) **Paper Order Books:** Only in exceptional circumstances will approval be given to use a Paper Order to purchase goods/services as the Council's electronic purchasing system (PECOS) must be used where available; approval and issue of a Paper Order Book will be controlled by the Procurement Team. Use of Paper Orders to bypass the electronic ordering system will be reported to the Head of Legal, Procurement and Regulatory Services. Paper order books should not be used for internal arrangements.
 - (11) **Heads of Service:** As budget holders, Heads of Service are responsible for ensuring contract compliance both with their own service specific contracts and for spend on corporate and collaborative contracts. Where guidance is required, the Head of Service shall consult with Procurement.
6. All Services must initially investigate internal options as a first option before any tender exercise is instructed; for example, Corporate Print Room for printing; Roads & Transportation for pathways and road repairs etc. Although in some cases internal charges may be slightly higher than outsourcing the requirement, the cost to the Council as a whole is less as the money is rotational within the Council.

TENDER THRESHOLDS

7. The financial thresholds that determine whether quotations or tenders are required are as detailed below.
- (1) **Consultancy Commissions** (a consultancy is defined as '*a service that would not normally be carried out by Council Officers and where there is a specialist aspect to the service*'): Consultancy Commissions with a total anticipated value of over £10,000 are to be formally noticed, tendered and officially opened by Procurement. The Head of Service will be responsible for ensuring value for money and best value for Consultancy Commissions below £10,000, usually by obtaining three quotations from reputable organisations who hold the required minimum insurance indemnity, relevant experience, competencies and who are financially stable (Equifax rating of 'D' or better, unless approval is given by Head of Service due to the low risk nature of the contract).
 - (2) **Supplies and Services:** With the exception of Nationally procured contracts, all Supplies and Services with a total anticipated value in excess of £30,000 (calculated over the full term of the contract, including any extension options) are to be formally tendered by

Procurement and officially opened. The Head of Service is responsible for ensuring value for money and best value for Supplies and Services with an aggregated value below £30,000 but not exceeding £500, by consulting with Procurement who will advise on whether formal tenders or a minimum of three quotations are required. This Standing Order also applies to the nomination of sub-contractors or suppliers for fully tendered works contracts. Where the value of a Supply, Works or Service is below £500 the Head of Service will be responsible for ensuring best value, although the Council's interest shall be protected by ensuring that the contractor is competent and holds the minimum insurance requirement and holds the required minimum Health & Safety competencies (membership of SSIP scheme for works contracts).

- (3) **All Commissions and Contracts:** In addition to 7.1 and 7.2, all contracts that have an anticipated contract value in excess of the European Procurement Threshold ruling at the time of advertising (calculated over the full term of the contract, including any extension options) will have the procurement process managed by Procurement who has sole responsibility for the placing of Contract Notices, including Contract Award Notices. The aggregated value is the total value of the consideration calculated over the entire term of the contract and use across the whole Council, including optional extensions (or four years in the case of arrangements with an indefinite period) where the consideration have similar characteristics or are for the same type of goods or services. The current thresholds are as follows, but these are likely to change on January 2012 and every two years thereafter. Where there is uncertainty as to the anticipated value of the contract when calculating the aggregated value, the EU Procedures will be applied in full, details of which are available from Procurement.

(i)	Supplies	£156,442
(ii)	Services	£156,442
(ii)	Works	£3,927,260

REPORTING OF TENDERS/AWARD OF CONTRACTS

8. (1) All tendering exercises will culminate with a Tender Outcome Report being produced by the Procuring Body (ie Procurement, Asset Improvement Services or Roads & Transportation) leading the procurement and this will be made available to the Head of Legal, Procurement & Regulatory Services who will award the contract and also made available to the appropriate Executive Directors/Heads of Service who are likely to have an interest in the contract.
- (2) All formal award of Contracts issued by the Head of Legal, Procurement and Regulatory Services are to be reported to Democratic Services stating the names and geographical location of all invited to tender, the tender outcome details and the value of the contract where lump sum, or the notional annual value if a Schedule of Rates Contract.

- (3) All award of contracts, irrespective of value, must be advised to Procurement immediately upon issue. All such awards will be recorded on a Contract Database for Audit and compliance purposes.

AUTHORITY TO CONTRACT

9. The authority of officers to award contracts on behalf of the Council will be strictly restricted to the following.
 - (1) Only the Head of Legal, Procurement & Regulatory Services or his/her representative may formally award Contracts on behalf of the Council where the contract value is in excess of £30,000 or £10,000 in the case of Consultancy Contracts.
 - (2) In the case of formal extensions to a Contract term, for contracts where this option exists, only the Head of Legal, Procurement & Regulatory Services or his/her representative may issue the Letter of Extension on behalf of the Council.
 - (3) For construction-related works contracts only, where the contract value is below £30,000, both the Head of Roads & Transportation and the Head of Asset Improvement Services are responsible for awarding contracts on behalf of the Council.
 - (4) Heads of Service are responsible for accepting quotations/offers for goods and services where the total value is between £500 and £30,000, with Procurement being advised prior to acceptance for aggregation purposes. Where Procurement recognise an aggregation issue, the Head of Service will be advised and, where time permits, a tender exercise will commence.
 - (5) Where a Consultancy Contract has an estimated value less than £10,000 the Head of Service is responsible for the acceptance of the quotation/offer/proposal on behalf of the Council, although Director approval must be obtained prior to acceptance.
 - (6) All leases, rental and external maintenance agreements must be approved by Procurement and authorised by the appropriate Head of Service.
 - (7) All Operational and Finance Leases must be approved by the Head of Finance.
 - (8) Where a collaborative contract is being procured on the Council's behalf by Procurement Scotland, the agreed protocols on authority to award will be complied with on all occasions, with final sign off by the Head of Legal, Procurement & Regulatory Services.
 - (9) Where a collaborative contract is being procured on the Council's behalf by Scotland Excel, authority to participate in the contract will rest with Procurement on all occasions and reported to Governance & Scrutiny on an annual basis.

- (10) Where a collaborative contract is being procured on the Council's behalf by another council/public body, authority to award the contract will rest with the Contracting Authority. In all such cases a Tender Outcome Report will be prepared by the Contracting Authority and approved by the East Ayrshire Council's Head of Legal, Procurement and Regulatory Services, prior to the award of contract.
- (11) Where a collaborative contract is being procured by the Council on behalf of another council/public body, authority to award the contract will rest with East Ayrshire Council's Head of Legal, Procurement and Regulatory Services. In all such cases a Tender Outcome Report will be produced by Procurement and issued to the other councils/public bodies, who will be required to confirm agreement by their lead officer, prior to award of contract.

ORDER & QUOTATION THRESHOLDS

10. (1) All Authorised Officers may place Orders to compliant contractors up to the value allowed in the specific Contract. Where no contract exists for a specific requirement, authorised officers may place an order for the supply of goods or services, where the requirement does not exceed £500 in so far as best value is deemed achieved by the officer.
- (2) Where no contract exists and there is a requirement for goods or services anticipated to have a value over £500 but not exceeding £30,000 a request will be sent to Procurement, who will advise the relevant Executive Director/Executive Head of Service/Head of Service or his nominee of the sourcing options to meet the requirement, normally by seeking a minimum of three quotations on the Council's terms, or where aggregation dictates by formal tendering. Procurement will respond with instructions/advice as to how to proceed within 3 working days of receipt of an e-mailed enquiry. Authorised Service Units will be given access to the 'Quick Quote' system for the purposes of obtaining 3 quotations (a minimum of 5 firms must be invited to quote to ensure that at least 3 quotations are actually received); if no access is available then the CPU will obtain the quotations on behalf of the Service Unit. Where 3 Quick Quotes are not received the remit will revert to the CPU in Procurement. In all cases the operation of the Quick Quote System will be the subject of ongoing monitoring by the Corporate Procurement Unit to ensure compliance.
- (3) Quotations should only be sought from reputable and competent organisations who hold the required minimum insurance indemnity (and SSIP in the case of works contracts) and by including the Council's standard Terms and Conditions at the time of quotation request.
- (4) Where no contract exists and there is a requirement for the supply of goods or services in excess of £30,000 a request will be sent to Procurement who will be responsible for procuring a formal Contract on behalf of the Council, with the exception of Building & Highway Construction Works. However Building and Highway Construction Works where the value is likely to exceed the European thresholds, will have the process managed by Procurement.

FRAMEWORKS & TERM CONTRACTS

11. (1) Where a compliant Framework Agreement is in place and where there is a provision for periodic electronic mini-tenders, these will be expedited by Procurement, unless the service has been approved by Procurement, who will who maintain a record of the revised bids received for audit purposes. Following the review after a periodic or ad hoc mini-tender, Procurement is responsible for informing those who continue to be included in the Framework of their revised rank, again unless the service is approved by Procurement to carry out the function.
- (2) Where a contract is for the supply of goods or services which will require to be delivered from time to time during a specific period, the requirements of these Standing Orders shall be carried out only once prior to the commencement of such Framework/Term Contract. This will apply to term contracts and Framework Agreements where call-offs are ordered throughout the term of the agreement/contract.

NOTICES

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

END OF CONTRACT TERM OR EXTENSION OPTIONS

13. Approximately 6 months (or approximately 8 months if TUPE, or where Strathclyde Police involvement is anticipated) prior to the end of a contract term or available extension option, Procurement will issue a Contract Review Form to the Contract Administrator which requires to be completed and returned to Procurement by the relevant Head of Service. The Corporate Procurement Team will action as appropriate.

PROCUREMENT GUIDANCE

14. Where a Service Unit/Department has any dubiety over the correct procurement routes, EU calculations re thresholds, packaging, procedures or strategies to be employed for a procurement process, it is the responsibility of the Head of Service to ensure that Procurement's advice is sought at the earliest opportunity and adhered to and who will assist the Service Unit/Department with its procurement.

OPTION APPRAISAL

15. The Executive Director/Head of Service is responsible for the carrying out a formal option appraisal exercise to establish the exact nature of each specific requirement, including the decision to deliver in-house or to outsource. Each option appraisal will be carried out at the outset of each project prior to the Contract Notice and, where possible, prior to the extension of a contract term. A Contract Review Form shall require to be completed by the appropriate Head of Service approximately 5 months prior to the end of the contract period or available extension option.

SPECIFICATION WRITING

16. (1) In the case of non-construction (works) contracts, the Heads of Service are responsible for ensuring that adequately detailed specifications are prepared by his/her officers and that these are passed timeously to Procurement who will assist in the fine tuning of the client requirements and incorporate the specification into the tender documentation.
- (2) In the case of construction contracts, Asset Improvement Services and Roads & Transportation are responsible for specifying the detailed client requirement.

FORWARD PLANNING OF REQUIREMENT

17. (1) For all procurement projects that require to be advertised and comply with the Public Contracts (Scotland) Regulations 2006, including Amendments (i.e. those in excess of the EU Thresholds) require the Director/Head of Service to ensure that any option appraisal exercise is complete and their procurement requirements defined at least 5 calendar months prior to the required physical contract start date. Where TUPE is anticipated the notice period is a minimum of 7 calendar months. In the case of Social Work contracts, this may be a total period of 12 months due to the requirement to consult with Service Users.
- (2) For all procurement projects that do not require to comply with the Public Contracts (Scotland) Regulations 2006 (i.e. those below the EU Thresholds) the Executive Director/Head of Service must ensure that any option appraisal exercise is complete and their procurement requirements defined at least 5 calendar months prior to the required physical contract start date. Where TUPE is anticipated the notice period is 7 calendar months.

EXEMPTIONS

18. (1) There shall be exempted from the provisions of these Standing Orders any contract for works, supplies or services which, in the opinion of the appropriate Executive Director/Head of Service are required to address a genuine emergency situation (e.g. a Contractor going into liquidation or where a Health & Safety issue requires to be urgently addressed, where the supply of goods are required locally, wind and watertight requirement in Housing or tenants right to repair) which would preclude the adoption of normal procedures. Lack of planning does not constitute an emergency requirement.
- (2) The Council may be exempt from the provisions of these Standing Orders or any part of them, any contract when it is satisfied that the exemption is justified by special unforeseen circumstances wholly out with the Council's control.
- (3) Works, supplies and service contracts procured and awarded on the Council's behalf by other Authorities, Scotland Excel, Procurement Scotland are exempted from these Standing Orders.
- (4) Notwithstanding the provisions of paragraph 10(2) hereof Housing Asset Services are exempt from compliance in the cases of Cat A "Emergency" and Cat B "24 Hour" response categories. However, in such circumstances the Head of Housing and/or the Head of IT and Asset Management will nevertheless be responsible for ensuring best value for all such requirements for Supplies, Works and Services with a value of between £500 and £30,000 under these two time-critical response categories.
- (5) Notwithstanding the provisions of paragraph 10(2) hereof the Roads & Transportation service is exempted from compliance in cases of genuine emergency works where materials are required to be sourced immediately. However, the Head of Roads and Transportation will nevertheless be responsible for ensuring best value for all such requirements for Supplies, Works and Services with a value of between £500 and £30,000 under these two time-critical response categories.
- (6) There shall be exempted from the provisions of these Standing Orders any contract of employment.
- (7) Contracts for the purchase, sale or lease of Heritable Property are governed by separate procedures and are exempt from these Standing Orders, unless where a formal procurement process is initiated.

OTHER REFERENCE

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

PROCUREMENT PROCEDURES

20. (1) Generally

There are specific recognised Procurement Procedures (Routes) that are available to use, depending upon the nature of the requirement. Moreover, where the tendering process is in accordance with the Public Contracts (Scotland) Regulations 2006, including Amendments (i.e. those above the EU Thresholds) the minimum timetables and transparency requirements must be complied with. However, Heads of Service are responsible for ensuring that his/her officers seek and adhere to guidance and instructions from the Corporate Procurement Team at the outset of the process, when considering the appropriate Procurement Process to adopt for each procurement project.

- (i) Restricted Procedure
- (ii) Accelerated Restricted Procedure
- (iii) Open Procedure
- (iv) Negotiated Procedure
- (v) Competitive Dialogue Procedure
- (vi) Dynamic Purchasing Systems

- (2) The appropriate way forward and the detail of each Procedure shall be discussed with the Corporate Procurement Team at the outset. A minimum of 6 months is required for a straightforward tender exercise using the most common Procedures of Restricted or Open. Other Procedures are generally used for more complex requirements and the Accelerated Procedure **must not** be used due a lack of forward planning by Service Units.

AUTHORITY TO EXTEND OR NEGOTIATE AWARD

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

ISSUE AND RETURN OF TENDERS/ELECTRONIC TENDERS

22. (1) Tender documents shall state:-
- (a) The nature and purpose of the Contract for which tenders are invited.
 - (b) The latest date and time (in all cases being twelve noon) when tenders must be received, either by hard copy or by electronic means.
 - (c) If hard copy, the location where tenders are to be returned, in all cases to Main Reception Desk, Council Headquarters, London Road, Kilmarnock KA3 7BU. If submission by electronic means, the website/system details through which the electronic tenders are to be submitted.
 - (d) That the tender shall remain open for acceptance for the period specified in the tender documents.
 - (e) That the Council is not bound to accept the most economically advantageous, lowest or any tender received.
 - (f) The award criteria and weightings to be used in the evaluation of bids received.
 - (g) The contact details and method of submitting all tenderer queries during the tender period, whether by email or via the electronic tendering system.
- (2) For hard copy of tenders, at the time of invitation to tender for the purposes of obtaining an offer from them, a Tender Record Sheet shall be produced by the appropriate officer in Roads, Asset Improvement Services or the Corporate Procurement Team and a copy passed to the Senior Administrative Officer and London Road reception. The Tender Record Sheet shall contain the following information:-
- (a) Project Title and Reference.
 - (b) Budget Allocation/Anticipated Contract Value (where available).
 - (c) Names and address of tenderers invited to submit an offer.
 - (d) Tender return date and time.
 - (e) Price : Quality Award Ratio.

For electronic tenders, the submission of the tenders is controlled by the system which is fully auditable with details available from Procurement.

- (3) For hard copy of tenders, Tender Documents shall be accompanied by a suitable discrete envelope for their return by post or by hand, clearly marked to indicate that enclosed is a tender and for what purpose. The envelope shall be addressed to the Main Reception Desk, East Ayrshire Council, Council Headquarters, London Road, Kilmarnock, KA3 7BU. In addition, the latest date and time for receipt of offers shall be indicated on the envelope, together with an identifier whereby the name of the Contractor can be ascertained for the purpose of returning unopened late tenders and also to contain a statement "if returned by hand, should be delivered to the Main Reception Desk at Council Headquarters, London Road, Kilmarnock where a receipt will be issued specifying the date and time of receipt.
- (4) All tender returns shall be kept in safe and secure place until formally opened.
- (5) Hard copy of tenders above £30,000 where officially opened will be passed by Administrative Services to Roads, Asset Improvement Services or the Corporate Procurement Team, as appropriate.
- (6) Below £30,000 hard copy of tenders to be opened by the Head of Service shall be passed by Administrative Services to the appropriate Head of Service or Corporate Procurement Team, as appropriate.
- (7) Where **Requests For Quotations** or **Quick Quotes** are issued for goods, services or works which have an estimated total aggregated value not exceeding £30,000, these will be issued, received, opened and processed by the Corporate Purchasing Unit within the Corporate Procurement Team, or authorised users within the relevant Service Unit.

LATE TENDERS

23. (1) No tenders received after the latest closing date and time for submission shall be considered. Any hard copy tender received late should be stamped accordingly and returned to the Tenderer with an accompanying letter indicating that as a result of the tender being received late it will not be considered, at the discretion of the Head of Legal, Procurement & Regulatory Services.
- (2) For the purposes of electronic tenders, it should be noted that the system will not allow late tenders to be uploaded to the system beyond the deadline set. A register is to be kept by the Corporate Procurement Team of any requests by Tenderers to accept a late electronic tender.

OPENING OF TENDERS

24. (1) Where a hard copy tender has the anticipated value in excess of £30,000 or £10,000 in the case of Consultancy Contracts, the tenders must be returned to the Council HQ and be officially opened by a Member and Administrative officer.
- (2) Where the hard copy tender has a value of less than £30,000 or £10,000 in the case of a Consultancy Contract, the tenders must be returned to the Council HQ and will be passed directly to the Head of Service who will be responsible for recording and witnessing the opening of tenders. In the case of electronic tenders, these will be opened by Procurement who will make a record of the bids received available to Administrative Services by completing an electronic Tender Record Sheet.
- (3) At the official opening of hard copy Tenders over £30k (£10k for Consultancy Contracts) the amount of offers as received shall be recorded for each tenderer upon the Tender Record Sheet. As each tender is opened and noted, it shall be initialled, dated and time recorded by the Elected Member present, who will also sign and date the Tender Record Sheet.
- (4) Where hard copy tenders are opened by the Head of Service (<£30k and £10k for Consultancy Contracts) or his/her authorised nominee, the amount of offers as received shall be recorded for each tenderer upon the Tender Record Sheet. As each tender is opened and noted, it shall be initialled, dated and time recorded by the Head of Service and witnessed by another senior officer from the service, who will also sign and date the Tender Record Sheet.
- (5) Following official opening and recording of offers received, the hard copy Tender Documents shall be passed by Administration together with a copy of the completed Tender Record Sheet to the Head of Roads & Transportation, Asset Improvement Services or Procurement as appropriate.
- (6) Notwithstanding the terms of paragraphs 23(1) – (5) hereof where electronic tendering is used as the means to receive tenders, the Head of Legal, Procurement and Regulatory Services will be responsible for ensuring that the lodging of electronic tenders is both secure and auditable. All information detailed at paragraph 23 (1) – (5) hereof in respect of any such exercise will be recorded by Procurement and passed to Democratic Services for retention and reporting purposes.

CHECKING & EVALUATION OF TENDERS

25. (1) In the case of all tenders using added value award criteria (i.e. where not wholly evaluated on price) all tenders will be appraised, checked and fully evaluated, with only void offers being discounted from the added-value tender evaluation process.

- (2) Tenders being evaluated against added value criteria will have the added-value element of the offers appraised and scored by a Tender Evaluation Panel of not less than three scoring officers, with the process being scrutinised by an officer from Procurement, who is responsible for the production of a Tender Outcome Report detailing the process undertaken and the results of the evaluation and this report will be submitted to the Head of Legal, Procurement and Regulatory Services, Executive Director, Head of Service and other senior officers, as appropriate prior to the issue of any letters of intent, letters of regret and letter of award/inclusion.
- (3) In the case of tenders using the NJCC Code of Procedure for Single Stage Selective Tendering, the three lowest tenders received shall be subject to checking by the appropriate officers of the originating Department. In respect of tenders whose estimated value is in excess of £30,000 a written report shall be prepared detailing all the tenders received in a form determined from time to time by the Executive Director of Finance & Corporate Support. This report shall contain a specific recommendation as to the acceptance or otherwise of each tender with reasons. The use of this code of procedure must not be used in respect of tenders which require to be advertised through OJEU.

COUNCIL APPROVAL TO CONTRACT

26. (1) No award of contract shall be made unless the estimated expenditure has been approved previously by the Cabinet through the budgeting process.
- (2) The Council will not be bound to accept the lowest or any tender received. Tenders may be accepted without further reference to Cabinet, provided the Best Value tender after checking and, where appropriate, identification of savings, does not when aggregated with other contracts where appropriate, exceed the budget allocation as approved by the Cabinet.
- (3) In the event that it is proposed to accept other than the Best Value valid tender received after checking, then this must be referred to the Head of Legal, Procurement & Regulatory Services for approval.
- (4) Where it is determined in consultation with Procurement and the Client Department that a tender is abnormally low and of the opinion that it is not possible for the tenderer to deliver the contract to the required standard for the price offered, or where a tenderer has submitted material qualifications to the Conditions of Contract or Specification then such an offer may be rejected as void and the tenderer will be so advised.
- (5) Following the issue of a contract acceptance for a contract in excess of £30,000, a report on the outcome of the tendering procedure shall be submitted by Administration on behalf of the relevant Executive Director to the first meeting of the Governance and Scrutiny Committee.

- (6) In the case of Lump Sum Capital Programme 'works' contracts, provided the accepted contract sum including any subsequent authorised approval to incur additional expenditure, is not exceeded by more than 10%, then Cabinet approval for additional expenditure will not be required.
- (7) In the case of Lump Sum Capital Programme 'works' contracts, in the event that the final cost of a contract exceeds or is likely to exceed the accepted contract sum including any subsequent authorised approval to incur additional expenditure, by more than 10%, then this shall be reported to the Cabinet at the earliest possible date, explaining the circumstances and the financial implications.

CONTRACT REGISTERS

27. (1) Procurement shall maintain a Contract Register of all formally awarded contracts, having an estimated value in excess of £30,000 and shall include therein the name and address of such successful tenderer, the value or amount of the contract, together with a record of any hard copy tenders returned due to late receipt and details of the contract award.
- (2) Procurement shall also maintain a register of all tenders received in respect of each contract having an estimated value not exceeding £30,000 although this record will be limited to the name and address of the successful tenderer and the value of the award. The appropriate Executive Director/Head of Service shall ensure that all letters of acceptance issued by him/her or on his/her behalf shall be copied to the Corporate Procurement Team for recording purposes.
- (3) Where a contract is procured by other than Procurement, the appropriate Executive Director/Head of Service shall make arrangements for the secure retention of all successful and unsuccessful tenders and related tender documentation for a period of 6 years following final financial settlement of the contract. Upon expiry of the 6 year retention period, appropriate arrangements must be made by the appropriate Executive Director/Head of Service for the suitable secure disposal of such confidential documentation.

CONTRACT MANAGEMENT & MONITORING

28. (1) The relevant Executive Director/Executive Head of Service/Head of Service shall ensure that all Contract Administrators and other officers within their respective services who utilise contracts (National, Sectoral, Collaborative, Corporate and Departmental) maintain regularly updated records of the performance of contractors in the delivery of their Contracts. The systems to be used for the gathering and recording of information shall be the Council's web-based Contract Management System, unless a Service Unit has a bespoke system which records additional information not capable of being recorded on the corporate Contract Management System. Where a Service use their own bespoke system, they are responsible for managing the system and reporting performance to their Head of Service.

- (2) The identified Lead Users within Departments who act as Contract/Framework Administrators are responsible for the day to day management, monitoring and ongoing payment for each specific contract and shall refer to and maintain the contract documentation and any variations issued under the contract. This will also include Contract Management information such as non-conformances which must be recorded on the council's Contract Management web-based system. A summary of Contract/Framework Administrator's duties and responsibilities is available on the Procurement pages of the Intranet.
- (3) The Executive Director of Finance & Corporate Support shall ensure that adequate reporting mechanisms are in place to inform Cabinet and Committee in respect of spend against Individual Contracts. In addition, contractual financial reporting information will also be available from PECOS and Procurement will provide to the Director and Head of Service on a 4 weekly basis.
- (4) A report shall be prepared by the appropriate Head of Service on the financial outcome of each completed capital programme contract and submitted to the Governance and Scrutiny Committee.
- (5) The Executive Director of Finance & Corporate Support will ensure that the monitoring procedures by the appropriate Client Departments relating to the administration of Best Value provide Value for Money in respect of service delivery to the Council, by the application of the approved Contract Management procedures.
- (6) In relation to the audit of contracts, the Chief Executive or her authorised Officers, whilst carrying out the monitoring of Performance and Best Value, shall have the authority, on production of identification, to:-
 - (i) obtain entry at all reasonable times to any Council premises, land or sites.
 - (ii) have access to all records, documents and correspondence relating to the audit in hand.
 - (iii) require and receive such explanations as are necessary concerning any matter under investigation.

PAYMENTS

29. (1) Authorised payments will only be made by those officers who have been identified by the Heads of Service, who are responsible for supplying a list of authorised signatories for the certification of accounts to the Head of Finance & Corporate Support.
- (2) Payments will only be made in accordance with the specific Conditions of Contract terms laid out in the Contract Documents for each particular contract.

- (3) Payments require to be made within 28 days of receipt of an invoice and the Head of Finance and the appropriate Head of Service are jointly responsible for ensuring timely payments.

CONTRACTUAL MATTERS

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

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

(2) **Equality**

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

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

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

(4) **Prevention of Collusion and Corrupt or Illegal Practices**

Every contract shall contain a clause entitling the Council to cancel the contract and to recover from the contractor/supplier the amount of any loss resulting from such cancellation, if the contractor/supplier/service provider or its representative (whether with or without the knowledge of the contractor/supplier/service provider) shall have practised collusion in tendering for the contract or any other contract with the Council or shall have employed any corrupt or illegal practices either in the obtaining or execution of the contract or any other contract with the Council. Tenderers shall sign a declaration of non-collusion as part of its tender submission.

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

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

(6) **European Standards**

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

(7) **Copyright**

Executive Directors and Heads of Service shall in so far as practicable, ensure that in contracts for the commissioning of reports, research, graphics, design, media and other consultancy services to which copyright applies, that while copyright in the work remains vested in the Contractor, the Council has royalty free rights to utilise the information provided in relation to the continued development of the specific project and subsequent related projects.

(8) **Health & Safety**

Every contractor/supplier appointed by or on behalf of the Council will be required to conduct its undertakings in accordance with current Health and Safety Regulations and approved Codes of Practice.

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

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

(10) **Liquidated and Ascertained Damages**

(a) Where considered appropriate by the Executive Director/Executive Head of Service/Head of Service, contracts shall provide for liquidated and ascertained damages in the event of late completion of the contract.

(b) The amount to be specified in each such contract shall be determined in terms of the estimated and substantiated losses likely to be incurred by the Council, in the event of late completion.

(11) Insurance

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

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

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

(12) Sustainable Procurement

Where appropriate, sustainability requirements should be specified or sustainability should form part of the award criteria. Also, where appropriate, community benefits clauses should be considered. Although not an exhaustive list examples of the range of issues which can be incorporated into such provisions relate to training proposals, intentions regarding the provision of apprenticeships, recycling, whole life costs, environmentally friendly waste disposal policies, reuse of materials, proposals to generate local economic opportunities and development and general investment proposals for local communities. Proposals to include any form of community benefit clause in any particular exercise should be discussed with the Corporate Procurement Unit initially.

APPLICABLE TO PROCUREMENT CONSULTANTS

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

documentation prior to its issue. All such tenders shall be issued and administered by Procurement.

CENTRAL PURCHASING & ePROCUREMENT

32. (1) Central Purchasing and Electronic Buying are currently being introduced in a phased manner throughout council departments and the following standing orders shall apply where the systems are in place within service units.
- (2) **e-Procurement (PECOS):** Is the electronic web-based system that allows orders to be placed with selected suppliers and to record receipt of goods and payment of invoices. All designated buyers who have been trained on the use of the system must use PECOS where the requirement is available on the system.
- (3) **Central Purchasing:** Specific commodities are already purchased via a Central Purchasing Unit within the Corporate Procurement Team. In conjunction with the phased introduction of PECOS the Central Purchasing Unit will also be extended to cover other key commodities and services where opportunities are identified and to secure best value by the use of a more centralised and managed approach to purchasing, including taking advantage of aggregation.

HIRE DESKS

33. (1) The current hire desk within Roads will continue to act as Framework Administrator for the ordering and administration of all Departments' Vehicle Hire and Vehicle Purchase requirements.
- (2) The current hire desk within Roads will continue to act as Framework Administrators for the ordering and administration of all Departments' Plant Hire requirements.

NATIONAL AGENDA

34. (1) A review of procurement in 2008 within the Scottish Public Sector (The McClelland Report), commissioned by the Scottish Government, recommended major strategic changes that will have an ongoing impact on all Local Authorities within Scotland.
- (2) These changes include policy, structure and operating procedures and the formation of new central procuring organisations, namely **Procurement Scotland** and **Scotland Excel**. These organisations have responsibility for the co-ordination and tendering of major contracts for goods and services used across the public sector. Procurement Scotland have responsibility for tendering what are known as Category A items (all public sector) while Scotland Excel look after Category B items (local authorities only).
- (3) A report will be presented to Governance & Scrutiny Committee annually, in April, which will advise on the Category A and B contracts put in place that East Ayrshire Council are participating in.

- (4) In line with the recommendations of The McClelland Report and to comply with guidelines from the Scottish Procurement Directorate, East Ayrshire Council is continually reviewing its Procurement practices and the new Procurement Strategy for 2011 – 2013 is being written for approval by Council in March 2011.

END