



## **EAST AYRSHIRE COUNCIL**

# **STANDING ORDERS RELATING TO CONTRACTS & TENDERING**

**Applicable from 1<sup>st</sup> January 2008**

**November 2007**

**EAST AYRSHIRE COUNCIL****STANDING ORDERS RELATING TO CONTRACTS****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.
2. Where collaborative contracts are being awarded on the Council's behalf by other Authorities, ABC, Scotland Excel, National Procurement Centre of Expertise 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.
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 UK legislation or European Union rules 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 the National Procurement Sector of Expertise and likely to be mandatory once in place.  
(2) **National Council Contracts:** Category B commodities and services to be procured on the Council's behalf by Scotland Excel and likely to be mandatory once in place.  
(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 who 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 housing and property capital programmes and other building-related ad hoc works are procured directly by Technical Services, where the works are surplus to Building & Works capacity.
- (5) **Highway Contracts:** The Roads Structural Maintenance Programme and other highway-related works are procured directly by Roads & Transportation.
- (6) **Corporate / Departmental Contracts:** Collaborative contracts 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) **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.

## TENDER THRESHOLDS

- 6. The financial thresholds that determine whether quotations or tenders are required are as detailed below.
  - (1) **Consultancy Commissions:** Consultancy Commissions with a total anticipated value of over £10,000 are to be formally noticed, tendered and officially opened. 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 and who are financially stable.
  - (2) **Supplies, Works and Services:** With the exception of 6 (1), all Supplies, Works 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 and officially opened. The Executive Head/Head of Service is responsible for ensuring value for money and best value for Supplies, Works and Services with an aggregated value below £30,000 but exceeding £500 by obtaining a minimum of 3 quotations. Furthermore, where a Service Unit is fully integrated with e-Purchasing (PECOS) the Executive Head/Head shall consult with the Corporate Procurement Team who will advise on whether formal tenders or a minimum of three quotations are required where the aggregated value is between £500 and £30,000. This standing order also applies to the procurement of Nominated Sub-Contractors or Nominated Suppliers. Where the value of a Supply, Works or Service is below £500 the Executive Head/Head of Service will be responsible for ensuring best value.

- (3) **All Commissions and Contracts:** In addition to 2.1 and 2.2, 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) require to be notified to the Procurement Section who have sole responsibility for the placing of Contract Notices, including Contract Award Notices. The aggregated value is the total value of the consideration calculated over the entire term of the contract, including optional extensions (or four years in the case of contracts 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 2008 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.

|      |          |            |
|------|----------|------------|
| (i)  | Supplies | £144,371   |
| (ii) | Services | £144,371   |
| (ii) | Works    | £3,611,319 |

## REPORTING OF TENDERS / AWARD OF CONTRACTS

7. (1) All tendering exercises will culminate with a Tender Outcome Report being produced by the Procuring Body leading the procurement and this will be made available to the officer who is to award the contract and to the appropriate Executive Head/Heads of Service who is likely to have an interest in the contract.
- (2) All award of Contracts issued by the Head of Legal, Procurement and Regulatory Services are to be reported to Administrative Services stating the names and addresses 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 the Contract Monitoring Officer within the Corporate Procurement Team immediately upon issue. All such tenders will be recorded on a Contract Database for Audit purposes.

## AUTHORITY TO CONTRACT

8. 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 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 Technical Services Manager 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 contract value is below £30,000, with the Corporate Procurement Team being advised prior to acceptance for aggregation purposes.
- (5) Where a Consultancy Contract has an estimated value less than £10,000 the Executive Head/Head of Service is responsible for the acceptance of the quotation/offer/proposal on behalf of the Council.
- (6) All leases, rental and external maintenance agreements must be approved by the Corporate Procurement Team and authorised by the Appropriate Executive Head/Head of Service.
- (7) All Operational and Finance Leases must be approved by the Executive Head of Finance & Asset Management.
- (8) Where a collaborative contract is being procured on the Council's behalf by the National Procurement Centre of Expertise, the agreed protocols on authority to award will be complied with on all occasions.
- (9) Where a collaborative contract is being procured on the Council's behalf by ABC / Scotland Excel, authority to award the contract will rest with the Joint Board on all occasions.
- (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 by 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 the Corporate Procurement Team and issued to the other councils/public bodies, who will be required to confirm agreement, prior to award of contract.

## **ORDER & QUOTATION THRESHOLDS**

9. (1) All Authorised Officers may place orders against compliant Contracts 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.

- (2) In the case of Service Units that are fully integrated with e-Purchasing (PECOS), 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 the Corporate Procurement Team, who is responsible for advising the Executive Head/Head of Service of the sourcing options to meet the requirement, normally by seeking a minimum of three quotations on the Council's terms, or by formal tendering. The Corporate Procurement Team will respond with instructions/advice as to how to proceed within 24 hours of receipt of the emailed enquiry. Where a Service Unit is not fully integrated with e-Purchasing (PECOS), the Executive Head/Head of Service will obtain a minimum of 3 quotations where the aggregated value of the requirement is between £500 and £30,000.
- (3) Quotations may only be sought from reputable organisations who hold the required minimum insurance indemnity and who are financially stable.
- (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 the Corporate Procurement Team who will be responsible for procuring a formal Contract on behalf of the Council, with the exception of Building & Civil Construction Works.

## **FRAMEWORKS & TERM CONTRACTS**

10. (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 the Corporate Procurement Team, 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, the Corporate Procurement Team is responsible for informing those who continue to be included in the Framework of their revised rank.
- (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 period. This will apply to term contracts and Framework Agreements where call-offs are ordered throughout the term of the agreement/contract.

## **NOTICES**

11. Adequate publicity must be a consideration when deciding upon the procurement of all Supplies, Works and Services, including Consultancy Contracts. Unless where Roads or Technical Services are utilising the Approved List of Contractors all tender opportunities must be adequately advertised, including a Notice placed on the Council's procurement webpage. All such Notices must be placed on the website by the Corporate Procurement Team. Notwithstanding the proposed use of the Approved List of Contractors, all major value Contracts must be advertised on the Council's website and expressions of interest considered in conjunction with those on the Approved List.

## **PROCUREMENT GUIDANCE**

12. 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 the Corporate Procurement Team's advise is sought and adhered to and who will assist the Service Unit / Department with its procurement.

## **OPTION APPRAISAL**

13. The Executive Director/Executive Head/Head of Service is responsible for the carrying out of 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 prior to the extension of a contract term.

## **SPECIFICATION WRITING**

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

## **FORWARD PLANNING OF REQUIREMENT**

15. (1) For all procurement projects that require to be advertised and comply with the Public Contracts (Scotland) Regulations 2006 (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 6 calendar months prior to the required physical contract start date. Where TUPE is anticipated the notice period is 7 calendar months.
- (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 Director/Executive Head/Head of Service must ensure that any option appraisal exercise is complete and their procurement requirements defined at least 4 calendar months prior to the required physical contract start date. Where TUPE is anticipated the notice period is 5 calendar months.

## EXEMPTIONS

16. (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/Executive Head of Service/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) which would preclude the adoption of normal procedures. Lack of planning does not constitute an emergency requirement.
- (2) The Council may 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, ABC, Scotland Excel, National Procurement Centre of Expertise are exempted from these Standing Orders.
- (4) Notwithstanding 9 (2) Building & Works are exempt from compliance in the cases of Cat A "Emergency" and Cat B "24 Hour" response categories. However, the Head of Building & Works 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 9 (2) Roads are exempt from compliance in the 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.

## OTHER REFERENCE

17. 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. The Corporate Procurement Strategy shall be complied with as if it forms part of these Standing Orders.

**APPROVED LIST OF CONTRACTS**

18. (1) This Standing Order shall apply to all contracts where the Head of Roads or the Technical Services Manager considers that invitation to tender should be restricted to persons whose names appear on the Approved List of Contractors. However, the Approved List of Contractors may only be used by Technical Services and Roads & Transportation for construction-related works contracts. In cases where the works have an estimated value in excess of the current European Union Threshold for Works Contracts, the Approved List of Contractors may only be used in conjunction with a call for competition advertised in the Official Journal of the European Union from which expressions of interest must also be considered. Adequate advertising of below EU threshold works contracts must also be considered on a project by project basis.
- (2) The Approved List of Contractors shall -
- (a) Be compiled and maintained by Technical Services, or on its behalf by Contract Audit within the Corporate Procurement Team.
- (b) No person shall be included in the list unless its technical capability, health and safety and financial standing have been satisfactory investigated.
- (3) Before a list is compiled, notices inviting applications for inclusion in it shall be published in such trade journals and/or appropriate newspapers as the appropriate Executive Director/Head of Service may consider necessary.
- (4) Each list may be amended at any time and shall be reviewed at intervals of not more than three years. At least four weeks before each review, each company whose name appears on the list shall be asked whether it wishes its name to be considered for inclusion thereon and notices inviting applications for consideration to be included in the list shall be published in the manner provided for the paragraph (3) of this Standing Order.
- (5) An invitation to tender for a contract shall be sent to at least six persons whose names appear on the appropriate list or, if there are fewer than six persons to all such companies.
- (6) A formal policy on the selection of tenderers shall be produced by the Head of Roads & Transportation and the Technical Services Manager for use where the Approved List of Contractors is used. The policy will recognise the need for the systematic rotation of tenderers.

## PROCUREMENT PROCEDURES

### 19. (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 (i.e. those above the EU Thresholds) the minimum timetables and transparency requirements must be complied with. A summary of the Procurement Procedures available are listed below for information purposes. 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) **Restricted Procedure**

- (a) This Standing Order shall apply to all contracts where the Head of Legal, Procurement and Regulatory Services considers that invitation to tender shall be limited to persons who reply to a public notice.
- (b) Public notice shall, in all cases, be placed on the Council Website and the National Noticing Portal when established.
- (c) In addition to 25 (2), Public Notices shall be given in such trade journals and/or appropriate newspapers as the appropriate Executive Director/Executive Head of Service/ Head of Service may consider necessary, setting out particulars of the contract and inviting persons interested to apply within such period, as may be specified, for permission to tender.
- (d) In addition to 25 (2) and 25 (3) contract notices shall be placed in the Official Journal of the European Union where the anticipated total value of the aggregated requirement exceeds the European Financial threshold ruling at the time of the Notice and the EU timetable restraints will be adhered to in all cases.
- (d) All contract and award notices will be the responsibility of the Corporate Procurement Team who will place all notices on behalf of the Council.
- (e) After the expiration of the period specified in the public notice, invitations to tender shall be sent to at least six persons who are considered competent to carry out such a contract or, if there are fewer than six persons, to all such persons.

(3) **Open Procedure**

- (a) This Standing Order shall apply to all contracts where the Head of Legal, Procurement and Regulatory Services considers that invitation to tender shall be open to all organisations who express an interest in tendering.
- (b) In all cases a Public Notice shall be advertised on the Council's website, the National e-Noticing Website, along with notices in the local, national press and any relevant trade journals as the appropriate Executive Director/Executive Head of Service/Head of Service may consider necessary, expressing the nature and purpose of the contract, inviting tenders for its execution and stating the last date and time when expressions of interest can be received and emailed expressions of interest will be encouraged.

(4) **Competitive Dialogue Procedure**

Where the requirement cannot adequately be described and where the project is of a highly complex nature the Competitive Dialogue Procedure may be used. In all such cases, guidance will be sought from the Corporate Procurement team who will give guidance and assist in the procurement.

**AUTHORITY TO EXTEND OR NEGOTIATE AWARD**

- 20. (1) Where the appropriate Executive Director/Executive Head of Service/Head of Service considers that a tender should be negotiated with one person, he/she shall, before entering into negotiations, obtain 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/Executive Head of Service/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 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

21. (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.
  - (c) The location where tenders are to be returned, in all cases to Main Reception Desk, Council Headquarters, London Road, Kilmarnock KA3 7BU.
  - (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 where all tenderer queries are to be sent during the tender period, including email address.
- (2) 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, Technical 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.
  - (c) Names and address of tenderers invited to submit an offer.
  - (d) Tender return date and time.
  - (e) Price : Quality Award Ratio.
- (3) Tender Documents shall be accompanied by a suitable 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 return shall be kept in safe and secure place until formally opened or opened by the Executive Head of Service, as appropriate.
- (5) Tenders where officially opened will be passed by Administrative Services to Roads, Technical Services or the Corporate Procurement Team, as appropriate.

- (6) Below threshold tenders to be opened by the Executive Head shall be passed by Administrative Services to the appropriate Executive Head of Service or Corporate Procurement Team, as appropriate.
- (7) Where **Requests For Quotations** are issued for goods and services 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.

## **LATE TENDERS**

22. No tenders received after the latest closing date and time for submission shall be considered. Any 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.

## **OPENING OF TENDERS**

23. (1) Where a 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 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 Executive Head of Service/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 the Corporate Procurement Team who will make a record of the bids received available to Administrative Services.
- (3) At the official opening of Tenders 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 tenders are opened by the Executive Head of Service/Head of Service 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 Executive Head of Service/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 Tender Documents shall be passed together with a copy of the completed Tender Record Sheet to the Head of Roads & Transportation, Technical Services manager or Corporate Procurement Team, as appropriate.

- (6) Notwithstanding 23 (1) – (5) 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 safe and auditable. Electronic tendering may only be used with the approval of the Head of Legal, Procurement and Regulatory Services.

## **CHECKING & EVALUATION OF TENDERS**

24. (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 the Corporate Procurement Team, who is responsible for the production of a Tender Outcome Report detailing the process undertaken and the results of the evaluation and this report will be submitted to the Head of Legal, Procurement and Regulatory Services and other senior officers, as appropriate prior to the issue of any letters of intent, letters of regret and letter of award.
- (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 Corporate Support. This report shall contain a specific recommendation as to the acceptance or otherwise of each tender with reasons.

## **COUNCIL APPROVAL TO CONTRACT**

25. (1) No tender shall be accepted for any contract unless the estimated expenditure has been approved previously by the Cabinet.
- (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 should be referred to the Cabinet prior to acceptance.

- (4) Where the appropriate Executive Director/Executive Head of Service/Head of Service determines that a tender is abnormally low and is 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 the relevant Executive Director to the first meeting of the Governance and Scrutiny Committee.
- (6) In the case of Lump Sum Capital Programme 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 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**

26. (1) The Corporate Procurement Team shall maintain a register of all tenders received in respect of each contract, having an estimated value in excess of £30,000 and shall include therein the name and address of such tenderer invited, the value or amount of tenders “as opened” and “as checked”, together with a record of any tenders returned due to late receipt and details of the contract award.
- (2) The Corporate Procurement Team 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/Executive Head of Service/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) The appropriate Executive Director/Executive Head of Service/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/Executive Head of Service/Head of Service for the suitable secure disposal of such confidential documentation.

**CONTRACT MANAGEMENT & MONITORING**

27. (1) All Contract Administrators and other officers who utilise contracts (National, Sectoral, Collaborate, Corporate and Departmental) shall 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.
- (2) The identified Lead Users within Departments who act as Contract/Framework Administrators are responsible for the 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.
- (3) The Executive Head of Finance & Asset Management shall insure 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 once the system has been completely integrated into the departments purchasing processes, over a period of two to three years.
- (4) A report shall be prepared by the relevant Executive 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 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) The Chief Executive, together with the Executive Director of Corporate Support in relation to contracts or their 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

28. (1) Authorised payments will only be made by those officers who have been identified by the Executive Directors, Executive Heads or Heads of Service who are responsible for supplying a list of authorised signatories for the certification of accounts to the Executive Head of Finance & Asset Management.
- (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.

## CONTRACTUAL MATTERS

29. (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) **Race 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 Race Relations Act 1976, or any statutory modification or re-enactment thereof relating to discrimination in employment.

(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 as appropriate.

(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 sub-let any portion without the previous written consent of the appropriate Executive Director/Executive Head of Service/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 equivalent 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, Executive Heads of Service 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 vests in the Contractor, the Council has royalty free rights to utilise the information provided in relation to the continued development of the specific project.

(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 necessary by the appropriate Executive Director/Executive Head of Service/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 of the security to be given.

**(10) Liquidated and Ascertained Damages**

- (a) Where considered necessary by the appropriate Executive Director/Executive Head of Service/Head of Service, contracts shall provide for liquidate 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 the 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
- (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.

**APPLICABLE TO PROCUREMENT CONSULTANTS**

30. (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/Executive Head of Service/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/Executive Head of Service/Head of Service.

## INTERIM ARRANGEMENTS

31. (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 Function within the Corporate Procurement Team. In conjunction with the phased introduction of PECOS the Central Purchasing Function 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.

## HIRE DESKS

32. (1) The current hire desk within Roads will continue to act as Framework Administrator for the ordering and administration of all Vehicle Hire requirements.
- (2) The current hire desks within Roads and Building & Works will continue to act as Framework Administrators for the ordering and administration of all Plant Hire requirements.

## NOTIFICATION OF CHANGE

33. (1) A recent review of procurement within the Scottish Public Sector (The McClelland Report), commissioned by the Scottish Government, has 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 the **National Procurement Centre of Expertise** and potentially **Scotland Excel** (replacement for **abc**). These organisations will have responsibility for the co-ordination and tendering of major contracts for goods and services used across the public sector. NCPoE will have responsibility for tendering what are known as Category A items (all public sector) while Excel will look after Category B items (local authorities only).
- (3) In line with the recommendations of The McClelland Report and to comply with guidelines from the Scottish Procurement Directorate East Ayrshire Council has completed a review into current Procurement practices and the revised Procurement Strategy for 2008 – 2010 was approved by Council on 21<sup>st</sup> November 2007.

- (4) This Strategy will also include the formation of a Central Purchasing Unit (CPU) to co-ordinate and consolidate non-tendering purchasing activities throughout the Council and the introduction of ePS, a Council wide common electronic purchasing system known as PECOS (currently being rolled out) which will be the standard system for purchase order processing.
- (5) The Strategy will contain guidelines on Sustainable Procurement and recommendations on the operation of centralised 'Hire Desks' for both vehicle and plant hire.
- (6) Subsequently, on approval and publication of the proposals contained within this Strategy this will necessitate amendments to the Standing Orders as currently drafted.

END