

## **Item: 9**

**Policy and Resources Committee: 22 June 2021.**

**Contract Standing Orders.**

**Report by Executive Director of Development and Infrastructure.**

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

To consider revised Contract Standing Orders.

### **2. Recommendations**

The Committee is invited to note:

#### **2.1.**

That, on 26 November 2019, the Policy and Resources Committee recommended that revised Contract Standing Orders be approved.

#### **2.2.**

That the Contract Standing Orders have since been updated to reflect changes following the United Kingdom's exit from the European Union, together with recommendations arising from the internal audit on the procurement and importation of stone to Cursiter Quarry, reported to the Monitoring and Audit Committee on 11 March 2021.

**It is recommended:**

#### **2.3.**

That the updated Contract Standing Orders, attached as Annex 1 to this report, be approved.

### **3. Background**

The purpose of Contract Standing Orders is to set clear rules for the procurement of Supplies, Services and Works for the Council. Following the rules should ensure that the Council is fair and accountable in its dealings with Contractors and in the award of Contracts. Contract Standing Orders are intended to ensure that the Council obtains value for money for the Council taxpayer. Value for money is defined as the optimum combination of whole life cost and quality (or fitness for purpose) to meet the end users' requirements.

## **4. Summary of Changes to the Contract Standing Orders**

### **4.1.**

On 26 November 2019, the Policy and Resources Committee recommended that revised Contract Standing Orders be approved. The Contract Standing Orders were subsequently updated in January 2020 under delegated powers in accordance with CSO 8.3.3, to reflect the new higher EU Threshold levels as issued by the Scottish Government Scottish Procurement Policy Note SPPN 8/2019 on 5 December 2019 to take effect from 1 January 2020.

### **4.2.**

The Contract Standing Orders have also been updated to reflect changes to procurement legislation at the end of the EU Exit Transition Period, as detailed in the Scottish Government Scottish Procurement Policy Note SPPN 11/2020, to take effect from 1 January 2021, which was further updated on 19 April 2021.

### **4.3.**

The Contract Standing Orders have since been updated to include the requirement for a Sustainable Procurement Impact Assessment, as recommended by the Internal Audit report relating to the procurement importation of stone to Cursiter Quarry, reported to the Monitoring and Audit Committee on 11 March 2021.

### **4.4.**

The updated Contract Standing Orders are attached as Annex 1 to this report. The proposed revisions and amendments are summarised as follows:

- CSO 1.3. An update to the list of relevant statutory guidance for the end of the EU Exit Period, Climate Change and Circular Economy Consideration and Implementation of Fair Work First in Scottish Procurement.
- CSO 2.1. Addition to definition of terms for the former EU Threshold values, the Government Procurement Agreement, Single Procurement Document which replaces the former European Procurement Document, the addition of the Sustainable Procurement Impact Assessment and the new Procurement Plan.
- CSO 12.1.3. Reference to Executive Director of Corporate Services has been removed.
- CSO .15.1. Procurement Plan process description and authorisation.
- CSO 16.3. Addition of the requirement for all European Structural Fund programmes to continue to use the ESPD for procurements that start after the EU Exit date.
- CSO 19.2. the World Trade Organisation (WTO) and Government Procurement Agreement continue the old requirements of the Treaty on the Functioning of the European Union (TFEU) principles of transparency, equal treatment, non-discrimination; proportionality and mutual recognition where relevant.
- CSO 20.2.1. Additional requirement to advertise contracts which exceeds £50,000 to be advertised in the local newspaper where there is a local market for a minimum duration of one week.

- CSO 20.2.4. The new Find a Tender Service which replaces advertising in the Official Journal of the European Union (OJEU).
- CSO 31.14. Requirement remains for contracts awarded under a Dynamic Purchasing System (DPS) put in place prior to 31 December 2020 to be published on OJEU.
- CSO 38.1.1. Addition of the requirement to reference the completion of a procurement plan to the Contract Recommendation Report.
- CSO 38.1.8. Addition of the requirement to reference the completion of a Sustainable Procurement Impact Assessment (SPiA) to the Contract Recommendation Report.
- CSO 48.4. Requirement to ensure a Sustainable Procurement Impact Assessment (SPiA) is carried out where appropriate.
- Appendix 1, Non Competitive Action (NCA) proforma has been updated to reflect that current arrangements for the final authorisation are to be obtained at Chief Executive level.

## **5. Corporate Governance**

This report relates to the Council complying with governance and procedural issues and therefore does not directly support and contribute to improved outcomes for communities as outlined in the Council Plan and the Local Outcomes Improvement Plan.

## **6. Financial Implications**

There are no financial implications for the Council arising directly from approval of the recommendations set out in this report.

## **7. Legal Aspects**

Section 1 of the Local Government in Scotland Act 2003 obliges the Council to make arrangements that secure best value.

## **8. Contact Officers**

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## **9. Annex**

Annex 1: Draft updated Contract Standing Orders.



# **Contract Standing Orders**

**June 2021 Version 8.0**

## Version Control.

Version.	Updated by.	Date.	Details of change.
1.0.		November 2013.	Approved by General Meeting of the Council on 10 December 2013.
2.0.	Gary Butler.	17 January 2014.	Updated to include revised European Union (EU) Advertising thresholds.
3.0.	Rosemary Colsell.	21 June 2016.	Updated and revised to include the provisions of the Procurement Reform (Scotland) Act 2014 and the Procurement Scotland Regulations 2016. Approved by General Meeting of the Council 5 July 2016.
4.0.	Rosemary Colsell.	11 October 2017.	Revision to reflect new requirements at Clause 37.3.
5.0.	Rosemary Colsell.	22 March 2018.	Revision to reflect new Thresholds.
6.0	Rosemary Colsell	November 2019	Updated to reflect new procedures
7.0	Rosemary Colsell	20 January 2020	Updated to reflect new EU Thresholds
8.0	Rosemary Colsell	May/June 2021	Updated to reflect EU Exit and new internal procedures

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## 1. Introduction

1.1. The purpose of Contract Standing Orders (CSOs) is to set clear rules for the procurement of Supplies, Services and Works for the Council. Following the rules should ensure that the Council is fair and accountable in its dealings with Contractors and in the award of Contracts. CSOs are intended to ensure that the Council obtains value for money for the Council taxpayer. Value for money is defined as the optimum combination of whole life cost and quality (or fitness for purpose) to meet the end users' requirements.

1.2. The CSOs are compiled in accordance with the Procurement Reform (Scotland) Act 2014, Public Contracts (Scotland) Regulations 2015, the Procurement (Scotland) Regulations 2016, the Concession Contracts (Scotland) Regulations 2016, the Utilities Contracts (Scotland) Regulations 2016 and the Public Contracts (Scotland) Amendment Regulations 2016.

1.3. The CSOs are to be read in conjunction with the Procurement Reform (Scotland) Act 2014 statutory guidance in recognition of the duty of Public Authorities to have regard to the guidance as detailed below.

- Procurement Reform (Scotland) Act 2014: statutory guidance, Guidance on procurement strategies and annual reports, the sustainable procurement duty, community benefit, tenders and award of contracts.  
<https://www.gov.scot/publications/guidance-under-procurement-reform-scotland-act-2014/pages/5/>
- Addressing Fair Work Practices, including the Real Living Wage, in Procurement: <https://www.gov.scot/publications/addressing-fair-work-practices-including-real-living-wage-procurement-best/>
- Procurement of Health and Social Care Services: <https://www.gov.scot/publications/guidance-procurement-care-support-services-2016-best-practice/>
- Scottish Procurement Policy Note (SPPN) 07/2016 Update to Guidance on the Procurement of Care and Support Services (Best Practice): <https://www.gov.scot/Topics/Government/Procurement/policy/SPPNSSPANS/policy-notes/SPPN2016/CareSupportServicesBestPractice>
- [Scottish Procurement Policy Note \(SPPN\) 11/2020 Changes to Procurement legislation at the end of the EU Exit Transition Period](https://www.gov.scot/publications/changes-to-procurement-legislation-at-the-end-of-the-EU-Exit-transition-period-sppn-11-2020/)
- <https://www.gov.scot/publications/changes-to-procurement-legislation-at-the-end-of-the-EU-Exit-transition-period-sppn-11-2020/>
- [Taking Account of Climate and Circular Economy Considerations in Public Procurement \(SPPN\) 01/2021.](https://www.gov.scot/publications/taking-account-of-climate-and-circular-economy-considerations-in-public-procurement-sppn-01-2021/)
- [Scottish Procurement Policy Note \(SPPN\) 03/2021 Implementation of Fair Work First in Scottish Public Procurement.](https://www.gov.scot/publications/scottish-procurement-policy-note-sppn-03-2021-implementation-of-fair-work-first-in-scottish-public-procurement/)

1.4. All Contracts that are awarded by the Council, regardless of value shall be subject to an obligation to seek best value and be able to demonstrate transparency, equal treatment, non-discrimination and proportionality.



1.5. CSOs are designed to protect the interests of the Council and protect the interests of officers involved in procurement. CSOs enable officers to act confidently for the Council in the pursuit of best value. It is the responsibility of the Chief Executive and Executive Directors to ensure that officers within their jurisdiction or Service have a good understanding and where applicable a working knowledge of these CSOs.

1.6. Relevant UK and Scottish legislation overrides these CSOs only in so far as to ensure compliance with said legislative requirements.

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1.7. The Executive Director with Procurement as part of their remit may approve guidance notes on Tendering and procurement matters for Contracts awarded by the Council. Guidance notes will be compiled by the Procurement Manager.

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1.8. The Procurement Manager will publish a Corporate Procurement Manual to be read by officers in conjunction with the Contract Standing Orders and a control copy will be placed on the staff portal.

## 2. Definitions and Interpretation

2.1. Definition of terms is as follows:

Abnormally Low Tenders.	As defined within the Procurement (Scotland) Regulations 2015 and any subsequent Scottish Government Guidance when available.
Chief Officer.	The Chief Officer – Health and Social Care procuring the Supplies, Services or Works.
Contract.	An agreement between the Council and any Contractor made by formal agreement or by issue of acceptance or an official order for Supplies, Services or Works.
Contract Documents.	Documents to be used in the tendering procedure and where different those that are intended to form part of any Contract following a tendering procedure. The Contract Documents include, but are not restricted to, the <u>Single Procurement Document (SPD)</u> , the invitation to tender, the instructions to tenderers, terms and conditions of contract, the specification and technical requirements, pricing schedule, form of tender, certificate of bona fide tendering and any Bills of Quantities and includes any such documents or their equivalents using e-procurement.
Contractor(s).	Includes any sole trader, partnership or company (limited or unlimited) or any duly

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	incorporated trade, professional or commercial body.
Delegated Authority.	Officers who have been given formal written authority by their Executive Director or Chief Officer to manage procurement exercises within a specified value range on behalf of the Council.
Dual Stage Procedure.	The below <u>Threshold</u> procedure which is equivalent to the <u>Threshold Restricted Procedure</u> .
<u>Threshold</u> .	The threshold for determining the application of the Regulations. In the case of the Procurement (Scotland) Regulations 2016 the threshold is £189,330 (Supplies and Services) and £4,733,252 (Works). In the case of the Utilities Contracts (Scotland) Regulations 2016 the threshold is £ 378,660 for Supplies and Services and £4,733,252 for Works. <u>The previous EU Threshold values remain in place and the next review will be implemented by January 2022 as these are linked now to the World Trade Organisation and Government Procurement Agreement signatories.</u>
<u>Over Threshold</u> Regulated Procurement.	Goods, Services or Works contracts with a value over the <u>Threshold</u> .
European Single Procurement Document (ESPD).	The standard form document introduced by the <u>EU Public Procurement Directive</u> (Directive 2014/241/EU) which <u>replaced</u> the pre-qualification questionnaire, the particular form of which <u>was</u> approved by the Scottish Government. <u>This form must continue to be used for procurements linked to the European Structural and Investment Funds (ESIF) programmes.</u>
Executive Director.	The Executive Director procuring the Supplies, Services or Works.
Framework Agreement.	An overarching agreement with supplier(s) to establish terms governing individual contracts that may be awarded during the life of the agreement ('call-offs'), concluded in accordance with Section 34 of the Public Contracts (Scotland) Regulations 2015.
<u>Government Procurement Agreement</u>	<u>The United Kingdom is a signatory to the World Trade Organisation's (WTO) Government Procurement Agreement (the</u>

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	<u>GPA) and this remains as the UK is now a signatory in its own right following the end of the EU Transition Period.</u>
Health and Social Care Services.	A public contract or framework agreement for social and other specific services listed in Schedule 3 of the Public Contracts (Scotland) Regulations 2015.
Health and Social Care Services Threshold.	£ 663,540
Life-Cycle Costing.	All consecutive or interlinked stages, including research and development to be carried out, production, trading and its conditions, transport, use and maintenance, throughout the existence of the product or the works or the provision of the service, from raw material acquisition or generation of resources to disposal, clearance and end of service or utilisation.
Procurement.	The process leading to the award of a public contract or framework agreement or establishment of a dynamic purchasing system for the acquisition of works, supplies or services from an economic operator.
<u>Procurement Plan.</u>	<u>A summary of the planned procurement providing sufficient information to ensure that all relevant Council Policies have been followed, including the governance, identified budget, Contract Standing Orders, the Financial Regulations and the Sustainable Procurement Policy requirements.</u>
Public Contracts Scotland (PCS) portal.	The Scottish Government's official national advertising portal for public sector contract opportunities <a href="http://www.publiccontractsscotland.gov.uk">www.publiccontractsscotland.gov.uk</a> .
<u>Relevant Officer</u>	<u>The Officer who has been delegated by either the Chief Executive, the Executive Directors or the Chief Officer to carry out this instruction as part of their duties.</u>
Quick Quote.	An online quotation facility which allows the Council to obtain competitive quotes electronically for: <ul style="list-style-type: none"> <li>• Low value requirements between £10,000 and £50,000; and</li> <li>• Unregulated Works Contracts (below the value of £2,000,000), depending on</li> </ul>

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	complexity of contract (as defined in Clause 17).
Quotation.	A formal offer to supply or purchase supplies or provide services where the estimated value of the contract does not exceed £50,000 or to execute works with a value of £2,000,000 for works.
Regulated Procurement.	As defined by the Procurement Reform (Scotland) Act 2014 and referred to as the Reform Act 'slice' a regulated procurement for Goods or Services Contracts with a value of over £50,000 and for Works Contracts over £2,000,000 and less than the relevant Thresholds.
Regulations.	The Public Contracts (Scotland) Regulations 2015, the Procurement Reform (Scotland) Act 2014, the Procurement (Scotland) Regulations 2016 and / or the Concession Contract (Scotland) Regulations 2016 as the context requires, but where the Council is acting as a Harbour Authority and chooses to do so, the Utilities Contracts (Scotland) Regulations 2016.
<u>Single Procurement Document (SPD).</u>	<u>The standard form document which replaces the European Single Procurement Document (ESPD) introduced by the new WTO/GPA Public Procurement Directive (Directive 2014/241/WTO/GPA) which replaced the pre-qualification questionnaire. The SPD is the particular form of which has been approved by the Scottish Government.</u>
Single Stage Procedure.	The below Threshold procedure which is equivalent to the Threshold Open Procedure.
Supplies.	Goods or the hire of goods and for any siting or installation of those goods.
<u>Sustainable Procurement Impact Assessment (SPiA)</u>	<u>A Sustainable Procurement Impact Assessment (SPiA) will be carried out for all relevant goods, services and works contracts where there is potential to minimise the use of carbon-based energy and its associated emissions.</u>
Tender.	A formal offer to supply or purchase supplies, execute works or provide services where the estimated value of the contract is £50,000 (excluding Value Added Tax (VAT)) or more.

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Tender Evaluation Panel	At least two people should be established and consist of individuals with demonstrable technical ability to evaluate tenders
Tender Opening Board	As described in Clause <a href="#">32.7</a>
Unregulated Works Procurement.	A contract for Works with a value of between £50,000 and £2,000,000, being a procurement not covered by the Regulations and procured utilising the Council's database of pre-approved contractors.
Works.	Building construction, building maintenance or engineering works.

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2.2. In interpreting these CSOs, any reference to any legislation, regulations or guidance shall be to that legislation, regulations or guidance as the same may be updated, amended, supplemented or replaced from time to time.

### 3. Compliance with Contract Standing Orders

3.1. Contracts awarded by the Council must comply with CSOs.

3.2. Officers are required to comply with these CSOs, the Scheme of Delegation to Officers, the Scheme of Administration and the Council's Financial Regulations. The Chief Executive, Executive Directors and Chief Officer will have in place policies, practices, procedures and training which ensure compliance. Failure to comply with the Scheme of Delegation to Officers, the CSOs and the Council's Financial Regulations may result in disciplinary action.

### 4. Conduct of Officers and Members

4.1. Members must abide by the Councillors' Code of Conduct published by the Standards Commission for Scotland available at: <http://www.standardscommissionscotland.org.uk/codes-of-conduct/councillors-code-of-conduct>.

4.2. Officers must comply with the Code of Conduct for Employees of Orkney Islands Council available on the Council portal.

### 5. Ethical Standards

5.1. In all dealings with Contractors, the Chief Executive, Executive Directors, and all officers must preserve the highest standards of honesty, integrity, impartiality and objectivity. In particular, officers engaged in procurement matters must:

- 5.1.1. Be fair, efficient, firm and courteous;
- 5.1.2. Maintain the highest possible standard of integrity in all business relationships;
- 5.1.3. Acquire and maintain current technical knowledge;

- 5.1.4. Achieve appropriate professional standards in the management of contracts;
- 5.1.5. Foster appropriate standards of professional competence amongst those for whom they are responsible;
- 5.1.6. Comply with the law, guidance on professional practice and contractual obligations;
- 5.1.7. Declare any personal interest which may affect or be seen by others to affect impartiality;
- 5.1.8. Respect the confidentiality of information received in the course of duty and ensure that information given in the course of duty is honest and clear; and
- 5.1.9. Respond promptly, courteously and efficiently to suggestions or enquiries, including Freedom of Information (FOI) request obligations according to Council policies.
- 5.1.10. Not knowingly work with suppliers that trade in slavery, prostitution or illegal drugs, or who breach International Labour Organisation conventions.
- 5.1.11. Not offer, give or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the procurement agreement or for showing or refraining from showing favour or disfavour to any person in relation to said Agreement which may constitute an offence under the Bribery Act 2010.
- 5.1.12. Take all reasonable steps, in accordance with good industry practice, to prevent fraud by Council Staff and the Supplier (including its shareholders, members and directors) in connection with the procurement of supplies, services and shall in the first instance notify their Line Manager, Head of Service or Executive Director immediately if they have reason to suspect that any fraud has occurred or is occurring or is likely to occur. Reporting in all cases should be in accordance with the Council's Corporate Anti-Fraud Policy and Whistle Blowing Policy.

## **6. Authority to Procure**

- 6.1. No officer may manage a Procurement exercise unless authority has been delegated to them by the Chief Executive, Executive Director or Chief Officer.
- 6.2. The diversity of the work involved in procurement necessitates that officers are competent in a wide variety of generic procurement skills in addition to the specific technical skills and knowledge required when procuring specific Supplies, Services and Works. Officers with delegated authority to invite and manage Procurement exercises will be required to undertake specific procurement training.
- 6.3. The Procurement Manager is responsible for the training of officers in procurement matters and will maintain a list of officers with Delegated Authority to manage a Procurement exercise.

## 7. Separation of Duties

7.1. The roles of the client / budget holder and the officer with delegated authority to manage a Procurement exercise must not be performed by the same officer. The Chief Executive and Executive Directors will ensure separation of these key roles within the Procurement process.

## 8. Suspension, Variation and Revocation

8.1. These CSOs may be varied or revoked by the Council. Any variation to, or revocation of CSOs, will be effective on the first working day after the conclusion of the General Meeting of the Council at which it was approved.

8.2. CSOs or any part of them may be suspended by the Council in respect of a Contract on receiving a joint recommendation from the Chief Executive or Executive Director, and the Head of Finance, that there are special circumstances which justify such a suspension and that it is in the interests and within the powers of the Council to do so.

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8.3. The Executive Director with Procurement as part of their remit will be able to vary these CSOs in the following operational circumstances:

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8.3.1. To reflect changes in job titles, reorganisations of Council Services and vacancies in posts;

8.3.2. To change references to any piece of legislation where the legislation is repealed and to insert references to new pieces of legislation where the new pieces of legislation largely re-enact the provisions of the repealed legislation; and

8.3.3. To change the financial values of the Threshold where referred to in these CSOs.

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8.4. The Procurement Manager will be responsible for ensuring that an up to date control copy of CSOs is placed on the Council's staff intranet and that, for the purposes of transparency an additional copy is published on the Council's website.

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## 9. Value of Contract

9.1. The financial values stated throughout these CSOs represent the total value of the Contract over its whole life and are not, for example, the estimated annual value of the Contract.

9.2. Where the Contract is for Supplies or Services, the value of the Contract shall include all options under the Contract. For example, if the Contract allows the Council to either purchase additional Supplies or Services, or to extend the Contract beyond its original term, the financial implications of these must be included in the value of the Contract, even if the likelihood of taking up these options is small.

9.3. It is not permitted to deliberately divide any procurement exercise into two or more Contracts if the intention in doing so is to avoid the application of the financial thresholds in these CSOs or the Regulations.

9.4. All financial values stated in these CSOs are exclusive of VAT.

## 10. Financial Provision

10.1. Before inviting Tenders or Quotations or recommending the acceptance of Tenders, the Chief Executive and Executive Directors will be required to be satisfied that all necessary Council approvals are in place and sufficient budgetary provision has been made or will be made to cover the contractual commitment by the Council.

## 11. Equalities and Prevention of Discrimination

11.1. Before entering into a Contract the Chief Executive and Executive Directors will obtain from the Contractor an assurance, in writing, that to the best of the Contractor's knowledge the Contractor has complied with all statutory requirements under the Equality Act 2010.

11.2. The assurance referred to in CSO 11.1 may be obtained as part of the selection process as contained in the SPD which includes a requirement to comply with relevant Social Laws.

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11.3. Contracts awarded by the Council will contain a condition obliging the Contractor to comply with all duties arising from the Equality Act 2010.

## 12. Form of Contract

12.1. Except in circumstances where the Executive Director of Corporate Services and the Head of Legal Services agree otherwise, every Contract shall be:

12.1.1. In the name of the Council;

12.1.2. In writing and in an approved form, using either the Council's standard conditions of Contract or, where applicable, government contracts or other specialist or professional body's terms and conditions e.g. Scottish Building Contracts Committee (SBCC), Association of Consulting Engineers (ACE), New Engineering Contract (NEC);

12.1.3. Signed by either the Chief Executive, the Head of Finance, the Head of Legal Services or other officer with written delegated authority to sign Contracts on behalf of the Council in accordance with the Scheme of Delegation to Officers for procurement matters; and

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12.1.4. Subject to the laws of Scotland.

12.2. The Contract Documents in respect of all Contracts will be prepared by the Chief Executive or Executive Directors. When it is appropriate to do so, the Chief Executive and Executive Directors may make use of Contract Documents prepared by the Government Procurement Service, Scottish Procurement, Scotland Excel and other framework agreement providers where permitted by those bodies to do so. It is the Chief Executive and Executive Director's responsibility to ensure that the Contract Documents are suitable for the Contract.



12.3. All Procurement documents must clearly state that the FOI (Scotland) Act 2002 applies to Contracts awarded by the Council. This is to ensure that Contractors are aware that the Council may be required, as a matter of law, to release information to third parties.

## **13. Exemptions and Exceptions**

13.1. Supplies, Services and Works shall be acquired by effective competition, including adequate publicity of the Contract, unless there are justifiable reasons to the contrary.

13.2. There shall be an exemption from these CSOs where:

13.2.1. The value of the Contract is less than £10,000 for Supplies and Services and Works;

13.2.2. It is a Contract of employment (Note: this exemption will not apply to Contracts for temporary staff or interim managers supplied by recruitment agencies, or an equivalent organisation);

13.2.3. The Contract is for care or housing support services or other forms of support or self-directed service as determined by the Self Directed Support legislation and relevant guidance, where the service user has the freedom to determine the identity of the service provider;

13.2.4. The Contract relates to the transfer, acquisition or disposal of an interest in heritable property including a license to occupy or use heritable property;

13.2.5. Tenders are invited on behalf of any consortium, or similar body, of which the Council is a member, in accordance with any such method adopted by such a body;

13.2.6. The Contract relates to the appointment of legal counsel to act on behalf of the Council;

13.2.7. The Council funds an external operator to provide Services on a non-contractual basis e.g. grant funded arrangements with the third sector. In such cases the principles of Following the Public Pound shall apply.

13.3. There shall be an exception from these CSOs where:

13.3.1. The Council is satisfied that there are special circumstances justifying an exception from these CSOs or any part of them;

13.3.2. In the opinion of the Chief Executive or Executive Directors, action is urgently required to prevent danger to life, serious risk to health, or damage to property;

13.3.3. It is a Contract for the provision of health, special education and / or social care services, and where, in the opinion of the Chief Executive, Executive Directors, Chief Officer or Chief Social Work Officer, it is considered that to undertake a competitive tendering exercise would have an adverse effect on the quality and continuity of service for service users and their relatives;

13.3.4. Where the Contract is an extension to an existing Contract and is not a Regulated Procurement, an over Threshold Procurement or an Unregulated Works Procurement (in which case see CSO 16), and which has been identified by the Relevant Officer as necessary and being so urgent as not to permit the invitation to tenders;

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13.3.5. In the opinion of the Chief Executive, Executive Director or Chief Officer it is essential that the Contract is entered into for the settlement of any claim or litigation raised by or against the Council;

13.3.6. The Contract is funded by money provided by the government or another public body (including funds from the National Lottery) and the award of that money to the Council is subject to such conditions that make it impractical for the Council to comply with these CSOs in the letting of the Contract.

13.4. Where exceptions are sought in respect of Contracts with a value of greater than £10,000 the Chief Executive and Executive Directors will comply with the Non Competitive Action (NCA) procedure set out at Appendix 1.

13.5. The relevant Executive Director will maintain a central register of exceptions.

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## 14. Contracts below £10,000

14.1. Where the contract value is less than £10,000 for Supplies and Services and Works, the Chief Executive, Executive Directors and Chief Officer will proceed in a manner which they consider to be the most expedient to the efficient management of their Service whilst ensuring that the Contract represents value for money to the Council.

14.2. The Chief Executive and Executive Directors may dispense with the need to obtain competitive quotations and instead maintain a written record of price checking or benchmarking where the value of the Contract is less than £10,000 in the case of Supplies and Services and Works.

## 15. All Contracts for Supplies and Services and Works above £10,000 – Procurement Plan

15.1. Where a contract value is over £10,000 the relevant Officer will ensure that a Procurement Plan is completed by the service lead and that an Officer with Delegated Procurement Authority is identified to undertake the procurement.

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15.2. the Procurement Plan will describe the procurement planned and provide sufficient information to ensure that all relevant Council Policies have been followed, including the governance, identified budget, Contract Standing Orders, the Financial Regulations and the Sustainable Procurement Policy requirements.

15.3. The Relevant Officer will ensure that the Procurement Plan is authorised by the relevant Managers prior to the procurement exercise commencing. The Procurement Plan is to be submitted to the Procurement Manager in the first instance for authorisation who will forward to the relevant Head of Service and Executive Director or Chief Officer for further approval.

## 16. Unregulated Procurements with a contract value between £10,000 and £50,000 for Supplies and Services and Works

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16.1. Where the value of the Contract is between £10,000 and £50,000 for Supplies and Services and Works, the Chief Executive and Executive Directors will invite a minimum of three written quotations from prospective Contractors with the experience and expertise to meet the requirement for Supplies, Services or Works. In circumstances where fewer than three quotations are obtained a written record shall be retained as to the reasons for this.

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16.2. Technical and financial checks by means of the SPD (Scotland) shall not be necessary for Contracts below £50,000, instead a selection procedure relevant and proportionate to the subject matter and value of the contract shall be incorporated into the invitation to quote documentation.

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16.3. Quotations may be invited and returned by either the Quick Quote system or by an open quotation contract advertisement placed on the PCS portal or, in very exceptional circumstances, by hard copy or email.

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16.4. Route 1 of the Procurement Journey (or equivalent) (<https://www.procurementjourney.scot/node/20>) will be used when obtaining quotations where the Contract is for Supplies or Services and the Contract is between £10,000 and £50,000.

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## 17. Regulated Procurements (with a contract value above £50,000 for Supplies and Services or £2,000,000 for Works, and below the Thresholds).

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17.1. Route 2 of the Procurement Journey (or equivalent) and accompanying documentation as appropriate shall be used for all Regulated procurement exercises.

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17.2. The SPD is to be used in all cases for Regulated Procurements.

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17.3. The ESPD is still to be used where handling procurements linked to European Structural and Investment Funds (ESIF) programmes. EU law continues to apply to ESIF procurements which start after the end of the EU exit Transition Period. This means that public bodies should use the European Single Procurement Document for ESIF procurements instead of the new Single Procurement Document.

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17.4. E-procurement must be used as the default position for all Regulated Procurements. Where e-procurement is being used, it shall be the responsibility of the Contractor to obtain the invitation to tender through the e-procurement system.

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## 18. Unregulated Works Procurements (Works contracts with a value between £50,000 and £2,000,000)

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18.1. Where the value of the Works Contract is between £50,000 and £2,000,000, the Chief Executive and Executive Directors will advertise the contract in accordance with CSO 21 and invite a minimum of three tenders from pre-approved Contractors with the experience and expertise to meet the requirement for Works. In circumstances where fewer than three tenders are obtained a written record shall be retained as to the reasons for this.

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18.2 The SPD is to be used in all cases for unregulated Works procurements with a contract value between £50,000 and £2,000,000, unless the Dynamic Purchasing System is utilised (see CSO Clause 31).

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18.3. Unregulated procurements for works may be invited and returned by either Quick Quote system or by an Open or restricted procedure contract notice placed on the PCS portal or, in very exceptional circumstances, by hard copy or email.

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18.4. The use of this procedure for unregulated procurements is permitted where the procurement is of a standard nature and is not complex as defined in clause 18.5 below.

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18.5. Complex procurements are procurements which are not routinely undertaken by the Council and may have unusual technical, legal or financial requirements.

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18.6. Complex procurements will be required to follow the requirements for Regulated Procurements CSO Clause(s) 17.1, 17.2, 17.3, 17.4.

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## 19. Regulated Procurements (with a contract value at and above the Thresholds for Supplies and Services and Works)

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19.1. Route 3 of the Procurement Journey (or equivalent) and accompanying documentation as appropriate shall be used for all over Threshold Regulated procurement exercises.

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19.2. The SPD is to be used in all cases for over Threshold Regulated Procurements.

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19.3. E-procurement must be used as the default position for all WTO/GPA Regulated Procurements. Where e-procurement is being used, it shall be the responsibility of the Contractor to obtain the invitation to tender through the e-procurement system.

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19.4. All contract notices for over Threshold Regulated Procurements will be passed for approval and issued by the Procurement Manager.

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## 20. Contracts for Health and Social Care Services

20.1. Where a Contract is for Health and Social Care services and is above the Health and Social Care Services Threshold, the procurement regime set out in Chapter 3 of the Public Contracts (Scotland) Regulations 2015 shall apply.

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20.2. Where a Contract is for Health and Social Care Services with a value below the Health and Social Care Services Threshold, the Council may choose to award without seeking offers, however there is still a requirement to comply with the WTO/GPA principles of transparency, equal treatment, non-discrimination; proportionality and mutual recognition where relevant.

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20.3. Subject to the terms of Clause(s) 20.1 and 20.2 above, where a Contract is for Health and Social Care Services has a value below £50,000, the Council may choose to award without seeking offers.

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20.4. In instances as described above where there is award of a contract without competition, a non-competitive action form must be completed and authorised by the Chief Executive prior to contract award in accordance with CSOs Clause 13 and as set out in Appendix 1.

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## 21. Publicity of Contract Opportunities

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21.1. The Council is under a duty to ensure that for each Contract that it intends to award the Contract is given a degree of advertising which is sufficient to ensure open competition and to meet the requirements of the principles of equal treatment, non-discrimination and transparency. Contracts that are Regulated Procurements and those that exceed the Threshold must comply with the advertising requirements set out in the Regulations.

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21.2. The following minimum advertising procedures will apply:

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21.2.1. Contract Notice for Supplies and Services where the Contract exceeds £50,000 will be uploaded on the PCS portal and advertised in the local newspaper where there is a local market for a minimum duration of one week;

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21.2.2. Contracts for Works where the Contract exceeds £50,000 will be advertised in the local newspaper for a minimum duration of one week;

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21.2.3. In addition to the advertising requirements at CSO 21.2, where the value of a Contract for Works exceeds £2,000,000 the contract notice will be uploaded on the PCS portal;

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21.2.4. Contract Notice for Supplies and Services and Works where the Contract exceeds the Thresholds will be uploaded to the new Find a Tender System via the PCS Portal.

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21.3. The requirement to publish notices on Public Contracts Scotland (PCS), which comes from the Procurement Reform (Scotland) Act 2014, remains. Whilst public bodies are no longer be required to publish notices in the Official Journal of the

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European Union (OJEU), these notices are now published on a new UK e-notification system called Find a Tender System (FTS) instead.

21.3.1. FTS has been developed to comply with international agreements such as the GPA, which requires relevant procurements in the UK to be advertised through a single point of access available free of charge. To meet this requirement to publish on FTS, public bodies should continue to use PCS.

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21.3. In addition to the advertising requirements referred to in CSO 21.2, or where it is felt that insufficient interest may be generated, the Chief Executive, Executive Directors and Chief Officer may decide to advertise the Contract opportunity in any other way.

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21.4. In exceptional circumstances, for example where using market knowledge it is known that there is no capacity locally to meet the requirements of a Contract, the Chief Executive, Executive Director or Chief Officer may dispense with the requirement to advertise in the local paper.

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21.5. All Contract Notices published on the PCS portal will be subject to the prior approval of the Procurement Manager for over Threshold Regulated Procurements.

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21.7. Contract notices advertising Contracts will include the selection and award criteria to be used to evaluate submissions for both the SPD selection stage and the award criteria stage of both Open and Restricted Procedure procurements.

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21.8. Where a Contract is to be awarded following a restricted procedure or competitive procedure with negotiation, a call for competition may be made by means of a prior information notice, published in accordance with the Regulations.

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## **22. Procedures**

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22.1. Where the estimated value of any Contract is likely to be equal to the value of a Regulated Procurement or exceed the Threshold, the Chief Executive and Executive Directors or Chief Officer will be responsible for determining whether or not the Regulations apply and will refer the matter to the Procurement Manager who will provide guidance and assistance in determining the appropriate Contract award procedure.

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22.2. Where it is established that the full procedural requirements of the Regulations apply, the Chief Executive and Executive Directors, will ensure that the Contract is advertised, tendered, evaluated and awarded in accordance with the Regulations.

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22.3. Where other competitive routes are available to Council for consideration such as the Dynamic Purchasing System, Competitive Dialogue, Negotiated Procedure without Prior Publication, Competitive Procedure with Negotiation, and Innovation Partnership, the Chief Executive and Executive Directors or Chief Officer will refer the matter to the Procurement Manager and Head of Legal Services who will provide guidance and assistance in determining the appropriate Contract award procedure and the specific Regulation(s) that will apply.

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22.4. The **Relevant Officer** will determine in consultation with the Procurement Manager where the use of lotting strategies is appropriate and would have the effect of ensuring that the Contract opportunity is accessible to small and medium-sized enterprises.

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## 23. Commodity Strategy

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23.1. The **Relevant Officer** in consultation with the Procurement Manager will ensure that an appropriate Commodity Strategy is prepared for each individual Regulated Procurement and **over Threshold** Regulated Procurement.

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23.2. The Commodity Strategy must be prepared by officers with the appropriate Delegated Authority and be proportionate to risk, value and the strategic importance of the commodity to the Organisation.

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23.3. The preparation of the Commodity Strategy will ensure that proportionate consideration is given to planning, Sustainable Procurement and Risk Management prior to commencement of the procurement. See more at: <https://www.procurementjourney.scot/route-2/route-2-develop-strategy>.

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23.4. A Commodity Strategy is not required for mini-competitions carried out or work packages called off under Framework Agreements established by external agencies, by the Council; or for work packages placed under the Council's framework arrangements. This CSO will apply in instances where the justification to utilise these arrangements have been authorised by the Chief Executive, Executive Directors and Chief Officer as appropriate.

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## 24. Contract Award Criteria

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24.1. For Regulated Procurements and **over Threshold** Regulated procurements award criteria must in all cases be advertised and awarded on the basis of the most economically advantageous tender (MEAT), it is not permissible to award on the basis of cost only.

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24.2. For Procurements over the value of £10,000 for Supplies and Services, and for Works over the value of £50,000, Contracts shall be awarded on the basis of the Tender which is: the MEAT using both quality and cost award criteria unless there are exceptional reasons that are proportionate and related to the subject matter of the contract and always in the context overall of best value.

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24.3. Contracts may in exceptional circumstances be awarded on the basis of a fixed price or cost where economic operators may compete on quality criteria only.

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24.4. For Procurement of Works under the value £50,000 may in exceptional circumstances be awarded on the basis of cost or price and always in the context of best value. Prior to utilising this CSO, a risk assessment shall be undertaken which evidences overall best value and is recorded on the contract award recommendation report as referred to in CSO 39.

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24.5. When developing the Contract Documents the Chief Executive and Executive Directors will include award criteria that relate directly to, and is proportionate with, the subject matter of the Contract.

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24.6. The award criteria will be clearly defined in the Contract Documents and in the contract notice so that Contractors have a common understanding and will, depending on the subject matter of the Contract, include:

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24.6.1. Quality / technical merit;

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24.6.2. Qualification and experience of staff assigned to performing the contract, where the quality of the staff assigned can have a significant impact on the level of performance of the contract;

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24.6.3. Design, functional characteristics and aesthetics;

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24.6.4. Sustainability and community benefit / social issues where appropriate;

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24.6.5. Innovation;

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24.6.6. Maintenance, including on-going technical support and after sales support;

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24.6.7. Delivery or period of completion;

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24.6.8. Price;

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24.6.9. Life Cycle Costing which shall be objectively verifiable, non-discriminatory and indicated in the procurement documentation.

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24.7. The Chief Executive, Executive Directors and Chief Officer will decide on an overall ratio or split between criteria and allocate weightings and sub-criteria as appropriate.

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## 25. Contract Payments

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25.1. Proposed payment arrangements under a Contract must be discussed and agreed by the Director of Finance in advance of any Contract being entered into. However the Director of Finance may issue guidance on approved payment arrangements.

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## 26. Restricted or Dual Stage Procedure

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26.1. The Chief Executive or Executive Director may approve the use of a Restricted or Dual Stage Procedure which, subject to CSO 32 electronic tendering, will be advertised and conducted in accordance with CSOs 21, and 26.

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26.2. The contract notice will contain sufficient information to enable potential tenderers to determine whether they are interested in bidding for the Contract. The information contained within the contract notice will include the title and a short description of the proposed Contract, the duration, estimated commencement date, the estimated value and the selection criteria used. The contract notice shall also

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indicate whether e-procurement is to be used and a link to <https://www.publiccontractsscotland.gov.uk/>.

26.3. The contract notice will specify a date and time by which requests to be selected to tender must be received. For the selection stage, this must be no sooner than 30 days from the date the contract notice is published unless reductions in timescales are available. For the tender stage, this must be no sooner than 30 days from the invitation to tender is issued. Where the submission of tenders electronically is permitted, the minimum time limit for receipt of tenders can be reduced to 25 days. Where the Contract exceeds the Threshold the timescales referred to in the Regulations will apply.

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26.4. The Chief Executive, Executive Director or Chief Officer will issue an SPD to all Contractors responding to the contract notice via the PCS portal;

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26.5. The Relevant Officer Relevant Officer will ensure that the SPD Supporting Statements that are issued to all Contractors responding to the contract notice are tailored to, and are relevant and proportionate to, the subject matter of the proposed Contract.

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26.6. No Contractor will be invited to submit a Tender unless they have successfully complied with the technical and financial checks in CSO 33 and have met the selection criteria to be invited to tender set out in the SPD.

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26.7. The Relevant Officer will select a sufficient number of Contractors to be invited to tender. To ensure genuine competition, the number of Contractors selected to be invited to tender shall not be less than five, unless agreed by the Chief Executive, Executive Directors or Chief Officer. In circumstances where fewer than five Contractors submit an SPD, all of the Contractors that have met the selection criteria shall be invited to tender.

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26.8. The Chief Executive, Executive Director or Chief Officer will send invitations to tender, in writing, simultaneously to each Contractor selected to tender and the invitation to tender will be accompanied by the Contract Documents. The invitation to tender shall state the requirements in CSOs 34 and 35.

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26.9. As a minimum, the invitation to tender will include the following:

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26.9.1. Instructions to tenderers;

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26.9.2. Final date and time for the receipt of tenders by the Council;

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26.9.3. Where e-procurement is not being used the address to which tenders must be sent;

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26.9.4. Terms and conditions of Contract;

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26.9.5. The specification which clearly describes what is required;

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26.9.6. The award criteria to be used in the evaluation of tenders;

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26.9.7. Tender response requirements;

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26.9.8. Form of tender;

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26.9.9. Certificate of bona fide tendering;

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26.9.10. Compliance Statement as appropriate.

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## 27. Open or Single Stage Procedure

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27.1. The **Relevant Officer** may approve the use of an Open or Single Stage Procedure which, subject to CSO 32 electronic tendering, will be conducted and advertised in accordance with CSOs 21 and 27.

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27.2. The contract notice will contain sufficient information to enable any potential tenderer to determine whether they are interested in bidding for the Contract. The information contained within the contract notice will include the title and a short description of the proposed Contract, the duration, estimated commencement date, the estimated value, the selection criteria used and community benefits clauses where they are being used. The contract notice shall also indicate if e-procurement is being used and provide a link to <https://www.publiccontractsscotland.gov.uk/>.

27.3. The contract notice will specify a date and time by which applications for invitations to tender must be made. The date and time specified will be no sooner than 35 days from the date the contract notice is published. Where the submission of tenders electronically is permitted, the minimum time limit for receipt of tenders can be reduced to 30 days. Where the Contract exceeds the **Threshold** the timescales referred to in the Regulations will apply.

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## 28. Use of Framework Agreements provided by External Agencies

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28.1. The Chief Executive, the Executive Directors and Chief Officer will consider the use of Framework Agreements established by other bodies as part of the route to procurement decision.

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28.2. The Chief Executive, the Executive Directors and Chief Officer will determine whether, where a market outwith the framework suppliers is established and where the contract value is below that of a Regulated Procurement or a **over Threshold** Regulated Procurement, the Contract should be advertised directly to the known suppliers in addition to the call off contract opportunity sourced through a Framework Agreement.

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28.3. Where a Framework Agreement is provided by a Framework Provider other than the Council, a check should be undertaken by the Procurement Manager in consultation with the Head of Legal to determine the Council's eligibility to use that Framework Agreement prior to its use.

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28.4. Where it has been clearly identified that the Council is eligible to utilise the Framework Agreement, the procedures for the use of that Framework Agreement must be strictly complied with in all instances.

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28.5. The duration of the individual contracts based on a Framework Agreement do not need to coincide with the duration of that Framework Agreement, but might as appropriate be shorter or longer.

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28.6. A contract award notice will be published on conclusion of a call-off from a Framework Agreement. A contract award letter will also be issued to the provider, and the Contract will be entered in the Contracts Register.

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## 29. Concluding a Framework Agreement

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29.1. The Council may establish a Framework Agreement with either one or a minimum of three economic operators, where there are three economic operators to satisfy the selection criteria.

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29.2. The Council must advertise the Contract in accordance with these CSOs, depending on the value of the Contract.

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29.3. The period of such arrangements shall not exceed four years without specific justification which must be published when the requirement is advertised.

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29.4. Where the Council concludes a framework agreement with more than one economic operator, a specific contract may be awarded:

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29.4.1. By direct award in accordance with the terms laid down in the framework agreement without re-opening competition; or

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29.4.2. Where the terms of the Framework Agreement permit, by carrying out a mini competition prior to award.

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29.5. Where a contract is for the supply of goods or materials or the provision of services or works by means of a call off contract within a framework agreement, and where that framework agreement allows for direct award of call-off contracts without further competition, formal tendering shall be carried out only once prior to the commencement of such arrangement.

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29.6. Once awarded, a framework agreement shall remain closed to the admission of new contractors / suppliers / service providers for the lifetime of the Framework Agreement.

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29.7. The Council must not use a framework agreement improperly or in such a way as to prevent, restrict or distort competition.

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## 30. Extensions to Existing Contracts

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30.1. Subject to CSOs 30.2 to 30.5, where the **Relevant Officer** consider that an existing Contract should be extended and the option to extend is given to the Council in terms of the Contract, the Chief Executive or Executive Directors may authorise the take-up of that option.

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30.2. Where the Contract does not make provision for the extension of the Contract, the **Relevant Officer** shall not extend the Contract, unless the use of the procedure in CSO 30.3 has been followed.

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30.3. Contracts awarded as Regulated Procurements and **over Threshold** Regulated Procurements may only be extended where the procedure in Section 72 of the Public Contracts (Scotland) Act 2015 is followed.

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30.4. For the purposes of CSO 30.1 an extension of a Contract includes the option to increase the amount of Supplies, Services or Works as well as the option to lengthen the duration of the Contract.

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30.5. Where the Contract does not make provision for the extension of the Contract and the initial Contract was below the **Threshold**, the total value of the Contract, including the value of the extension will not exceed the **Threshold**.

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30.6. Where the Contract has been established for a low value supply, service or works below £10,000 or a Contract established following approval of a non-competitive action and are not Regulated procurements, subsequent variations to that Contract should not exceed 50% of the initial value of the Contract.

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## 31. Dynamic Purchasing System

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31.1. Establishment of a Dynamic Purchasing System (DPS) should be considered in instances where goods, services or works are commonly used by the organisation and which are readily available on the market.

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31.2. The **Relevant Officer** shall ensure that the DPS is set up and run in accordance with the information available on the [Procurement Journey website at Dynamic Purchasing Systems](https://www.procurementjourney.scot/dynamic-purchasing-systems-dps).  
<https://www.procurementjourney.scot/dynamic-purchasing-systems-dps>

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31.3. The **Relevant Officer** shall ensure that the DPS is open at all times during its operation for new suppliers to join.

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31.4. The **Relevant Officer** may keep a list of Contractors who have been appointed to a Dynamic Purchasing System managed by the Authority and who may be invited to tender for Contracts for Supplies and Services up to maximum value of £50,000 and for Works up to £2,000,000.

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31.5. The selection of tenderers from the Contractors appointed to the Dynamic Purchasing System will be the responsibility of the Chief Executive or Executive Directors.

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31.6. The Dynamic Purchasing System will contain the names of the Contractors that wish to be included on the list and whose inclusion on the list has been approved by the **Relevant Officer**. The **Relevant Officer** will not include a Contractor on the list unless a satisfactory review has been carried out to establish the technical capability of the Contractor and an assessment of the financial standing carried out by the Head of Finance.

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31.7. The **Relevant Officer** will review the Contractors appointed to the Dynamic Purchasing System at least once every five years and undertake an assessment of insurance and financial standing on an annual basis.

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31.8. The advertisement inviting applications to be appointed to the Dynamic Purchasing System will indicate the categories of Supplies, Services and Works to be included in the Dynamic Purchasing System and will be advertised in accordance with CSO 21.

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31.9. The **Relevant Officer** will maintain records detailing the following:

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31.9.1. The rejection or exclusion of Contractors from the Dynamic Purchasing System and the reasons for such exclusion or rejection; and

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31.9.2. Arrangements to monitor the financial status of Contractors included on the approved list.

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31.10. In the event that a Contractor is removed from the Dynamic Purchasing System or has an application to be added to the Dynamic Purchasing System refused, the Contractor shall be advised of the decision forthwith and the **Relevant Officer** shall keep a record listing the name and address of the Contractor and explaining the reasons why that Contractor has been removed from the Dynamic Purchasing System or why the application was refused.

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31.11. The **Relevant Officer** will ensure that no Contractor has been excluded from, or included on the Dynamic Purchasing System by reasons of consideration of non-commercial matters within the meaning of Section 17 of the Local Government Act 1988 or any statutory modification or re-enactment thereof.

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31.12. The **Relevant Officer** may suspend a Contractor from a Dynamic Purchasing System in circumstances where the **Relevant Officer** have serious concerns regarding the Contractor's ability to provide the Supplies, Services or Works in relation to which the Contractor is appointed to the Dynamic Purchasing System. The suspension will allow the **Relevant Officer** to carry out investigations regarding the Contractor's fitness to remain appointed to the Dynamic Purchasing System. The suspension shall be for a period not exceeding six months or until the end of the investigation, whichever is sooner, at which point the **Relevant Officer** must either reinstate the Contractor to the Dynamic Purchasing System or remove the Contractor from the Dynamic Purchasing System and CSO 31.9 will apply.

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31.13. The Procurement Manager is to be consulted prior to consideration of the set up of a new Dynamic Purchasing System.

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31.14. Notices for contracts awarded under a Dynamic Purchasing System, where the System was put in place prior to 31 December 2020, will require to be published on OJEU. The PCS advertising portal will ensure that this happens.

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## 32. Electronic Tendering

32.1. Unless the **Relevant Officer** has agreed otherwise, tendering exercises shall be conducted by electronic means, provided that:

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32.1.1. Electronic tendering is to take place using a system which has been approved by the Executive Director with Procurement as part of their remit; and

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32.1.2. To use electronic tendering would not significantly restrict or distort competition.

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32.2. Where electronic tendering is in use the contract notice will be published in accordance with CSO 21 and will provide information as to the internet address which offers unrestricted and full access by electronic means to the Contract Documents.

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32.3. This CSO 32.3 shall replace CSOs 33, 34 and 35 in their entirety and where electronic tendering is in use the Relevant Officer will ensure that:

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32.3.1. No Tender submitted by electronic means will be considered unless it is received in the format requested by the Council and at the electronic address specified by the Council before the deadline for the receipt of tenders;

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32.3.2. Each tender is kept unopened in a single secure electronic mailbox that cannot be opened before the deadline for the receipt of tenders; and

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32.3.3. For each tendering exercise the electronic tendering system shall, and if required for audit purposes, produce a record to show the time and date of the receipt of tenders.

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32.4. Managers with Delegated Procurement Authority to a Level 4 in consultation with the Procurement Manager may extend the deadline for the submission of tenders by notifying all tenderers of the extension in the following circumstances:

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32.4.1. Before Tenders are received by the Council;

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32.4.2. Following the receipt of Tenders but before the Council has opened the tenders due to the functionality of the e-procurement system, and

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32.4.3. Independent evidence has been obtained by the Council that the electronic tender advertising portal used was not operational immediately prior to and during the submission of tender deadline due to technical reasons.

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32.5. Where an extension of the deadline for the submission of Tenders has been granted in accordance with CSO 32.4, tenderers that have submitted Tenders may be given the opportunity to re-submit their Tenders. Where tenderers are permitted to re-submit Tenders, the same opportunity will be extended to all tenderers.

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32.6. Tenders with a value of over £50,000 that have been submitted by electronic means in accordance with this CSO 32 will be opened by an Elected Member and two officers one of whom must be on a salary grade of G9 or above.

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32.7. When recording Tenders that have been submitted by electronic means, the Tender Opening Board must check the following:

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32.7.1. That the Form of Tender has been signed and dated by the tenderer;

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32.7.2. That the Certificate of Bona Fide Tendering has been signed and dated by the tenderer;

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32.7.3. That the Price schedule has been completed;

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32.8. If a Tender is incomplete, or does not conform to the Contract Documents, the Relevant Officer may decide to disqualify the Tender. If the Tender is disqualified the Relevant Officer must inform the tenderer at the earliest opportunity that the Tender has been disqualified and the reasons for disqualification.

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32.9. Formal Tender opening procedures are not required for receipt of tenders for selection stage of the Restricted Procedure, establishment of a Dynamic Purchasing System or for the establishment of a Framework Agreement where no pricing is fixed at the initial stage.

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32.10 For the avoidance of doubt, for regulated procurement, formal Tender opening procedures are required for all Open Procedure Tender submissions, and for subsequent call offs or mini-competitions from a Framework Agreement or works packages awarded via the Dynamic Purchasing System in accordance with CSOs 32.6 and 32.7 above.

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### 33. Technical and Financial Checks

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33.1. No Contractor may be awarded a Contract unless, following a review of the proposed Contractor, the Relevant Officer are satisfied as to:

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33.1.1. The technical capability of the proposed Contractor; and

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33.1.2. The financial standing of the proposed Contractor.

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33.2. The assessment of the financial standing of proposed Contractors will be undertaken by the Head of Finance.

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33.3. It shall not be necessary to review the financial standing of a Contractor where the estimated value of the Contract is £50,000 or below.

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33.4. It shall not be necessary to review the financial standing of a Contractor where a Contract is awarded either following a further competition under a Framework Agreement or a Dynamic Purchasing System. Further review of the financial standing of a contractor will not be necessary where a periodic financial review is undertaken as a condition of the contractor's appointment to the Framework Agreement or Dynamic Purchasing System.

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33.4. The Relevant Officer will keep a record showing the results of each check of technical capacity and financial standing of Contractors.

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### 34. Receipt and Custody

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34.1. For hard copy Tenders the envelope containing the tender will be addressed to the Chief Executive as specified in the Contract Documents in whose custody it shall remain until the time arranged for its opening.

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34.2. CSO 34.1 will not apply where e-procurement is used. Where e-procurement is in use CSO 32 will be complied with.

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## 35. Late Tenders

35.1. Tenders received after the closing date and time specified in the Contract Documents will not be considered. Late Tenders will be returned to the Tenderer with a covering letter explaining why the Tender is not being considered. Late Tenders may be opened to ascertain the name of the tenderer but no details of the tender shall be disclosed.

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## 36. Opening of Hard Copy Tenders

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36.1. Tenders must be opened, simultaneously, in the presence of an Elected Member and two officers, one of whom must be on a salary grade of G9 or above.

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36.2. When opening the Tenders, the Tender Opening Board comprising the Elected Member and two officers in accordance with CSO 36.1. must check the following:

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36.2.1. That the Form of Tender has been signed and dated by the tenderer;

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36.2.2. That the Certificate of Bona Fide Tendering has been signed and dated by the tenderer;

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36.2.3. That the Price schedule has been completed;

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36.3. If a Tender is incomplete, or does not conform to the Contract Documents, the Relevant Officer may decide to disqualify the Tender. If the Tender is disqualified the Chief Executive or Executive Directors must inform the tenderer at the earliest opportunity that the Tender has been disqualified and the reasons for disqualification.

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36.4. Electronic tenders received via an electronic post box will be opened and recorded in accordance with CSOs 32.6 to 32.8.

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## 37. Tender Evaluation

37.1. All Contracts will be awarded in accordance with the published award criteria and no others.

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37.2. Tenders will be evaluated by a Tender Evaluation Panel which consists of at least two officers with demonstrable technical ability to evaluate tenders.

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37.3 Officers are required to complete a conflict of interest form for each individual tender evaluation prior to consideration and acceptance as a member of the Tender Evaluation Panel.

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37.4. As a matter of good practice no member of the Tender Evaluation Panel shall assess both the quality and price aspects of a Tender.

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37.5. In instances where evaluation of price requires expert analysis additional advice to be sought from the service area.

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37.6. Where an Abnormally Low Tender is identified, the Procurement Manager and Legal Services will be consulted; prior to any decision made as to the treatment of the Abnormally Low Tender submission.

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### 38. Checking of Tenders and Post Tender Negotiations

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38.1. All Tenders shall be subject to checking by the Relevant Officer who will prepare a written report in respect of all Tenders received in a form that complies with CSO 39 and that contains a specific recommendation as to the acceptance of the successful Tender or Tenders and the reasons for the award recommendation.

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38.2. Between the last date and time for the receipt of Tenders and the date on which a decision is taken as to which, if any, Tender is to be accepted, the Relevant Officer may choose to enter into post tender negotiations. Post tender negotiations will only be undertaken in circumstances where the Relevant Officer have identified the tenderer who has submitted either the lowest price or most economically advantageous tender, and where the Relevant Officer is satisfied that there is scope for improvement in the Tender received and that such negotiations will be in the best interests of securing better value for money or improved terms to the Council. Post tender negotiations may only be used where that Tenderer is clearly identified. Post tender negotiation shall not be used to put other tenderers at a disadvantage or distort competition.

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38.3. Where it is considered possible that post tender negotiations might apply, a clear indication will be given to prospective Contractors in the contract documents that post tender negotiation might be considered.

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38.4. Between the last date and time for the receipt of Tenders and the date on which a decision is taken as to which, if any, Tender is to be accepted, the Relevant Officer may contact a tenderer in respect of any Contract to validate or to clarify the terms of the Tender.

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38.5. Notwithstanding the other terms of this CSO 38, where examination of the Tenders reveals obvious errors and discrepancies which would affect the tender figures, errors will be dealt with as follows:

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38.5.1. Any obvious arithmetical errors will be rectified by the Relevant Officer checking the tenders and the amount of tender shall be held to be correct so rectified and the tenderer informed of the corrected amount;

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38.5.2. Where there is an obvious and genuine error in rates occurring, the tenderer will be given the opportunity of either confirming that he / she agrees with their tender being considered with the error remaining or withdrawing their tender. This procedure must be undertaken in writing. In the event that the tenderer decides to withdraw his / her tender, it will not be considered for acceptance. The tenderer must not be given the opportunity to submit an amended tender;

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38.5.3. Tenders which include Bills of Quantities must be checked for arithmetical accuracy, and where inaccuracies are found, the tenderer must be given the opportunity to correct them in accordance with any applicable Code of Practice e.g. ACE, NEC, Institution of Civil Engineers (ICE) or Joint Contracts Tribunal (JCT).

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38.6. A written record will be kept by the Relevant Officer where post tender negotiation has been used. The written record will include the justification for authorising post tender negotiations, the nature of the negotiations and the outcome of the negotiations.

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### 39. Content of Award Recommendation Reports

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39.1. For all Contracts established through a competitive procedure, a Contract award recommendation report will be prepared for consideration and approval by the Chief Executive, the Executive Director or Chief Officer of the relevant service area detailing the following information:

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39.1.1. The nature of the requirements of the Contract and date that the Procurement Plan was completed and authorised;

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39.1.2. The tendering procedures adopted;

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39.1.3. A comparative digest of offers received;

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39.1.4. For unregulated procurements for Supplies and Services and Works, the reason, where applicable, for receiving less than three quotations:

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39.1.5 For procurement of works with a value of under £50,000, where the award criteria is based solely on cost/price, a summary of the risk assessment undertaken and the outcome of this;

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39.1.6. Identification of Abnormally Low Tenders where applicable and actions taken;

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39.1.7. A statement to confirm that CSOs have been complied with;

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39.1.8. A statement to confirm that a Sustainable Procurement Impact Assessment has been carried out where this is applicable;

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39.1.9. Confirmation that the Contract is within budget and details of budget ledger code and where applicable, capital approval;

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39.1.10. Details of any clarifications carried out and where post tender negotiation has been used a written record of the justification for its use, and the nature and outcome of the negotiations;

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39.1.11. Benefits and savings available; and

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39.1.12. A recommendation on the award of the Contract or Contracts.

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## 40. Acceptance

40.1. Contracts will be signed by the Chief Executive, the Head of Finance or the Head of Legal Services or other officer with delegated authority to sign Contracts on behalf of the Council in accordance with CSO 12.1.

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40.2. In relation to all Contracts, the Chief Executive and Executive Directors will keep a written record showing the assessment of each Tender against the published award criteria. The written record will demonstrate why the successful Tender was chosen and a statement to confirm that the Council's CSOs have been complied with.

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40.3. All Tenderers will be informed in writing of the success or otherwise of their Tender as soon as reasonably practicable after the approval of the Contract award recommendation report prepared in accordance with CSO 39.

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40.4. Where the Contract exceeds the Threshold and the full procedural requirements of the Regulations apply, no Tender will be accepted until the mandatory standstill period has expired and the Chief Executive and Executive Directors are satisfied that no valid challenge has been received in relation to the Contract award decision.

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40.5. The mandatory standstill period is a period of at least 10 calendar days between the date of dispatch of the letters issued (by email) and the date when it is proposed to enter into the Contract.

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40.6 Where a challenge is made to the Contract award decision before the Contract is made, the Chief Executive or Executive Directors will refer the matter to the Head of Legal Services for consideration.

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## 41. Contracts Register

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41.1. The Procurement Manager will maintain a central register of all Contracts and ensure that an up to date web-based contracts register for contracts with value of £50,000 or more are available via the <https://www.publiccontractsscotland.gov.uk> portal. To meet the Council's statutory requirements of transparency the live Contracts Register is publicly available via the PCS Portal.

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41.2. The Contract information that shall be entered into the register is as follows:

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41.2.1. The date of the award of contract;

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41.2.2. The name and address of the Contractor;

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41.2.3. A description of the purpose of the Contract;

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41.2.4. The duration of the Contract;

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41.2.5. The estimated value of the Contract including any extensions available;

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41.2.6. The start date;

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41.2.7. The end date for the contract, or the circumstances in which the contract will end;

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41.2.8. The duration of the potential extension periods to the Contract; and

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41.2.9. Any other information relating to the Contract which the Chief Executive considers to be material.

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41.3. The Council shall maintain a single, centrally managed internal contracts register for the purposes of business planning which shall be managed by the Council's Procurement Team.

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41.4. The Chief Executive, Executive Directors and Chief Officer shall provide a plan to the Procurement Manager no later than 1 April each year showing their plans for contracting activity in the following two calendar years, in order to allow for the publication of the Council's Annual Procurement Strategy and Plan by 31 December of each year.

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41.5. For the purpose of maintaining a register in accordance with CSO 41, the Relevant Officer will send a copy of all Contract award letters to the Procurement Manager.

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## 42. Contract Award Notice

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42.1. For the purpose of transparency, where the Contract has been advertised in accordance with CSO 21.2, the Relevant Officer will publish a Contract award notice on the PCS portal.

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42.2. A contract award notice must be published on the PCS portal for all over Threshold Regulated Procurements, Regulated Procurements, for all Health and Social Care Contracts including direct awards, all Framework Agreement call-offs and purchases under a Dynamic Purchasing System or Negotiated Procedure where appropriate.

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42.3. Where the Contract exceeds the Threshold and is subject to the Regulations a contract award notice must be published no later than 48 days after the award of the Contract.

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42.4. For Regulated procurements and for over Threshold Regulated Procurements which are equal to or greater than £4,000,000 the contract must include the following:

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42.4.1. A summary of the community benefit requirement that will be included in the contract, or

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42.4.2. Where the public body does not intend to include any such requirements, a statement of its reasons for not including any requirements.

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42.4.3. Where community benefits are included in a Regulated Procurement and / or an over Threshold Regulated Procurement the Council must include in the award

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notice a statement of the benefits it considers will be derived from those requirements.

### 43. Specifications

43.1. Where there is a recognised British, or International Standard applicable to any Contract which is current at the date of Tender, the Contract Documents shall require that the Supplies and Services shall meet the requirement of that standard.

43.2. The **Relevant Officer** shall avoid reference within specifications which has the effect of favouring or eliminating any particular Contractors by specifying a particular material or a specific make. In exceptional circumstances such references may be justified e.g. where the subject matter of the proposed Contract makes the use of such references as indispensable, in circumstances where the use of such references becomes indispensable, it will be accompanied by the words 'or equivalent'.

### 44. Assignment, Sub-Contracting, Termination and Variation

44.1. In every Contract there shall be included a provision whereby the Contractor shall be prohibited from transferring or assigning to any persons without the prior consent of the Council.

44.2. The sub-contracting of any part of a Contract except to the extent permitted in writing by the **Relevant Officer** shall be prohibited.

44.3. The **Relevant Officer** may terminate any Contract or part of a Contract or to agree to vary or amend the terms of any Council Contract but only following consultation with the Head of Finance and the Head of Legal Services being satisfied that it is reasonable and in the best interests of the Council to exercise that power.

### 45. Liquidated and Ascertained Damages

45.1. Where the value of a Contract exceeds £100,000 or for complex procurements assessed on a case by case basis, the Chief Executive and Executive Directors will consider whether it is appropriate for the Contract to include a provision for liquidated and ascertained damages. The amount to be specified in the Contract will be determined by the **Relevant Officer** in consultation with the Head of Finance. The assessment of liquidated and ascertained damages will be a pre-determined and genuine estimate of loss to the Council.

### 46. Performance Bonds

46.1. Where the contract value exceeds £1,000,000 the **Relevant Officer** will consider whether it is appropriate to provide for performance bonds. The amount for each performance bond will be approved by the Head of Finance. The bond will be in a form that is acceptable to the Head of Finance and the Head of Legal Services.

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## 47. Insurance

47.1. The Relevant Officer will ensure that appropriate risk management measures are in place to protect the Council, and that Contractors hold adequate insurance for the period of the Contract. The level of insurance cover held by Contractors will be considered on a case by case basis and will be commensurate with the scale, complexity and associated risks of the Contract.

47.2. The Chief Executive, Executive Directors, or Chief Officer will consult with the Head of Finance where there is any doubt regarding the level of insurance cover that is required to be held by Contractors.

## 48. Prevention of Collusion and Corrupt or Illegal Practices

48.1. In every written Contract a clause shall be inserted to secure that the Council shall be entitled to cancel the Contract and to recover from the Contractor the amount of any loss resulting from such cancellation if the Contractor or the Contractor's representative (whether with or without the knowledge of the Contractor), shall have practiced collusion in tendering for the Contract or shall have employed any corrupt or illegal practices either in the obtaining or performance of the Contract.

## 49. Sustainable Procurement

49.1. Before undertaking a regulated procurement exercise the Relevant Officer shall take into account the social, economic and environmental impacts of the proposed Contract and whether the Contract will contribute to the achievement of sustainable development in accordance with the Sustainable Procurement Duty and the Council's Sustainable Procurement Policy <https://www.orkney.gov.uk/Service-Directory/P/sustainable-procurement.htm>.

49.2. For any procurement equal to or greater than £4,000,000, the Council must consider whether to impose community benefit requirements as part of the procurement.

49.3. The Relevant Officer will consider under CSO 40.1, only factors that are relevant and proportionate to the proposed Contract.

49.4. The Relevant Officer will ensure that a Sustainable Procurement Impact Assessment (SPIA) s carried for all procurement exercises for all relevant goods, services and works contracts where there is potential to minimise the use of carbon-based energy and its associated emissions.

## 50. Consultants

50.1. The appointment of consultants is subject to these CSOs and the Council's Financial Regulations. Due to their specialist and fixed term nature consultancy appointments are closely scrutinised. Therefore, prior to the commencement of a procurement exercise, the Relevant Officer shall obtain specific Committee approval to appoint a consultant unless this applies to construction or engineering projects.

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50.2. The Committee report which seeks approval for the appointment of a consultant will include:

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50.2.1. A summary of the requirements, including the expected benefits and when they are likely to be delivered;

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50.2.2. Details of any alternatives to consultancy e.g. in-house expertise;

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50.2.3. The estimated start and end date of the proposed Contract;

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50.2.4. The maximum estimated value of the Contract over its lifetime.

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50.3. The **Relevant Officer** will ensure that effective contract management arrangements are established to ensure the delivery of cost effective consultancy services which meet the Contract, i.e. the work required is completed on time, within budget and to specification.

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50.4. Where it is appropriate and possible to do so, the **Relevant Officer** shall procure that ownership of Intellectual Property Rights in reports and other documents generated by consultants shall be assigned to the Council on such terms as the Council may reasonably require.

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## 51. Annual Procurement Strategy

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51.1. The Chief Executive or Executive Directors and Chief Officer will ensure a Procurement Strategy is published to set out how it intends to ensure that its procurement activity delivers value for money and contributes to the achievement of the authority's broader aims and objectives in line with Scotland's National Outcomes.

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51.2. The Council will in its Procurement Strategy annual procurement report help promote the positive impacts public procurement can have on Scotland's economy and public services.

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51.3. The Chief Executive or Executive Directors and Chief Officer will ensure that Consultation and Publication of an Annual Procurement Strategy is carried out and that in order to be meaningful and effective, engagement must be proportionate, manageable, and forward looking enough to allow time to incorporate findings into individual requirement contracting / Procurement Strategies.

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51.4. By 1 April of each year, the Council will therefore develop an annual corporate Procurement Strategy in accordance with the Statutory Guidance as at CSOs 1.3 which shall contain the following:

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51.4.1. How it intends to ensure that its regulated procurements will contribute to the carrying out of its functions and the achievement of its purposes;

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51.4.2. How it intends to ensure that its regulated procurements will deliver value for money;

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51.4.3. How it intends to ensure that its regulated procurements will be carried out in compliance with its duties under section 8 of the Procurement Reform (Scotland) Act 2014:

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51.4.3.1. Treat relevant economic operators equally and without discrimination;

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51.4.3.2. Act in a transparent and proportionate manner;

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51.4.3.3. Sustainable procurement duty.

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51.4.4. The Council's general policy on:

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51.4.4.1. The use of community benefits requirements;

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51.4.4.2. Consulting and engaging with those affected by its procurements;

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51.4.4.3. The living wage being paid to persons involved in producing, providing or constructing the subject matter of regulated procurements;

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51.4.4.4. The promotion of compliance with Health and Safety legislation;

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51.4.4.5. The procurement of fairly and ethically traded goods and services.

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51.4.5. How it intends its approach to regulated procurements involving the provision of food to:

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51.4.5.1. Improve the health, wellbeing and education of communities in the authorities area; and

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51.4.5.2. Promote the highest standards of animal welfare.

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51.4.6. How the authority intends to ensure that, so far as reasonably practicable, the following payments are made no later than 30 days after the invoice (or similar claim) relating to the payment is presented:

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51.4.6.1. Payments due by the authority to a contractor;

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51.4.6.2. Payments due by a contractor to a sub-contractor;

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51.4.6.3. Payments due by a sub-contractor to a sub-contractor.

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51.5. The Council recognises its obligation to consult stakeholders including businesses, third sector organisations, communities and citizens who may have an interest in the Council's contracting for services. In support of this it will, develop a communication plan to ensure appropriate engagement with all sectors in Orkney, and will include an annual 'meet the buyer event' to provide a platform for market consultation and engagement with suppliers.

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## 52. Procurement Annual Report

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52.1. The Chief Executive or Executive Directors and Chief Officer will ensure that its procurement activity complies with the relevant legislation and that the decisions it

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takes in the context of its procurement activity are in accordance with the legislation and its own procurement objectives.

52.2. The Chief Executive or Executive Directors and Chief Officer will ensure that the Procurement Strategy is reviewed annually and the revised Procurement Strategy and Procurement Annual Report is published as soon as reasonably practical after April 2018 and thereafter on an annual basis and in accordance with the Statutory Guidance as at 1.3.

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### 53. Collaborative Procurement

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53.1. The Council may enter into a joint procurement exercise with another Public body, which in its entirety, is carried out jointly and in the name of all the public bodies concerned, and shall be jointly responsible for ensuring that the Legislation is complied with. This also applies in cases where one public body manages the procedure, acting on its own behalf and on the behalf of the other public bodies concerned.

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### 54. Prevent Duty

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54.1. The Chief Executive or Executive Directors and Chief Officer will ensure that Tendering and Contract documentation will include a requirement for all Contractors to the Council to support the Council's PREVENT duty to prevent radicalisation and support counter-terrorism where appropriate to the subject matter of the Contract.

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## Appendix 1

### Non Competitive Action (NCA)

1. It is Council policy that Contracts for Supplies, Services and Works should be awarded on the basis of value for money following a genuine and effective competition. This policy recognises that there may be occasions where it is appropriate to award a Contract without following a genuine and effective competition. This procedure is known as NCA and can only be applied in exceptional circumstances.
2. NCA will only be approved when a genuine business need exists which outweighs the need to subject the requirement to competition. Evidence in support of the NCA must stand up to scrutiny or challenge.
3. The Chief Executive has the authority to approve an NCA.
4. When seeking authority for NCA, the Chief Executive and Executive Directors will ensure that there is sufficient information contained within the request to enable the Chief Executive to consider the NCA.
5. The Chief Executive, in consultation with the Head of Finance, the Head of Legal Services and the Procurement Manager, as appropriate, will decide whether or not to authorise the request to proceed without competition.
6. Following approval a scanned copy of the NCA Form must in all cases be sent to the Procurement Manager for inclusion on the NCA register.
7. Where a request for NCA is rejected then a competition will be necessary. The level of competition will depend on the value, nature and complexity of the purchase.

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## Request for Non-Competitive Action NCA



**Note:** Once completed and signed by the Executive Director seeking the Exception this form must be sent to the Chief Executive for Approval.

Deleted: Director of Corporate Services

<u>Details of the Service seeking Non-Competitive Action</u>	
<u>1. Name</u>	
<u>2. Service</u>	
<u>Details of NCA exception request</u>	
<u>3. Contractors Name</u>	
<u>4. Contract Title</u>	
<u>5. Type of Contract</u>	<u>Supplies/Services/Works</u>
<u>6. Value (excluding VAT)</u>	
<u>7. Duration</u>	
<u>8. Is the request an amendment to an existing contract?</u>	<u>No</u>
<u>9. If Yes, was the original contract competitively tendered?</u>	<u>NA</u>
<u>10. Justification for non-competitive action</u>	
<u>11. Include reference to CSOs – Clause 13 Exemptions and Exceptions – detailing the exemption or exception referred to in the NCA request (including full details and explanation as necessary)</u>	
<u>Signature</u>	
<u>Name of Executive Director seeking approval for NCA</u>	
<u>Date</u>	
<u>I approve the exception requested / I am unable to agree to the exception request</u> (please delete or highlight as applicable)	
<u>Signature</u>	

<u>Chief Executive</u>	
<u>Date</u>	