



The Highland Council Contract Standing Orders

November 2017

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1. Overview

- 1.1 These Contract Standing Orders (“the Contract Standing Orders (CSO)) shall apply and have effect from 15 November 2017 and shall be subject to regular review.
- 1.2 The purpose of these Contract Standing Orders (CSO) is to: -
 - a) Ensure that uniform contracting procedures of the highest standard are laid down for use throughout The Highland Council;
 - b) Secure compliance with the law with respect of all contracts;
 - c) Ensure the Council obtains best value in its procurement activity and all resultant contracts;
 - d) Afford protection to the Council and its staff.
- 1.3 This shall ensure the Council consistently acts in a transparent and proportionate manner and in a way that is equal and without discrimination. In turn this shall lead to value for money and more sustainable outcomes.
- 1.4 Responsibility and accountability for all procurement within the Council lies with the Procurement Senior Responsible Officer (SRO), who shall be a member of the Council’s Executive Leadership Team and who has authority to determine all matters to procurement subject to compliance with legal requirements. The Procurement SRO may delegate areas of procurement to other officers of the Council. All parts of the Council constitute a single contracting authority and no establishment or operation of the Council is separate from it. As such they are applicable to all Services and all establishments including schools, care homes, and operations to which responsibility for awarding contracts is delegated or outsourced.
- 1.5 The Council has a Memorandum of Understanding in place with Aberdeen City Council and Aberdeenshire Council for the provision of a Shared Service to provide commercial and procurement services. The lead council for the Shared Service is Aberdeen City Council. The Shared Service covers the procurement of all goods, services and works, with the exception of children and adult social care related “services to the person”. In the case of “services to the person”, advice, guidance and support can be sought from the Shared Service to foster a collaborative culture where there are common requirements and this is deemed to be mutually beneficial. The CSO also apply to any officers within the Shared Service acting on behalf of the Council on an individual contracting authority basis. Where the Shared Service is working in collaboration with other contracting authorities, reference to those contracting authorities’ standing orders/regulations will also need to occur; however, internal governance of other contracting authorities should not dilute or conflict with these CSO.
- 1.6 The CSO provide references to a Procurement Manual, Procurement Guidance Notes, procurement template documents and training materials – these documents and materials are linked to the CSO, and sit outwith the main document (in order to accommodate regular review and amendments to comply with legislation and best practice), however, compliance and usage of these documents and materials is required under the CSO.

2 Definitions

2.1 Throughout this document the following definitions shall apply:

Aggregation means that where a contract is one of a series of similar contracts, across the Council for the same category of goods, services or works, or specific requirements needed to complete a project, the value of each must be aggregated to determine the relevant Contract value. In the foregoing circumstances the Procuring Officer should seek guidance from the Head of the Commercial and Procurement Shared Services (or his delegate) before proceeding. The splitting of requirements into smaller lots or orders or shorter contract periods in an attempt to avoid the Contract Value limits in these Contract Standing Orders is expressly prohibited.

Annual Procurement Report means a report published by the Council annually in relation to regulated procurement activities.

Business Case means a formal report for approval by a Chief Officer or Committee, as the case may be, (conforming to a template approved by the Head of Commercial and Procurement Shared Services or his delegate) seeking authority to conduct a procurement for the purchase of works, goods or services.

C&PSS means the Commercial and Procurement Shared Services led by Aberdeen City Council on behalf of Aberdeen City Council, Aberdeenshire Council and The Highland Council.

Committee means any relevant committee of the Council with responsibility for monitoring best value, internal financial control, corporate governance (including procurement), or any other matter to which the procedure for award of Council contracts may be relevant.

Contract means a contract entered into or to be entered into by the Council and a supplier for works, goods or services and includes a framework agreement or a call-off contract under a framework agreement unless the context requires otherwise and also includes income or savings generating arrangements.

Contracting Authority means The Highland Council: this is the Contracting Authority in all Contracts into which the Council or any part of the Council enters.

Contract of Employment means a contract between the Council and an individual that sets out an employee's employment conditions, rights, responsibilities and duties and is distinct from an agreement to provide services for the Council, for example by a consultancy arrangement.

Contract Value means, subject to aggregation (see definition above), the total value of a contract (exclusive of VAT) payable by the Council under the contract over the whole life of the contract (including any optional extension periods or any value transferred to the supplier by way of a concession or rights or some other asset/non-cash transfer).

Contracts Register means the single corporate record of contract details currently in place within the Council.

Corporate Procurement Strategy means a document giving details on how the

Council intends to carry out regulated procurements as required by Section 15 of the Procurement Reform (Scotland) Act 2014.

Council means The Highland Council.

Delegated Procurement Authority (DPA) means the authority that permits a Delegated Procurer to conduct a procurement, and to agree to award, amend or vary contracts for Supplies / Services / Works on behalf of the Council.

Delegated Procurer means any officer holding Delegated Procurement Authority and authorised to carry out procurement activities.

Direct Award means the award of a Contract without the Council having sought quotes or tenders.

E-Tendering or Electronic Tendering means a tendering process where the contract documents are published electronically and the tender documentation and/or response to these is also submitted electronically in the first instance. E-tender shall be construed accordingly.

EU Procurement Directive means the European legislative framework for public procurement in force at the time a procurement process is entered into.

EU Thresholds means the contract value thresholds set out in the current Public Contracts (Scotland) Regulations governing the applicability of those Regulations to public contracts.

Framework Agreement means an agreement between one or more contracting authorities and one or more suppliers, the purpose of which is to establish the terms governing public contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.

Head of the C&PSS means the Head of the Commercial and Procurement Shared Services (or his delegate) led by Aberdeen City Council on behalf of Aberdeen City Council, Aberdeenshire Council and The Highland Council.

Procurement Guidance Notes (PGN) means the procurement guidance notes published by the Head of Commercial and Procurement Shared Services and as amended from time to time. The Procurement Guidance Notes are supplementary to these Contract Standing Orders.

Procurement Manual means the procurement manual published by the Head of Commercial and Procurement Shared Services and are supplementary to these Contract Standing Orders. The Procurement Manual is intended to guide Procuring Officers through procurement projects so that best value for money and compliance with legislation is achieved. The Procurement Manual also provides template documents for procurements and all Services are required to use these templates.

Procurement SRO means the Procurement Senior Responsible Officer who shall be a member of the Council's Executive Leadership Team and who has authority to determine all matters to procurement subject to compliance with legal requirements. The Procurement SRO may delegate areas of procurement to other officers of the Council.

Procuring Service means the service department of the Council with responsibility for procuring any particular requirement for supplies, service or works on behalf of the Council or for the disposal of surplus materials.

Project Sponsor means the owner of and budget holder for the requirement as distinct from the Service Lead Officer carrying out commercial and procurement action on their behalf.

Proper Officer means any officer in the employment of the Council who is duly authorised for the purpose of signing contracts on behalf of the Council under the Council's Scheme of Delegation or any other resolution of the Council authorising officers to sign contracts.

Public Contracts Scotland means the national portal for advertising public sector contract opportunities in Scotland, which may be found at www.publiccontractsscotland.gov.uk.

Public Contracts Scotland Tender means the national portal for issuing/receiving public sector tenders in Scotland, which may be found at <https://www.publictendersscotland.publiccontractsscotland.gov.uk/esop/pts-host/public/pts/web/login.html>

Regulated Procurements means a procurement where any contract formed will be a public contract the value of which is equal to or greater than the relevant contract threshold, and which is not excluded by legislation.

Relevant Legislation means the Scottish procurement legislation in effect at the time any procurement process is entered into, along with EU Procurement Directives and any other relevant applicable law.

Scheme of Delegation means the record maintained of all powers delegated to Council officers.

Service Lead Officer is the person delegated by the Project Sponsor to carry out commercial and procurement action on their behalf. The Service Lead Officer will have appropriate Delegated Procurement Authority to procure goods, services or works and takes the lead on a procurement.

Terms and Conditions mean the special and general arrangements, provisions and requirements of a contract.

Thresholds means the financial value that determines how procurement is to be undertaken.

Work Plan means a listing of areas of expenditure anticipated to be made by Services on goods, services and works exceeding an aggregated £10k, either against existing contracts/framework agreements or where contracts/framework agreements are needed.

3 Extent and Application

- 3.1 These Contract Standing Orders are made under section 81 of the Local Government (Scotland) Act 1973.

- 3.2 These Contract Standing Orders must be interpreted in accordance with the principles of openness, fairness and non-discrimination.
- 3.3 All Council personnel shall comply with the terms of the Contract Standing Orders. Where any breach or non-compliance with these Contract Standing Orders is discovered it must be reported immediately to the Head of Corporate Audit and Performance acting on behalf of the Procurement SRO. Failure by any employee to comply with the Contract Standing Orders or associated Procurement Manual and Procurement Guidance Notes may be grounds for disciplinary action.
- 3.4 Subject to the provisions of Paragraph 3.11, the Contract Standing Orders shall apply to:
- a) Any procurements undertaken by, or on behalf of, the Council with the intention of creating a contract or contracts (including the creation of a framework agreement) for the purchase of goods and/or services, or for the execution of works.
 - b) Any procurements undertaken by, or on behalf of, the Council with the intention to enter into a call-off contract under an external framework agreement. Prior to call-off from any external framework agreement, the Head of Commercial and Procurement Shared Services (or his delegate) must give written approval for the use of the proposed framework agreement. Approval for the use of a framework agreement is distinct from the authority to spend under it either in terms of a single call-off or authority to call-off reactive requirements for the life of the external framework agreement.
 - c) Any amendment or variation of an existing contract for the purchase of goods or services, or for the execution of works, where:
 - i. that amendment or variation would exceed the parameters of the approval of the original procurement, or
 - ii. the aggregate contract value of the original contract and the variation of that contract would exceed a threshold requiring approval at a higher level, or
 - iii. the amendment would result in an assignation or novation to a new supplier.
 - d) Any procurement undertaken by, or on behalf of, the Council with the intention of leading to the award of a public services concession contract or public works concession contract.
- 3.5 The Contract Standing Orders are subject to the over-riding provisions of European, United Kingdom or Scottish law governing public procurement. They are also subject to any statutory guidance issued from time to time by the EU Commission, UK Government or Scottish Government on public procurement.
- 3.6 When determining the contract value, the Delegated Procurer must take into account the aggregate value of the particular requirement for supplies, services or works across the whole Council (including any extension option). Where any single requirement is divided into Lots the Contract Value will equal the aggregate value of all the Lots. If the procurement of any such requirements is split amongst

a number of contracts which, taken individually, are below the threshold values, each of these contracts will be subject to the relevant EU Procurement Directive in place at the time of the procurement in the same way as if the requirements were procured through a single large contract.

- 3.7 Contracts related to “social care/light touch and other specific services” are subject to what is generally referred to as a Light-Touch Regime. Details of the services covered under this regime, and how the Council will procure such services are included within the Procurement Manual and/or Procurement Guidance Notes.
- 3.8 All tendering for Supplies, Services and/or Works shall, where appropriate, be carried out in conjunction with the Head of the C&PSS (or his delegate). Further detail about the interaction between Services and C&PSS is provided in 4 Procurement Procedures.
- 3.9 The following types of contract are exempted from the provisions of these Contract Standing Orders:-
- a) All contracts with a total estimated cost not exceeding £10,000.
 - b) Any contract of employment.
 - c) Any contract relating to the acquisition or disposal or lease of heritable property or any other interest in land where no ancillary services are attached (including but not limited to managed services).
 - d) Any award of a Grant.
 - e) Any contract for the Sponsorship of an event.
 - f) Any contract which relates to the appointment of legal services or expert witnesses in any legal proceedings on behalf of the Council.
 - g) Any contract which, in the opinion of the Director of the procuring Service, or of the Procurement SRO, is urgently required to prevent danger to life, serious risk to health or damage to property. Where practicable the Director or the Procurement SRO shall consult with the Head of the C&PSS before taking any action under this paragraph. In all circumstances where this exemption has been used:
 - i. the Head of the C&PSS shall be notified as soon as reasonably practicable and
 - ii. any contract entered into on behalf of the Council must be noted in the Contracts Register.
 - h) Any contract that is to be performed in-house.
 - i) Any contract of a statutory nature where another contracting authority is the only body allowed by law, regulation, or published administrative provision to provide that service i.e. in situations where an exclusive right is conferred and there can be genuinely no competition in selecting the provider and there can be no negotiation over the price payable.
- 3.10 The Contract Standing Orders may be suspended either in whole or in part by the Procurement SRO and the Head of the C&PSS (or his delegate) in writing in respect of the following exceptions:-
- a)
 - i. Where the Project Sponsor has satisfied the Procurement SRO and Head of the C&PSS (or his delegate) that the requirement is not readily obtainable from more than one supplier, service provider, or contractor, and it can be demonstrated that no viable equivalent is available; or that;

- ii. The prices of the goods, materials or specialist services are wholly controlled by trade organisations or government order and it can be demonstrated that no equivalent is available; or that
 - iii. The requirements are subject to intellectual property rights and it can be shown that either no suitable compatible alternative is available, or that exposure to competition of an item covered by copyright, patent, or trademark would breach such rights. Note that where an item is described by a reference to a trade name, it must be followed by the phrase “or equivalent”; or
- b) Where there is an existing contract for the supply of any class of goods, works or services. Such contracts may only be extended without fresh competition within reason, and in accordance with any limitations set out either in the Contract itself or the Contract Notice. At least one of the following shall apply:-
- i. The extension is justified on the basis of best value and/or operational necessity in which case it may not exceed the allowance for extension as set out within the terms and conditions of the contract or by more than 50% over the original scope or value of the contract, whichever is the lesser;
 - ii. The extension may be necessary in order to allow for the proper conduct of a competition;
 - iii. The requirement for extension has been brought about by in circumstances of extreme urgency due to an unforeseeable circumstance not within the control of the Council.

In all cases the original contract must have been won *via* an open competition and must be reasonable in all the circumstances.

Any contract extension which would involve a material change in the original contract by nature or extent must be the subject of fresh competition.

- c) The demand is for the execution of work or the supply of goods, materials or services, certified by the relevant Service Director as being required as an emergency measure so as not to permit the invitation of tenders. “Emergency” means **only** an event which could not reasonably have been foreseen and cannot be used to avoid compliance with these CSO. Each case must be reported to the Procurement SRO and Head of the C&PSS; or
 - d) The work to be executed or the goods, supplies or services to be provided consist of repairs to or the supply of parts for existing proprietary machinery or plant and the Council is bound by the terms of an agreement, by insurance requirements or by the terms of a warranty to use a specified contractor; or
 - e) The contract is for the supply of goods acquired on the Commodities Market.
- 3.11 Where the Procurement SRO and the Head of C&PSS have decided that the criteria within 3.10 for an exception of Contract Standing Orders are fulfilled, then a contract may be awarded to the preferred supplier or contractor as appropriate and the reason(s) must be noted in the Contracts Register.
- 3.12 The Contract Standing Orders must be read in conjunction with the Procurement Manual and Procurement Guidance Notes issued by the Head of the C&PSS.

Where there is any discrepancy between documents, the Contract Standing Orders will take precedence.

3.13 Any query regarding the application or interpretation of the Procurement Regulations should be made in the first instance to Commercial and Procurement Shared Services.

3.14 C&PSS and Council Staff involved in procurement activities are responsible for ensuring that the Council's Declaration of Conflict of Interest, and Receipt/Offer of Gifts or Hospitality form is completed and submitted where such incidents occur. The form can be obtained via

https://www.highland.gov.uk/staffsite/downloads/download/19/guidance_on_registration_of_interests

For the avoidance of doubt however, no member of C&PSS or Council Staff with a social or family connection with any member of the staff of any organisation expressing an interest in bidding for a particular requirement, where there is a likelihood that said member of the potential bidders staff is likely to have access to the development of a bid may be involved in any way on the procurement exercise related thereto. Similarly, no member of the C&PSS or Council Staff with a pecuniary interest in any organisation expressing an interest in bidding for a particular requirement may be involved in any way on the procurement exercise related thereto.

4 Procurement Procedures

4.1 Authority to Incur Expenditure

No tender shall be invited (or speculatively invited) or contract entered into unless the total estimated expenditure has been previously approved. The allocation of a budget as part of the Council's budget setting process is insufficient, unless the Project Sponsor has determined that there is a reasonable expectation that the total estimated budget has been established and agreed in principle, as part of the Council's budget setting process. The method of authorising/undertaking procurement is dependent on the Contract Value as follows:

Threshold levels:-

	Goods and Services	Works
Direct Award – Single Quote	Below £10,000	Below £50,000
Quotes	£10,000- £49,999	£50,000 -£1,999,999
Tenders	£50,000+	£2,000,000 +

4.2 Work Plans

On an annual basis all Services (Heads of Service/Budget Holders/Managers) are required to work with the C&PSS (Category Managers) and Corporate Finance (Finance Managers) to establish and maintain procurement Work Plans covering a two year period. The Work Plan shall contain details of all goods and services (with a value exceeding £10k) and works (with a value exceeding £250k).

The purpose of the Work Plan is to:

- identify and collate budget for goods, services and works against needs and how these will be procured;
- identify where existing contracts/framework agreements need to be renewed or extended (where such extension option exists);
- identify where new contracts/framework agreements need to be established;
- assist in the production of a procurement pipeline for tendering opportunities for publication to suppliers;
- assist in the production of C&PSS workload resource planning;
- assist in the aggregation and identification of cross-Service collaborative opportunities;
- assist in the identification of collaborative opportunities with other C&PSS partner organisations;
- assist in the targeting of potential savings and community benefits;
- assist in the identification of Service procurement training needs.

It is the responsibility of C&PSS Category Managers to engage and work with Services and Corporate Finance in order to develop and maintain the Work Plans

4.3 Business Cases

A low and higher value Business Case Template shall be incorporated into the Procurement Manual. The Procurement Manual shall contain information on how they are to be actioned and any required timescales for completion. The purpose of the Business Case is to provide scrutiny on needs, costs and how requirements are to be procured and managed.

The tables below identify when a Business Case must be actioned.

Goods and Services

Expenditure Level	Using an existing Contract	Call-off from an existing Framework Agreement	No existing Contract/Framework Agreement available
Below £10k	Not needed	Not needed	Not needed
Between £10k-£50k	Not needed	Not needed	Needed
Between £50k-EU threshold	Not needed	Not needed	Needed
Above EU threshold	Needed	Needed	Needed

Works

Expenditure Level	Using an existing Contract	Call-off from an existing Framework Agreement	No existing Contract/Framework Agreement available
Below £250,000	Not needed	Not needed	Not needed
Between £250,000 - £1,999,999	Needed	Needed	Needed
Between £2m - EU threshold	Needed	Needed	Needed

Above EU threshold	Needed	Needed	Needed
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Review and approval of Business Cases

Business Cases need to be developed, reviewed and approved by Services and/or C&PSS in line with:-

Type and Value	Service	C&PSS
Goods and Services £10k-£50k	Develop Approve	Review Approve
Goods and Services £50k-EU threshold	Develop Approve	Develop Review Approve
Goods and Services above EU threshold	Develop Approve	Develop Review Approve
Works £250k-EU threshold	Develop Approve	Review Approve
Works above EU threshold	Develop Approve	Develop Review Approve

Where required Business Cases may also be subject to Committee approval, in these instances it is the responsibility of the Service to seek Committee approval.

4.4 Aggregated Expenditure

Where it is expected that the aggregation of Council requirements to be procured through via Contracts or Framework Agreements enables better value for money to be achieved, a Business Case may involve more than one Service.

Where a contract value has been previously approved by the relevant Head of Service, or Committee and it becomes apparent to the Head of the procuring Service that the indicative total value of the contract as previously reported is likely to be exceeded, the Head of the procuring Service shall consult with the Head of the C&PSS on what action requires to be taken and no further orders shall be made under the contract/framework agreement until such advice has been obtained.

There shall be no artificial splitting of a contract to avoid the application of the provisions of Scottish, UK or EU procurement law and/or these Procurement Regulations

4.5 Authority to Carry Out Procurements

4.5.1 All contracts let by or on behalf of the Council shall be subject to an obligation on the Procurement SRO and the Head of the C&PSS to seek best value for the Council. The Head of Commercial & Procurement Services and the Delegated Procurer will be responsible for demonstrating fairness, non-discrimination, equal treatment and transparency in the contract procedures chosen to all parties having an interest in those procedures.

4.5.2 Procurements shall only be carried out by Delegated Procurers who have been designated as such by the Procurement SRO or the Head of the C&PSS and who hold relevant Delegated Procurement Authority.

4.5.3 The Head of C&PSS shall maintain a register of Delegated Procurers.

4.5.4 Delegated Procurement Authority will be reviewed on an annual basis, or as required, and may be increased, reduced or withdrawn by the Procurement SRO or the Head of the C&PSS as necessary.

4.6 Quotations - Contracts below £10,000 (Supplies/Services) and £50,000 (Works)

4.6.1 The procedure to be followed for the award of any contract by the Council depends on the estimated Contract Value. Values or amounts referred to in these Contract Standing Orders shall be based on the best available estimate at the time of tendering.

4.6.2 For any contract with a total estimated value below £10k (for goods and services) or £50k (for works), the Delegated Procurer shall as a minimum obtain a single quotation and action a direct award of contract. Where the Delegated Procurer considers that better value for money could be achieved through a competitive process and time is not of the essence the Delegated Procurer should consider actioning quotations in accordance with 4.7.

4.6.3 All requests for quotations shall be advertised, and submissions received, via the Quick Quote online procurement tool available via Public Contracts Scotland, unless authorisation has been given by the Procurement SRO or the Head of the C&PSS (or his delegate) to the contrary.

4.7 Quotations - Contracts between £10,000 and £49,999 (Supplies/Services) and £250,000 and £1,999,999 (Works)

4.7.1 The procedure to be followed for the award of any contract by the Council depends on the estimated Contract Value. Values or amounts referred to in these Contract Standing Orders shall be based on the best available estimate at the time of tendering.

4.7.2 For any contract (with an approved Business Case) with a total estimated value between £10k- £49,999 (for goods and services) or £250k-£1,999,999 (for works), the Delegated Procurer shall follow the Procurement Manual and any Procurement Guidance Notes and obtain written quotations to ensure the demonstration of best value to the Council in the sourcing decision.

4.7.3 All requests for quotations shall be advertised, and submissions received, via the Quick Quote online procurement tool available via Public Contracts Scotland, unless authorisation has been given by the Procurement SRO or the Head of the C&PSS (or his delegate) to the contrary.

4.8 Competitive Tendering (Where the Contract Value is below the EU Threshold)

4.8.1 Where any contract has an estimated value of between £50,000 and the EU Threshold (for supplies/services) or between £2m and the EU Threshold (works), or is otherwise exempt from the full application of EU Procurement Rules, competitive tendering shall be undertaken.

4.8.2 To ascertain how the procurement shall be undertaken in relation to the requirement, the Delegated Procurer shall follow the Procurement Manual.

4.8.3 All tenders shall be appropriately advertised via Public Contracts Scotland and tender documentation made available and submissions received, via Public Contracts Scotland or Public Contracts Scotland Tender or such other platform as may be authorised by the Head of Commercial and Procurement Shared Services (or his delegate).

4.9 EU Procurement

4.9.1 An EU Procurement must be undertaken where the Council proposes to tender for any contract with an estimated value equal to or exceeding the applicable EU Threshold (Supplies, Services or Works) – unless an existing contract or framework agreement can meet needs.

4.9.2 To ascertain how the procurement shall be undertaken in relation to the requirement, the Delegated Procurer shall follow the Procurement Manual and any Procurement Guidance Notes.

4.9.3 All tenders shall be appropriately advertised via Public Contracts Scotland and tender documentation made available and submissions received, via Public Contracts Scotland or Public Contracts Scotland Tender or such other platform as may be authorised by the Head of Commercial and Procurement Shared Services (or his delegate).

4.10 Framework Agreement Call-offs

4.10.1 Where a call-off exceeding £50k is being made via a framework agreement a contract award notice shall be published through Public Contracts Scotland.

5 Roles and Responsibilities

5.1 General Responsibilities

5.1.1 It is the duty of all employees within the Council to ensure that these Contract Standing Orders, and any associated Procurement Manual and Procurement Guidance Notes, are adhered to in order to ensure Best Value is achieved in relation to expenditure relating to supplies, services or works. The allocation of a budget as part of the Council's budget setting process is not sufficient to comply with these Contract Standing Orders.

5.2 Head of the Commercial and Procurement Shared Services

5.2.1 Whilst the responsibility for all procurement and tendering arrangements for supplies, services and works sits with the Procurement Senior Responsible Officer (SRO), the SRO shall liaise as required with the Head of the Commercial and Procurement Shared Service for procurement advice and guidance as necessary.

5.2.2 The Head of the Commercial and Procurement Shared Services shall authorise, by means of Delegated Procurement Authority, adequately trained staff to undertake procurement activity (Delegated Procurers).

5.2.3 The Head of the Commercial and Procurement Shared Services shall ensure that a Procurement Manual and relevant Procurement Guidance Notes are in place and that necessary revisions are made to these on a regular basis to reflect changes in legislation, Council policy or good practice.

5.3.4 The Head of the Commercial and Procurement Shared Services may delegate such responsibilities under these Contract Standing Orders as are permitted by the Scheme of Delegation.

5.3 Directors

5.3.1 Each Director has responsibility to ensure staff in their directorate follow the Contract Standing Orders for all contracts let by their Directorate and is accountable to the Council for the performance of their duties in relation to contract management. Each Director shall be able to evidence that the procurements are compliant with these Contract Standing Orders, Procurement Manual and associated Procurement Guidance Notes.

5.3.2 Each Director shall ensure that all contracts in place within their Directorate are entered into the corporate Contracts Register as soon as possible following the award of a contract is made. The details required to be provided are detailed within the Procurement Manual and relevant Procurement Guidance Note.

5.4 Delegated Procurers

5.4.1 All Delegated Procurers will ensure compliance with relevant procurement legislation, these Contract Standing Orders, Procurement Manual and Procurement Guidance Notes.

5.4.2 Delegated Procurers are authorised to undertake procurements to the levels stated within their individual Delegated Procurement Authority or in the Scheme of Delegation. They must ensure that these are not exceeded without the authority of the Procurement SRO or the Head of the C&PSS.

5.4.3 Delegated Procurers will undertake regular procurement related training in order to maintain their Delegated Procurement Authority.

6 Sustainable Procurement

6.1 The Council is committed to securing meaningful environmental, social and economic value in procurements and to working with all sectors of the business community in order to achieve increased prosperity. As responsible and ethical buyers, the Council aims to embed the key principles of sustainability into procurement activity for the benefit of society, the economy and the environment. Sustainable procurement provides an extremely effective lever to further local and national priorities.

6.2 In the context of these Contract Standing Orders “sustainable development” shall be taken to mean development which secures a balance of social, economic, health and environmental well-being in the impact of activities and decisions, and which seeks to meet the needs of the present without compromising the ability of future generations to meet their own needs.

6.3 Before carrying out a Regulated Procurement, the Council must consider how in conducting the procurement process it can:

- i. improve the economic, social and environmental wellbeing of the Council’s area.

- ii. facilitate the involvement of small and medium enterprises, third sector bodies and supported businesses in the process, and;
- iii. promote innovation.

6.4 In carrying out the procurement the Council must act with a view to securing such improvements as identified within paragraph 6.3. However the Council must only consider matters that are relevant to what is proposed to be procured and, in doing so, consider the extent to which it is proportionate in all the circumstances to take those matters in to account.

6.4 Detailed information is available within the Procurement Manual.

7 Purchase Orders

7.1 No supplies, services or works shall be ordered or instructed except on an official order form, which shall be in an approved format. Where, by reason of urgency or necessity, a verbal order is issued, it must be confirmed immediately in writing by the issue of an official order form. The supplier shall be requested to quote order numbers on all invoices.

8 Special Matters

8.1 Internal Departments

8.1.1 Where supplies, services or works can be provided by another Service of the Council, this may be delivered by that Council Service following consultation between the Head of the relevant Service(s) and the Head of the C&PSS. It is the responsibility of the manager of the in-house provider to ensure that Best Value for the Council is achieved by either (a) carrying out such supplies, services or works at cost; or (b) providing requested advice and support in relation to contracting with an external provider.

8.2 Second Hand Goods

8.2.1 Second hand goods up to a value of £50,000 may be acquired without a competitive quotation being obtained provided that:

- a) The Director of the relevant Service can demonstrate that the purchase is necessary to facilitate service delivery.
- b) The Director of the relevant Service can demonstrate that the purchase represents best value, having given due consideration to the cost of an equivalent new purchase and estimated life of the asset both from new and current age.
- c) The goods have been subject to inspection to ascertain their physical condition, with a record kept of the outcome of the inspection.
- d) The Council has clear title to the goods.
- e) The Director obtains in writing (including e-mail) the prior agreement of the Head of Finance before effecting the purchase.

8.3 Grants

8.3.1 The awarding of grants/grants in aid is a means by which the Council can provide subsidies or funding to external bodies (including individuals, businesses and third sector organisations) to further the aims of those external bodies. Grant funding

must follow local codes of practice for funding external bodies, 'Following the Public Pound' as well as state aid rules. Grants/grants in aid must not be viewed as an alternative means to procure Supplies, Services or Works which should be the subject of competition in accordance with these Procurement Regulations.

8.3.2 Whilst an award of a grant by the Council may not be subject to these Contract Standing Orders, it is essential that the Council's procedures on awarded grants are adhered to.

8.3.3 Where it is envisaged that there may be any procurement or state aid implications in the award of grants (including the aggregation of grants to the same organisation), then the Procurement SRO and/or the Head of the C&PSS and Head of Legal Services must be consulted prior to entering into any such arrangement.

8.3.4 Purchase of supplies, services or works in relation to grant funding awarded to the Council will be carried out in accordance with the provisions within these Contract Standing Orders.

8.4 Shared Services

8.4.1 Shared Services are arrangements where the Council collaborates with other public authorities to obtain supplies, services or works from them. Advice on the operation of procurement rules in respect of any proposed shared service arrangement should be sought from the Head of Commercial and Procurement Shared Services.

8.4.2 Identification of a proposed shared service arrangement should be undertaken in consultation with the Head of Commercial and Procurement Shared Services and can only be entered into where the Director of the relevant Service can demonstrate that such an arrangement represents Best Value to the Council.

8.4.3 Approval to enter into a shared service arrangement must be sought from the Committee, as per the values within these Contract Standing Orders.

9 Tender Issue and Receipt

9.1 The Delegated Procurer shall issue invitations to quote/tender and contract documents for all contracts in compliance with these Contract Standing Orders, Procurement Manual or the Scheme of Delegation.

9.2 Terms and Conditions of Contract

9.2.1 Except where specialist Terms and Conditions are required, the Delegated Procurer shall use the standard Terms and Conditions of Contract in use by the Council, or those within a relevant framework agreement. Any specialist Terms and Conditions must be approved in writing by the Head of Commercial and Procurement Shared Services or the Head of Legal as appropriate. Template Terms and Conditions of Contract are detailed within the Procurement Manual.

9.2.2 On no occasion will the Council contract under Terms and Conditions supplied by any tenderer/contractor unless these have been reviewed and agreed by the Head of Commercial and Procurement Shared Services or the Head of Legal as appropriate.

9.3 Advertisement

- 9.3.1 Unless agreed otherwise in writing by the Head of Commercial and Procurement Shared Services, any tender which requires to be advertised in accordance with these Procurement Regulations shall be advertised via the Public Contracts Scotland website (www.publiccontractsscotland.gov.uk), notwithstanding any other form of advertisement or notice required by law or otherwise.

9.4 Issue of Tenders

- 9.4.1 Electronic procurement (e-procurement) processes will be utilised for all tender exercises. Contracts shall be advertised, contract documents issued, information exchanged, tenders submitted, received and opened via electronic means. Detailed information is available within the Procurement Manual.

9.5 Receipts of Tenders

- 9.5.1 Tenders will be received and opened electronically via the electronic tendering system utilised by the Council. Where, in exceptional circumstances, electronic procurement is not utilised, tender receipt and submission shall be undertaken as per the Procurement Manual.

10 Tender Evaluation

- 10.1 Tenders shall be evaluated by a group of nominated individuals in accordance with the Procurement Manual.
- 10.2 Tenders shall be evaluated in accordance with the quotation or tender award criteria, and on the basis of establishing which offer is the most economically advantageous and provides Best Value to the Council.
- 10.3 Tenders shall be evaluated strictly in accordance with the evaluation criteria set out in the tender documents. No tender shall be accepted based on evaluation of criteria not set out in the tender documents
- 10.4 A written record shall be maintained outlining the evaluation process, recording the process followed, the criteria applied, and detailing the reasons for the decision. This record shall be retained as per the Council's Retention Policy and is further detailed within the Procurement Manual.

11 Supplier Selection and Tender Acceptance

- 11.1 As soon as reasonably practicable after a decision has been made to eliminate a supplier or tender at any stage of a procurement procedure the Council must notify those tenderers and candidates concerned of their elimination by notice in writing.
- 11.2 As soon as possible after a decision has been made to award any contract following a procurement process where Contract Value is above the relevant EU threshold the Council shall, by notice in writing, inform all candidates and economic operators concerned of the Council's decision to award the contract.
- 11.3 Tender award and unsuccessful letters shall be prepared using the Procurement Manual templates and guidance by the Delegated Procurer and/or the C&PSS

(where the C&PSS are the lead) shall be undertaken in accordance with relevant legislation.

12 Award of Contract

12.1 At the conclusion of the tender procedure and (if applicable) after the expiry of any Standstill Period the final contract shall be entered into between the Council and the successful tenderer.

12.2 Contracts shall be entered into and executed as follows:

12.2.1 **Contracts with a value equal to or exceeding the relevant EU Threshold**, through the execution of a written contract executed in accordance with Scots law, unless otherwise agreed in accordance with Paragraph 9.2.2, signed on behalf of the Council by a Proper Officer and signed by the contractor by a duly authorised person.

12.2.2 **Contract Values of less than the relevant EU Threshold**, unless the Head of Commercial and Shared Procurement Services has directed a particular option in the case of a procurement, the Delegated Procurer shall determine whether the contract should be executed either:

- i. through the execution of a written contract executed in accordance with Scots law (unless otherwise agreed in accordance with Paragraph 9.2.2) and signed on behalf of the Council by a Proper Officer and signed by the contractor by a duly authorised person; or
- ii. by the issuing of an Award Letter by the Head of the procuring Service, and the return of such letter signed by a duly authorised person on behalf of the tenderer signifying their acceptance of the appointment on the terms and conditions stated therein.

13 Contract Management

13.1 It is the responsibility of the Delegated Procurer to ensure that details of all contracts are included within the Contracts Register and that copies of all concluded contracts are available to Commercial and Procurement Shared Services as required.

13.2 The Delegated Procurer shall ensure that the performance of the contract is monitored and reviewed in a way which is proportionate to the value, duration, subject matter and complexity of the contract, and in accordance with Procurement Manual.

14 Records and Reporting

14.1 The Head of Commercial and Procurement Shared Services shall maintain and publish a Contracts Register for the monitoring of all contracts and framework agreements developed or in use across the Council, which shall include, as a minimum, all information as required by relevant legislation. This information is detailed within the Procurement Manual.

14.2 Each Procuring Service shall ensure that the required information as detailed within Procurement Manual is communicated to Commercial and Procurement

Shared Services as soon as possible in order to maintain the Contracts Register. Where a corporate Council contract register system is in place it is the responsibility of the Service Lead Officer (where actioning a procurement not supported by the C&PSS) or the C&PSS procurement lead to ensure the Contracts Register is maintained with accurate and timeous information – including contract awards extensions/termination/assignment/novation. This shall include call-offs from framework agreements which exceed £50k in contract value.

- 14.3 The Head of Commercial and Procurement Shared Services shall produce and publish a Corporate Procurement Strategy, which shall be reviewed on an annual basis. The Corporate Procurement Strategy shall include, as a minimum, all information as required by relevant legislation.
- 14.4 The Head of Commercial and Procurement Shared Services shall produce and publish an Annual Procurement Report as soon as practicable after the end of each financial year. The Annual Procurement Report shall include, as a minimum, all information as required by relevant legislation.
- 14.5 Delegated Procurers shall comply with all reporting procedures put in place by the Head of Commercial and Procurement Shared Services.
- 14.6 The Head of Commercial and Procurement Shared Services shall ensure that reports on matters specified in the Corporate Procurement Strategy, and otherwise as required, are brought to any relevant Council Committee.

15 Contracts for Health or Social Care Services

- 15.1 For the purposes of this section of the Procurement Regulations, Contracts for Health or Social Care Services shall mean contracts for the provision of services under the Social Work (Scotland) Act 1968; the Children (Scotland) Act 1995; or the Mental Health (Care and Treatment) (Scotland) Act 2003; or any other function of the Council covered by the definition of a care service in the Regulation of Care (Scotland) Act 2001, including housing support services and any other relevant legislation.
- 15.2 Information in relation to the procurement of Health and/or Social Care Services (which are not the responsibility of NHS Highland) is given within the relevant Procurement Manual and any relevant Procurement Guidance Note.
- 15.3 Where the relevant Director is satisfied that one or more of the following circumstances apply, he/she has delegated authority to enter into an exceptional procedure with one provider:
 - a) Where the Director is satisfied that the requirement of the contract is unique or, after research, only one suitable source of supply can be identified.
 - b) When, for reasons of extreme urgency or risk to life or health and wellbeing the other procurement procedures cannot reasonably be complied with.
 - c) Where, for example in the case of certain residential or supported living services, there are only limited spaces available for a specific type of care and those spaces only become available occasionally and at short notice.

- d) Where the Council is instructed by a Children's Hearing or Educational Tribunal to place a child in a particular setting.
- e) Where the individual has a right to choose and direct their own accommodation and/or support
- f) Where the Director is satisfied that the risk to service user(s) outweighs the benefits of advertising the requirement and awarding the contract or framework following competition

15.4 An exceptional procedure means direct negotiations with a single provider/contractor without competition or further competition with a view to the Director awarding the contract to that contractor or extending an existing contract.

15.5 Where the exceptional procedure has been used, the Chief Officer of the Integrated Health and Social Care Partnership and/or Head of Children's Services shall report to the relevant Committee detailing the contract values, names of provider and types of service commissioned/procured by this means. In addition, the Director shall ensure that the details of the contract are entered into the Contracts Register.