The Highland Council Contract Standing Orders

2023

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The Highland Council
Comhairle na Gàidhealtachd

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1. Overview

1.1 The purpose of these Contract Standing Orders is to:

- ensure that consistent contracting procedures of the highest standard are laid down for use throughout the Council;
- secure compliance with the law;
- ensure that the Council obtains best value in its procurement activity and all resultant contracts;
- provide a framework for a more detailed Procurement Manual; and
- protect the Council and its staff.

1.2 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.

2 Definitions

2.1 Throughout this document the following definitions shall apply:

2.1.1 **Annual Procurement Report** means a report published by the Council annually in relation to Regulated Procurements

2.1.2 **Business Case** means a formal report (Procurement Approval Form) for approval by Procurement Approval Group, 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, if the scope of a project changes the business case may require review and further approval by the relevant board in line with these contract standing orders.

2.13 **Capital Programme** means a list of the budgets allocated to capital projects, and the associated funding, approved at the annual Council budget meeting with additions throughout the financial year to be approved by submission of a business case to the Capital Board.

2.1.4 **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;

2.1.5 **Concession Contract** means a works concession contract, or a services concession contract as defined by the Concession Contracts (Scotland) Regulations 2016.

2.1.6 **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.

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

2.1.8 **Contract Value** means the estimated aggregate total value (total estimated value), excluding VAT, over the entire term of the Contract which the Council expects to be payable under the contract. In the case of a works concession contract or a services concession contract, the value shall be calculated on the basis of the total net turnover of the concessionaire generated over the duration of the contract, as estimated by the Council, in consideration for the works and services that are the object of the concession.

2.1.9 **Contracts Register** means a record of contract details currently in place within the Council.

2.1.10 **Council** means The Highland Council.

2.1.11 **Delegated Procurement Authority** or 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 or works on behalf of the Council.

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

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

2.1.14 **Find a Tender Service** means the UK e-notification service, a single web-based portal called the Find a Tender Service which is provided, by or on behalf of the Cabinet Office and through which notices can be published in accordance with the Relevant Legislation and these Contract Standing Orders.

2.1.15 **Higher Value Threshold** means the Contract Value thresholds set out in the Public Contracts (Scotland) Regulations 5 (1) (a), (b) and (c) and as amended by the Scottish Ministers from time to time, current thresholds are set out in the Procurement Manual.

2.1.16 **Framework Agreement** means an agreement between one or more contracting authorities and one or more suppliers. The purpose of such agreements 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.

2.1.17 **Procurement Manual** means a supplement to these Contract Standing Orders which give detailed guidance on how to conduct procurement activity in a manner compliant with these standing orders and relevant procurement legislation

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

2.1.19 **Regulated Procurements** means a procurement where any contract formed will be a public contract the Contract Value of which is equal to or greater than the relevant contract Threshold, and which is not for the procurement of an excluded contract as defined in Section 4 of the Procurement Reform (Scotland) Act 2014 or a contract excluded from the scope of the Concession Contracts (Scotland) Regulations 2016

2.1.20 **Relevant Legislation** means the Scottish procurement legislation in effect at the time any procurement process is entered into and any other relevant applicable law.

2.1.21 **Terms and Conditions** means the special and general arrangements, provisions and requirements of a contract.

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

2.1.23 **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 Commercial and Procurement Shared Service who will notify the Strategic Lead, Corporate Audit and Performance acting on behalf of the Procurement SRO. Failure by any employee to comply with the Contract Standing Orders and associated Procurement Manual 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, or for the award of a concession;

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, an Adoption Report must be completed in accordance with the Procurement Manual;

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 procurement threshold requiring approval at a higher level, or

iii. the amendment would result in an assignation or novation (transfer) to a new supplier; and

3.5 The Contract Standing Orders are subject to the over-riding provisions of United Kingdom or Scottish law governing public procurement. They are also subject to any statutory guidance issued from time to time by the 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 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 legislation 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.

3.8 All tendering for Supplies, Services and/or Works, or a Concession Contract by a Delegated Procurer shall be carried in compliance with these Contract Standing Orders and the guidance within the Procurement Manual.

3.9 The following types of contract are exempted from the provisions of these Contract Standing Orders: -

a) Any contract of employment.
b) 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).
c) Any award of a Grant.
d) Any contract for the Sponsorship of an event.
e) Any contract which relates to the appointment by the Council of advocates, solicitors or barristers or expert witnesses in any legal proceedings on behalf of the Council.
f) Any contract which, in the opinion of the Executive Chief Officer 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 Executive Chief Officer of the procuring Service or the Executive Chief Officer Resources and Finance shall consult with the Head of the Commercial and Procurement Shared Service before taking any action under this paragraph. In all circumstances where this exemption has been used:
    i. the Head of the Commercial and Procurement Shared Service 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.
g) Any contract that is to be performed in-house.
h) 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 Executive Chief Officer Resources and Finance and the Head of the Commercial and Procurement Shared Service in writing

(using the approved template from the Procurement Manual) in respect of an award of any contract where the award of that contract is urgently required to meet the exigencies of the Service.

3.11 Where the Executive Chief Officer Resources and Finance and the Head of the Commercial and Procurement Shared Service have agreed to a suspension of the Contract Standing Orders under Paragraph 3.10, 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 if the Contract Value is greater than £10,000 (supplies/ services or works) or £4.5m (concessions). Any contract made on behalf of the Council under this paragraph shall be reported to the Procurement Approval Group or Capital Board as appropriate as soon as practicable.

3.12 The Contract Standing Orders must be read in conjunction with the Procurement Manual issued by the Commercial and Procurement Shared Service. 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 Contract Standing Orders should be made in the first instance to the Commercial and Procurement Shared Service.

3.14 The Commercial and Procurement Shared Service and Council Staff are responsible for ensuring that the Council's Declaration of Conflict of Interest, and Receipt/Offers 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_register_of_interests For the avoidance of doubt however, no member of the Commercial and Procurement Shared Service 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 Commercial and Procurement Shared Service 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 contract entered into for the purchase of goods or services, or for the execution of works unless the total estimated expenditure has been previously approved and can be met from an approved budget. No tender shall be invited for a concession or Concession Contract entered into unless it has been previously approved. The method of authorising a procurement is dependent on the Contract Value as follows:

4.1.1 Contract Value below £50,000 (supplies/services), £2,000,000 (works) or £4.5m (concessions) Subject to budget approval, the relevant Executive Chief Officer may give authority to conduct any procurement where the estimated Contract Value is below £50,000 (supplies/ services) or £2,000,000 (works), and following consultation with the Executive Chief Officer Resources and Finance, the Head of the Commercial and Procurement Shared Service may give authority to conduct any procurement where the estimated Contract Value of a Concession Contract is below £4.5m. Such procurements shall be undertaken by a Delegated Procurer in line with Section 4.3 of these Contract Standing Orders.

4.1.2 Contract Value above £50,000 (supplies/services) £2,000,000 (works), or £4.5m (concessions) Contracts with an estimated Contract Value of above these thresholds shall be listed on the annual procurement workplan to be submitted by the relevant Executive Chief Officer in accordance with Paragraph 14.6.

4.1.3 Prior to the commencement of the procurement a Business Case above £50,000 (supplies/services) £2,000,000 (works), or £4.5m (concessions) (conforming to a template approved by the Head of Commercial and Procurement) to be submitted by the relevant Executive Chief Officer to the Procurement Approval Group or where the contract relates to a capital project to the Capital Board. Business cases may only be submitted to either board on the approval of a representative of the Commercial and Procurement Shared Service and the Finance Business Partner. Approval must be granted by the relevant board prior to the procurement being undertaken.

4.1.4 Expenditure via Framework Agreements Delegated Procurers must whenever possible procure supplies, services and works under Scotland Excel or Scottish Government framework agreements provided that authority to incur expenditure for each call-off contract has been approved in accordance with these Contract Standing Orders and also provided that: -

i. An Adoption Report has been completed in accordance with the Procurement Manual,
ii. No material change has been made to the call-off terms under the framework agreement and calling-off from the framework has been carried out in accordance with the procedures laid down within that framework,
iii. All call-off contracts with a Contract Value of greater than £10,000 (supplies/ services or works) or £4.5m (concessions) must be added to the Contracts Register, and
iv. Where a call-off exceeding £50k is being made via a framework agreement a contract award notice shall be published through Public Contracts Scotland.
v. If the aggregate Contract Value of call-off contracts under a framework agreement is likely to exceed the thresholds stated in Paragraph 4.1.2 then the authority of the Procurement Approval Group or Capital Board as appropriate shall be required for the adoption report.

4.1.5 Expenditure of grant funding, monetary bequest or donation received by the Council

i. Expenditure of grant funding, monetary bequest or donation received by the Council must always be in accordance with the terms and conditions of the grant, monetary bequest or donation (if any).
ii. Where a tender is to be invited or contract entered into that is in excess of £50,000 (supplies/services/works) and the expenditure either in whole or in part is to be met from grant funding, monetary bequest or donation received by the Council, a Business Case (Procurement Approval Form) (conforming to a template approved by the Head of Commercial and Procurement) must be submitted by the relevant Executive Chief Officer to the Procurement Approval Group for approval to proceed, in place of the approval route set out in regulation 4.1.1.2, or for Capital Projects to the Capital Board
iii. If this applicable regulation cannot be complied with due to time constraints relating to expenditure of the grant, monetary bequest or donation, this would be considered grounds to suspend the applicable regulation under procurement regulation 3.10.

4.1.6 There shall be no artificial splitting of a contract to avoid the application of the provisions of Scottish or UK procurement law and/or these Contract Standing Orders.

4.2 Exceeding approved Contract Value

4.2.1 Where a Contract Value has been previously approved by the relevant Executive Chief Officer, Procurement Approval Group or Capital Board and it becomes apparent to the Executive Chief Officer of the Procuring Service that the indicative total Contract Value of the contract as previously reported is likely to be exceeded, no further action shall be taken under regulation 4.2.2 or 4.2.3 until the relevant Chief Officer has consulted with the Executive Chief Officer Resources and Finance and the Head of the Commercial and Procurement Shared Service on what action requires to be taken and no further orders shall be made under the contract until such advice has been obtained and approval granted on course of action advised.

4.2.2 In all cases where the Contract Value of a supplies/ services or concession contract is likely to exceed what has previously been approved, and the additional cost is more than either the lesser of £100,000; or 50% of the approved Contract Value, in the case of supplies/services, or the additional turnover from the contract is more than the lesser of £4.5m and 10% of the original Contract Value in the case of a Concession Contract; the relevant Executive Chief Officer shall ensure that a report on the matter is submitted to the next meeting of the Procurement Approval Group, for consideration. This Regulation applies to contracts equal to or greater than £50,000 for Goods and/or Services and to contracts greater than £4.5m for concessions. In such circumstances the indicative previously agreed total Contract Value cannot be exceeded without the relevant approval being received.

4.2.3 Where the Contract Value of a works contract is likely to exceed the indicative total Contract Value of that contract that has previously been approved, the Capital Board may approve further expenditure provided it is affordable within the assigned budget including any contingency allowances. The requirement to obtain the prior approval of the Executive Chief Officer Resources and Finance and the Head of the Commercial and Procurement Shared Service in accordance with regulation 4.2.1 must be observed in all cases unless unforeseeable events occurring at a works site require an immediate decision. For any instances where an immediate decision is required the relevant Executive Chief Officer shall keep a record of contract change notices/ contract variations that increase the price of a works contract procured by their service and report them to the next scheduled Capital Board meeting.

4.2.4 The Procurement Approval Group and the Capital Board shall keep a register of all reports made under this regulation to be available for inspection for monitoring and audit purposes

4.3 Competition absent for Technical Reasons

4.3.1 Where the works, supplies or services can only be provided by a particular economic operator because competition is absent for technical reasons or because that operator has an exclusive right (including intellectual property rights), and no reasonable alternative or substitute exists, a request for approval of a direct award must be submitted in writing (using the approved template from the Procurement Manual) to the Executive Chief Officer Resources and Finance and the Head of the Commercial and Procurement Shared Service. No business case approval will be required, in all other respects, Regulation 4.1 will continue to apply, including the requirement that expenditure can be met from an approved budget.

4.3.2 Where a direct award under regulation 4.3.1 is approved, the contract award shall be noted on a register to be kept by the Procurement Approval Group, to be available for inspection for monitoring and audit purposes.

4.4 Authority to Carry Out Procurements

4.4.1 All contracts let by or on behalf of the Council shall be subject to an obligation to seek best value for the Council. The Head of the Commercial and Procurement Shared Service and the Delegated Procurer will be responsible for demonstrating fairness, non-discrimination, equal treatment and transparency in the procurement procedures and apply same to all parties having an interest in those procedures.

4.4.2 Procurements shall only be carried out by Delegated Procurers who have been designated as such by the Head of Commercial and Procurement and who hold relevant Delegated Procurement Authority and are registered on the register of Delegated Procurers maintained by the Commercial and Procurement Shared Service.

4.4.3 Delegated Procurement Authority will be subject to renewal on a three yearly basis following completion of Procurement Training Modules as set by the Commercial and Procurement Shared Service, review of Delegated Procurement Authority may be increased, reduced or withdrawn by the Head of the Commercial and Procurement Shared Service as necessary.

4.5 Procurement Procedures (Quotes)

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.

4.5.1 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 4.6.2.

4.5.2 For any contract with a total estimated Contract Value below £50,000 (for supplies and services), £2,000,000 (for works) or £4.5m (for concessions), the Delegated Procurer shall follow the Procurement Manual and obtain written quotations to ensure the demonstration of best value to the Council in the sourcing decision. If quotations cannot be obtained the Delegated Procurer shall complete a Non-Competitive Action Form (included in the Procurement Manual) explaining why this is the case and submit it to the Commercial & Procurement Shared Service for approval.

4.5.3 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 Commercial and Procurement Shared Service to the contrary.

4.6 Procurement Procedures (Competitive Tendering Below the Higher Value Threshold)

4.6.1 Where any contract has an estimated value of between £50,000 and the Higher Value Threshold (for supplies/services) or between £2,000,000 and the Higher Value Threshold (works) or is otherwise exempt from the full application of the Public Contracts (Scotland) Regulations 2015, competitive tendering shall be undertaken.

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

4.6.3 All tenders shall be appropriately advertised, and submissions received, via Public Contracts Scotland or such other platform as may be authorised by the Head of the Commercial and Procurement Shared Service.

4.7 Procurement Procedures (Competitive Tendering Above the Higher Value Threshold)

4.7.1 A Higher Value Procurement means a procurement undertaken in accordance with the Public Contracts (Scotland) Regulations 2015 or the Concession Contracts (Scotland) Regulations 2016 and requires advertising in Find a Tender Service. A Higher Value Procurement must be undertaken where the Council proposes to tender for any contract with an estimated value equal to or exceeding the applicable Higher Value EU Threshold (Supplies, Services or Works).

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

4.7.3 All tenders shall be appropriately advertised, and submissions received, via Public Contracts Scotland or such other platform as may be authorised by the Head of the Commercial and Procurement Shared Service.

5 Roles and Responsibilities

5.1 General Responsibilities

It is the duty of all employees within the Council to ensure that these Contract Standing Orders, and the Procurement Manual, are adhered to in order to ensure Best Value is achieved in relation to expenditure relating to supplies, services or works and the granting of Concession Contracts. 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 Executive Chief Officer Resources and Finance (Procurement Senior Responsible Officer)

5.2.1 The Executive Chief Officer Resources and Finance is responsible for all procurement and tendering arrangements for supplies, services, works and the granting of concessions. The Commercial and Procurement Shared Service led by Aberdeen City Council on behalf of Aberdeen City Council, Aberdeenshire Council and The Highland Council, will be responsible for providing Commercial & Procurement Services on behalf of the Executive Chief Officer Resources and Finance under the Commercial and Procurement Shared Service Collaboration Agreement.

5.2.2 The Executive Chief Officer Resources and Finance is responsible for establishment of a Governance Board to review and approve expenditure where any contract has an estimated value of above £50,000 for supplies/services or above £4,500,000 for a concession contract. Terms of Reference and membership of the board shall be reviewed annually, the board membership must include Procurement and Finance representation.

5.2.3 The Executive Chief Officer Resources and Finance is responsible for establishment of a Governance Board to review and approve expenditure where any contract has an estimated value of above £2,000,000 for works. Terms of Reference and membership of the board shall be reviewed annually, the board membership must include Procurement and Finance representation.

5.3 Head of the Commercial and Procurement Shared Service

5.3.1 The Head of the Commercial and Procurement Shared Service is responsible for all procurement and tendering arrangements for supplies, services, works and the granting of concessions on behalf of the Executive Chief Officer Resources and Finance.

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

5.3.3 The Head of the Commercial and Procurement Shared Service shall ensure that the Contract Standing Orders and the Procurement Manual are in place and that necessary revisions are made to it 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 Service shall be responsible for complying with relevant reporting requirements as set out in relevant procurement legislation.

5.4 Executive Chief Officers

5.4.1 Each Executive Chief Officer has responsibility to ensure that staff in their Service follow the Contract Standing Orders for all contracts let by their Service and is accountable to the Council for the performance of their duties in relation to contract management. Each Executive Chief Officer shall be able to evidence that the procurements are compliant with these Contract Standing Orders and the Procurement Manual.

5.4.2 Each Executive Chief Officer shall ensure that all contracts in place within their Service with a Contract Value of greater than £10,000 (supplies/ services or works or £4.5m (concessions) are entered into the corporate Contracts Register. Guidance on the submission of required information is detailed within the Procurement Manual.

5.5 Delegated Procurers

5.5.1 All Delegated Procurers will ensure compliance with relevant procurement legislation, these Contract Standing Orders and the Procurement Manual.

5.5.2 Delegated Procurers are authorised to undertake procurements to the levels stated within their individual Delegated Procurement Authority. They must ensure that these are not exceeded without the authority of the Head of the Commercial and Procurement Shared Service.

5.5.3 Delegated Procurers will be required to undertake training once every three years in order to maintain their Delegated Procurement Authority.

6 Sustainable Procurement

6.1 The Council is committed to working towards sustainable development, and in particular sustainable procurement and will work to embed the principles of sustainability at all stages of procurement activities to ensure that social, environmental and economic impacts are considered throughout the procurement and contract management process, consistent with relevant legislation.

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. Sustainable development 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 above £50,000 (Goods & Services) or above £2,000,000 (Works)(other than the procurement of a concessionaire), 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.

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.

6.5 Sustainable Procurement can also be considered in procurements below the regulated thresholds, if proportionate and relevant to do so. where matters that are relevant to what is proposed to be procured can be included and, in doing so, consider the extent to which it is proportionate in all the circumstances to take those matters in to account.

6.6 Detailed information and guidance 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 within 3 working days with the issue of an official order form from the ordering system. The supplier shall be requested to quote order numbers on all invoices.

7.2 The order, shall be approved by the Executive Chief Officer or other authorised signatory. The officer approving the purchase order must be satisfied that there is appropriate budgetary provision covering the estimated cost and that Council procurement procedures have been followed prior to authorisation.

7.3 The Head of Corporate Finance has authority to dispense with the requirement to complete a purchase order and shall maintain a register of such dispensations. Purchasing with a purchase card is subject to this dispensation.

8 Special Matters

8.2 Second Hand Goods

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

a) The Executive Chief Officer of the relevant Service can demonstrate that the purchase is necessary to facilitate service delivery.
b) The Executive Chief Officer 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 Executive Chief Officer obtains in writing (including e-mail) the prior agreement of the Head of Corporate Finance before effecting the purchase.

8.3 Grants

8.3.1 The award of grants is a means by which the Council provides 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 must not be used to procure supplies, services or works which the Council would otherwise have to procure in accordance with these Contract Standing Orders.

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 Executive Chief Officer Resources and Finance and the Head of the Commercial and Procurement Shared Service 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 the Commercial and Procurement Shared Service.

8.4.2 Identification of a proposed shared service arrangement should be undertaken only following consultation with the Executive Chief Officer Resources and Finance and the Head of the Commercial and Procurement Shared Service and can only be entered into where the Executive Chief Officer 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 may also require the approval of the appropriate Strategic Committee**.**

8.5 Income Generation

8.5.1 Where a contract is to be entered into by the Council for income generation purposes and there will be no expenditure by the Council out with approved budgets, the Head of the Commercial and Procurement Shared Service, following consultation with the Executive Chief Officer Resources and Finance, shall approve the decision to enter into the contract and the Terms and Conditions of Contract to be utilised and there shall be no requirement for approval of a business case.

8.6 Appointment of Consultants

8.6.1 The appointment of consultants or sub-contractors shall be conducted in accordance with the provisions of these Contract Standing Orders. Such appointments may fall within the IR35 rules which may result in the Council being liable to pay income tax and national insurance contributions in respect of the engagement, IR35 implications must be established prior to commencing the procurement process. The Council must not enter into contracts with any individual or company direct where it is established IR35 will apply without the prior approval of the Head of the Commercial and Procurement Shared Service in consultation with the Executive Chief Officer Resources and Finance. Details of how to ascertain whether an appointment may fall under IR35 rules are contained within the Procurement Manual.

8.6.2 In appointing consultants Executive Chief Officers must ensure that the terms of agreement are controlled and knowledge transfer to Council officers should be effected where beneficial.

8.6.3 Any contract for Consultancy shall specify as a minimum:

- the precise scope of the commission;
- cost limits and controls;
- lines and levels of reporting, responsibility and authority;
- insurance cover (which must be verified by Council officers);
- the method of determining completion of work and payment thereof;
- standard Highland Council terms of payment; and
- the ownership of intellectual property rights relating to any material or computer software developed during the consultancy.

It shall be the responsibility of the relevant Executive Chief Officer to ensure that any consultancy contract complies with the 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 and the Procurement Manual.

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 the Commercial and Procurement Shared Service or the Head of Legal as appropriate. The Councils standard Terms and Conditions of Contract are contained 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 the Commercial and Procurement Shared Service 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 Contract Standing Orders 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 guidance is available within the

Procurement Manual, where an exception is required to Electronic Tendering then the Head of the Commercial & Procurement Shared Service should be contacted for guidance on how to proceed. Generally, an exception would only be agreed if there was an issue with electronic tendering systems or an alternative was required to facilitate more complex procurement procedures i.e. innovation partnership/competitive dialogue

9.5 Receipt 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 An Award Report must be completed in accordance with the Procurement Manual and approval sought from the Executive Chief Officer of the procuring service to proceed with the recommendations within the report to award any tender for Goods/Services/Works or a concession contract.

11.2 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.

11.3 As soon as possible after a decision has been made to award any contract following a procurement process where Contract Value is above the Higher Value threshold the Council shall, by notice in writing, inform all candidates and economic operators concerned of the Council's decision to award the contract.

11.4 Tender acceptance letters and debrief letters shall be prepared and signed by the Delegated Procurer using the approved template within the Procurement Manual (Tender acceptance and debrief letters do not commit the Council to a contract).

11.5 Debriefs shall be undertaken in accordance with the Procurement Manual.

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 Higher Value 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 person duly authorised under the scheme of delegation and signed by the contractor by a duly authorised person.

12.2.2 Contract Values of less than the Higher Value Threshold, unless the Head of the Commercial and Shared Procurement Service 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 person duly authorised under the scheme of delegation and signed by the contractor by a duly authorised person; or

ii. by the issuing of an Award Letter by the Executive Chief Officer 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 the Commercial and Procurement Shared Service 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 and any other guidelines on contract management issued by the Commercial and Procurement Shared Service from time to time.

14 Records and Reporting

14.1 The Head of the Commercial and Procurement Shared Service 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 the Commercial and Procurement Shared Service as soon as possible in order to maintain the Contracts Register.

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 Executive Chief Officers shall:

14.6.1 submit to the Head of the Commercial and Procurement Shared Service, an annual procurement workplan for their Service prior to the commencement of each financial year (conforming to a template approved by the Head of Commercial and Procurement) detailing all contracts to be procured in the coming year with a Contract Value of £50,000 or more (supplies/services) or £2,000,000 or more (works) or £4.5m or more (concession); and

14.6.2 update the Head of the Commercial and Procurement Shared Service from time to time in the event of any new procurements being added to the workplan; and

14.7 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 Contract Standing Orders, 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 Procurement Manual.

15.3 Where the relevant Executive Chief Officer is satisfied that one or more of the following circumstances apply, they have delegated authority to enter into an exceptional procedure with one provider:

a) Where the Executive Chief Officer 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 Executive Chief Officer is satisfied that the risk to service user(s) outweighs the benefits of advertising the requirement and awarding the contract or framework following competition.

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

15.**4** Where the exceptional procedure has been used, the Executive Chief Officer shall report to the Procurement Approval Group detailing the contract values, names of provider and types of service commissioned/procured by this **means.** In addition, the Executive Chief Officer shall ensure that the details of the contract are entered into the Contracts Register.

15.5 Extensions and Variations

i. There shall be no requirement to report to or seek approval from the Procurement Approval Group, to extend a contract where the option to extend was included in the original Committee approval. The authority to exercise an option to extend in these circumstances shall be delegated to the relevant Executive Chief Officer unless the combined Contract Value exceeds the amount approved by Committee and the additional cost exceeds the amount specified in 4.1.2.2(ii), in which case the Procurement Approval Group, shall have the authority to agree the extension or variation following presentation of a Business Case by the Delegated Procurer.

ii. Where the extension was not covered in the original approval and the combined Contract Value of the existing Contract, and the extension or variation is less than £50,000 (supplies/ services) or £4.5m (concessions) then the relevant Executive Chief Officer shall have authority to agree the extension or variation following receipt of a Business Case from the Delegated Procurer.

iii. Where the extension was not covered in the original approval and the combined Contract Value of the existing Contract and the extension or variation is equal to or exceeds £50,000 (supplies/services) or £4.5m (concessions) then the Procurement Approval Group, shall have authority to agree the extension or variation following presentation of a Business Case by the Delegated Procurer.