
Report to: Audit and Scrutiny Committee

Date of Meeting: 5th February 2026

Subject: Revision of Contract Standing Orders

Report by Strategic Director Partnership & Performance

1.0 Purpose

- 1.1. The purpose of this report is to provide the Audit & Scrutiny Committee with a clear and concise summary of the proposed substantive changes made to the Council's Contract Standing Orders, comparing the previous version effective from June 2015 (revised October 2021) with the revised version effective from 19 March 2026

2.0 Recommendations

It is recommended that:

- 2.1. Committee note, challenge and comment on the report.
- 2.2. Agrees to submit the revised Contract Standing Orders, as set out in Appendix 1, to the next available Council meeting for approval, and to recommend their adoption and implementation with effect from 19 March 2026. Considerations

3.0 Considerations

- 3.1. The Council's Contract Standing Orders (CSOs) underpin the governance framework for all procurement activity. Following legislative change, national policy updates and internal governance reviews, the CSOs have been comprehensively reviewed and updated.
- 3.2. The revised document represents a full restatement and modernisation of the previous CSOs rather than a limited amendment.

Summary of Key Changes

- 3.3. The CSOs have been expanded and restructured to align clearly with the full procurement lifecycle, from planning through to contract management and termination.
- 3.4. References to European Union procurement directives and State Aid have been removed and replaced with the existing Scottish legislative framework.

- 3.5. Governance arrangements have been strengthened through clearer approval routes, the mandatory use of procurement forms and enhanced audit trail requirements.
- 3.6. Procurement thresholds and aggregation rules have been updated to reflect current legislation and Council decisions, including the treatment of works contracts as regulated procurements from £50,000.
- 3.7. The revised Contract Standing Orders significantly expand requirements relating to Fair Work First, community benefits, sustainable procurement, equality, and children's rights. Post-award contract management, including extensions, variations, reporting and early termination, is now subject to clearer controls and escalation requirements.

4.0 Sustainability Implications

- 4.1. Sustainable Procurement contributes to the achievement of environmental, economic and social outcomes. The Procurement Reform (Scotland) Act 2014 requires the Council to act in accordance with the Sustainable Procurement Duty when procuring any contract for Supplies or Services equal to or more than £50,000 or procuring contracts for the execution of Works equal to or more than £2 million.
- 4.2. The Sustainable Procurement Duty, as outlined in the 2014 Act, requires the Council to consider how it can:
 - Improve the economic, social and environmental wellbeing of the area(s) in which the Council operates, with particular focus on reducing inequality
 - Facilitate the involvement of small and medium enterprises (SMEs), third sector bodies and supported businesses
 - Promote innovation
- 4.3. Creating a positive impact through procurement should be a key part of commodity/service profiling and strategy development. Embedding sustainability into procurement can support the objectives of the Council and be adapted to reflect the nature of the contract.
- 4.4. Maximising the local benefit of all monies spent by the Council through the adoption of the "Procurement Journey" to assist as many local businesses as possible to bid successfully for Council contracts
- 4.5. Engagement will continue with local businesses to ensure they are aware of tender, contract and supply opportunities within the Council.
- 4.6. Support to enable local businesses to understand the procurement process and respond to opportunities will also be continued.

5.0 Resource Implications

5.1. Financial Details

5.2. The full financial implications of the recommendations are set out in the report. This includes a reference to full life cycle costs where appropriate. Yes

5.3. Finance have been consulted and have agreed the financial implications as set out in the report. Yes

5.4. Staffing

6.0 Exempt Reports

6.1. Is this report exempt? Yes (please detail the reasons for exemption below) No

7.0 Declarations

The recommendations contained within this report support or implement our Corporate Priorities and Council Policies.

(1) Our Priorities

Clackmannanshire will be attractive to businesses & people and ensure fair opportunities for all

Our families; children and young people will have the best possible start in life

Women and girls will be confident and aspirational, and achieve their full potential

Our communities will be resilient and empowered so that they can thrive and flourish

(2) Council Policies

Complies with relevant Council Policies

8.0 Impact Assessments

8.1 Have you attached the combined equalities impact assessment to ensure compliance with the public sector equality duty and fairer Scotland duty? (All EFSIAs also require to be published on the Council's website)

No

8.2 If an impact assessment has not been undertaken you should explain why:

- There are no impacts of the proposal on those with protected characteristics and, where relevant, affected by socio-economic disadvantage (referred to as 'equality groups' in this document).
- The Council is meeting its legal requirements in terms of Public Sector Equality Duty and the Fairer Scotland Duty.
- There are no measures needed to be put in place to ensure any negative impacts are eliminated or minimised.

9.0 Legality

9.1 It has been confirmed that in adopting the recommendations contained in this report, the Council is acting within its legal powers. Yes

10.0 Appendices

10.1 Please list any appendices attached to this report. If there are no appendices, please state "none".

Appendix 1 – Contract Standing Orders

Appendix 2 – Summary of Key Changes – Contract Standing Orders (2015/2021 to 2026)

11.0 Background Papers

11.1 Have you used other documents to compile your report? (All documents must be kept available by the author for public inspection for four years from the date of meeting at which the report is considered)

Yes (please list the documents below) No

Contract Standing Orders 2015/2021 can be found on the Council Website @

<https://www.clacks.gov.uk/site/documents/procurement/contractstandingorders/>

Author(s)

NAME	DESIGNATION	TEL NO / EXTENSION
Derek Barr	Procurement Manager	01259 452017

Approved by

NAME	DESIGNATION	SIGNATURE
Chris Alliston	Strategic Director of Partnership & Performance	

CLACKMANNANSHIRE COUNCIL

CONTRACT STANDING ORDERS

Effective Date: 19th March 2026

Version: Final 1.0

Prepared by:

Clackmannanshire Council Procurement

www.clacks.gov.uk

This document sets out the rules and procedures governing all procurement activity undertaken on behalf of Clackmannanshire Council. It is designed to ensure compliance with relevant legislation, promote best value, and safeguard the Council's reputation and resources.

These Contract Standing Orders shall remain in full effect until varied, replaced or superseded by a decision of the Council.

Table of Contents

1. Introduction
2. Definitions
3. Contracting Authority
4. Date of Commencement
5. Extent and Application of Contract Standing Orders
6. Exemptions from the Application of Contract Standing Orders
7. Reporting on Exemptions from the Application of Contract Standing Orders
8. Best Value
9. Authority to Undertake Procurement Activity
10. Collaborative Procurement
11. Light Touch Services (formerly Part B Services)
12. Council's Key Priorities, Values & Outcomes
13. Sustainable Procurement
14. Community Benefits
15. Awarding Contracts in Lots
16. Restricting Tenders to Supported Businesses Reserved Contract
17. Freedom of Information (Scotland) Act 2002
18. Appointment of Agents to Act on Behalf of the Council
19. Non-Compliance with Contract Standing Orders
20. Review of Contract Standing Orders
21. Compliance with Procurement Legislation in Scotland and Contract Standing Orders
22. Ethics and Standards
23. TUPE – Transfer of Undertakings (Protection of Employment) Regulations 2006
24. Estimated Contract Value and Aggregation
25. Thresholds
26. Contract - Commodity Strategy
27. Procurement Governance Documents
28. Procurement Procedure Selection
29. Timescales
30. Framework Agreements
31. Contract Monitoring and Reporting - Proposed Procurement Requirement
32. Issuing Documentation
33. Return and Opening of Tenders and Quotes
34. Late Submission of Tenders and Quotes Proposals
35. Confidentiality of Tenders and Quotes Proposals
36. Evaluation of Tenders and Quotes Proposals
37. Procurement Reports
38. Approval to Accept & Award Contracts
39. Mandatory Standstill Period
40. Contract Monitoring and Reporting - Contract Award
41. Tender File
42. The Use of Standard Documents
43. SPD

- 44. Standard Quote Documentation - Goods and Services
- 45. Standard Tender Documentation - Goods and Services
- 46. Mandatory Clauses
- 47. Tender Documentation - Works Contracts
- 48. Supplier Contract Terms and Conditions
- 49. Contracts Register
- 50. Contract Monitoring and Management
- 51. Direct Contract Awards
- 52. Contract Extensions
- 53. Contract Variations / Modification
- 54. Early Termination of Contract
- 55. Reporting and Authorisation
- 56. Bids for External Contracts Authorisation

Appendices:

- Appendix 1: Exception Procedure Process
- Appendix 2: Exception Request Decision Notice

1. Introduction

- 1.1 Procurement decisions are among the most important decisions Officers will make because the money involved is public money and the Council is obliged to ensure that we deliver high quality goods, works and services. It is the Council's duty to secure best value in its arrangements, and ensure public money and resources are used efficiently. The Council's reputation is equally important and should be safeguarded from any suggestion of dishonesty or corruption. The Council should also act in a fair and accountable manner in its dealings with contractors and suppliers.
- 1.2 The Contract Standing Orders provide a commercial, legal and operational framework and clear set of rules when undertaking procurement activity on behalf of the Council. For these reasons, a failure to comply with Contract Standing Orders and with the Council's Financial Regulations carries the risk of being a disciplinary offence. Employees have a duty to report breaches of Contract Standing Orders and/or the Council's Financial Regulations to an appropriate Head of Service and to the Strategic Director of Partnership and Performance.
- 1.3 Contract Standing Orders protect the interests of the Council, and they also protect the interests of Council Officers who are involved in procurement. It is the responsibility of each Head of Service to ensure that every officer who is involved in procurement has a good understanding of Contract Standing Orders and has access to the Corporate Procurement Process "The Procurement Journey" (<https://www.procurementjourney.scot/>).
- 1.4 The Procurement Journey provides guidance and wide-ranging advice as to the purpose and practical application of Contract Standing Orders. It is intended to support all levels of procurement activities and to help manage the expectations of stakeholders, customers and suppliers.

It facilitates best practice and consistency across the Scottish public sector. It provides one source of guidance and documentation for the Scottish public sector. It is updated on a continual basis with any changes in legislation, policy and best practice. It is compliant with the Public Contracts (Scotland) Regulations 2015, Procurement (Scotland) Regulations 2016 and the statutory guidance.

Officers should use the source documentation in the Procurement Journey and the Council website for every procurement exercise. This will ensure you are always using the most recent guidance and templates on an ongoing basis. The Journey is designed to be used in conjunction with guidance on current public procurement legislation and the Scottish Procurement Policy Handbook.

- 1.5 Those who are responsible for procuring, managing or delivering major construction projects should also follow the policy and procedural framework

set out in the Scottish Construction Procurement Manual (<https://www.gov.scot/publications/construction-procurement-handbook/>).

- 1.6 Any dispute or difference as to the interpretation of Contract Standing Orders or the Procurement Journey shall be decided by the Strategic Director of Partnership and Performance.
- 1.7 Officers and members of agents of the Council, acting on the Council's behalf in relation to any contractual matter shall conduct themselves in such a manner so that the independence and integrity of the Council's procedures are, always, maintained and are seen to be maintained.
- 1.8 Officers must comply with the requirements of Section 68 of the Local Government (Scotland) Act 1973 (Disclosure by Officers of Interests in Contracts). (<https://www.legislation.gov.uk/ukpga/1973/65/section/68>)
- 1.9 Public procurement can be defined as the acquisition, whether under formal contract or otherwise, of goods, services and works from third parties by Clackmannanshire Council. The scope of Clackmannanshire Council procurement ranges from the purchase of diverse, routine supplies or services to formal tendering and placing contracts for large infrastructure projects.
- 1.10 Procurement for the purposes of Contract Standing Orders is not intended to cover funding agreements, grants or forms of co-operation between Clackmannanshire Council and other bodies which are non-contractual. However, it should be noted that relationships between Clackmannanshire Council and third parties may constitute contracts for the provision of goods, services or works in certain circumstances and will still require governance through Procurement Forms 1 & 2. Even where funding agreements or forms of non-contractual co-operation do not constitute procurement, normal commercial disciplines should be applied wherever possible.
- 1.11 The scheme of financial delegation forms an integral part of Clackmannanshire Council's control environment. No officer of the Council should undertake or authorise a transaction for which they do not have authority. It is the responsibility of managers to ensure that they have the appropriate level of authority to carry out their duties based on the principles set out below. Adherence to these principles will ensure that financial delegations are effective and adequately controlled. An up-to-date list of all Officer delegated authorities is available on the Council J drive at J/Authorised signatories.
- 1.12 Invoice authorisation is covered in Financial Regulations section: 12. Payment for Goods and Services.
- 1.13 Segregation of duties is an important control procedure. Therefore, the following should be observed:
 - The order or contract should be authorised by someone competent who understands the requirement and has been given the delegated authority.
 - The goods should be received and checked for correctness.

- The checking and certification of invoices should be by a different competent authorised member of staff.
- The payment of invoices should be by another competent member of accounts staff.
- This separation will ensure that individuals are fully protected against misunderstandings.

1.14 The Procurement Manager shall have power to vary these standing orders but only in the following circumstances: a) to reflect changes in job titles, reorganisations of departments, Council Committees and vacancies in posts; b) to change references to legislation where the legislation is repealed or amended and to insert references to new legislation where the new legislation largely re-enacts the provisions of the repealed or amended legislation; c) to change the financial values of the thresholds where referred to in these Contract Standing Orders, to implement any changes in these thresholds.

2. Definitions

In these Contract Standing Orders, the following words and expressions will have the following meanings assigned to them:

Agent Any external individual, organisation or consultant acting on behalf of the Council.

Aggregation Combining buying power within the Council or with others in order to gain best pricing and service agreements from suppliers.

ALEO (Arm's Length Organisations) Arm's Length External Organisation is a body which is formally separate from the Council but subject to its control and influence and is used to deliver services on the Council's behalf. They may have charitable status, but this is not an essential requirement.

Annual Procurement Report A report which discloses how the Council's procurement activity has complied with its published procurement strategy. (<https://www.clacks.gov.uk/business/procurementannualreport/>)

Authorised Officer The officer designated by the Chief Executive to deal with and be responsible for the procurement process and the contract in question.

Best Value Best value within the meaning of section 1 of the Local Government in Scotland Act 2003 and the securing of it in accordance with that section.

Contract An agreement between the Council and any contractor or supplier made by formal agreement or by issue of an official order, for goods, materials, works or services.

Contract Responsible Officer the Council officer with management responsibility for a specific contract. This means the responsibility for dealing with supplier performance and contractual matters on a day-to-day basis.

Council Clackmannanshire Council.

Commissioning The process of planning, buying, and monitoring health and social care services. It involves assessing needs, setting priorities, and developing strategies to meet those needs.

Contract Strategy A pre-tender template completed by the Responsible Officer, used when preparing to carry out a procurement exercise to determine the route to market for tenders. Applies to all Regulated procurements and Higher Value Regulated procurements.

CSOs These Contract Standing Orders.

Day A calendar day unless otherwise specified.

Disclosure by Officers of Interests in Contracts Section 68 of the Local Government (Scotland) Act 1973.

Estimated Contract Value The total estimated contract value, excluding VAT, established prior to tendering, for the entire term of the Contract and for use across the whole Council, including all options, permitted extensions and variations.

Exception Report A report submitted when seeking exemption from Contract Standing Orders.

Fair Work First The commitment by employers to investment in skills and training, no inappropriate use of zero hours contracts, action to tackle the gender pay gap, genuine workforce engagement, including with trade unions, payment of the Real Living Wage, offering flexible and family-friendly working practices for all workers and opposing the use of fire and rehire practices.

Form 1 RFQ/tender authorisation which must be completed/submitted by the Contract Responsible Officer for all contractual arrangements with a value of £10,000 or above over the lifetime of the requirement. Completed before any tender process commences or to take part in any national or collaborative contract.

Form 2 The Contract Award Report completed/submitted after the tender evaluation has been undertaken and before a contract is awarded or before a direct award can be made.

Framework Agreement An agreement between one or more contracting authorities and one or more economic operators, to establish the terms governing public contracts to be awarded during a given period.

Freedom of Information In relation to public procurement, the Freedom of Information (Scotland) Act 2002 which provides a general right of access to information about all public contracts and procurement activity held by Clackmannanshire Council, subject to certain conditions and exceptions.

FTS UK e-notification system called Find a Tender System.

GPA World Trade Organisation's Government Procurement Agreement.

Grant Funding In principle, the difference between a grant and a procured contract is clear: in the case of a grant, the Council contributes to a project carried out by an external organisation, or contributes directly to that organisation, because the project or activities contribute to the public authority's policy aims. In the case of a procured contract, the Council specifies the product or service that it wants and receives that product or service in return for payment. (<https://www.gov.scot/publications/scottish-public-finance-manual/grant-and-grant-in-aid/annex-3-grant-funding-and-procured-goods-and-services-contracts/>)

Health & Social Care Services The health, social and related services, being one of the services listed in Schedule 3 of the Public Contracts (Scotland) Regulations 2015.

Head of Service A Head of Service within Clackmannanshire Council, including the Chief Executive and any Senior Officer of the Council with delegated authority to undertake specific tasks relating to procurement and contracts.

Higher Value Regulated Procurement A procurement equal to or above the GPA threshold and subject to the application of the Public Contracts (Scotland) Regulations 2015.

In-house Provision - provision by an existing service or services within the Council where the Council would use its own resources to provide the requirement prior to committing to external expenditure.

Joint Buying Arrangement (JBA) Procurement protocol with Falkirk and Stirling Councils.

Most Economically Advantageous Tender (MEAT) The tender offer that is assessed from the Council's point of view as the most economically advantageous based on the best price-quality ratio according to criteria linked to the subject matter of the contract and not simply price alone.

Procurement The function responsible for acquiring by purchase, lease or other legal means, the goods, works and services used by the Council to discharge its functions in an effective, efficient and economic manner. The procurement process spans the whole life cycle of the procured goods, works or services.

Procurement Journey the Scottish Government Corporate Procurement Process which provides guidance for buyers who procure goods, services and care and support services. (<https://www.procurementjourney.scot/>)

Procurement Laws Procurement Reform (Scotland) Act 2014; The Procurement (Scotland) Regulations 2016; The Public Contracts (Scotland) Regulations 2015; and Statutory guidance as same may be updated, replaced or revised from time to time and SPPNs.

Public Contracts Scotland <http://www.publiccontractsscotland.gov.uk/> – This portal enables the Council to advertise all contracting opportunities, irrespective of value.

Public Service Contract Referred to in the CSOs as "Services" as defined in the Public Contracts (Scotland) Regulations 2015.

Public Supply Contract Referred to in the CSOs as "Supplies" or "Goods" as defined in the Public Contracts (Scotland) Regulations 2015.

Public Works Contract Referred to in the CSOs as "Works" as defined in the Public Contracts (Scotland) Regulations 2015.

Quick Quote A Request for Quotation (RFQ) via the Public Contracts Scotland website, used to obtain competitive quotes for low value/low risk procurement exercises between £10,000 and £50,000.

Real Living Wage The hourly rate of pay which is independently calculated each year and overseen by the Living Wage Foundation.

Regulated Procurement A procurement falling within the thresholds for the application of the Procurement Reform (Scotland) Act 2014 and the Procurement (Scotland) Regulations 2016.

Scheme of Delegation the Scheme of Delegation which provides certain Officers of the Council with delegated authority to undertake specific tasks relating to procurement and contracts.

Scottish Construction Procurement Manual A suite of handbooks to provide guidance for public sector construction clients in developing and delivering their construction projects.

Scottish Regulations Means the Public Contracts (Scotland) Regulations 2015 and associated statutory guidance applicable to Higher Value Regulated Procurements.

Scottish Procurement National Contracts Category "A" Procurements
Procurement contracts directory for central government and the public sector.
(<https://www.gov.scot/publications/frameworks-and-contracts/>)

Scottish Procurement Policy Note(s) or SPPN(s) SPPNs provide advice to public sector organisations and other relevant bodies on procurement policy.

Scotland Excel National Contracts Category "B" Procurements the Centre of Procurement Expertise for the local government sector. (<https://home.scotland-excel.org.uk/>)

Single Procurement Document (SPD) A standard form that includes exclusion and selection questions, allowing buyers to identify suitably qualified and experienced bidders.

Standstill Period The standstill period provides for a short (at least 10 days) pause between the point when the contract award decision is notified to bidders, and the final contract conclusion.

Supplier Development Programme Provides a range of specialist business support activities to assist businesses to become more capable of accessing and competing for public sector contracts. (<http://www.sdpscotland.co.uk/home.aspx>)

Supported Businesses Providers operating supported businesses, supported employment programmes or supported factories where more than 30% of the workers are disabled or disadvantaged persons.

Sustainable Procurement Duty The obligation on the Council to consider how its actions can, through procurement, improve the social, environmental and economic wellbeing of the Clackmannanshire Council area.

Third Sector Organisations which exist wholly or mainly to provide benefits for society or the environment, e.g., community groups, charities, social enterprises.

Threshold The total aggregated value limits as defined within relevant Procurement Laws and Contract Standing Orders

3. Contracting Authority

The Council is the Contracting Authority for the purposes of Procurement Laws and in respect of all procurement activity. This means that all contracts are let on behalf of the Council as a whole and that no Service, Team, Unit or other part of the Council has the legal capacity to enter independently into any contract.

The Council remains the Contracting Authority when entering collaborative contracts where the Council procures goods, services or works jointly with other public sector organisations but may not complete the procurement process.

In all tender documentation, reference should be made to the Council as the legal entity and not a particular Service, Team or Unit.

4. Date of Commencement

These Contract Standing Orders define the rules and procedures to be adopted when undertaking any procurement activity on behalf of the Council and are effective from **19th March 2026**

All procurement processes commencing from that date will observe the rules contained within these Contract Standing Orders.

Notwithstanding the dates, these Contract Standing Orders shall remain in full effect until they are varied, replaced or superseded by a decision of the Council.

5. Extent and Application of Contract Standing Orders

These Contract Standing Orders are standing orders made by the Council under Section 81(2) of the Local Government (Scotland) Act 1973 for the purposes of making contracts for the purchase of Services or Supplies or for the execution of Works.

These Contract Standing Orders will apply to all contracts for the procurement of all Goods, Services and Works by the Council, including non-contract, ad hoc, one-off requirements, and they will be applied by any employee or agent of Clackmannanshire Council undertaking any procurement activity on behalf of the Council.

The Contract Standing Orders apply to all public procurement expenditure by the Council irrespective of the funding source and includes expenditure that has been devolved in any way.

The only exemptions to these Contract Standing Orders are those detailed in Section 6 – Exemptions from the Application of Contract Standing Orders.

6. Exemptions from the Application of Contract Standing Orders

Contract Standing Orders apply to all contracts entered by Contract Responsible Officers. In some circumstances, however, exceptions may be granted and the general approach to this is outlined below. All requests must be made in writing, following the procedure detailed in Appendix 1 and identifying the grounds for the request. Approvals must also be recorded in writing and given prior to any action taken which is not in accordance with the Contract Standing Orders.

Such exemptions are not necessarily exempt from the application of the specific requirements of Procurement Laws, where they apply or any other rule of law.

Lack of sufficient planning and/or internal process delays will not constitute special, exceptional or emergency circumstances.

The following are exempt from the application of Contract Standing Orders:

A. Below Threshold / Quick Quote Contracts

1. Contracts for the purchase of Goods, Services or Works are excluded from the application of the Contract Standing Orders where the total estimated value over the lifetime of the contract is less than £10,000.
2. Contracts with a total aggregated value less than £10,000 continue to be subject to the obligation to demonstrate Best Value and a requirement that the

Service Area Lead put in place a written contract without delay, and, where applicable, ensure that appropriate plans are made to seek competition.

3. The obligation to demonstrate Best Value must include the ability to evidence that at least three quotes for the requirement were obtained unless in exceptional circumstances.

B. Specific Exclusions

1. Any contract of direct employment.
2. The acquisition, disposal, lease or rental of land, existing buildings, other immovable property, any planning gain pursuant to a legal agreement under section 75 of the Town & Country Planning (Scotland) Act 1997 or any other interest in land.
3. Any contract for the provision of financial services.
4. The arrangement of works, goods or services to be delivered through an In-House Service Provider.
5. The instruction of advice from or services provided by Counsel or instructions to solicitors to advise, prepare or represent the Council in arbitration, conciliation or judicial proceedings.
6. Appointed guardians or legal services designated by a court or tribunal.
7. The purchase of a work of art or museum specimen as approved by the Chief Executive.
8. The allocation of direct payments or personal budgets under options 1, 2 or 4 of the Social Care (Self-Directed Support) (Scotland) Act 2013.
9. Where an insolvency situation offers the opportunity for the Council to secure goods or services on substantially advantageous terms or at a significant discount.
10. The purchase of special education or social care contracts but only where the conditions of Section 12 of the Procurement Reform (Scotland) Act apply and the level of the purchase is below the threshold for the application of Part 2 Chapter 3 Section 7 of the Public Contracts (Scotland) Regulations 2015

C. Specific Exclusions (Subject to the Exception Procedure in Section 7)

1. An immediate need is, in the opinion of the Chief Executive, created by a sudden, unforeseen, real and demonstrable emergency that requires immediate action to protect life or property.
2. The purchase of a named product required to be compatible with an existing installation as approved by the Head of Service.
3. There is a genuinely justifiable case to use an existing contractor/supplier to maintain continuity of supply or site experience.
4. The purchase of goods or materials, the execution of works or supply of services for which the procurement officer considers that no genuine competition can be obtained.

7. Reporting on Exemptions from the Application of Contract Standing Orders

Advice on any proposed exemption from Contract Standing Orders under Section 6 should be sought from the Procurement Manager and/or the Strategic Director of Partnership and Performance.

The appropriate Director must record their reasons in writing in the form of an Exception Report for a decision, which must be submitted to the Strategic Director of Partnership and Performance. The Strategic Director of Partnership and Performance will maintain a central register of exceptions.

The Strategic Director of Partnership and Performance will consult the Chief Finance Officer (S95) and Procurement Manager before taking any action that binds the Council. Any such exception shall be reported retrospectively in full to the next Audit & Scrutiny Committee, including the reasons that fully justify the exception. A summary of Contract Standing Order exemptions will also be provided as part of the Annual Procurement Report to Audit & Scrutiny Committee.

The appropriate Director will normally be the Director that holds the budget for the requirement. Where there is a technical or competency issue, the appropriate Director will be the one with responsibility for the professional aspects of the requirement.

The requirement to comply with relevant Procurement Laws remains. A contract voluntary award notice without competition must be published in Public Contracts Scotland on a voluntary basis where the exemption granted is above the £10,000 threshold but below the threshold for the application of Procurement Laws. Where the exemption granted is above the threshold for the application of Procurement Laws, the procedures leading to the award under the Scottish Regulations must be followed.

8. Best Value

The Council has a statutory duty to secure best value, which includes a contribution to the achievement of sustainable development. Effective procurement is one of the tools available to deliver best value.

Best value in procurement is the optimum combination of price and quality identified through the Most Economically Advantageous Tender (MEAT). In this context:

- Price means the whole life cost or total acquisition cost of any requirement, not simply the price paid on acquisition. The price may include the purchase price and the costs of the purchase-to-pay process, operation, maintenance and disposal.
- Quality means the measurable qualities of a proposal, for example, technical merit, functional characteristics, experience of staff, after-sales services and

should not refer to a subjective view of high or low quality, but simply the quality that is right for the Council. The quality evaluation criteria used must be proportionate and linked to the subject matter of the contract.

Every procurement requirement will be awarded based on the Most Economically Advantageous Tender. No procurement requirement will be awarded solely based on price or quality alone unless authorised by the Procurement Manager.

Advice on the application of whole life cost and/or total acquisition cost can be found in the Procurement Journey available on the Council website. Further advice is available from the Procurement Manager.

For the purposes of these Contract Standing Orders, the value of a contract must be calculated over the life of the contract. It is not permissible to disaggregate a contract to circumvent the requirements of Contract Standing Orders that relate to competitive tendering.

9. Authority to Undertake Procurement Activity

All employees whose role involves any significant procurement activity will require to agree that they have read and understood their obligations as per Financial Regulations and Contract Standing Orders and must always adhere to these when undertaking any procurement activity. This will be registered as part of the officer's approved delegated authority.

All employees will be required to undertake appropriate training when requested, to ensure standards, compliance, governance and best practice procurement is undertaken. Additional and specialist training may be required in more specialist procurement roles.

All Contract Responsible Officers must be registered within the Public Contracts Scotland site and included on the User List and will have appropriate access levels allocated from the following levels of access in the Public Contracts Scotland Website:

- Auth User – read-only access to authority areas of the site
- Editor – create notices for publication but not publish
- Publisher – publish site notices
- Post-box Opener – open online electronic submissions

Employees who do not have the appropriate delegated authority are not permitted to undertake procurement activity.

10. Collaborative Procurement

National, sectorial and collaborative procurement arrangements with other public bodies are encouraged where these can demonstrate best value to the Council.

Collaboration can take place through established contracts or through collaboration on one-off requirements.

Where a framework has been put in place for the Council's use, it must be used as a first point of reference before any tender exercise is entered. Only where they are found to be unsuitable or cannot provide value should an officer seek to establish another arrangement and tender in line with these Contract Standing Orders and Policy.

Where the Council takes the lead procurement role in such arrangements, these Contract Standing Orders apply to each procurement process carried out under the collaborative arrangement.

Where another public sector organisation takes the lead procurement role, it is that public sector organisation's Contract Standing Orders, procedures or equivalent that will apply. All procurement activity carried out in collaboration is required to comply with relevant Procurement Laws.

A Procurement Form 1 – Tender Authorisation must be completed/submitted by the Contract Responsible Officer before any tender process commences or to take part in any national or collaborative contract including council-led arrangements.

Services must ensure Form 1 approval is in place prior to submission and any advertising or contact with potential suppliers.

10.1 Formal Collaborative Arrangements

Where the Council enters formal joint buying or consortia purchasing arrangements, the related agreement and procurement strategy must protect the Council to a level proportionate to the risk involved, whilst at the same time providing the basis for a partnering approach and delivery of best value.

As a minimum, the agreement should clearly state:

- The nature and extent of the arrangement
- Legal responsibilities
- Arrangements for governance, accountability and dispute resolution
- The exit strategy
- The auditing arrangements
- The process for the induction of new partners

10.2 Informal Collaborative Arrangements

Where the Council enters informal and ad-hoc joint buying or consortia purchasing arrangements where no strategic agreement exists, the Council must be protected to a level proportionate to the risk involved, whilst at the same time providing for flexibility and delivery of best value. As a minimum this will typically be compliance with all relevant Procurement Laws and the ability to demonstrate best value.

10.3 Council Requirements

Where the Council is not the lead authority in the procurement process, the lead authority or other public sector organisation must be obliged to comply with all relevant Procurement Laws and with its own internal rules when undertaking the procurement exercise. The appropriate Officer within the Council who is dealing with the contract is required to satisfy themselves, as far as it is feasible to do so, that the requirement is met.

In addition, where the Council is not leading the procurement process, Officers are required to ensure that a unique reference number should be sought from Procurement via the use of a Procurement Form 1. This reference must be noted on all documentation and Procurement shall maintain a list of tenders for administrative and audit purposes.

Approval to accept a proposal or tender through a collaborative arrangement must follow the process set out in Section 37 – Approval to Accept & Award of Contracts. No contract can be awarded by or for the Council before approval to accept has been sought and obtained, as outlined in Section 37. This will be done via the use of a Procurement Form 2.

Where the Council takes the lead procurement role, tender award letters will be issued from Procurement and signed by an appropriate Officer with sufficient delegated authority as per Section 37.

Please also see Section 28 in relation to national Framework Agreements and their use.

10.4 Scottish Procurement Alliance Process

1. Clackmannanshire staff member completes Form 1 and obtains internal sign-off to proceed with SPA.
2. A Clackmannanshire contract number is issued and must be provided to SPA.
3. SPA project registration form is completed.
4. Staff member provides specification and pricing document to SPA.
5. Direct award skips steps 6–10.
6. SPA runs expression of interest process and creates tender package.
7. Staff member confirms satisfaction with documents and SPA uploads to PCS.
8. SPA runs tender through PCS.
9. Staff member evaluates bids and provides results to SPA.
10. SPA processes evaluation and provides winning bidder information.
11. Staff member completes Form 2 and obtains internal sign-off.
12. SPA issues letters to staff member for delegated authority sign-off.

13. Signed letters returned to SPA, which notifies successful supplier and publishes award notice.
14. Procurement creates call-off in PCS.
15. Contract register is updated.

11. Light Touch Services (formerly Part B Services)

The Public Contracts (Scotland) Regulations 2015 introduced a new 'light-touch' regime for certain services including health and social care services and education services.

Scope and General Guidance

The Light Touch Regime (LTR) provides a more flexible approach when procuring any of the services specified in Schedule 3 of the Procurement Laws relevant to Higher Value Regulated Procurements. Relevant services include health and social care services, education services, cultural services, benefits services, and certain legal services which are not excluded from the application of Procurement Laws.

The Light Touch Regime applies where the total estimated value of the contract including any extensions is £663,530 inclusive of VAT or more.

Regulations 74–76 of the Procurement Laws set out the rules which apply when procuring a light touch service. Minimum mandatory requirements include:

1. A Prior Information Notice or Contract Notice must be published on PCS.
2. Transparency and equal treatment must be respected.
3. The process must be conducted fairly in accordance with published documents.
4. A price/quality ratio analysis must be applied.
5. A Contract Award Notice must be published within 30 days of award.

Beyond these requirements, there is flexibility in:

- Timescales (must be reasonable and proportionate)
- Duration (no requirement to retender every 4 years)
- Selection process (baseline checks such as insurance, registration, etc.)
- Evaluation criteria (Regulation 76 provides a non-exhaustive list)

Refer to the Procurement Journey for further detail:

<https://www.procurementjourney.scot/light-touch-regime>

A procedure must be developed by procurement officers, set out in the contract notice and followed. It must be proportionate and appropriate to the scale and type of procurement.

The procedure should include timescales, evaluation methodology and change management procedures. It must align with internal governance and principles of transparency and equal treatment.

Procurement Officers must ensure awards are made based on MEAT and not price alone. Procedures must include fair work matters, community benefits and sustainable procurement.

Where there is a ground to directly award a light touch service contract under Section 50 or Section 6, officers must follow the Exception Process in Section 7. Otherwise, the contract should be procured in terms of this section.

Regulated Procedures between £50,000 and £663,540

For contracts valued between £50,000 and £663,540, the Procurement Reform (Scotland) Act 2014 and the Procurement (Scotland) Regulations 2016 apply.

Where a relevant light touch service contract is valued below £663,540 but at least £50,000, Contract Responsible Officers must conduct the procurement process in line with the Procurement (Scotland) Regulations 2016 and the Procurement Reform (Scotland) Act 2014. Route 2 of the Procurement Journey provides full guidance.

Under Section 12 of the Procurement Reform (Scotland) Act 2014, it is possible to directly award a health and social care contract within the CPV codes contained in the Schedule to the Procurement (Scotland) Regulations 2016 up to £663,540 inclusive of VAT. This applies only to certain health and social care services.

To minimise risk of challenge, social care services should still be treated as normal services and tendered where appropriate to ensure competition, openness, fairness, transparency and accountability.

Where there is a ground to directly award a light touch service contract between £50,000 and £663,540 under Section 50 or Section 6, officers must follow the Exception Process in Section 7.

All instructions for the provision of legal services must be referred to and approved by the Head of Legal Services prior to commencement.

Contract Responsible Officers must have regard to relevant statutory guidance and the requirements of the Procurement Reform (Scotland) Act 2014.

12. Council's Key Priorities, Values & Outcomes

The Council can use its buying power to help achieve its key priorities, values and outcomes. These will be considered in every procurement process and, where appropriate, incorporated into the contract strategy, evaluation and contract terms.

Council priorities can be found at: <https://www.clacks.gov.uk/council/priorities/>

Children's Rights and the UNCRC

In accordance with the UNCRC (Incorporation) (Scotland) Act 2024, all procurement activity must respect, protect and promote the rights of children as set out in the United Nations Convention on the Rights of the Child (UNCRC).

Where procurement involves services that may directly or indirectly affect children, officers must undertake a Child Rights and Wellbeing Impact Assessment (CRWIA) and ensure that specifications, evaluation criteria and monitoring arrangements reflect UNCRC principles.

13. Sustainable Procurement

Sustainable Procurement contributes to the achievement of environmental, economic and social outcomes.

The Procurement Reform (Scotland) Act 2014 requires the Council to act in accordance with the Sustainable Procurement Duty when procuring any contract for Supplies or Services equal to or more than £50,000 or procuring contracts for the execution of Works equal to or more than £2 million.

The Sustainable Procurement Duty, as outlined in the 2014 Act, requires the Council to consider how it can:

- Improve the economic, social and environmental wellbeing of the area(s) in which the Council operates, with particular focus on reducing inequality
- Facilitate the involvement of small and medium enterprises (SMEs), third sector bodies and supported businesses
- Promote innovation

Creating a positive impact through procurement should be a key part of commodity/service profiling and strategy development. Embedding sustainability into procurement can support the objectives of the Council and be adapted to reflect the nature of the contract.

When considering sustainable procurement outcomes, any contract requirements must be:

- Linked to the subject matter of the contract
- Relevant and proportionate
- Incorporated in a way that does not result in inappropriate exclusion of potential suppliers or anti-competitive behaviour

Sustainable outcomes cannot be used as the sole criteria for the award of a contract. It is recommended that not more than 10% of the total available score is allocated to this section.

Further guidance and template questions can be found in the Procurement Journey.

14. Community Benefits

In accordance with the Procurement Reform (Scotland) Act 2014, Clackmannanshire Council shall consider the inclusion of community benefit requirements in all regulated procurements where the estimated value of the contract is equal to or greater than £4 million.

Community Benefits may not apply to Low-value or short-duration contracts, highly specialised markets or urgent procurements

Community benefit requirements are defined as contractual obligations that relate to training and recruitment, availability of sub-contracting opportunities, or other measures intended to improve the economic, social or environmental wellbeing of the Council's area, in a way that is additional to the primary purpose of the contract.

Officers must assess the potential for community benefits at the planning stage of each procurement exercise and document the rationale for inclusion or exclusion of such requirements. Where community benefit requirements are included, they must be clearly specified in the contract documents and form part of the evaluation and monitoring process.

Suppliers awarded contracts with community benefit clauses must demonstrate how they will deliver the specified benefits and provide regular updates on progress.

Examples of community benefits include, but are not limited to:

- Targeted recruitment and training opportunities
- Support for small and medium enterprises (SMEs)
- Engagement with local voluntary and community organisations
- Initiatives that promote environmental sustainability

The Council will report annually on the implementation and outcomes of community benefit requirements as part of its procurement reporting obligations.

15. Awarding Contracts in Lots

Where the procurement is a Higher Value Regulated Procurement (refer to Section 24 – Thresholds), a contract may be awarded in the form of separate lots.

Where the decision is taken not to award in the form of separate lots, the main reason(s) for this must be explained in the contract documents or within the reporting requirements set out in the 2015 Regulations.

16. Restricting Tenders to Supported Businesses Reserved Contract

The Council can reserve contracts and framework agreements so that only supported businesses are able to participate in the procurement process, or that the contract or framework agreement is only able to be performed in the context of a supported employment programme.

In this context:

- A supported business means a business whose main aim is the social and professional integration of disabled or disadvantaged persons, and where at least 30% of the employees are disabled or disadvantaged persons.
- A supported employment programme means an employment programme operated by a business with the main aim being the social and professional integration of disabled or disadvantaged persons and where at least 30% of those engaged in the programme are disabled or disadvantaged.

The restriction must be advertised in the relevant Public Contracts Scotland notice. Prior to exercising this right, advice must be sought from the Corporate Procurement Manager.

17. Freedom of Information (Scotland) Act 2002

The Freedom of Information (Scotland) Act 2002 was introduced by the Scottish Parliament to ensure that people have the right to access information held by Scottish public authorities.

The Act states that any person can receive information that they request from a public authority, subject to certain exemptions such as protection of personal data, commercial interests, or national security.

If a request for information is refused or ignored, people have the right to ask the Council to review their decision. If they are still unhappy with the response, they have the right to appeal to the Commissioner, who will investigate their case. The Commissioner has powers to force the Council to release any information that is not exempt under the Act.

There is a presumption that contractual information should be made available for disclosure if requested. However, Officers should be aware of the potentially anti-competitive implications of disclosing detailed contractual information in the period around a procurement process taking place. In particular, the provisions of the Procurement Laws prohibit disclosure of information during a live procurement process.

Officers should seek advice from Legal Services if FOI requests are received during a procurement process or at any other time if they are unsure whether information is disclosable.

18. Appointment of Agents to Act on Behalf of the Council

It is a condition of appointment that any agent appointed to act on behalf of the Council will, where appropriate:

- Comply in full of the requirements of relevant Procurement Laws, the Council's Contract Standing Orders, all relevant legislation and all Council policies
- Provide evidence that they are trained in and competent in public procurement
- Ensure that any modification to the procedure for opening tenders is approved in advance by the Procurement Manager
- Produce to the appropriate Head of Service or nominated Council Officer on request all relevant records and documentation related to the contracted service and/or contract being supervised on behalf of the Council
- On completion of the contract service and/or contract, provide to the appropriate Head of Service all relevant records and documentation related to the contracted service and/or contract supervised on behalf of the Council

Every appointment of a consultant, architect, surveyor, engineer or any other external agent to act in any capacity on behalf of the Council is required to have a contract condition that ensures that copyright in respect of anything created or completed by that external agent in relation to the appointment will be the property of the Council, or that the consultant grants an unconditional royalty-free licence to use the documents.

Where issues arise in respect of copyright, Officers are required to seek guidance and advice from Legal Services.

Heads of Service must ensure that, where appropriate, the contract with the agent includes an indemnity in favour of the Council for any liabilities and costs which the Council may incur because of the agent's failure to comply with these provisions.

19. Non-Compliance with Contract Standing Orders

19.1 Reporting and Disciplinary Action

Any non-compliance with Contract Standing Orders or Financial Regulations must be reported immediately upon discovery to the Strategic Director of Partnership and Performance.

Failure to report any known non-compliance may result in disciplinary action being taken against the employee who failed to report the non-compliance.

The Strategic Director of Partnership and Performance may authorise an investigation where deemed necessary. The investigation findings will be reported to the Chief Finance Officer (S95), Procurement Manager, the relevant Head of Service, the Chief Executive and the appropriate Council Committee.

If there is a recommendation for disciplinary action to be taken, where a serious or repeated non-compliance of Contract Standing Orders and Financial Regulations is identified, it will be referred to the appropriate line manager.

19.2 Contractual Implications

Any non-compliance of Contract Standing Orders and Financial Regulations can seriously affect the legal standing of a contractual relationship and can increase the ability of unsuccessful bidders or tenderers to seek redress through the courts.

Officers are reminded that a person entering a contract with the Council is protected under Section 81(4) of the Local Government (Scotland) Act 1973 and shall not be bound to inquire whether the Contract Standing Orders of the Council which apply to the contract have been complied with. Non-compliance with such shall not invalidate any contractual arrangement entered by or on behalf of the Council.

It is therefore imperative that officers should not accept any quotes, offers or tenders except in accordance with these Contract Standing Orders.

20. Review of Contract Standing Orders

Contract Standing Orders will be reviewed and updated as required by changes to procurement legislation and regulation or otherwise every three years.

Until Contract Standing Orders have been amended or reviewed, these Contract Standing Orders will apply to all procurement processes undertaken.

Contract Standing Orders may be varied, suspended or revoked by the Council at any time following a resolution passed upon notice duly given in terms of those Standing Orders that regulate the meetings and proceedings of the Council.

Whilst changes to Contract Standing Orders will require the approval of Council, the Procurement Manager may implement changes to the Corporate Procurement Processes and any changes in legislation without further reference to Council.

21. Compliance with Procurement Legislation in Scotland and Contract Standing Orders

Because of the UK's exit from the European Union on 31 December 2020, various deficiencies have arisen within domestic legislation. These have been addressed through several different pieces of amending legislation which provided the necessary technical changes to the relevant legislation.

For Higher Value Regulated Procurements, the Authorised or Responsible Officer must comply with:

- The Public Contracts (Scotland) Regulations 2015 (PC(S)R 2015)
- The Concession Contracts (Scotland) Regulations 2016 (CC(S)R 2016), where a concession contract is to be put in place
- The Utilities Contracts (Scotland) Regulations 2016 (UC(S)R 2016)

Officers must also comply with Scottish Procurement Policy Notes (SPPNs).

For Regulated Procurements, the Authorised or Responsible Officer must comply with:

- The Procurement Reform (Scotland) Act 2014 (PR(S)A 2014)
- The Procurement (Scotland) Regulations 2016 (P(S)R 2016)

Officers must also comply with relevant statutory guidance.

Please see Section 24 for further detail on the thresholds for Higher Value Regulated Procurements and Regulated Procurements.

The thresholds at which the Procurement Laws apply are revised every two years. Procurement processes that involve an anticipated spend above this level are commonly referred to as Higher Value Regulated and “above GPA threshold” contracts and by law must follow the appropriate Procurement Journey.

The relevant Procurement Laws take precedence over the Contract Standing Orders and any local procurement arrangements put in place must comply with these. If a procurement officer is unsure of the regulations that apply, they should contact the Procurement Manager in the first instance.

Every procurement process commenced, and subsequent contract entered into, or order placed by or on behalf of the Council must comply fully with the requirements of relevant Procurement Laws and these Contract Standing Orders.

As a Devolved Scottish Authority, the Council will not be subject to the new Procurement Act 2023 other than when calling off under a UK Framework established under the new Act.

22. Ethics and Standards

Dealings with suppliers and tenderers must always be transparent, honest and fair.

Any conflict of interest which arises in relation to an officer’s official duty and their personal interest must be resolved so that any decision taken is impartial and any conflicted individual is not able to influence decisions made.

The actions of officers should not be, nor give the impression that they have or may have been, influenced by a gift or consideration to show favour or disfavour to any person or organisation. Officers must be aware of their responsibilities when procuring and that there are criminal penalties for offences which are specified in the Bribery Act 2010.

Should any officer become aware of any potential contraventions of the Bribery Act 2010, they should report their concerns to their Head of Service and the Monitoring Officer. Further guidance on the 2010 Act is available from the Council's Governance Service.

All officers should note that where Procurement Laws apply, under the Scottish Regulations, should any potential supplier have been convicted of offences under the 2010 Act (or previous legislation), or similar offences of dishonesty or fraud, then it is highly likely that they will require to be de-selected from the procurement process. Should this matter arise in the course of a procurement process, the procurement officer should seek guidance from Resources and Governance in the first instance.

Officers must keep sufficient records to establish an audit trail to demonstrate that ethical standards have been observed throughout any procurement process.

23. TUPE – Transfer of Undertakings (Protection of Employment) Regulations 2006

The TUPE Regulations apply to contracts in respect of the provision of services where there is an organised grouping of employees whose principal purpose is carrying out that service on behalf of the Council (whether directly or through a contractor) and either:

- The service ceases to be provided by the current contractor and is instead carried out by a subsequent contractor
- The service ceases to be provided by the current contractor and is instead taken on by the Council
- The service ceases to be provided directly by the Council and is put out to tender through a procurement process

In practice, where there is an incumbent service provider, should the service provision change, the assigned employees of that service provider would transfer to the incoming provider because of the TUPE Regulations. As a result, during the procurement process, some bidders may qualify their tenders in respect of any liabilities that may arise under the TUPE Regulations, which may cause the Procurement Officer difficulties in evaluating tenders.

The TUPE Regulations also apply in circumstances where an external service is proposed to cease and be delivered through In-house Provision. Contract Responsible Officers should also consider the application of TUPE where service contracts are put out to tender for the first time.

Should a Procurement Officer identify that the TUPE Regulations may apply during a procurement exercise or through proposals for In-house Provision, the officer should seek guidance from Resources and Governance in the first instance. Contract Responsible Officers should refer to the Procurement Journey for further detailed guidance.

The Terms and Conditions of Contract should also oblige the service provider to provide the Council with certain employee information for publication by the Council in any retender to enable bidders to consider whether TUPE may apply and where this is the case, make appropriate provision in their bid price for any transferring employee(s).

24. Estimated Contract Value and Aggregation

The calculation of the estimated value of a procurement within the meaning of Contract Standing Orders shall be based on the total amount payable for the duration of the contract, including any form of option and any renewals of the contract.

For Regulated Procurements this calculation is exclusive of VAT. For Higher Value Regulated Procurements this figure should include VAT.

The choice of the method used to calculate the estimated value of a procurement may not be made with the intention of excluding it from the scope of the Contract Standing Orders or Procurement Laws. No works project or entirety of supplies and/or services may be subdivided with the effect of preventing its coming within the scope of the Contract Standing Orders, unless justified by objective reasons.

This estimate must be valid at the moment at which the call for competition is sent, or, in cases where a notice is not published, at the moment at which the Council commences the contract award procedure.

Regarding framework agreements, the value to be taken into consideration shall be the maximum estimated value of all the contracts envisaged for the total term of the framework agreement. Maximum spend should be included in the contract notice or the procurement documents.

Contract Responsible Officers are required to consider and include the value of similar requirements in other parts of the Council when calculating an estimated contract value. There are no exceptions to the application of the aggregation rule, which is the obligation to take account of requirements across the Council when working out the total estimated value of the contract and which Procurement Laws apply.

Contract Responsible Officers shall ensure there is sufficient financial provision within approved budgets for the estimated expenditure prior to inviting any offers or accepting any contract for supplies, services or works.

No tender shall be invited, offer made or accepted for any contract for the supply of goods or materials, the provision of services or for the execution of works unless there is sufficient financial provision within approved budgets for the net estimated expenditure.

25. Thresholds

The following thresholds determine the procurement process to be adopted according to the value of the contract. Detailed advice is available within the Procurement Journey.

Scottish Ministers revise the threshold values of the Procurement Laws relevant to Higher Value Regulated Procurements every two years to ensure alignment with the World Trade Organisation's (WTO) Government Procurement Agreement (GPA). Threshold values were updated and are relevant to procurement exercises commencing on or after 1 January 2024.

Procurement Value Bands and Required Processes

- **Less than £10,000** No formal procurement route required. Best Value must be demonstrated (e.g. three competitive quotes). See Section 6.
- **£10,000 – £49,999** Applies to Supplies, Services, and Works (including Health & Social Care contracts where the decision is taken to seek quotes). Procurement Journey Route 1 applies. Use Request for Quick Quote via Public Contracts Scotland. Notice published only on Public Contracts Scotland (not Find a Tender).
- **£50,000 – £173,100 (excl. VAT)** Equivalent to £207,720 (incl. VAT). Applies to Supplies and Services – Regulated Procurement. Procurement Journey Route 2 applies. Use Invitation to Tender (ITT) for Goods & Services. Notice published only on Public Contracts Scotland.
- **£50,000 – £4,327,500(excl. VAT)** Equivalent to £5,193,000 (incl. VAT). Applies to Works – Regulated Procurement. Procurement Journey Route applies (see Construction Procurement Handbooks). Use ITT for Works. Notice published only on Public Contracts Scotland.
- **Health and Social Care Contracts – £50,000 to £552,949.99 (excl. VAT)** Equivalent to £663,539.99 (incl. VAT). Regulated Procurement applies. Procurement Journey Route 2 and Care & Support Services guidance apply. Use ITT for Goods & Services. Notice published only on Public Contracts Scotland.
- **From £173,100 (excl. VAT)** Equivalent to £207,720 (incl. VAT). Applies to Supplies and Services – Higher Value Regulated Procurement. Procurement Journey Route 3 applies. Use ITT for Goods & Services. Notice published on Public Contracts Scotland and transmitted to Find a Tender.
- **From £4,327,500 (excl. VAT)** Equivalent to £5,193,000 (incl. VAT). Applies to Works – Higher Value Regulated Procurement. Procurement Journey Route applies (see Construction Procurement Handbooks). Use ITT for Works. Notice published on Public Contracts Scotland and transmitted to Find a Tender.

- **Social and Other Specific Services (including Health & Social Care and Education) – From £552,950 (excl. VAT)** Equivalent to £663,540 (incl. VAT). Higher Value Regulated Procurement applies. Procurement Journey guidance applies (see Care & Support Services and Light Touch Regime). Use ITT for Goods & Services. Notice published on Public Contracts Scotland and transmitted to Find a Tender.

Additional Notes

- From 1 January 2022, VAT must be included when calculating the estimated contract value to determine whether GPA thresholds are met or exceeded.
- Values will be updated again from 1 January 2028.
- Health and Social Care Contracts are defined by specific CPV codes listed in the Procurement (Scotland) Regulations 2016.
- Works contracts are treated as Regulated Procurements from £50,000 onward by internal Council decision.

26. Contract – Commodity Strategy

Officers are required to select a contract commodity strategy for all procurements that are over £50,000 in value over the lifetime of the requirement.

A commodity/service strategy is effectively a purchasing plan for a particular good or service. It documents the sourcing strategy and should not be confused with a Procurement Strategy.

There will be several potential options applicable to any commodity/service. These will vary with the type, size and complexity of the requirement. In all cases, a “Do Nothing” option should be considered as a benchmark.

The commodity/service strategy should include a summary of options that clearly details the:

- Benefits
- Costs
- Risks

These should demonstrate compliance with any legal obligations and help select the required strategy option to be pursued in the short, medium and long term.

Estimated benefits within a commodity/service area can be obtained from:

- Benchmarking
- Market testing
- Market trends
- Past discounts

- Previous experience

Market research should not be limited to sales literature from potential suppliers. It may include references, trade journals or third-party company market research. Identification and assessment of “softer” benefits should be undertaken at this stage.

The contract strategy should consider a range of commercial and technical considerations, including:

- Contract switching costs
- Supplier switching costs
- Resource investment
- Communications and roll-out
- Cost of going to tender

The recommended option must satisfactorily meet the requirements, be affordable and viable.

The contract commodity strategy should also note:

- Whether there is an in-house provider capable of undertaking the work
- The most appropriate price/quality ratio to deliver best value
- Past experience of sourcing and contractual difficulties with similar goods, services or works
- The measurement of effective contract performance
- Contract management resource requirements, roles and responsibilities

27. Procurement Governance Documents

27.1 Procurement Form 1

All proposed procurement requirements with a value of over £10,000 over the lifetime of the requirement will require a Procurement Form 1.

This RFQ/tender authorisation must be completed and submitted by the Contract Responsible Officer before any tender process commences or to take part in any national or collaborative contract. This includes SLA arrangements with other local authorities.

Services must ensure Form 1 approval is in place prior to submission and any advertising or contact with potential suppliers.

27.2 Procurement Form 2

The Contract Award Report (Procurement Form 2) must be completed and submitted after the tender evaluation has been completed but before the contract is awarded or before a direct award can be made.

Services must ensure the contract award has been approved by an officer with the appropriate level of delegated authority as set out in Section 37 prior to submitting the Form 2 to the Service Accountant for financial sign-off and then to Legal Services or Procurement, who will issue a tender award letter where appropriate.

No contract can be awarded to the successful supplier until all documentation has been completed, and an official purchase order has been transmitted to the supplier.

28. Procurement Procedure Selection

The Procurement Laws applying to Higher Value Regulated Procurements specify the procurement procedures that can be undertaken. The Restricted Procedure and the Open Procedure are the most used procedures.

When undertaking any Open Procedure, it may be advisable to seek to limit the number of proposals submitted by identifying minimum criteria applicable to the contract and/or setting out the number to be taken forward and how the decision will be taken (e.g. the first five ranked).

28.1 Open Procedure

If research has shown there are few bidders who could meet the Council's needs, the Open Procedure may be used. This is where all bidders receive the full Invitation to Tender documents via Public Contracts Scotland and all tenders received are evaluated.

The Open Procedure can be used freely in any circumstances and for any type of contract. Any interested bidder may submit a tender.

In some cases, it can be beneficial to choose a procedure where the number of bidders can be reduced at the selection stage based on their capability and capacity, especially if the Council does not have enough resources (such as time) to conduct a full Open Procedure.

Using the Open Procedure will depend upon the number of tenders expected and the nature of the evaluation criteria. If many tenders are anticipated, the evaluation may be time-consuming.

28.2 Restricted Procedure

The Restricted Procedure should be used for procurement exercises where market analysis has shown many bidders could meet the Council's needs and bid.

The Restricted Procedure is a two-stage process:

- The first stage is a selection process, where bidders' capability, capacity and experience to perform the contract is assessed using the Single Procurement Document (SPD) to shortlist bidders.
- The second stage is when the Invitation to Tender is issued, and bids are assessed to determine the Most Economically Advantageous Tender.

Applicants who have been unsuccessful at the SPD stage must be notified of their rejection at that time.

It may be advisable to limit the number of applicants to be taken forward by, for example, stating the first five ranked will be taken forward. The minimum number to be taken forward in a Restricted Procedure is five.

Contract Responsible Officers must ensure that the criteria used to assess SPDs (selection criteria) and to evaluate subsequent proposals (evaluation criteria) are different. The same criteria are not permitted to be considered and applied twice within one procurement process.

28.3 Alternative Procedures

Other procedures are available within the Procurement Laws relevant to Higher Value Regulated Procurements:

- Competitive Dialogue
- Competitive Procedure with Negotiation
- Innovation Partnership
- Negotiated Procedure without Prior Publication

These are significantly more complex and can only be applied in specific circumstances. Guidance must be sought from the Procurement Manager on the use of these procedures due to the very strict rules relating to their use.

29. Timescales

All tender processes subject to the Procurement Laws relevant to Higher Value Regulated Procurements are required to comply with the statutory timescales, which must be followed on all occasions. These are minimum timescales and should be used as a starting point for planning an appropriate timetable, having regard to the complexity of the requirement and ensuring that the supplier has sufficient time to submit a considered response.

Different timescales will apply according to the nature and complexity of the purchase being made. A complex requirement that falls below the Higher Value Regulated Procurement GPA thresholds should be subject to a minimum 21-day period between advertisement and return.

Pre-planning is critical for all purchasing. In considering how much time is required to undertake a procurement exercise, time and resource must be allocated to drafting the technical and legal documents in advance of advertising the opportunity.

The need for any internal procedural requirements such as approvals should also be factored into the procurement timeline.

30. Framework Agreements

A framework agreement is an agreement or other arrangement between one or more contracting authorities and one or more economic operators which establishes the terms (the terms as to price and, where appropriate, quantity) under which the economic operator will enter into one or more contracts with a contracting authority during the period in which the framework agreement applies.

Frameworks may include national agreements such as those put in place by Scotland Excel, Scottish Procurement, Crown Commercial Service, Scottish Procurement Alliance, ESPO and other local authorities. This list is not exhaustive. These must not be speculative frameworks. See SPPN 03/2017 for further information: <https://www.gov.scot/publications/speculative-framework-agreements-sppn-032017/>

It is important that officers can demonstrate that any framework option represents best value to the Council and considers the Council's key priorities.

Call-off terms and conditions vary widely from framework to framework. The Procurement Owner is responsible for ensuring that the terms and conditions are appropriate and shall consult with the Procurement Manager.

Framework agreements may be awarded to a sole supplier or to three or more suppliers. Where multiple suppliers are awarded a place on the contract, the process of selecting one supplier at the point of purchase should be clearly stated in the tender documentation.

Framework agreements are generally limited to a maximum contract period of four years. Further guidance is available from the Procurement Journey.

Procurement governance documents will be required and approved for any purchases that are disaggregated but cumulatively more than the thresholds noted in Section 24.

A completed and signed Form 1 will be required prior to using a framework, including any contact with framework suppliers. A completed and signed Form 2 will be needed prior to making any contract award under a framework.

Please also see Section 10 for collaborative procurement.

As a Devolved Scottish Authority, the Council will not be subject to the new Procurement Act 2023 other than when calling off under a UK framework established under the new Act. In such cases, officers should comply with and follow the procedures and processes set out in the UK framework documents.

31. Contract Monitoring and Reporting – Proposed Procurement Requirement

All contracts, regardless of value, must be supported with a Clackmannanshire Council official Purchase Order Number generated from the Council Financial

System (TechnologyOne). Orders must be provided to the supplier in advance of any work, goods or services being provided to the Council. All orders and internal requisitions must be approved by an authorised signatory. Orders must not be issued upon receipt of an invoice.

All contracts with a value more than £1,000 must be set out in writing.

Contracts or orders with a value below £1,000 may be agreed verbally but must be supported with a Clackmannanshire Council Purchase Order Number within two working days. This enables Heads of Service to demonstrate what has been agreed between the parties in the event of legal proceedings or audit.

All proposed procurement requirements with a value of over £10,000 over the lifetime of the requirement will require a Procurement Form 1. This RFQ/tender authorisation must be completed and submitted by the Contract Responsible Officer before any tender process commences or to take part in any national or collaborative contract. This includes SLA arrangements with other local authorities. Services must ensure Form 1 approval is in place prior to submission and any advertising or contact with potential suppliers.

A Procurement Form 2 – Contract Award Report must be completed and submitted after the tender evaluation has been completed and before the contract is awarded or before a direct award can be made. Services must obtain approval prior to submission to the Service Accountant for financial sign-off and then to Legal Services or Procurement, who will issue a tender award letter.

No contract should be entered into with the successful supplier until all documentation has been completed and an official Purchase Order and award letter have been sent to the supplier.

32. Advertising

All contract opportunities valued at over £10,000 are required to be advertised through Public Contracts Scotland as detailed in the Procurement Journey and Section 24 – Thresholds. This includes seeking quotes from a framework.

Contract opportunities below £10,000 in value should be considered for advertising where this will support the Council's key priorities and policy objectives and where the exercise can demonstrate best value. As detailed in the Procurement Journey and Section 6, three quotes are required for all requirements above £1,000 and below £10,000.

33. Issuing Documentation

Prior to issuing a tender document, a unique reference number should be sought from the Procurement Manager. This is part of the Form 1 process. This reference must be noted on all documentation and advertisements. The Procurement Manager shall maintain a list of tenders for administrative and audit purposes.

All tender documentation must be sent out using the Public Contracts Scotland portal, including quotes from national frameworks.

No documentation can be sent to bidders without the express agreement of the Procurement Manager, who will issue these on behalf of the Contract Responsible Officer.

34. Return and Opening of Tenders and Quotes

The Public Contracts Scotland tender Post-box must be used as an online submission facility to allow the officer to receive responses from suppliers electronically in a secure environment.

Responses are submitted through the portal and held in the secure Post-box until the deadline for responses has expired. Two nominated officers then unlock the Post-box to access the submissions.

The Post-box can be used for receipt of completed tender documents in an open or single-stage procedure or completed SPDs in a restricted or dual-stage procedure. It can also be used for the second stage in a restricted dual-stage procedure.

A full audit trail is kept of all access to the Post-box, and a complete record of all supplier submissions is stored.

Where exceptional circumstances require an email submission, completed proposals must be returned to the Procurement Manager by the closing time and date. The tender proposals sent by email must not be opened until after the closing time and date as per the notice in Public Contracts Scotland.

At least two authorised officers must be included on the authorised openers in Public Contracts Scotland.

No officer who has a direct or indirect pecuniary interest in the contract may open any of the proposals or be involved in any stage of the evaluation process or award.

Proposals found to be unsigned or incomplete by an organisation may not be considered.

35. Late Submission of Tenders and Quotes Proposals

Any proposal received after the date and time for receipt of proposals may be considered only if the Council is satisfied that there is a technical issue with the Public Contracts Scotland system beyond the control of the tenderer and this has been approved by the Strategic Director of Partnership and Performance or the Procurement Manager. Otherwise, late bids must be rejected.

Any proposal received after the opening procedure has commenced or any proposal rejected under any of the provisions above will be immediately returned to the bidder by the Strategic Director of Partnership and Performance or Procurement Manager.

Proposals may be opened to ascertain the name and contact details of the bidder, but no further details can be recorded or disclosed.

36. Confidentiality of Tenders and Quotes Proposals

During the period between the opening of proposals and/or tenders and the award of a contract, all details of the proposals submitted must remain secret and be treated as confidential. It is the responsibility of those involved in the process to ensure complete confidentiality during this period.

Where the contract value requires Council approval, the evaluation panel may disclose the outcome of the exercise to the appropriate Strategic Director that the contractual requirement relates to. All reports must be put to Council as exempt/confidential reports under Section 50JA(2) (Exempt Information) of the Local Government (Scotland) Act 1973.

The requirement for confidentiality during this period applies to any external agent acting on behalf of the Council. Failure to meet the confidentiality requirements will be reported to the Strategic Director of Partnership and Performance and/or the appropriate committee and may result in disciplinary action.

Please refer to Section 16 for the position in relation to disclosure following the award of the contract.

37. Evaluation of Tenders and Quotes Proposals

Evaluation of proposals must be based on quality and whole life cost or total acquisition cost. Contracts cannot be awarded on 100% price.

Evaluation must be completed using the agreed price/quality weighting and individual criteria. These must be agreed during the planning stage and detailed in procurement advertisements and documentation.

All criteria, sub-criteria and scoring must be detailed individually so that all bidders know what scores are attached to each criteria area. Under no circumstances should Contract Responsible Officers use sub-criteria that have not been published to evaluate proposals.

Weighting and criteria must not be changed once agreed and published and must be applied consistently across all proposals.

Records must be kept of positive and negative reasons for scores, and a record made of the characteristics of each bid, as agreed by the evaluation panel, together with a summary of the relative advantages of the proposal to be accepted. The evaluation sheets must be signed and dated by all members of the evaluation panel.

This information will be sent to rejected bidders once a contract has been awarded (or prior to the implementation of the standstill period where applicable).

The model used to evaluate proposals must be a Prior Overall Weighting (POW) model to ensure accountability in the event of a challenge or complaint. Officers should use the source documentation in the Procurement Journey to ensure they are using the most recent guidance and templates.

Where pre-qualification is required, the evaluation criteria used to pre-qualify applicants must not be used again in the final evaluation of proposals. Questions within an SPD should relate to previous experience of candidates in delivering similar goods/services, and the criteria used to award contracts should relate to project delivery requirements only.

Contract Responsible Officers should consult the Procurement Journey or the Procurement Manager if in any doubt.

For the evaluation of construction and civil engineering proposals, in addition to the above, the appropriate discipline principles, guidance and industry good practice in force at the time of the requirement must be used.

38. Procurement Reports

Tender and procurement reports will be submitted to the Council, Chief Executive or Strategic Directors as appropriate.

Where deemed appropriate and/or requested, a report can be referred and/or submitted to an alternative committee or to the full Council.

39. Approval to Accept & Award Contracts

For the purposes of this section, the contract value is the total value of the contract, excluding VAT, over the entire lifetime of the contract. Requirements cannot be split into contracts of lower value, disaggregated or reduced in duration to avoid the need to advertise, conduct a full tender exercise, or circumvent delegated authority or the law.

Approval to accept a proposal or tender can only be given in accordance with the following levels of delegated authority:

- Chief Executive: Unlimited
- Strategic Directors: Unlimited
- Chief Finance Officer (S95): Unlimited
- Chief Officer (Clackmannanshire & Stirling Health & Social Care Partnership): Up to £1,500,000
- Chief Officers (including Statutory Roles): Up to £449,999
- Senior Service Manager (Grade 12): Up to £149,999

The Tender Accepted and Contract Award Report (Form 2) must be completed and approved by the relevant delegated officer. Once completed, it must be sent to the delegated officer as noted above.

No contract can be awarded before approval to accept has been sought and obtained.

All tender award letters will be issued by Legal Services and signed by an appropriate authoriser.

Abnormally Low Tenders or Errors

If tenders appear to be abnormally low, the Council may choose to reject those tenders. The Council will not exclude an abnormally low tender automatically without first asking for an explanation and allowing for a verification procedure. This may include:

- Economics of the manufacturing process or construction method
- Technical solutions or favourable conditions available to the tenderer
- Originality of the works, supplies or services proposed

The tender can only be rejected where the explanations and evidence do not satisfactorily account for the low price or costs proposed. The Procurement Manager must be consulted prior to rejecting an abnormally low tender.

Errors in Computation

If errors of arithmetic are discovered in a tender, the tenderer will be allowed, with approval from the Monitoring Officer and before acceptance:

- To confirm the offer without amendments or withdraw the offer
- To amend the tender to correct genuine arithmetic errors only

All Invitations to Tender must state which method will be used for dealing with errors.

Post-Tender Clarification

A full written record must be kept by the relevant Head of Service of all contracts where post-tender clarification has been used. The record must include:

- Justification for authorising clarification
- Nature and outcome of the clarification
- Any additional terms agreed

This record must be retained with the original tender.

40. Mandatory Standstill Period

A mandatory standstill period must be applied to all contract award procedures for tenders with a total aggregated contract value that requires a Route 3 Procurement.

There will be a minimum period of 15 days between the date that unsuccessful bidders receive notification that their bid has not been accepted and the date that the contract is to commence. The Procurement Manager and/or the Strategic Director of Partnership and Performance may extend this period on cause shown.

All letters will be issued by Legal Services.

For every contract, the lead Procurement Officer shall draw up a written report which shall include at least the following:

- The name and address of the contracting authority, the subject matter and value of the contract or framework agreement
- The names of the successful candidates or tenderers and the reasons for their selection
- The names of the candidates or tenderers rejected and the reasons for their rejection
- The reasons for the rejection of tenders found to be abnormally low
- The name of the successful tenderer and the reasons why their tender was selected and, if known, the share of the contract or framework agreement which the successful tenderer intends to subcontract to third parties
- If necessary, the reasons why the contracting authority has decided not to award a contract or framework agreement

A full debrief will be offered to any bidder or tenderer and, if requested, will be provided within the prescribed timescales.

Under no circumstances should contracts commence within the standstill period.

41. Contract Monitoring and Reporting – Contract Award

Once the approval to accept has been received and the contract has been awarded, a signed letter issued by Legal Services, complete with a signed purchase order, must be completed. The contract will then be awarded in the Public Contracts Scotland Portal.

42. Tender File

On completion of the tender process, all related documentation must be filed in a master file and retained for a period appropriate to the contract.

43. The Use of Standard Documents

Standard documents for the procurement of goods and services are maintained and updated by the Procurement Manager. Contract Responsible Officers are required to

use the source documentation in the Procurement Journey to ensure that they are always using the most recent guidance and templates for each procurement process undertaken.

This includes the source SPD in the Procurement Journey. Contract Responsible Officers should also use the Council's standard Form ITTs and RFQs, which include mandatory clauses that protect the Council.

Failure to use source documentation or Council standard templates risks the procurement process being terminated and recommenced using the correct documentation.

Where the contract subject matter is a contract for works, Contract Responsible Officers should use the most up-to-date standard form building contracts issued by the Scottish Building Contracts Committee, with any Schedule of Amendments as appropriate for the type of contract. Officers should consult with Legal Services if they are unsure of the relevant contract terms.

Not all the Contract Terms and Conditions contained within the standard documents may be appropriate to the contract requirement and some may therefore be deleted. This is subject to Sections 44, 45 and 46 and subject to consultation with Legal Services and the Procurement Manager.

The Contract Terms and Conditions contained within the standard documents may be insufficient for the contract requirement and may be added to or developed further, subject to consultation with Legal Services and the Procurement Manager.

Guidance and advice on the appropriateness of the Contract Terms and Conditions should be sought from Legal Services and/or the Procurement Manager prior to any amendment being made.

44. Pre-Qualification Questionnaires (PQQs) or SPD

Where a dual-stage or restricted process is being applied, the standard PQQ or SPD should be used as the template for the selection stage.

Officers are required to use the source documentation in the Procurement Journey and Public Contracts Scotland to ensure they are always using the most recent guidance and templates for each procurement process undertaken.

Failure to follow the standard process will result in the procurement process being terminated and recommenced using the correct documentation.

45. Standard Quote Documentation – Goods and Services

All quotes must include:

- Clackmannanshire Council Contract Terms and Conditions
- Specification Schedules
- Pricing Schedules
- Commercially Confidential Information Schedules
- Quotation Completion Details

46. Standard Tender Documentation – Goods and Services

All tenders must include:

- Instructions to Tenderers
- Clackmannanshire Council Contract Terms and Conditions
- Form of Tender
- Certificate of non-collusion
- Method Statements
- Delivery Schedules
- Specification Schedules
- Specification Compliance Schedules
- Pricing Schedules
- Commercially Confidential Information Schedules
- Returned Documentation Checklist

Where an open or single-stage procedure is being conducted, a Tender Questionnaire is also to be included in the tender pack.

Officers are required to use the source documentation in the Procurement Journey to ensure they are always using the most recent guidance and templates for each procurement process undertaken.

47. Mandatory Clauses

The following clauses from the standard Contract Terms and Conditions may not be deleted and must be included in all contracts for goods and services and all works contracts:

- No assignation of the contract without the prior written consent of the Council
- No sub-contracting of the contract without the written consent of the Council

- Cancellation if gratuities, inducements or any other type of consideration in relation to the contract are offered to an employee, member or agent of the Council
- Compliance with all relevant legislation, including:
 - Equality Act 2010 and the Public Sector Equality Duty
 - Any Act, rule, or statutory instrument amending or replacing the above
 - Any other statute or regulation to prevent unlawful discrimination
 - Health & Safety regulations
- Termination
- Indemnity and Insurance
- Confidentiality and Freedom of Information (Scotland) Act 2002
- Data Protection
- TUPE
- Disputes procedure
- Authorised Users
- Governing Law
- Set Aside Provisions
- Employee Vetting, typically Enhanced Disclosure or PVG where appropriate and permitted by law. Alternatively, the Procurement Officer must be satisfied that candidates have a sufficient risk appraisal system to ensure compliance with PVG legislation.

Where any contract provides for the appointment of a nominated sub-contractor, the responsible Council Officer or agent must ensure that the contract also includes:

- The main contractor is subject to the same payment terms as the Council
- The main contractor is responsible for ensuring that the nominated sub-contractor meets the same requirements as the main contractor, including:
 - Mandatory clauses identified in these Contract Standing Orders
 - Support for the local economy and promotion of local employment
 - Payment of the Living Wage
 - Vetting to Enhanced Disclosure level where required and permitted by law
 - Consideration of the impact on children's rights and wellbeing, where relevant

- Inclusion of child-friendly service delivery standards where services are accessed by or affect children

All procurement activity must comply with the Equality Act 2010, the Public Sector Equality Duty, and the Fairer Scotland Duty. Officers must ensure that equality considerations are embedded throughout the procurement lifecycle, including planning, specification, evaluation and contract management.

All procurement exercises must be screened to determine whether an Equality Impact Assessment (EQIA) is required. An EQIA must be conducted where the procurement involves:

- High-value contracts (as defined by the Contract Standing Orders)
- Services that may impact individuals with protected characteristics
- Any change in policy, service delivery or access to services

48. Tender Documentation – Works Contracts

Guidance and advice on works documentation must be sought from Legal Services before any procurement process commences.

Only Legal Officers of the Council acting in accordance with the Scheme of Delegation may negotiate and agree the terms and conditions for leases and/or the sale or purchase of land or heritable property.

49. Supplier Contract Terms and Conditions

Officers are not permitted to enter contracts on the supplier's contract terms and conditions and should take care not to inadvertently do so.

In the rare event that a supplier refuses to accept the Council's contract terms and conditions or proposes amendments to the Council's terms or any standard form building contract, any such amendments or the supplier's terms must be referred to Legal Services for review and possible approval.

50. Contracts Register

A Council Contracts Register will be maintained to provide a central point for contract information.

All contracts awarded on behalf of the Council with a total aggregated value more than £10,000 will be recorded in the Council Contracts Register using information contained in Public Contracts Scotland.

Services and the member of staff responsible for completion of the tender will be responsible for ensuring recording and submission to the Procurement Manager of the final actual contract cost compared to the original estimated contract cost, detailing the reasons and justification for any overspend or underspend.

51. Contract Monitoring and Management

Contracts awarded by or on behalf of the Council must be monitored and managed throughout the contract term to ensure delivery of the contracted goods, services or works in accordance with the contract requirement and standard.

Contract monitoring and management arrangements agreed during the procurement process will be determined by the complexity and risk associated with the contract, conditions in the relevant market, and must consider both financial and quality aspects.

Further details are available in the Procurement Journey.

52. Direct Contract Awards

A contract which is a Regulated Procurement or Higher Value Regulated Procurement can only be awarded directly without competition if the direct award can be justified under the relevant law. Examples include:

- Where, for technical reasons, only one supplier can deliver the contract
- Where compatibility with existing systems or infrastructure is essential
- Where urgency or unforeseen circumstances prevent a competitive process
- Where intellectual property or exclusive rights restrict competition

The reporting process for excluded contracts set out in Section 7 must be undertaken and completed before the contract can be awarded.

53. Contract Extensions

A contract extension affects the duration and potentially the value of the contract.

A contract can only be extended in certain defined circumstances:

- The right to extend must have been referred to in the initial procurement advert for the contract and the terms and conditions of the contract must contemplate such an extension
- The extension is a permissible modification in terms of Section 54
- The extension, in procurement law terms, constitutes a permissible and justifiable direct award under Section 52

In all other cases, a contract extension is not permitted.

This section does not apply to contracts for the execution of works where extensions of time are expressly contained in standard industry form terms and conditions of contract.

The relevant Head of Service must obtain advice from the Procurement Manager in consultation with Legal Services and the Chief Financial Officer prior to extending any contract and must follow the process for direct awards set out in Section 52.

54. Contract Variations / Modification

Allowing and regulating contract variations should be a standard feature of all contracts. Although a supplier may request a contract variation, the ability to vary the contract must be approved, managed and controlled by the Council.

Variations must be agreed in writing through a formal amendment of the contract. This is also known as a “change management process” or “change control procedure.”

No one involved in managing the contract may agree to informal amendments on their own. All potential variations must be fully explored with the appropriate contract managers and stakeholders. Any agreed variations must follow the change management process.

The reasons for the variation must be clearly documented. Variations must not be used to mask poor performance or serious underlying problems. The impact on timeframes, deliverables and value for money must be assessed. If the effects are significant, senior management and other stakeholders must be consulted.

Contract managers must ensure variations do not significantly change the contract requirement or substantial parts of the original transaction. This is referred to as a “substantial modification” under the Public Contracts (Scotland) Regulations 2015. If this is the case, a new procurement exercise must be undertaken.

Permissible grounds for modification include:

- Where the modification has been clearly provided for in the original procurement documents
- To provide for additional works, services or supplies where a change of contractor cannot be made for reasons such as interoperability or duplication of cost, provided the price increase does not exceed 50% of the initial contract value and a notice is published
- Where the modification arises due to unforeseen circumstances, again subject to the 50% cap and publication
- Where a new contractor replaces the initial contractor due to takeover or merger, provided the new contractor meets the original selection criteria
- Where modifications are not substantial, meaning:
 - The modification does not render the contract materially different in character
 - The modification does not alter the economic balance in favour of the contractor
 - The modification would not have attracted different bidders or changed the outcome of the original procurement

- Where the value of all modifications is collectively below the relevant threshold and below 10% of the initial contract value for services/supplies or 15% for works

Modifications must not alter the overall nature of the contract. These rules apply equally to frameworks.

Officers must report the variation in accordance with Section 55 and may be required to commence a new procurement.

55. Early Termination of Contract

For tenders that meet or exceed the Higher Value Regulated Procurement thresholds, tender documents must include an early termination clause to permit effect to be given to Regulation 73 of the Public Contracts (Scotland) Regulations 2015. The Council must have the right to terminate the contract or framework early where:

- The contract or framework has been subject to such substantial modification that a new procurement exercise is required
- The tenderer was in a situation constituting a ground for exclusion at the time of award and should have been excluded
- A court or tribunal has declared that the contract or framework should not have been awarded due to a serious breach of the 2015 Regulations

If the relevant Head of Service decides that an operational contract with no significant implications for the Council and no significant unplanned budgetary impact requires early termination, they must obtain prior written approval from the Procurement Manager in consultation with Legal Services and the Chief Financial Officer.

In all other cases, including those with significant implications, the Head of Service must submit a report explaining the circumstances and implications to the appropriate Committee, in consultation with the Procurement Manager, Legal Services and the Chief Financial Officer.

56. Reporting and Authorisation

The factors and projected financial impact must be reported to the Head of Service, who must then report to:

- Strategic Director of Partnership and Performance
- Chief Finance Officer (S95)
- Procurement Manager
- Internal Audit
- Audit Committee

Where additional contract costs more than £50,000 are identified (other than authorised variations), details must be reported to the Strategic Director of Partnership and Performance, Chief Finance Officer (S95) and Procurement Manager.

Where additional costs exceed 10% of the original contract value, the Chair of the Audit Committee must also be informed.

Subject to the provisions of the contract, every extra or variation must be evidenced and authorised in writing by the Council Officer responsible for the contract or the agent acting on behalf of the Council.

Every extra or variation must be reported to the Strategic Director if the cumulative effect results in an increase or decrease to the original contract price of 7% or £25,000, whichever is greater.

On completion of the contract, a final summary of the extras or variations must be recorded and submitted to Internal Audit.

57. Bids for External Contracts Authorisation

Where a Service within the Council wishes to submit a bid to provide supplies, services or works to a third party and the proposal:

- Has a total aggregated value more than £50,000, and/or
- Will utilise more than 10% of the total staff resources within that Service

Before any bid can be submitted to a third party:

- Approval to proceed must be sought from the Strategic Director of Partnership and Performance
- Any conditions attached by the third party to the submission of bids must be referred to and approved by Legal Services

All such proposals submitted to third parties must follow relevant industry good practice and adhere to guidance issued by the appropriate Strategic Director.

Appendix 1: Exception Procedure Process

Contract Standing Orders apply to all contracts entered by Procurement Officers. In some circumstances, however, exceptions may be granted. The approach to this is outlined below. All requests must be made in writing, identifying the grounds for the request. Approvals must also be recorded in writing and given prior to the action being taken.

Stage 1 – Submission of Exception Request The originating officer submits the Exception Request to the Strategic Director of Partnership and Performance, in consultation with the Chief Finance Officer (S95) and the Procurement Manager.

- Submission is lodged with Strategic Director of Partnership and Performance and copied to all parties above
- Requires Head of Service or Director sign-off
- Consideration should be given to pre-submission discussions with Legal, Finance and Procurement
- Failure to supply sufficient information may delay Stage 2

Stage 2 – Consideration of Exception Request the Strategic Director of Partnership and Performance, in consultation with the Chief Finance Officer (S95) and the Procurement Manager, reviews the request.

- Further information may be requested
- Decision may be delayed until additional information is received
- Target timescale: 10 working days from initial receipt or from receipt of additional information

Stage 3 – Request for Further Information (if applicable)

- Routed back to originating officer via Strategic Director of Partnership and Performance
- Additional information should be provided promptly
- Must be in report format and contain sufficient detail to enable completion of the Exception Response

Stage 4 – Final Review and Conditions the Strategic Director of Partnership and Performance, in consultation with the Chief Finance Officer (S95) and the Procurement Manager, completes the final comparison of Legal and Finance positions.

- Failure to agree results in refusal of the Exception Request
- Conditions may be attached to any approval to reflect Legal and Finance positions

Stage 5 – Decision Notification the Strategic Director of Partnership and Performance issues the decision to the originating officer.

- Decision is logged and copied to the originator
- Decision is conclusive
- If refused, a copy of the Exception Request Decision Notice must be included in any Council report seeking approval

Appendix 2: Exception Request Decision Notice

The following checklist is used to assess Exception Requests:

1. Does the Exception Request require a suspension or revocation of Contract Standing Orders?
2. Does the Exception Request contain a paragraph detailing the reasons for the request?
3. Do the reasons justify the proposed action?
4. Has a competitive exercise been carried out? If so, how many organisations were invited to tender?
5. Is there an in-house provider capable of undertaking the work?
6. If so, were they offered the opportunity and what was their response?
7. Does the Exception Request advise of the consequences of not approving the request, provide alternatives and cost implications?
8. Are the relevant Contract Standing Orders properly quoted?
9. Is the proposed contractor included in an approved list of contractors (e.g. a trade creditor in the financial system)?
10. Is there an acknowledged public sector agreement (e.g. Scottish Procurement, Scotland Excel, or a collaborative procurement agreement)?
11. Is there evidence that a financial and technical appraisal of the proposed contractor has been carried out?
12. Is there an approved budget for the proposal, and where is this recorded?
13. Where tenders have been received, is the project within budget?
14. Is the contract above the GPA threshold for goods, services or works?
15. Has the originator demonstrated that the proposals represent value for money?
16. Have all necessary consents for the project been obtained?

Appendix 2

Summary of Key Changes – Contract Standing Orders (2015/2021 to 2026)

Purpose of Report

To provide Audit & Scrutiny Committee with a clear summary of the substantive changes made between the previous Contract Standing Orders (effective June 2015, revised October 2021) and the revised Contract Standing Orders effective from **19 March 2026**, highlighting governance, control, compliance and assurance implications.

1. Background

The Council's Contract Standing Orders (CSOs) have been comprehensively reviewed and updated to reflect:

- Legislative change (post-EU Exit and updates to Scottish procurement law)
- Updated national procurement policy and statutory guidance
- Changes to Council governance, roles and committees
- Expanded expectations around transparency, sustainability, Fair Work, children's rights and ethical procurement
- Modernisation of procurement processes and documentation

The revised CSOs represent a **full restatement and expansion**, rather than a limited amendment of the previous version.

2. High-Level Overview of Changes

Area	Summary of Change
Overall structure	CSOs significantly expanded and restructured (from c.54 sections to 57 sections plus expanded appendices)
Legal framework	EU-focused references removed; replaced with up-to-date Scottish legislative framework
Governance & assurance	Strengthened reporting, approval, audit trail and committee oversight requirements
Procurement practice	Greater procedural detail and alignment with Procurement Journey
Social value	Substantial new emphasis on Fair Work First, community benefits, sustainability and children's rights
Transparency	Enhanced publication, reporting and FOI obligations

3. Significant Structural Changes

3.1 Expansion and Re-ordering of Sections

- The revised CSOs follow a **more logical end-to-end procurement lifecycle**, from planning to contract management and termination.
- Several areas previously covered briefly have been **expanded into standalone sections** (e.g. governance documents, contract variations, early termination).

3.2 Removal of Obsolete EU Content

- Dedicated sections on **EU Directives and State Aid** have been removed.
- Content has been replaced with explicit reference to **Scottish procurement legislation** and post-EU Exit arrangements.

4. Key Policy and Procedural Changes (By Theme)

4.1 Legislative & Compliance Framework

What's changed

- References now fully aligned to:
 - Procurement Reform (Scotland) Act 2014
 - Public Contracts (Scotland) Regulations 2015
 - Procurement (Scotland) Regulations 2016
- Explicit clarification that the Council is **not subject to the Procurement Act 2023**, except when calling off UK frameworks.

Audit & Scrutiny relevance

- Reduces legal ambiguity.
- Improves confidence that CSOs reflect current statutory obligations.

4.2 Date of Commencement & Authority

What's changed

- New effective date: **19 March 2026**.
- Clearer articulation that CSOs remain in force until explicitly superseded.

Impact

- Clear demarcation for audit purposes between legacy and new arrangements.

4.3 Procurement Governance & Documentation

What's changed

- Clearer and stronger requirements for:
 - Procurement Form 1 (pre-procurement authority)
 - Procurement Form 2 (contract award approval)
- Clearer linkage between delegated authority and procurement actions.
- Explicit prohibition on awarding contracts prior to proper approvals.

Improvement over baseline

- Governance requirements previously embedded within narrative are now explicit, structured and enforceable.

4.4 Thresholds and Financial Controls

What's changed

- Thresholds updated to reflect:
 - Revised GPA values
 - VAT inclusion rules from January 2022
- Works treated as **regulated procurement from £50,000** by Council decision.
- Clarification that aggregation rules apply across the whole Council.

Audit & Scrutiny relevance

- Stronger controls to prevent:
 - Contract splitting
 - Circumvention of competition or delegated authority

4.5 Exemptions and Exception Reporting

What's changed

- Much clearer definition of:
 - What is truly exempt
 - What requires a formal exception

- Stronger requirement for **retrospective reporting to Audit & Scrutiny Committee**.
- Central register of exemptions maintained by Strategic Director of Partnership & Performance.
- Clear link to Annual Procurement Report.

Impact

- Increased transparency and auditability of non-competitive awards.

4.6 Audit, Reporting & Committee Oversight

What's changed

- Strengthened requirements to notify:
 - Internal Audit
 - Audit Committee
 - Chair of Audit Committee (for material variances and cost escalation)
- Expanded reporting requirements for:
 - Contract variations
 - Extensions
 - Early termination
 - Additional costs

Key enhancement

- Audit & Scrutiny role is now **explicitly embedded** in CSOs.

4.7 Ethical, Social & Community Considerations (Major Expansion Area)

New or substantially enhanced content

- Fair Work First (including Real Living Wage)
- Community benefits (mandatory consideration for $\geq £4m$ procurements)
- Sustainable Procurement Duty
- Equality Impact Assessments (EQIA)
- Children's rights and UNCRC compliance (new statutory requirement)
- Ethical standards, conflicts of interest and bribery controls

Change from baseline

- Previously high-level policy intent → now mandatory procedural expectations.

4.8 Contract Management, Variations & Termination

What's changed

- Dedicated, expanded sections on:
 - Contract variations / modification (with legal tests)
 - Extensions
 - Early termination
- Clear thresholds and escalation points for reporting.
- Alignment with case law principles on “substantial modification”.

Audit relevance

- Reduces risk of unlawful contract amendment.
- Improves post-award control, which was weaker in the baseline document.

5. Sections Removed or Subsumed

Baseline Section	Status in Revised CSOs
EU Directives	Removed / obsolete
State Aid	Removed / replaced by subsidy control references
Case Law (standalone)	Integrated into procedural requirements
Council Policy Objectives	Reframed as “Key Priorities, Values & Outcomes”

6. Overall Assessment

In summary, the 2026 Contract Standing Orders:

- Represent a **substantial modernisation**, not a minor revision
- Strengthen governance, transparency and audit assurance
- Better reflect current Scottish legislative and policy expectations
- Provide clearer lines of accountability and committee oversight
- Reduce legal and financial risk to the Council

7. Conclusion

The revised Contract Standing Orders materially enhance the Council's control environment for procurement activity. They provide stronger assurance to Audit &

Scrutiny Committee that procurement decisions are lawful, transparent, well-governed and aligned with the Council's wider strategic priorities.