

Highland & Western Isles Valuation Joint Board

Contract Standing Orders



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CONTRACT STANDING ORDERS

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INTRODUCTION

1. EXECUTIVE SUMMARY

The purpose of these Orders is to implement within the Board the requirements of legislation and the fundamental principles of the Treaty of Rome applicable to the award of contracts.

These are

Freedom of movement of goods
Freedom of establishment
Freedom to provide services

With their derived principles being:

Equal treatment
Non-discrimination
Mutual recognition
Proportionality
Transparency

They recognise the rights of anyone interested in providing goods, works or services to or on behalf of the Board to be treated in accordance with these principles at all levels of expenditure, which are applicable at all levels of financial commitment.

They also aim to achieve best value for the Board by establishing common compliance and application of standards throughout the Board's operations so that the Board's reputation as a responsible, competent, and fair contracting authority is upheld and enhanced.

Responsibility and accountability for all procurement within the Board lies with the Assessor, who has authority to determine all matters relating to procurement subject to compliance with legal requirements. The Assessor may delegate areas of procurement to other officers of the Board.

Requirements for services, supplies and works with a value of £5,000 or more, shall be subject to requests for competitive quotations, unless they are covered by one or more of the exceptions or exemptions noted below. Requirements for services, or supplies with a value of £50,000 or more, and requirement for works with a value of £2,000,000 shall be subject to formal tendering procedures unless they are covered by one or more of the exceptions or exemptions noted below. These Prescribed Sums are set out at Annex 1 to these Orders. Quotations are dealt with entirely by authorised staff within the Assessor's Office and will not involve the Procurement Team. Formal tenders for Services and Supplies are managed by the Procurement Team who will agree a project plan with the Assessor in each case. It will be the responsibility of all participants to adhere to agreed timescales and it will not be the responsibility of one part of the team to make up time should another part of the team not do so.

Staff authorised to manage quotations must take part in the Highland Council's level 1 Procurement training course or equivalent. Staff authorised to carry out tasks

relating to formal tenders as part of their function must take part in level 1 and level 2 training or equivalent.

Advertising will take place as follows as a minimum:

- Requirements with a value in excess of £50,000 but less than £164,176 (Supplies and Services) or £4,104,394 (Works): Board's own Website via the Public Procurement Portal: www.publiccontractsscotland.gov.uk
- Requirements with a value in excess of £164,176 (Supplies and Services) or £4,104,394 (Works): Official Journal of the European Union (first) and the Board's own Website, both via the Public Procurement Portal

The single point of publication for these notices will be the Corporate Procurement Lead Officer who shall be a member of the Board's Management Team. This means that all Contracts subject to formal tendering procedures must be advertised via the Corporate Procurement Lead Officer, and that where quotation level requirements are advertised on a voluntary basis, the same requirement applies.

No transactions or commitments made or costs incurred may be split to avoid the necessity of appropriate calls for competition.

In all commitments made in the commissioning of consultancy services, regardless of value, Statements of Requirement and Terms of Engagement shall be documented in every case.

Tendering for goods, services, and works within the Board shall be carried out by electronic means unless specific agreement has been made with the Assessor that they shall be dealt with manually.

Procurement tasks shall be undertaken only by empowered staff, each of whom must have specific delegation allocated to them using the form at Annex 2 of these Orders.

Procurement via collaborative contracts such as those awarded by Procurement Scotland, or Crown Commercial Services may be undertaken without further competition depending on the particular procedure recommended by the Agency concerned at the discretion of the Assessor. In all cases periodic 'value for money' checks involving other alternatives should be carried out as such agencies do not guarantee or always offer best value.

Breaches of these Orders shall be passed to Internal Audit for investigation as potential disciplinary matters, and shall be summarised and reported quarterly to the Assessor.

PROJECT CHECKLIST

No tendering exercise may be commenced until the following issues have been considered and approved by the Assessor.

	Yes/No
Aims and Objectives	
Existing Contract	
Business Case	
Budgetary Provision	
Estimated Value Over 4 Years	
Governance	
Officers Have Appropriate Qualification, Skills, Experience And Training	
Procurement Authorisation Forms	
Project Has Relevant Procurement, Technical, Financial And Legal Input/Advice	
Independent Decision Point Reviews For Innovative/Irregular Projects	
Evaluation Panel Members	
Tender Board Members	
Regulatory & Licensing	
TUPE	
Construction, Design And Management Regulations	
VOSA, SEPA, HSE Etc. To be made available as early in the project as possible	
Planning Permission/Building Warrant to be made available as early in the project as possible	
Strategic/Community Benefits	
Sourcing Strategy/Lotting Strategy	
Specification	
Equality Impact Assessment Screening	
Socio-Economic Sustainability	
Environmental Sustainability	
Commercial	
Risks And Contingency Plans	
Selection And ITT Evaluation Criteria	
Contract Terms And Conditions	
Financial Vetting	
Pricing And Price Control	
Contract Management, MI And KPIs	
Ordering and Invoicing	

CONTEXT

1.0 Commencement

- 1.1 These Orders (“the Contract Standing Orders”) shall apply and have effect from 18th April 2016 and shall be subject to annual review.

2.0 Definitions

- 2.1 In these Contract Standing Orders, the following words and expressions shall have the meanings hereinafter assigned to them, that is to say:-

“The 1973 Act” means the Local Government (Scotland) Act 1973;

“Authorised” and “Authorised Staff” refers to those staff whose job role involves carrying out any of the tasks set out in the Procurement Authorisation Form at Annex 2, and who have been properly trained and qualified to do so. Such staff must have a Procurement Authorisation form approved by their line manager and the Assessor as part of their staff induction.

“Building construction works contracts” means Works contracts, as defined by the Public Contracts (Scotland) Regulations 2015, included as Annex 8, but excluding infrastructure construction contracts.

“Contract” means an agreement between the Board and another legal entity having the following characteristics: offer and acceptance/agreement, intention to form legal relationships, capacity (of the parties to enter such an agreement) and legality.

“Contracting Authority” In the context of these orders, the Highland & Western Isles Valuation Joint Board is the Contracting Authority in all Contracts into which the Board or any part of the Board enters. There are no legal personalities within the Board other than the Board itself, and as such no individual office of the Board has the legal capacity to enter independently into a Contract. All Contracts let and purchases made are therefore made by or on behalf of the Board as a whole.

“Consultancy” and “Consultant” means respectively the practice of giving expert advice, support, or opinion within a given field and any person or organisation providing any such service to, for, or on behalf of the Board.

“Corporate Procurement Lead Officer” in the context of the advertising, arrangement and management of competitive tendering and quotation exercises and award of contracts includes any properly authorised member of the Board’s staff.

“EU Regulated Procurement” means any procurement project covered by the Public Contracts (Scotland) Regulations 2015, the Public Concessions (Scotland) Regulations 2016, or the Public Utilities (Scotland) Regulations 2016.

“European Single Procurement Document (ESPD)” means the selection tool which replaces the Selection Questionnaire, as set out in Scottish Procurement Policy note 1/2016. It is based on the concept of self-certification and is aimed at reducing bureaucracy and making public contracts more accessible to SMEs.

“Infrastructure construction works contracts” means Works contracts, as defined by the Public Contracts (Scotland) Regulations 2015, included at Annex 8, but excludes contracts which relate to the construction, maintenance or modification of buildings insulated in whole or in part.

“Most Economically Advantageous Tender” means that giving maximum value for money over the lifetime of the contract for the goods, services or works delivered thereby, taking into account all material matters, visible or invisible, including but not being limited to quality and price. This is the only acceptable means of deciding upon which tenderer should be awarded a contract in terms of the public procurement regulations, and for the avoidance of doubt no contract may be awarded on the basis of lowest price alone. It must be noted that in assessing the most economically advantageous tender, the costs taken into account must be material to the purposes of the contract. In other words, the cost must bear upon a significant measurable characteristic of the requirement being procured.

“Partners” are defined as any organisations with which the Board works to deliver its objectives, with a formal agreement of roles (contract, funding agreement, Service Level Agreement etc.). Partnerships are defined by the agreements between the partners.¹

“Partnering” means a form of collaborative working between partners and in contrast with traditional ‘arm’s length’ procurement and contract-management approaches, partnering is characterised by a greater degree of openness, communication, mutual trust and sharing information. There may often be a long-term relationship which requires clear roles and responsibilities for decision making, and effective performance reporting. Entering into such agreements is subject to the same rules of competition as other forms of agreement.

“Prescribed Sum” means the value of the Sum set out at Annex 1 to these orders.

“Procurement Officer” means a member of staff empowered to award contracts on behalf of the Assessor in accordance with Annex 2 of these orders.

“Procurement Lead Officer” means the member of staff who shall be responsible for the management and integrity of each procurement project or the parts of wider projects involving procurement work. That officer must not be drawn from the technical project team or be the project sponsor themselves. No action may be taken in respect of any procurement project or the procurement aspect of any wider project and no external communication bearing upon the conduct or operation of the project may be issued except with the express authority of the Procurement Lead Officer. That officer must be a member the Chartered Institute of Purchasing and Supply (MCIPS) or have and maintain sufficient experience, skills, and training as to be able to acquire membership upon application to the Chartered Institute and must evidence this to the satisfaction of the Corporate Procurement Lead Officer. Alternatively they may be supervised by such a person but in such cases final decisions relating to the conduct of such work shall be a matter for that supervisor.

“Procurement SRO”: for the purposes of these Orders includes the Corporate Procurement Lead Officer acting on his behalf. The Procurement SRO shall be the Assessor who has authority to determine all matters relating to procurement subject

¹ HM Treasury, “Managing Risks With Delivery Partners” 2004

to compliance with legal requirements. The Assessor may delegate areas of procurement to other officers of the Board.

“Project Manager” means the member of staff appointed by the Assessor to deliver the project.

“Quality” in this context means fitness for purpose as defined in the Specification or Statement of Requirements.

“Regulated Procurement” means any procurement project covered by the terms of the Procurement Reform (Scotland) Act 2014, the Procurement (Scotland) Regulations 2016, and their associated Statutory Guidances.

“Services” means any of the activities set out at Annex 6.

“Supplies” means purchase, lease, rental or hire purchase (with or without option to buy) of products. A public contract having as its object the supply of products and which also covers, as an incidental matter, siting and installation operations shall be considered to be a ‘public supply contract’.

“Service Provider”, “Supplier” and “Contractor” shall have the meanings ascribed to them as set out in the Public Contracts (Scotland) Regulations 2015 <http://www.legislation.gov.uk/ssi/2015/446/contents/made>

“Sponsor” or “Sponsoring Director” means the owner of and budget holder for the requirement as distinct from the Procurement Officer carrying out commercial action on their behalf. The Project Sponsor/Project Director is the client side representative who acts as a single focal point of contact with the project manager for the day-to-day management of the interests of the client organisation.

“Works” A ‘work’ means the outcome of building or civil engineering works taken as a whole which is sufficient of itself to fulfil an economic or technical function. A list of these is also set out at Annex 6.

3.0 Extent and Introduction

These Contract Standing Orders are made under section 81 of the 1973 Act. They shall apply to the entering into by the Board, or on its behalf, of contracts for the supply, or lease, of Supplies, Services, and Works, as the case may be, unless classified as being exemptions or exceptions from these Contract Standing Orders. For the avoidance of doubt, these orders do apply to PFI/PPP, Joint Venture, and similar contracts.

They are written in accordance with the terms of the Scottish Government Procurement Policy Handbook, and Scottish Procurement Policy Notes, and shall be implemented by application of the standards and procedures set out in the Highland Council’s Procurement Manual as published at the time of the requirement arising.

It is not the purpose of these Orders to duplicate all the provisions of the Directive, the various Regulations, the Act, or the Statutory Guidances related thereto. The Board recognises that other competitive routes than those set out in these Orders may from time to time be available to the Board such as the Competitive Dialogue,

Competitive Procedure with Negotiation, and Innovation Partnership. These will be rare, and where they occur, the generality of these orders shall apply, however reference will be made in each case to the specific Regulation(s) applicable to the project in determining the particular governance thereof.

Policy responsibility for the governance of commercial business shall rest with the Assessor.

Subject to the requirements of the Board's Standing Orders, European Community Law and legislation, the under-noted powers to enter into commercial arrangements on behalf of the Board shall be held by the Assessor.

- a) agreement of specifications with user Services
- b) construction of contract terms and conditions
- c) development of sourcing and contracting strategies
- d) agreement of procurement budget heads
- e) selection of tenderers
- f) opening and evaluation of tenders
- g) award of contracts and framework arrangements, and dynamic purchasing systems including participation in collaborative contracts awarded by others
- h) appointment of consultants

Note that in these Orders, actions and responsibilities assigned to the Assessor will be executed on his behalf by the Corporate Procurement Lead Officer, who for the avoidance of doubt shall also be the Proper Officer for the purpose of awarding and signing procurement contracts, variations, extensions, novation orders and terminations and on behalf of the Board. This authority may be delegated, but only by means of a properly executed procurement authorisation form (see Annex 2).

4.0 EU, UK and Scottish Legislation

These Contract Standing Orders will be operated in such manner as will comply in all respects with the requirements of European Community Law, United Kingdom and Scottish legislation. There should be no conflict between these Orders and the legislation, but for the avoidance of doubt, in all cases EU law takes precedence, followed by UK and Scots law. For the avoidance of doubt, this shall include but not be limited to The Procurement Reform (Scotland) Act 2014, The Public Contracts (Scotland) Act 2015, the Public Contracts & Public Utilities (Scotland) Regulations 2015, The Procurement (Scotland) Regulations 2016, The Climate Change (Scotland) Act 2009, the Equality Act 2010, The Freedom of Information (Scotland) Act 2002, The Data Protection Act 1998, and The Bribery Act 2011.

5.0 Breach of Contract Standing Orders

Any breach or non-compliance with these Contract Standing Orders must on discovery be reported immediately to the Head of Audit and Risk Management acting on behalf of the Assessor. The Head of Audit and Risk Management may undertake any necessary investigation and report the findings to the Assessor and disciplinary proceedings may result from such reports.

6.0 Conflicts of Interest

Staff involved in procurement activities are responsible for making themselves aware of the Board's Code of Conduct for Staff:

http://www.highland.gov.uk/downloads/file/6307/code_of_conduct_for_employees

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

CONTRACT STANDING ORDERS – PART 1 APPLICABLE STANDARDS

1 EXEMPTIONS FROM STANDING ORDERS

There will be exempted from the provisions of these Standing Orders:

- (i) All contracts with a total estimated cost not exceeding the Prescribed Sums for quotations set out at Annex 1;
- (ii) Any contract of employment;
- (iii) Any contract excluded under the terms of the Public Contract (Scotland) Regulations 2015 or the Procurement (Scotland) Regulations 2016;
- (iv) Any contract relating to the disposal or lease of land or other capital asset
- (v) Any arrangement in which the Board shall fund an external operator to provide services on a non-contractual basis. In such circumstances the principles of the Following the Public Pound Code shall apply.

2 EXCEPTIONS FROM STANDING ORDERS

Nothing in these Applicable Standards 3 to 16 and Operational Procedures 1 to 15 shall apply:

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

- the extension may be necessary in order to allow for the proper conduct of a competition,

the requirement for extension has been brought about by an unforeseeable circumstance not within the control of the Board

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

Any extension which constitutes a deliberate material variation of the original contract by nature or extent must be the subject of fresh competition.

- (iii) The demand is for the execution of work or the supply of goods, materials or services, certified by the Assessor as being required as an emergency measure so as not to permit the invitation of tenders. “Emergency” means **only** an event which could not reasonably have been foreseen. Each case must be reported to the Assessor and next meeting of the Board; or
- (iv) the work to be executed or the goods, supplies or services to be provided consist of repairs to or the supply of parts for existing proprietary machinery or plant and the Board is bound by the terms of an agreement, by insurance requirements or by the terms of a warranty to use a specified contractor; or
- (v) The contract is for the supply of goods acquired on the Commodities Market.

All instances of such exceptions arising shall be reported to the Board.

3 BUDGETARY PROVISION AND PRECAUTIONARY TENDERING

- (i) The Board’s Financial Regulations make reference to the requirement to control capital and revenue expenditure, and therefore the terms of those Regulations must be implemented in the context of activity covered by these Orders.
- (ii) The Assessor must certify that sufficient funds exist prior to the commencement of any contracting action. If the cost of the requirement is not known when it arises, similar requirements elsewhere may be used as a baseline. Informal consultation with potential providers, without making any commitment, may also be used
- (iii) Prior to the commencement of any commercial action, the Assessor must advise the Procurement Officer conducting the competitive exercise of the associated budget
- (iv) Precautionary formal tendering aimed solely at establishing costs must not take place. The only allowable exception to this is when external funding is anticipated which must be used within the current financial year. In those circumstances tendering in advance of final agreement is acceptable, but the situation must be made clear to all potential bidders.

4 BUSINESS CASES

- (i) Before committing funds to or commencing a project or competition for any commercial arrangement in excess of the threshold for tendering via OJEU (whether advertised there or not) the Assessor must ensure that a business case has been established. This must examine all possibilities for meeting the requirement. It must also show that no other contract which could be used already exists within the Board. In each project a Contract Request Form must be completed by the Assessor before procurement action may commence.

5 DISPENSING WITH COMPETITION

- (i) It is a fundamental principle of Public Sector procurement that purchases should be made as a result of competition.
- (ii) Dispensing with competition at any level of purchase, which may amount to unfair discrimination, is contrary to the provisions of the Treaties of Amsterdam and Rome. Decisions to proceed with a non-competitive purchase above the prescribed sum for the obtaining of quotations, and the justifications for taking them must be recorded, and must only be made within the rules set out in Orders 1 and 2 above.
- (iii) Procurement *via* collaborative contracts such as those awarded by Procurement Scotland, Scotland Excel or the Government Procurement Service may be undertaken without further competition depending on the particular procedure recommended by the Agency concerned at the discretion of the Assessor. In all cases periodic 'value for money' checks involving other alternatives should be carried out as such agencies do not guarantee or always offer best value.
- (iv) Breaking down or disaggregating requirements in order to avoid the necessity of exposing them to competition is contrary to public procurement regulations and must not be entered into under any circumstances.
- (v) For the avoidance of doubt all separate elements or sub-projects within any specific programme relating to a linked set of outcomes or requirements shall be aggregated for the purposes of valuation and exposure to competition. Within such aggregated requirements the overall contract notice may invite bids by element, specialism, geographical area or any other logical and objectively justifiable lot which conforms to the Board's EU Treaty obligations. In any case of doubt the matter will be referred to the Corporate Procurement Lead Officer who will determine the correct application of the principle Aggregation to be applied to the requirements in question.

6 PERIODIC SUPPLIES FRAMEWORK AGREEMENTS AND DYNAMIC PURCHASING SYSTEMS

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

- (ii) Where a contract is for the supply of goods or materials or the provision of services or works by means of a call off contract within a framework agreement which allows for direct award of call-off contracts without further competition, formal tendering shall be carried out only once prior to the commencement of such arrangement.
- (iii) Where Frameworks specify the establishment of contracts via competition between operators in the Framework, this shall be carried out prior to the commencement of each individual call-off.
- (iv) Once awarded, a framework shall remain closed to the admission of new contractors/suppliers/service providers for the lifetime of the Framework.
- (v) Calls for competition must always be made under the terms of a Dynamic Purchasing System where a call-off contract is required.
- (vi) Participation in a Dynamic Purchasing system must remain open to the participation of new entrants during its lifetime, subject to their submission of a compliant tender.

7 AGGREGATION OF DEMAND, LOTTING OF CONTRACTS PARTNERSHIP WORKING AND SHARED SERVICE CONTRACTS

- (i) Where requirements arise in more than one office of the Board, or where requirements are shared between such parts of the Board, then those requirements shall be aggregated for the purposes of procurement, and no part of the Board shall operate independently of any other. In order to establish the value of a contract where no specific value is known, spending on the requirement over a period of four years shall be used as the basis of valuation.
- (ii) Once a Contract or set of Contracts or Framework Agreements for any category of Supply or Services, or Works has been let corporately on behalf of the Board, it shall be a requirement to use the Contract for the provision of the Supplies, Services, or Works concerned where such requirements arise.

The Board shall in respect of each contract, consider how it may be broken down into lots, and where this cannot be done, a justification for not doing so shall appear in the Contract Notice.

- (iii) Partnership arrangements are a valid means of achieving best value through procurement. The establishment of partnerships must be subject to formal competition and must protect the interests of the Board, by the use of formally agreed and written terms and conditions.
- (iv) Consideration should always be given to the possibility of joining with other organisations to tender jointly for similar requirements, and research undertaken prior to commencement as to the feasibility of this approach.
- (v) In accordance with Scottish Government Local Authority Procurement Circular 1/2007, the award of a contract by one contracting authority to another for the provision of services from one to another in return for

payments is subject to the same requirements for competition as any contract award procedure resulting in a contract award to a private sector organisation.

8 FREEDOM OF INFORMATION

- (i) The Board shall treat its commercial and contractual relationships as confidential to the extent allowed by the Freedom of Information (Scotland) Act.
- (ii) To allow for the operation of the requirements of the Freedom of Information (Scotland) Act, the EU Procurement Directives, and the Public Contracts (Scotland) Regulations, a Contracts Register shall be compiled by the Assessor and made publicly available.

9 SPECIFICATIONS

- (i) Formal Specifications or statements of requirement shall be developed either by the Assessor in conjunction with the Procurement Lead Officer for all tendered or quoted requirements for supplies, services (including each and every consultancy requiring competitive action), or works, which will fully define what the Contractor, Supplier, or Service Provider is to provide. Specifications shall not be accepted as final until the Procurement Lead Officer is satisfied as to their commercial viability.

The Assessor must ensure that technical specifications for regulated and EU-regulated procurements give equal access to all interested parties and do not create unjustified obstacles to the opening up of public procurement to competition or encouraging innovation. The Assessor shall specify requirements for award criterion in generic technical or performance terms. Technical specifications must not refer to materials or goods of a specific make or source or to a particular process or trademark, patent, type, origin or means of production which has the effect of favouring or eliminating particular suppliers.

- (ii) Where specifiers produce specifications referring to the specific brand, the Assessor shall ensure that the Procurement Lead Officer or Project Manager returns that specification to the specifier for correction in accordance with this Order.
- (iii) This requirement may only be dispensed with in exceptional circumstances, where the subject of the contract cannot otherwise be described by reference to technical specifications which are sufficiently precise and intelligible to all suppliers. However, where this exception applies, any such references in the technical specification must be accompanied by the words "or equivalent". Where the Assessor does make such a reference, a written justification shall be provided as part of the contract notice or invitation to participate or quote, including an explanation as to why it was not possible to describe the product by reference to technical or performance characteristics.
- (iv) Where technical specifications make reference to technical standards they shall be set out in accordance with the following hierarchy:

- (i) British standards transposing European standards
 - (ii) European technical assessments
 - (iii) Common technical specifications
 - (iv) International standards
 - (v) Other technical reference systems established by the European standardisation bodies.
- (v) In the absence of the above technical standards, public bodies may refer to the following:
- (i) British standards
 - (ii) British technical approvals
 - (iii) British technical specifications relating to the design, calculation and execution of the work or works and use of the project.

In this instance each reference to a technical standard must be accompanied by the words “or equivalent”.

The Assessor may include references in specifications to mandatory technical rules which go beyond the relevant EU standards, provided these are non-discriminatory, without prejudice to the relevant European standards or specifications and otherwise compatible with EU community law.

10 SUSTAINABILITY, COMMUNITY BENEFITS AND WORKFORCE MATTERS

- (i) To the full extent permitted under legislation at the time of undertaking the Contract, and in accordance with the requirements of the Directive, the Regulations, the Board shall take full account of the issues of socio-economic and environmental sustainability wherever they are material to the purposes of the Contract in accordance with the Board’s duties under Regulations and the Climate Change Act 2009.
- (ii) In recognition of the Sustainable Procurement duty, the Board shall in respect of all Regulated and EU Regulated procurement projects, assess the requirement in terms of its potential to derive economic, social, and economic benefits generally; and specifically in terms of the area it serves. The Assessor shall use the Sustainable Procurement Impact Assessment set out at Annex 4 to these Orders to make this determination. The Assessor shall then build into the project appropriate measures covering selection and award, contractual terms, specifications, and key performance indicators aimed at appropriate achievement of community benefits and sustainable procurement impacts
- (iii) The Board pays due regard to the Scottish Government Statutory Guidances in respect of the Sustainable Procurement duty and the achievement of Community Benefits. In general terms however it takes the view that allowing businesses and other groups to determine the best means of achieving these, and using their commercial acumen and innovative skills to compete them, is of greater benefit than specifying exactly what is to be achieved as part of the specification.

- (iv) The Board pays due regard to the Scottish Government Statutory Guidance on addressing fair work practices, including the living wage, in Procurement, <http://www.gov.scot/Topics/Government/Procurement/policy/SPPNSSPANS/policy-notes/2015/SPPN42015><http://www.gov.scot/Topics/Government/Procurement/policy/SPPNSSPANS/policy-notes/2015/SPPN42015>. The Board will implement this to the full extent permitted by statute in all significant contracts for the provision of Services and Works.
- (v) The Board shall comply in its contracting activities with the requirements of the Equality Act 2010

The general duty of compliance applies to public functions which are carried out through procurement as well as those carried out directly by a public authority. Where a contractor is carrying out a public function on behalf of the Board, the legal liability for equality duties in relation to that function remains with the Board which contracts out the function.

Prior to commencement therefore, all contracts with a value requiring tendering via OJEU for the provision of works and/or services shall be subject as a minimum to initial screening for an Equality Impact Assessment (EQIA), and the full production of an EQIA if the initial screening shows that to be appropriate.

Further information on equality legislation, including guidance on the public sector equality duties and how they apply to procurement, can be found on the Equality and Human Rights Commission (EHRC) website: <http://www.equalityhumanrights.com>, and advice should also be sought from the Board's Personnel Advisers.

- (vi) Records of the name and location of each business submitting and expression of interest, and those submitting selection questionnaires and/or formal tenders must have the type of business recorded on the same tracking form (e.g. micro-SME, SME, Social Enterprise, Voluntary Organisation, Women Owned Business, LLP, BME, PLC, UK Multinational, foreign Multinational) in order to accurately monitor engagement with each sector to demonstrate pursuit of Single Outcome Agreement requirements.

11 PROCUREMENT, PROJECT AND CONTRACT RISK AND PROJECT MANAGEMENT

- (i) These orders are written in order to ensure that officials operate in a way that conforms to the requirements of relevant legislation. In this way, the Board and individuals are protected from legal risk as far as can be reasonably foreseen. Individuals who break the rules set out within these orders not only expose the Board to unnecessary risk, but are also themselves exposed in cases where their actions constitute a criminal act.
- (ii) As such, Projects may only be initiated by officers who have the appropriate qualification, skills, experience and training. In addition, it must be ensured that projects have relevant professional procurement, technical, financial, and legal input/advice. Only officers who have had Procurement Authorisation Forms approved and have attended and approved

procurement training course may carry out the tasks listed on the procurement authorisation form.

- (iii) Formal Reviews will be introduced for innovative/irregular projects, or those with a value in excess of £3M over the life of the contract. These will occur at key decision points in each project's lifecycle and will be subject to governance by the major projects board or equivalent. These reviews will be documented, with decisions recorded, and will be undertaken by a team appointed by the major projects board, independent of the project and will thereby give assurance that the project is being delivered effectively and in a controlled manner
- (iv) In respect of a project with a value in excess of the OJEU tendering threshold (whether advertised there or not) the additional advice available in Treasury or OGC Guidance such as that relating to Option Appraisals, Joint Ventures, VFM and Risk Management and Project Models not covered in these orders, the Procurement Manual, Scottish Procurement Directorate documentation or Scottish Futures Trust documentation, must be used as appropriate in Council Projects. Specialists in Capital finance and procurement will be able to provide advice on these matters.

12 REPORTING OF CONTRACTS AND CONTRACT EXPENDITURE

- (i) Prior to the commencement of any formal tender exercise, the Assessor must establish a budget forecast for the requirement and shall certify that sufficient funds exist to cover this in accordance with paragraph 4 of these Orders. The Assessor's written commitment to this level of funding shall be passed to the Corporate Procurement Lead Officer prior to commencement, and this shall be recorded and kept on file within his office.
- (ii) On award of any formally tendered contract, the subject of the contract, successful tenderer, budget figure and actual forecast expenditure shall be reported by the Assessor to the Board.
- (iii) Where the forecast expenditure figure based on received tenders exceeds the budgetary figure, the Assessor must produce a plan for either managing the cost down to the level of budgetary provision or for making additional funds available, and a summary of this plan must also be reported to the Assessor.

13 TRANSFER OF UNDERTAKING (PROTECTION OF EMPLOYMENT) REGULATIONS

- (i) Where the Board seeks to outsource an activity currently provided in house or where the Board is re-tendering a service already provided by an external provider, TUPE will affect any staff who have the essential part of their on-going duties delivering the service immediately before the project commences (staff working intensively on a service for a very short period of time who are not normally engaged in that service will not be affected) and will be entitled to transfer to the new employer under TUPE.
- (ii) Prior to the commencement of any project involving contracting for services, TUPE, guidance must be sought from Board's Personnel, Procurement,

Payroll/Pensions, and Legal Advisors, and appropriate time must be built into the project plan for all necessary staff and Union consultations.

- (iii) The Board is obliged to provide the expected numbers of staff affected to prospective tenderers at commencement of the exercise. At the point of invitations to tender, the information set out in Annex 8 must be provided to prospective tenderers in respect of each staff member affected.
- (iv) This must be clarified by a statement to the effect that final numbers will be provided at least two weeks before contract commencement, but that no liability for the accuracy of this information will be taken prior to that point, and that numbers are subject to variation.
- (v) Any such contracts must contain a provision obliging the incoming service provider to keep records of staff assigned to the service and to provide that information on demand in order to enable re-tendering at the end of the contract.
- (vi) Where the Board is re-tendering a service, it will be necessary firstly to ask the existing service provider whether or not they believe that TUPE applies. If they believe that TUPE will apply, then they must make the information set out at Annex 8 available to potential new providers of the same service on exactly the same basis as the Board did on first outsourcing the activity. They must provide the information to the Board and the Board will issue it with selection/ITT documentation, however the Board will take no liability for this information and must advise bidders that they must verify this information with the existing service provider, who will be legally and contractually bound to reply. Tender documentation must contain a term indemnifying the Board for liability in respect of the reliability of this information.
- (vii) Once contracts are let, either on first outsourcing or at re-tender, the Board has a legal duty to ensure that the incoming service provider acts in accordance with their TUPE obligations.

14 CONTRACTS REGISTER AND TRANSPARENCY

- (i) The Board maintains a contracts register on its website, along with a list of all contracts to be advertised in the following two years which shall be updated quarterly.
- (ii) All contracts with a value of £50,000 or more must be published in the contracts register via the Procurement Team
- (iii) The Board shall maintain a single, centrally managed internal contracts register for the purposes of business planning which shall be managed by the Procurement Team. It shall also maintain a web-based contracts register via the www.publiccontractsscotland.gov.uk portal to meet its statutory requirements of transparency

Each senior officer shall provide a plan to the Assessor no later than 1st November each year showing their plans for contracting activity in the following two calendar years, in order to allow for the publication of the Board's Annual Procurement Strategy and Plan by 31st December of each year.

PART 2 OPERATIONAL PROCEDURES

1 AUTHORITY TO INVITE TENDERS AND PARTICPATE IN PROCUREMENT WORK

- (i) Formal tendering exercises shall be managed by the Corporate Procurement Lead Officer, following receipt of budgetary certification and business case, unless authority to do so is delegated by the Assessor, either in the scheme of delegation, or specifically through authorisation of a Delegated Authority Form (Annex 2). A Contract request form shall be completed by the Assessor prior to commencement in each case <http://ntintra1/fin/purchasing/rules.htm>
- (ii) Tenders in respect of goods or equipment to be supplied by way of a lease arrangement may only be invited following approval from the Assessor.
- (iii) Tenders with a value in excess of the prescribed sums must be dealt with in accordance with the EU Commission Open, Restricted, Negotiated with Competition, Innovation Partnership, or Competitive Dialogue methods. Timescales for these can be found in the Public Contracts (Scotland) Regulations 2015:

http://www.legislation.gov.uk/ssi/2015/446/pdfs/ssi_20150446_en.pdf
- (iv) For the avoidance of doubt no member of the Board staff may undertake any of the work covered by these Orders, including but not being limited to the award of contract at any value unless formally authorised to do so by the Assessor.
- (v) Projects may only be initiated by officers who have the appropriate qualification, skills, experience and training. Procurement tasks may only be undertaken by appropriately trained staff.. In addition, it must be ensured that projects have relevant and appropriate professional technical, financial and legal input/advice. Each project shall have a Procurement Lead Officer who shall be responsible for the management and integrity of each procurement project. No action may be taken in respect of any project and no external communication may be issued except with the express authority of the Procurement Lead Officer.

2 ADVERTISING OF TENDERS

- (i) In order to meet the requirements of the European Commission for adequate publicity of opportunities, advertising will take place as follows as a minimum:
 - a. Requirements with a value in excess of £50,000 but less than £164,176 (Supplies and Services) or in excess of £2,000,000 but less than £4,104,394 (Works): Board's own Website via the Public Procurement Portal: www.publiccontractsscotland.gov.uk
 - b. Requirements with a value equal to or in excess of £164,176 (Supplies and Services) or £4,104,394 (Works): Official Journal of

the European Union (first) and the Board's own Website, both via the Public Procurement Portal

The single point of publication for these notices will be the Board's Corporate Procurement Lead Officer. This means that all Contracts subject to formal tendering procedures must be advertised via the Corporate Procurement Lead Officer, and that where quotation level requirements are advertised on a voluntary basis, the same requirement applies

3 TENDERING VIA RESTRICTED PROCEDURES AND AD-HOC LISTS

- (i) The Assessor may only choose to use ad-hoc list or restricted procedure tendering in accordance with the guidance note at Annex 6 to these Orders. Where this route is chosen, then the requirement shall be advertised in accordance with Part 2 Para 2 of these Orders and expressions of interest invited. After the expiry of the period specified in the public notice, a select list of tenderers will be drawn up from the list of applicants returning either a Single European Procurement Document (ESPD) or (only where this is not available) a questionnaire or providing other evidence of competence as set out in the advertisement. .
- (ii) Where a Restricted procedure is used, the ESPD must be made available electronically and freely to all candidates at the time of publishing the Contract notice, along with all other relevant procurement documentation. In selecting the candidates to be invited to tender, the Assessor must accept the ESPD, consisting of an updated self-declaration as preliminary evidence confirming that the relevant candidate fulfils the conditions necessary for being invited to tender. The Assessor may require candidates and tenderers at any moment during the procedure to submit all or any of the supporting documents where this is necessary to ensure the proper conduct of the procedure.

4 OPEN TENDERING

- (i) Should the Assessor choose to use an open tendering procedure, then the requirement shall be advertised in accordance with Part 2 Para 2 of these Orders, and expressions of interest invited. All persons responding must then be invited to tender as detailed in the Highland Council's Procurement Manual.
- (ii) Where an Open procedure is used, the ESPD must be made available electronically and freely to all potential tenderers at the time of publishing the Contract notice, along with all other relevant procurement documentation. In carrying out appraisal of tenderers, the Assessor must accept the ESPD, consisting of an updated self-declaration as preliminary evidence confirming that the relevant tenderer fulfils the conditions necessary for being invited to tender. The Assessor may require tenderers at any moment during the procedure to submit all or any of the supporting documents where this is necessary to ensure the proper conduct of the procedure.

5 USE OF PERFORMANCE DATA IN TENDERING

- (i) In selection of tenderers, the Board is entitled to ask for completion certificates or other written evidence of the successful completion of project over the previous three years (services and supplies projects) or five years (works) by candidates or tenderers. Where this cannot be provided, it can be requested from relevant Contracting Authorities. The examples cited can be used as proof of expertise but the documentation requested in itself cannot be scored as confirmed by Statutory Guidance currently being drafted in support of the new Regulations: *“This question should not be scored by the buyer, as it is only used to verify any examples provided by the bidder in response to the Experience question.”*
- (ii) As set out in the same Statutory Guidance, potential tenderers can be excluded where they have “shown significant or persistent deficiencies in the performance of a substantive requirement under a previous contract, **which led to early termination of that contract, damages or other comparable sanctions**”. This must be based on objective proof only.
- (iii) Where the Contracting Authority has either obligations or concerns to ensure particular standards relevant to the delivery of a contract on the basis of compliance with Health and Safety or other similar Regulations, the Contracting Authority may either set a minimum relevant and proportionate standard which it must declare: failure of any potential tenderer to meet such a standard would automatically result in the disqualification of that candidate. This may be, for instance, a requirement to have had no HSE, SEPA, VOSA, or Traffic Commissioner’s (as relevant) actions or judgements against the candidate within a specified number of years.
- (iv) Where a potential tenderer is excluded from tendering on the basis of any of the above grounds, the length of that exclusion must be proportionate with the seriousness of the reason for exclusion:
 - a) In the case of a potential tenderer being excluded on the basis of paragraph 6(ii) above, a proportionate period of time must be allowed for during which an excluded potential tenderer may improve or “self-cleanse” their practices and after which potential tenderers may not be automatically excluded only on that basis and must be allowed to take part in competitive tendering on the basis of new information provided by them.
 - b) In the case of a potential tenderer being excluded on the basis of paragraph 6 (iii) above, once the requirements of appropriate regulatory Authorities and any minimum proportionately applied period since the last offence has passed, potential tenderers must be allowed once again to submit tenders.
- (v) Use of performance data or tendering history other than as described above is prohibited.

6 CONTENT OF INVITATIONS TO TENDER

- (i) For each contract the potential tenderers shall be issued a formal invitation to tender, detailing at least the following:
- the nature and purpose of the contract and detailed requirement specification
 - the last date and time when Tenders will be received
 - the return address
 - that the Board is not bound to accept the lowest or any tender
 - whether or not variant bids will be allowed (must be specified in the contract notice)
 - the evaluation criteria to be used in priority order and with any weighting given
 - the draft contract document
 - the no collusion certificate or certificate of bona fide tendering
 - that the Board is subject to the requirements of the Freedom of Information (Scotland) Act, with non-disclosure items form
 - the proposed amendments to contract form
 - that the Board will not accept liability for bid costs.
- (ii) Detailed procedures in respect of the recording, handling, and management of tender documents are shown in the Highland Council's Procurement Manual.
- (iii) The confidentiality of tenders must be respected, and no details may be disclosed to any tenderer regarding any tender other than their own during the conduct of a tender. No officer who has direct or indirect personal pecuniary interest may participate in any tendering procedure, and all such interests must be declared prior to commencement of the tender exercise. All communications with bidders will be passed only through the Procurement Lead Officer. Staff of other organisations shall only be permitted to participate in or act as observers to any part of a procurement project with the express prior authority of the Procurement Lead Officer.

7 SUPPLIER SELECTION AND CONTRACT AWARD CRITERIA

- (i) Prior to the publication of any notice or invitation to tender, the Assessor must decide on the objective evaluation criteria to be used in assessing both Selection questionnaires (if a two stage competition is involved) and tenders. Selection criteria must be set in such a way as to ascertain and select tenderers who are qualified to tender. Contract award criteria must be set in such a way as to ascertain and award contract(s) in favour of the most appropriate tender(s) put forward in response to the invitation in terms of the most economically advantageous tender. The Board must identify the most economically advantageous tender on the basis of the best price-quality ratio, which must be assessed on the basis of criteria linked to the subject matter of the public contract in question and must include the price or cost, using a cost effectiveness approach.
- (ii) These criteria must be weighted according to the needs of the contract, and both the criteria and their weightings must be published in the

selection/tender documentation. In the case of both Regulated and EU Regulated contracts the criteria and weightings must be set out in the Contract notice or Selection and Invitation to Tender. Supplier selection Criteria must include technical capability and compliance with any relevant health and safety or other relevant regulatory body's requirements, payment of social security liabilities, and taxation requirements. Where these criteria are not met, tenders must be rejected. The reasons for using the agreed evaluation criteria must be provided to unsuccessful candidates to tenderers at the time of their application/tender being rejected.

- (iii) Selection questionnaires and tenders must be checked and evaluated only of the basis of the published criteria, and no others, and contract awards must be made solely on the basis of that evaluation. Evaluation matrices are available within part 7 of the procurement manual. Evaluation of Selection questionnaires must be based on assessment of the financial, legal, and technical standing of the potential tenderer only, and tender evaluation criteria must be based on assessment of actual proposals for meeting the requirement. The criteria used for Selection may not be used in tender evaluation and the two sets of criteria must be distinct from each other.

With regards to the use of past performance as a contributing factor in supplier selection, it may only be used in determining technical competence in accordance with the Regulations. Technical competence in terms of whether an economic operator meets any minimum standards of technical or professional ability required of economic operators may be assessed by the contracting authority through various means. These include (but are not limited to) a list of contracts executed over the past five years (or other period proportionate with the value and risk involved) along with certificates of satisfactory completion for the most important of those contracts, indicating in each case-

- a) The value of the consideration received;
- b) When and where the work or works were carried out; and
- c) Specifying whether they were carried out according to the rules of the trade or profession and properly completed;

Where such certificates are not issued by Authorities, bidders may be asked to provide such a list which would then be verified with the Authority(ies) concerned. Such projects could include ones delivered to the Board, but must not be limited to them exclusively. Where a bidder is a new business, an average of all scores in this criterion may be applied to that bidder's submission.

This system may only be used where no governing body exists which will certify an economic operator's competence to provide goods, works, or services relevant to the requirement. Such valid and current certificates issued by regulating bodies must be accepted as evidence of technical competence.

Unless certification by a regulating body is a requirement of operating in the industry relevant to the requirement, bidders must not be asked to demonstrate competence merely by membership of a given institution. Rather they must be required to prove competence and should they choose

to do so through membership of an institute or professional association, must be required to demonstrate objectively why membership denotes competence.

- (iv) Awards of contract may only be made by the Assessor, or staff delegated by him to do so. Where a contract to be awarded is not the lowest priced or most economically advantageous, the view of the relevant Committee (or time not permitting, the Convener or Vice Convener of the Board) must be sought prior to award being made and the reasons for making the award must be reported to the next available meeting of the Board.
- a) Acceptable standards or pass marks relating to the financial, legal, and technical standing of the potential tenderer and supplier evaluation methodologies to be applied in Supplier Selection/Shortlisting/SELECTION assessments must be stated within the appropriate questionnaire. Selection Questionnaires used in open tendering should not be scored for the purpose of ranking and elimination of bidders, but must only be used to determine the suitability or otherwise of each individual bidder.
- (v) Contract Award/Evaluation criteria may include:
- Price (Whole Life Cost including running costs)
 - Quality defined in terms of
 - Technical Merit
 - Aesthetic and Functional Characteristics
 - Environmental Characteristics
 - Effectiveness
 - After Sales Service/Support
 - Technical Assistance/Training
 - Delivery Date/Installation
 - Social Issues
- (vi) For the avoidance of doubt, experience of the supplier/service provider/contractor, shall not be used as a contract award criterion, but only as a means of determining relevant technical expertise at SELECTION stage, and where used for that purpose, must not relate solely to experience of working with the Board but rather to relevant projects in any referent organisation. Requests for evidence of work on relevant projects must not be so prescriptive as to deter competition, nor must they be disproportionate to the risk under consideration. Instead they must be drafted in a way which will encourage competition and wherever reasonable, open up the opportunity to new businesses. References must not be scored and may only be used for the purposes of verifying other information. It is permissible to ask in at selection stage what proportion of a contract a bidder would intend to sub-contract, but only with a view to asking at tender stage how this would be managed, and the response in the questionnaire must not be scored.
- (vii) In all cases, these must be relevant and objectively measurable, and all criteria and their associated weightings must be published either with the contract notice or the invitation to tender. Selection criteria applied to selection must be proportionate to the requirement in hand, i.e. requirements

for turnover and number of staff must not be more restrictive than required for safe delivery of the requirement, and increased scoring should not be given for levels of such metrics over and above that required. Where membership of a particular organisation or qualification is required, the principle of mutual recognition must be upheld, and the words “or equivalent” inserted.

8 MANAGEMENT OF TENDERS

- (i) Competitions must be managed so as to ensure transparency, proportionality, and equality of treatment both a quotation and formal tender level. In respect of both quotations and tenders, the Board's tender/quotation tracking form must be used in full and where a project is not being managed by the Council's Procurement Services Section, must be returned to that section following completion of the competition.
- (ii) Tenderers will be required to return their tenders via the national electronic tendering system (Public Contracts Scotland-Tender (PCST)) or the Tender Post Box in the Public Contracts Scotland Portal, or via the PCS Quick Quote System, or by hard copy only if none of these methods are possible. Tenderers must be advised that open e-mail is not an acceptable method for returning tender documents. Late tenders and late submissions of outline and detailed solutions in Competitive Dialogue procedures may not be considered and if submitted in hard copy must be returned unopened to the tenderer unless tenderers can prove that lateness was caused by factors beyond their control.
- (iii) Upon receipt, all tenders must be receipted and logged, and retained unopened and secure until the advertised time of opening. A record of each tender received, showing the name of the tenderer, date received, date of tender, and value of tender must be retained on file. Where prices are submitted as a schedule, the pricing field on the tender recording form may be endorsed “see attached schedule” and a copy of the tender's pricing pages attached to the form and retained with it. This may be retained electronically.
- (iv) Tenders must be opened at the advertised time of opening or as soon as possible thereafter, simultaneously, by at least three persons, one of whom must be entirely independent of the exercise.
- (v) Tenders which include Bills of Quantities must be checked for arithmetical accuracy, and where inaccuracies are found, the tenderer must be given the opportunity to correct them in accordance to any relevant Code of Practice (e.g. ACE, NEC, ICE or JCT) that is appropriate for the contract. If no particular code applies, the same opportunity must be afforded to such tenderers on the understanding that none of the individual figures constituting the wrongly calculated cost may be altered.

9 EVALUATION PROCEDURES AND AWARD OF CONTRACT

- (i) Contracts must be awarded in accordance with the published criteria and no others.

- (ii) Evaluation will be split and Selection Questionnaires and tenders will be separated so that initial evaluation and scoring will be carried out as follows:
- a) Technical Evaluation: Specifiers/Requirement Owners supported by the Procurement Lead Officer. The technical evaluation panel must consist of at least two staff. The Board's Procurement Lead Officer will not carry out technical evaluation, but will ensure fair, equal, and justified application of the evaluation criteria
 - b) Financial Evaluation: The Procurement Lead Officer supported by Finance as appropriate (e.g. for complex evaluations). See Paragraph (iii) of this section of the Orders
 - c) Contract Evaluation: The Procurement Lead Officer supported by Legal Services as appropriate
 - d) Sustainability Evaluation (where relevant): The Procurement Lead Officer or Specifiers/Requirement Owners supported by Policy as appropriate (e.g. for complex evaluations)

Following initial assessment and individual marking, formal evaluation meetings will be convened by the Procurement Lead Officer, to allow for finalisation of all markings on the same day, or where this is impossible, on consecutive days. Any discrepant marks will be examined to ascertain whether they arose from an erroneous reading of the tender, and once scorers are content with their scores and any reasons for discrepant scores formally recorded, scores will be fed into the evaluation spreadsheet which will generate overall final scoring.

Individual evaluators must provide written justification for each their scores which will be retained on file and which may be produced in evidence should a challenge arise.

- (iii) Clarification questions and responses at both selection and ITT stage will be dealt with by the Procurement Lead Officer only.
- (iv) Tenders may be rejected immediately where they fail to meet the published criteria or where alternative terms and conditions are put forward which are unacceptable to the Board.
- (v) Following evaluation, notification of intention to award a contract and rejection of tenders on the basis of the evaluation criteria must be issued simultaneously, in respect of contracts tendered via OJEU, and a period of at least ten days must elapse between this date and contract commencement in order to allow unsuccessful tenderers to appeal². This must be explained to the successful contractor in the letter of intention to award. In respect of other contracts, the Procurement Lead Officer may issue the notifications of award and rejection immediately. Information relating to the addressees and the information with which they must be provided is set out at regulation 32 of the Public Contracts (Scotland) Regulations 2015.

- (vi) Prior to the award of any formally tendered contract, the Procurement Lead Officer will produce a tender report based on the template set out within the Highland Council's Procurement Manual to these Orders for consideration by the Assessor.
- (vii) In respect of tenders with a value requiring advertising via OJEU, a formal tender board meeting shall be convened chaired by the Assessor, and the tender evaluation panel will present the report and their conclusions to the tender board for consideration.
- (vii) The Assessor may elect to convene tender boards in respect of contracts with lower values, but in all cases the tender report must be accepted by the Assessor before any indication of the Board's intention to award a contract is published.
- (viii) Letters of award in respect of all contracts within the Board's remit will be issued by the Board's Procurement Lead Officer and awarded in accordance with the Scheme of Delegation to the Assessor. Letters of award in respect of contract award via quotations exercises or directly without competition will be copied to the Board's Procurement Lead Officer.

10 RISK MANAGEMENT PROCEDURES

- (i) In each formal tender, the Assessor will assess the level of risk they wish to undertake and that which they wish to transfer to a Contractor when setting the appropriate detail of the specification, the particular terms and conditions which will form the basis of the Contract, levels of insurance, and performance bonds. Risk management tools include the following and further advice can be obtained from Internal Audit and Risk Management.
- (ii) Insurance
 - (a) Employers' Compulsory Liability Insurance (ECLI). The Contractor shall hold employer's liability insurance in respect of staff in accordance with any legal requirement for the time being in force
 - (b) Public Liability and All Risks/Professional Indemnity: The levels of insurance cover required in respect of each project should be set by the Board in the context of the contract and reflecting the level of risk involved to members of the public, the Board's staff, its operational effectiveness, and its financial liabilities. Public Liability insurance shall be not less than the Prescribed Sum
 - (c) Other forms of insurance: It is not possible in these orders to determine exactly what levels of specialist insurance should be required for every area of specialist service provision, however where specialist services are being provided, the Board's Insurance Manager should be consulted when establishing a list of required insurances.
- (iii) Financial Vetting: In respect of Contracts with a value in excess of the prescribed sum, or in respect of contracts which the Assessor views as exposing the Board to excessive risk, a formal financial assessment of the potential tenderers' financial standing shall be undertaken prior to shortlisting

of tenderers or at Selection stage, depending upon the procedure used. In respect of projects with a value in excess of the OJEU tendering threshold, checking of potential contractors' financial standing must be undertaken via the Treasurer to the Board at Selection stage and again prior to final commitment and award of Contract, at the discretion of the Assessor. Minimum standards must be defined by the project team and made known to all bidders at commencement of the advertising of the competition.

- (iv) Liquidated Damages: Dependent on the terms of the contract document, where a breach, default or negligent act on the part of the Contractor result in direct losses to the Board, it will be the duty of the Assessor to take appropriate action. This includes deducting pre-estimated liquidated damages, and making any appropriate retentions where such retentions are agreed as genuine pre-estimates of loss and may not be construed as unenforceable penalty clauses
- (v) Conditions of Contract: These must ensure clear contract arrangements and should contain clauses that will protect the Board against a variety of risks, and sponsors must ensure that the conditions of contract are sufficient to deal with the risks involved in the project/contract
- (vi) Contingency Planning: Depending on the Assessor's assessment of risk, a contingency plan may require to be produced that provides an outline of decisions and considers the programme's effects on public services and ensure that decisions are taken about those for which contingency arrangements will be needed
- (vii) Forms of Security: Where a contract pre-tender estimate exceeds the prescribed sum, or, where the Assessor ascertains that the Board is exposed to sufficient risk, the Assessor shall consider whether the Board should require security for its due performance. He shall either certify that no such security is necessary or will decide what form of security may be appropriate. Forms include Parent Company Guarantees, Escrow Agreements, or Performance Bonds for the due performance of the contract. Note: "On Demand" Bonds are deemed unfair and should not be used. Where bonds are required, they should be from reputable UK based issuers.
- (viii) Staged Payments and Retentions: In accordance with Financial Regulations, no Supplies, Services or Works should be paid for until they have been formally accepted and any required testing carried out. In the event that stage payments are required for each phase of a project, formal acceptance and any required testing of that phase must be complete prior to payment being made.

11 QUOTATIONS

- (i) It is recognised that Quotation level requirements carry less risk than those requiring formal tender.
- (ii) On that basis, Quotations are dealt with entirely within the Assessor's Office and will not involve the Board's Procurement Team.

- (iii) For the avoidance of doubt however, the remaining provisions of these Orders will apply except that:
- a) Contract budgets need not be reported to the Corporate Procurement Lead Officer, nor contracts to Board meetings, and any necessary reduction of costs will be a matter for the Assessor (Part 1 Para 13)
 - b) Quotations shall be managed entirely within the Assessor's Office (Part 2 Para 1)
 - c) Quotations need not be advertised but may be sought via the www.publiccontractsscotland.gov.uk (PCS) portal or from other sources should suitable contractors not be available through that service (Part 2 Para 2)
 - d) Part 2 Paras 3 to 5 shall not apply
 - e) Supplier selection by means of Selection Questionnaires shall not be necessary as the Assessor is deemed to have selected Companies to provide quotations who he or she is willing to vouch as providing suitable competence and professional/financial standing (part 2 Para 7)
 - f) Quotations may be returned via the PCS "Quick Quote" system or in paper copy in envelopes which will remain unopened until expiry of the deadline for submission. Quotations submitted only via PCS "Quick Quote" may be opened by one person: those involving submission of one or more bids via paper copy however must be opened by two (Part 2 Para 8)
 - g) Evaluation of quotations will also take place entirely within the Assessor's Office, however technical and financial aspects should be evaluated separately by different staff
- (iv) Detailed instructions relating to the conduct of Quotation exercises relating to services, supplies, and works are at <http://ntintra1/fin/purchasing/contract-docs/quotation-instructions.pdf>

12 CONTRACT DOCUMENTS

- (i) Every contract subject to these Orders shall be in writing in an approved form, and shall specify all the applicable terms and conditions, drawn from the Board's standard terms and conditions of contract or other specialist or professional bodies' terms and conditions as appropriate including a statement to the effect that:
- (a) Those terms and conditions shall apply, and that no others shall apply unless issued as a formal variation by the Board, and;
 - (b) that the Contract constitutes the entire agreement between the Parties relating to the subject matter of the Contract and supersedes all prior negotiations, representations and undertakings, whether written or oral, except that such Condition shall not exclude liability in respect of any fraudulent misrepresentation.
- (ii) Where external bodies' standard forms of Contract are used as a basis (e.g. Joint Construction Tribunal (JCT), Association of Consulting Engineers (ACE), New Engineering Contract (NEC) etc.) the Assessor must demonstrate that sufficient supplementary terms and conditions are

introduced so as to describe clearly the entire relationship between the Parties and to eliminate doubt. Such conditions must be drawn from the Council's set of Corporate terms and conditions and the resulting contract shall not open the Council to a level of risk higher than that covered by the Council's own Corporate Conditions.

13 CONTRACTUAL KEY PERFORMANCE INDICATORS

- (i) Contracts must be managed in order to ensure that contractors/service providers/suppliers execute their contracts correctly and in full. Each contractor/service provider/supplier will therefore be required to complete and return a regular performance report based on the template contained in the Board's standard contractual document.
- (ii) The specific Key Performance Indicators used must be linked to the specification/statement of requirements, and the frequency of reporting must be based on the assessed level of risk involved in the contract. In all cases however, performance levels in respect of the payment of sub-contractors and sub-sub-contractors must be included, and where the delivery of community benefits forms part of the contract, these must be reported at least annually.

14 TERMINATION AND VARIATION OF CONTRACTS

- (i) No contract may be terminated, or materially varied, on behalf of the Board without the prior approval of the Assessor.
- (ii) No contract may be varied away from its advertised value, scope, requirement or nature without a fresh call for competition being issued unless:
 - (a) The proposed variation was specifically allowed for in the initial call for competition or
 - (b) The variation modifies the contract to less than a 50% change in its originally advertised value or scope or
 - (c) a new contractor replaces one to which the contracting authority had initially awarded the contract or framework as a consequence of complete or partial succession into the position of the initial contractor, following corporate restructuring, including takeover, merger, acquisition or insolvency, by another economic operator that fulfils the criteria for qualitative selection initially established, provided that this does not entail other substantial modifications to the contract or framework and is not aimed at circumventing the application of this Order; and
 - (d) where all of the following conditions are fulfilled:

- (e)
 - 1. the need for modification has been brought about by circumstances which a diligent contracting authority could not have foreseen;
 - 2. the modification does not alter the overall nature of the contract or framework;
 - 3. any increase in price does not exceed 50% of the initial contract value or framework agreement

15 ENGAGEMENT OF CONSULTANTS

- (i) Consultancy is subject to the full rigour of public procurement regulations. In all cases a formal Statement of Requirements and Terms of Engagement must be developed, and in all cases requiring the conduct of quotation or tender exercises, a formal Statement of Requirements and Terms of Engagement must be agreed by the Assessor prior to the engagement of the Consultant. Where it is likely that a former employee of the Board may be interested in undertaking the work, then in addition to the safeguards outlined in these Standing Orders, quotations or formal tenders shall be invited regardless of contract value. No contract shall be awarded to a former employee in receipt of a pension without the specific approval of the Assessor and the Board's Pension Advisors
- (ii) It will be a condition of the engagement of the service of any architect, engineer, surveyor or other consultant who is to be responsible to the Board for the supervision of a contract on its behalf, that in relation to that contract they will:
 - (a) Comply with these Contract Standing Orders as though they were an official of the Board;
 - (b) at any time during the carrying out of the contract, produce to the Assessor on request, all relevant records or copies maintained in relation to the contract; and
 - (c.) on completion of a contract, transmit appropriate records or copies to the Assessor.

ANNEX 1
CONTRACT STANDING ORDERS
PRESCRIBED SUMS:

1	Exemption limit for contracting using formal tendering (Services and Supplies).	(Below) 50,000
2	Exemption limit for contracting using formal tendering (Works)	2,000,000
3	Exemption Limit for contracting as per the Public Contracts (Scotland) Regulations 2015 (Social and Other Specific Services, as per Schedule 3 of the Regulations)	625,050
4	Exemption Limit for contracting as per the Procurement reform (Scotland) Act 2014 (Social and Other Specific Services, as per Schedule 3 of the Regulations)	50,000
5	For the purposes of the Procurement Reform (Scotland) Act, threshold at which contracts shall be considered “major” (Services, Supplies, and Works)	4,000,000
6	Exemption limit for contract using quotations (services, supplies and works)	(Below) 5,000
7	Exemption limit for financial vetting	(Below) 500,000
8	Exemption limit for leases to be approved by the Assessor	(Below) 100,000
9	Contract limit for performance bonds	(Over) 500,000
10	EU tendering threshold in respect of goods and services	164,176
11	EU tendering threshold in respect of works	4,104,394
12	Minimum value for employers’ liability insurance	5,000,000
13	Minimum value for public liability insurance	5,000,000
14	Minimum value for professional indemnity insurance (professional services and consultancy only)	1,000,000

Annex 2

CONTRACT STANDING ORDERS ASSESSOR DELEGATED AUTHORITY TO PARTICIPATE IN PROCUREMENT TASKS
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It shall be a condition of exercising the undernoted duties that each Officer entitled to do so shall have this form completed and authorised by the Assessor prior to doing so.

OFFICER'S NAME:				TITLE:			
SERVICE:		SECTION:		LOCATION/ AREA:			
Contract and/or any Value Limits to which Authority extends :							
Date Authorisation Limited Until:							
Works (Y/N) : (requires CDM training)				Supplies and All Services (Y/N):			

PLEASE COMPLETE BY TICKING THE RELEVANT BOXES BELOW:

ACTIVITY: QUOTATIONS (UP TO THE PRESCRIBED SUM)	
Administration of Quotation Procedures	
Draw up Specifications and Statements of Requirements	
Utilise Standard Templates to Create Quotation Documents	
Prepare Lists of Prospective Suppliers	
Award Contracts at Less Than Formal Tender Value	
ACTIVITY: TENDERS (FOR THE PRESCRIBED SUM AND OVER)	
Select Method of Tendering	
Draw up Specifications and Statements of Requirements	
Formulate Contractual Terms and Conditions	
Determine Evaluation Criteria	
Draft Contract Notice (Advert)	
Draft Contract Specific Selection Questions	
Evaluate SELECTION Submissions	
Issue Invitations to Tender and Contract Documents (Works/ Care Contracts Only)	
Participate in Selection Tender Evaluation	
Recommend Award of Contract	
Award Contracts (Works/Care Contracts Only)	
Obtain Board/Board Chair or Vice Chairman Approval	

Authorised By:

(Manager)

Date:

Approved by:

(for Assessor or Authorised Officer)

Date:

Annex 3 Procurement Tasks and Responsibilities

No	Task	Who is responsible?	How Long does it Take, and are there any Special requirements?
1	Obtain Business Case approval and draft Specification/Statement of Responsibilities	Assessor	This depends. Anything from a day or two to a month or two depending on the complexity of the contract
2	Discuss and Agree Specification, Evaluation Criteria, Procedure, staff to be involved, and timescales	Procurement in the case of the SRO's remit, or the project manager for devolved areas of procurement	This depends. Anything from a day or two to a month or two depending on the complexity of the contract
3	Prepare Contract Documents, Selection Questionnaires, Invitation to Tender and Draft Contract	Procurement in the case of the SRO's remit, or the project manager for devolved areas of procurement	This depends. Anything from a day or two to a month or two depending on the complexity of the contract. Drafts will be returned to the Assessor, whose staff will have 5 working days to request any alterations and return to Procurement. Procurement will finalise the documents within another 5 working days
4	Advertise Contract	Procurement	This will not take place until all contract documents are ready for issue
5	Deal with enquiries from Suppliers	Procurement in the case of the SRO's remit, or the project manager for devolved areas of procurement will receive and answer all queries, with reference to the Assessor for Technical details	This takes place throughout the competition from the time the contract is advertised. It is important that all suppliers are treated equally, hence Assessor staff should not deal with queries themselves, but pass them onto Procurement who will ensure all suppliers have the same information made available at the same time
6	Receive Selection submissions for Restricted (2 stage) procedures	Procurement in the case of the SRO's remit, or the project manager for devolved areas of procurement	As set out in the Public Contracts (Scotland) Regulations 2015 for projects advertised in OJEU, whatever is agreed to be reasonable in terms of the effort required to complete them by bidders for lower value projects
7	Obtain any missing or incomplete documents and pass to Assessor's Office once complete	Procurement in the case of the SRO's remit, or the project manager for devolved areas	Often policies or other required documents are missing; Procurement will check the completeness of all submissions and chase any missing documentation as appropriate. A week is generally allowed for this

Annex 3 Procurement Tasks and Responsibilities

		of procurement	
8	Read and draft score Selection submissions (Restricted Procedure)	Assessor and Procurement in the case of the SRO's remit, or the project manager for devolved areas of procurement	Time taken will depend on the number received, hence will vary from tender to tender. It is important the Assessor recognises that this is time consuming and factor resources in accordingly. See 9 below for the detail of who does what
9	Evaluate Selection submissions (restricted Procedure)	Procurement in the case of the SRO's remit, or the project manager for devolved areas of procurement will organise and Chair, Assessor to provide staff to advise	<p>Generally 2 days are allowed for this, though depending on the number to be evaluated it may need more or less time.</p> <p>Technical Evaluation: Specifiers/Requirement Owners supported by Procurement or Assessor contracting teams where the Project is covered by delegated procurement. The technical evaluation panel must consist of at least two staff. Procurement staff will not carry out technical evaluation, but will ensure fair, equal, and justified application of the evaluation criteria</p> <p>Financial Evaluation: Procurement staff in respect of the Corporate Procurement Lead Officer's remit, or the Project Manager in respect of other requirements, supported by The Treasurer to the Board as appropriate (e.g. for complex evaluations)</p> <p>Sustainability Evaluation (where relevant): Procurement staff in respect of the Corporate Procurement Lead Officer's remit, or the Project Manager in respect of other requirements with reference to Specifiers/Requirement Owners supported by Policy as appropriate (e.g. for complex evaluations)</p>
10	Invite Tenders	Procurement in the case of the SRO's remit, or the project manager for devolved areas of procurement	<p>As set out in the Public Contracts (Scotland) Regulations 2015 for projects advertised in OJEU, whatever is agreed to be reasonable in terms of the effort required to complete them by bidders for lower value projects</p> <p>Open or one stage Procedure: As required by the Public Contracts</p>

Annex 3 Procurement Tasks and Responsibilities

			(Scotland) Regulations 2015 for projects advertised in OJEU, whatever is agreed to be reasonable in terms of the effort required to complete them by bidders for lower value projects
11	Receive and Open Tenders	Procurement in the case of the SRO's remit, or the project manager for devolved areas of procurement with Assessor's Representation	A representative from the Assessor's Office requires to be present for the opening unless wholly electronic tenders are received. Should be scheduled to take place as soon as practically possible after closure of the tendering period and should be completed within one day
12	Obtain any missing or incomplete documents and pass to the Assessor's Office	Procurement in the case of the SRO's remit, or the project manager for devolved areas of procurement	A week is generally allowed for this. Often policies or other required documents are missing, Procurement will check the completeness of all submissions and chase any missing documentation as appropriate
13	Read tender submissions and score in draft	Assessor	This is essential so that Assessor's staff are prepared for the Evaluation panel meeting. Time take will depend on the number received, hence will vary from tender to tender. It is important the Assessor recognises that this is time consuming, and factor resources in accordingly.
14	Undertake Financial and Legal checks where required	Procurement in the case of the SRO's remit, or the project manager for devolved areas of procurement	Any required supplier checks will be co-ordinated by Procurement during both the Selection and Tender stages. Time taken will depend on the number and level of detail required.
15	Tender Evaluation Panel Meeting	Procurement in the case of the SRO's remit, or the project manager for devolved areas of procurement will organise and chair, Assessor to provide staff to evaluate	Generally 2 days are allowed for this, though depending on the number to be evaluated it may not take as long. Technical Evaluation: Specifiers/Requirement Owners supported by Procurement or Assessor contracting teams where the Project is covered by delegated procurement. The technical evaluation panel must consist of at least two staff. Procurement staff will not carry out technical evaluation, but will ensure

Annex 3 Procurement Tasks and Responsibilities

			<p>fair, equal, and justified application of the evaluation criteria</p> <p>Financial Evaluation: Procurement staff in respect of the Corporate Procurement Lead Officer's remit, or the Project Manager in respect of other requirements, supported by The Treasurer to the Board as appropriate (e.g. for complex evaluations)</p> <p>Contract Evaluation: Procurement staff in respect of the Corporate Procurement Lead Officer's remit, or the Project Manager in respect of other requirements with reference to Board's Legal Advisors as appropriate</p> <p>Sustainability Evaluation (where relevant): Procurement staff in respect of the Corporate Procurement Lead Officer's remit, or the Project Manager in respect of other requirements with reference to Specifiers/Requirement Owners supported by Policy as appropriate (e.g. for complex evaluations)</p>
16	Write Tender Report	Procurement in the case of the SRO's remit, or the project manager for devolved areas of procurement, with Assessor staff checking final draft	A week is allowed for this
17	Organise Tender Board Meeting	Assessor	This generally takes place the week after 16 above
18	Award of contract and debriefs	Procurement in the case of the SRO's remit, or the project manager for devolved areas of procurement with Assessor's staff input as required	This takes place following 17 above, and for over the OJEU threshold contracts requires a week to draft the letters and debrief information followed by a 10 day standstill period

Annex 3 Procurement Tasks and Responsibilities

19	Post award contract management	Assessor with Procurement support as appropriate in the case of the SRO's remit, or the project manager for devolved areas of procurement	Throughout the life of the contract
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Annex 4 Sustainable Procurement Impact Assessment

	Current Impacts				Action				
Sustainability Objective	Magnitude	Probability	Significance	Justification	SELECTION	Specification	Contract Conditions	Evaluation	Development
ENVIRONMENTAL									
Fuel			0						
Carbon			0						
Water			0						
Waste			0						
Resource Depletion			0						
Emissions to Air and Water			0						
Hazardous Substances			0						
Biodiversity			0						
SOCIAL									
Equality, Diversity & Inclusion			0						
Labour Standards			0						
Health & Safety			0						
SME/ Soc Ent/Vol Org/SE			0						
Employment & Skills Opportunities			0						
Poverty			0						
ECONOMIC									
Economic Regeneration			0						
Costs of Prosecutions			0						
Cost Reduction & Performance Improvement			0						
Efficiency			0						
Value for Money			0						
Whole Life Costing			0						
Monetisation of Impacts e.g. Cost of NOx SOx COx			0						

Annex 5 Sustainable Procurement Self-Assessment Framework

	Foundation Level 1	Embed Level 2	Practice Level 3	Enhance Level 4	Lead Level 5
People	Sustainable procurement champion identified. Key procurement staff have received basic training in sustainable procurement principles. Sustainable procurement is included as part of a key employee induction programme.	All procurement staff have received basic training in sustainable procurement principles. Key staff have received advanced training on sustainable procurement principles.	Targeted refresher training on latest sustainable procurement principles. Performance objectives and appraisal include sustainable procurement factors. Simple incentive programme in place.	Sustainable procurement included in competencies and selection criteria. Sustainable procurement is included as part of employee induction programme.	Achievements are publicised and used to attract procurement professionals. Internal and external awards are received for achievements. Focus is on benefits achieved. Good practice shared with other organisations.
Policy, Strategy & Communications	Agree overarching sustainability objectives. Simple sustainable procurement policy in place endorsed by CEO. Communicate to staff and key suppliers.	Review and enhance sustainable procurement policy, in particular consider supplier engagement. Ensure it is part of a wider Sustainable Development strategy. Communicate to staff, suppliers and key stakeholders.	Augment the sustainable procurement policy into a strategy covering risk, methods integration, marketing, supplier engagement, measurement and review.	Review and enhance the sustainable procurement strategy, in particular recognising the potential of new technologies. Try to link strategy to EMS and include in overall corporate strategy.	Strategy is: reviewed regularly, externally scrutinised and directly linked to organisations' EMS. The Sustainable Procurement strategy recognised by political leaders, is communicated widely. A detailed review is undertaken to determine future priorities and a new strategy is produced beyond this framework.
Competition	Expenditure analysis undertaken and key sustainability impacts identified. Key contracts start to include general sustainability criteria. Contracts awarded on the basis of value-for-money, not lowest price. Procurers adopt Quick Wins.	Detailed expenditure analysis undertaken, key sustainability risks assessed and used for prioritisation. Sustainability is considered at an early stage in the procurement lifecycle of most contracts. Whole-life-cost analysis adopted.	All contracts are assessed for general sustainability risks and management actions identified. Risks managed throughout all stages of the contract lifecycle. Targets to improve sustainability are agreed with key suppliers.	Detailed sustainability risks assessed for high impact contracts. Project/contract sustainability governance is in place. A life-cycle approach to cost/impact assessment is applied.	Life-cycle analysis has been undertaken for key commodity areas. Sustainability Key Performance Indicators agreed with key suppliers. Progress is rewarded or penalised based on performance. Barriers to sustainable procurement have been removed. Best practice shared with other organisations.
Engaging Suppliers Measurements &	Key supplier spend analysis undertaken and high sustainability impact suppliers identified. Key suppliers targeted for engagement and views on procurement policy sought.	Detailed supplier spend analysis undertaken. General programme of supplier engagement initiated, with senior manager involvement.	Targeted supplier engagement programme in place, promoting continual sustainability improvement. Two way communication between procurer and supplier exists with incentives. Supply chains for key spend areas have been mapped.	Key suppliers targeted for intensive development. Sustainability audits and supply chain improvement programmes in place. Achievements are formally recorded. CEO involved in the supplier engagement programme.	Suppliers recognised as essential to delivery of organisations' sustainable procurement strategy. CEO engages with suppliers. Best practice shared with other/peer organisations. Suppliers recognise they must continually improve their sustainability profile to keep the clients business.
Results	Key sustainability impacts of procurement activity have been identified.	Detailed appraisal of the sustainability impacts of the procurement activity has been undertaken. Measures implemented to manage the identified high risk impact areas.	Sustainability measures refined from general departmental measures to include individual procurers and are linked to development objectives.	Measures are integrated into a balanced score card approach reflecting both input and output. Comparison is made with peer organisations. Benefit statements have been produced.	Measures used to drive organisational sustainable development strategy direction. Progress formally benchmarked with peer organisations. Benefits from sustainable procurement are clearly evidenced. Independent audit reports available in the public domain

ANNEX 7 DOCUMENT RETENTION SCHEDULE

General

1 Is your contract worth at least the current value of the EU Tendering Threshold?

If no, then don't use a Restricted Competition unless there is a clear risk justifying it which you can describe to the tenderers themselves.

For “over the threshold” projects only:

1 Is there a large market with lots of competition?

If yes, use a Restricted Competition as it will save you time in assessing large numbers of bids and bidders time in developing them.

2 Is this a specialist market with only a few operators capable of doing what you need, or is the successful bidder easily replaced?

If yes, then don't use a Restricted Competition. You will be able to ask a very small number of pass/fail questions in a single stage assessment which will eliminate unsuitable bidders, and if you publish these in advance with your advert, those bidders are likely to “self-deselect”.

3 Do you want to encourage competition where you think there may be very little?

If yes, don't use a Restricted Competition as the restricted route is seen by businesses as being more complex and onerous than open route. Note that the selection stages of competitions attract more complaints than actual awards of contract!

4 Can you define your requirement, your contract, and your financing options properly?

If no, you are more likely to be using a more complex procurement route such as a competitive dialogue and in this case a Restricted Competition will be needed.

5 Do you have concerns that the industry you are working with may be subject to organised crime or have issues with adherence with specific environmental, social, legal or financial requirements?

If yes, you should use a Restricted Competition as this will allow you to deal with these issues before allowing undesirable operators the chance to bid, and the opportunity to test and score based on objective factors, the areas where you have concerns.

Note: These records may be electronic or digital rather than hard copy. Note also that these are minimum standards. In some cases, for example in respect of EU funded projects, the funding authority may require longer retention periods, or the contract itself

ANNEX 7 DOCUMENT RETENTION SCHEDULE

May contain long term liability conditions which will require them to be retained for the period of the liability. Care should be taken in each case to ensure that the correct period is used.

Document	Retention Period
Contract documents (per Limitations Act 1980)	Current + 5 Years
Evaluation reports	"
Hire/Rental Agreements	"
HM Revenue and Customs Import documentation	"
Maintenance/Software licence agreements	"
Purchase Orders	"
Specifications	"
Successful Tenders	"
Successful Quotations	"
Variation Orders	"
Unsuccessful Quotations	Current + 1 Year
Unsuccessful Tenders	"
Selection Questionnaires	"
Tender Envelopes (from award) All procurement documentation relating to projects benefiting from European funding.	1 Month 10 years from the date of final payment of any related account

ANNEX 8 DEFINITIONS OF SUPPLIES, SERVICES AND WORKS

For the avoidance of doubt, the scope of works/construction contracts and services contracts is broken down as follows, in line with definitions set out within the Consolidated Procurement Directive

CONSTRUCTION

Construction of new buildings and works, restoring and common repairs including

Site preparation

Demolition and wrecking of buildings; earth moving:

Demolition of buildings and other structures

Clearing of building sites

Earth moving: excavation, landfill, levelling and grading of construction sites, trench digging, rock removal, blasting

Site preparation for mining including overburden removal and other development and preparation of mineral properties and sites

Building site drainage

Drainage of agricultural or forestry land

Test drilling and boring including test drilling, test boring and core sampling for construction, geophysical, geological or similar purposes

General construction of buildings and civil engineering works including

Construction of all types of buildings

Construction of civil engineering constructions

Bridges, including those for elevated highways

Viaducts, tunnels and subways

Long-distance pipelines, communication and power lines

Urban pipelines, urban communication and power lines

Ancillary urban works

Assembly and erection of prefabricated constructions on the site

This class excludes:

Erection of complete prefabricated constructions from self-manufactured parts not of concrete

Erection of roof covering and frames including erection of roofs roof covering waterproofing

Construction of highways, roads, airfields and sports facilities including

Construction of highways, streets, roads, other vehicular and pedestrian ways

Construction of railways

Construction of airfield runways

Construction work, other than buildings, for stadiums, swimming pools, gymnasiums, tennis courts, golf courses and other sports installations

ANNEX 8 DEFINITIONS OF SUPPLIES, SERVICES AND WORKS

Painting of markings on road surfaces and car parks

This class excludes:

Preliminary earth moving

Construction of water projects including

Construction of:

Waterways, harbour and river works, pleasure

Ports (marinas), locks

Dams and dykes

Dredging

Subsurface work

Other construction work involving special trades including

Construction activities specialising in one aspect common to different kinds of structures, requiring specialised skill or equipment:

Construction of foundations, including pile driving

Water well drilling and construction, shaft sinking

Erection of non-self-manufactured steel elements

Steel bending

Bricklaying and stone setting

Scaffolds and work platform erecting and dismantling, including renting of scaffolds and work platforms

Erection of chimneys and industrial ovens

Building installation: Installation of electrical wiring and fittings including

Installation in buildings or other construction projects of:

Electrical wiring and fittings

Telecommunications systems

Electrical heating systems

Residential antennas and aerials

Fire alarms

Burglar alarm systems

Lifts and escalators

Lightning conductors

Insulation work activities including

Installation in buildings or other construction projects of thermal, sound or vibration insulation

Plumbing including

Installation in buildings or other construction projects of:

Plumbing and sanitary equipment

Gas fittings

Heating, ventilation, refrigeration or air-conditioning

ANNEX 8 DEFINITIONS OF SUPPLIES, SERVICES AND WORKS

Equipment and ducts

Sprinkler systems

Other building installation including

Installation of illumination and signalling systems for roads, railways, airports and harbours

Installation in buildings or other construction projects of fittings and fixtures

Building completion

Plastering including:

Application in buildings or other construction projects of interior and exterior plaster or stucco, including related lathing materials

Joinery installation including:

Installation of non-self-manufactured doors, windows, door and window frames, fitted kitchens, staircases, shop fittings and the like, of wood or other materials

Interior completion such as ceilings

Wooden wall coverings, movable partitions

Floor and wall covering including:

Laying, tiling, hanging or fitting in buildings or other construction projects of:

Ceramic, concrete or cut stone wall or floor tiles

Parquet and other wood floor coverings

Carpets and linoleum floor coverings, including of rubber or plastic

Terrazzo, marble, granite or slate floor or wall coverings

Wallpaper

Painting and glazing including:

Interior and exterior painting of buildings

Painting of civil engineering structures

Installation of glass, mirrors

Other building completion including:

Installation of swimming pools

Steam cleaning, sand blasting and similar activities for building exteriors other building completion and finishing work

PRIORITY SERVICES

Maintenance and repair services (excluding the fabric of buildings and other constructions)

Land transport services and courier services, except transport of mail

Air transport services of passengers and freight, except transport of mail

Transport of mail by land and by air

Telecommunications

Financial services:

(a) Insurance services

(b) Banking and investment services (4)

Computer and related services

ANNEX 8 DEFINITIONS OF SUPPLIES, SERVICES AND WORKS

Research and development services
Accounting, auditing and bookkeeping services
Market research and public opinion polling services
Management consulting services and related services
Architectural services; engineering services and integrated engineering services
Urban planning and landscape engineering services; related scientific and technical consulting services; technical testing and analysis services
Advertising services
Building-cleaning services and property management services
Publishing and printing services on a fee or contract basis
Sewage and refuse disposal services; sanitation and similar services

Also excluded: services involving the acquisition or rental, by whatever financial procedures, of land, existing buildings, or other immovable property or concerning rights thereon;

SOCIAL AND OTHER SPECIFIC SERVICES

Note that the Common Procurement Vocabulary (CPV) reference numbers have been removed from this list for ease of reading. Where the Board is contemplating relying on Regulations 74 to 76 of the Public Contracts (Scotland) Regulations 2015, Schedule 3 must be referred to directly and use will be limited to the specific CPV codes listed in that Schedule. Note also that this list is exclusive: no service excluded from the list below can be covered by either the miscellaneous services category or the “other services” category previously available

Health, social and related services:

1. (Supply services of domestic help personnel)
2. Supply services of nursing personnel)
3. Supply services of medical personnel)
4. (Private households with employed persons)
5. (Manpower services for households, Agency staff services for households, Clerical staff services for households, Temporary staff for households,
6. Home-help services and Domestic services)

Administrative social, educational, healthcare and cultural services

1. (Administration, defence and social security services),
2. Education and training services
3. (Exhibition, fair and congress
4. organisation services
5. (Seminar organisation services),
6. (Event services),
7. (Cultural event organisation services
8. (Festival organisation services),
9. (Party organisation services),
10. (Fashion shows organisation services),
11. (Fair and exhibition organisation services)

Compulsory social security services

Benefit services

ANNEX 8 DEFINITIONS OF SUPPLIES, SERVICES AND WORKS

Legal services, to the extent not excluded by regulation 11(1)(e)

Other administrative services and government services

Provision of services to the community

Prison related services, public security and rescue services to the extent not excluded by regulation 11(1)(k)

Investigation and security services

1. Investigation and security services, Security services, Alarm monitoring services, Guard services, Surveillance services, Tracing system services, Absconder-tracing services, Patrol services, Identification badge release services, Investigation services and Detective agency services) (Graphology services),
2. Waste analysis services)

International services

1. Services provided by extraterritorial organisations and bodies) and Services specific to international organisations and bodies

Postal services

1. Postal and telecommunications services
2. Post and courier services
3. Postal services
4. Postal services related to newspapers and periodicals
5. Postal services related to letters
6. Postal services related to parcels
7. Post office counter services
8. Mailbox rental
9. Post-restante services
10. Internal office mail and messenger services

Miscellaneous services

1. Tyre-remoulding services
2. Blacksmith services

ANNEX 9 INFORMATION REQUIRED FOR TUPE PURPOSES

Information on staff to be provided by the Board's Personnel Advisor or Assessor to enable tender pricing

Information Item	Employee 1	Employee 2	Employee 3	Employee 4 etc.
Date of Birth				
Age				
Continuous Service Start Date With Current Employer				
Required periods of notice				
Gender				
Pensionable service in years/days as at DDMMYY				
Employers contributions				
Employees contributions				
Job title				
Salary				
Hourly rate				
Employment status				
Contracted hours				
Annual holiday entitlement				
Holiday pay entitlement				
Sick pay entitlement				
Overtime allowance in last 12 months				

Annex 10 Contract Request Form

1. **Services/Goods/Works required** *(outline of the type of Services/Goods/Works you require a contract for and attach your specification)*

2. **Project Sponsor** *(State the name of the project sponsor who has approved the business case and budget)*

3. **Assessor** *(Assessor acting as the lead for the project - from which the budget is available)*

4. **Estimated Value / Budget Approval / Contract Duration**

- a. *State the estimated value of the tender over the full contract period; and*
b. *confirmation that the budget has been approved by the appropriate budget holder; and*
c. *The duration of the contract to be tendered, including any proposed extensions. This should usually be between two to four years with potential for one or two year's extension.*

5. **Risk**

- a. *State the risks to service provision of the project failing or not being taken forward (e.g. failure to deliver statutory duties); and*
b. *Mitigating actions proposed for managing those risks*

6. **Approved Business Case** *(Enclose a copy of the approved business case for this tender as required in The Board's Contract Standing Orders. Also, sustainability and Equal Opportunities Impact Assessment if applicable)*

Annex 10 Contract Request Form

7. Evaluation Team Members *Evaluators must have suitable technical skills and be suitably knowledgeable or qualified in relation to the subject matter of the tender. All evaluators must also have procurement authorisation)*

8. Intended Date of Commencement of Full Operations *(State the target date of the commencement of full operations for the Services/Goods/Works being tendered. If appropriate, please indicate any reasons as to why this date must be achieved.)*

9. Any Period required for Setting up Operations

10. TUPE Issues *(State whether or not members of council staff or staff of the existing contractor may be affected by a transfer to an new service provider)*

11. Assessor Contact Name and telephone number

Tender Request form Received/Approved by

Name_____

Date_____

Procurement Office Use

Allocated Procurement Team:-

- ☐ Corporate
- ☐ Facilities Management
- ☐ Technical