



STANDING ORDERS RELATING TO CONTRACTS

Title	STANDING ORDERS RELATING TO CONTRACTS
Who should use this	
Author	SAC/Adapted by Head of Valuation Services & Assistant ERO
Approved by Management Team	12 July 2017
Approved by Joint Board	10th November 2015
Reviewer	Head of Valuation Services & Assistant ERO/PA and Office Manager
Review Date	2020

Review History

REVIEW NO.	DETAILS	RELEASE DATE
1	REVIEWED OCTOBER 2015	
2	REFERENCE TO SAC REMOVED FROM SAC UPDATED VERSION. DISPOSAL OF LANDS AND BUILDINGS REMOVED.	JULY 2017
3		
4		
5		

Index**Page**

	Introduction	3
1.	Commencement	4
2.	Glossary of Terms	4
3.	Extent and Application	6
4.	Exemptions and Special Arrangements	8
5.	Disaggregation	10
6.	Delegation of Duties under these Standing Orders	10
7.	Maintenance and Repair of Board Buildings	10
8.	Collaborative Procurement	11
9.	Framework Agreements	11
10.	Procedure Prior to Commencing Procurement Exercise	12
11.	Advertising of Contracts	13
12.	Tendering Procedures	13
13.	Submission of Tenders	13
14.	Late Tenders	14
15.	Opening and Recording Tenders	15
16.	Checking, Clarification and Evaluation of Tenders	15
17.	Post Tender Negotiations	16
18.	Acceptance of Tenders	16
19.	Contracts Register	17
20.	Nomination of Sub-Contractor	17
21.	Serial and Phased Works Contracts	18
22.	Authority to Extend or Negotiate Contract without Prior Advertisement	18
23.	Periodic Supplies	18
24.	Contractual Matters	18
25.	Application to Procurement Consultants	21
Annex 1:	Procedures for Paper Tendering	22
Annex 2:	General Duties of Assessor & EROs under these Standing Orders	25

Introduction

This is an AVJB policy document but AVJB have adopted the policy from South Ayrshire Council as our lead authority and in line with our Service Level Agreement.

The Standing Orders Relating to Contracts set out how contracts for all supplies, services and works will be made by or on behalf of the Board. For the avoidance of doubt, the term 'contract' includes any form of agreement, written or unwritten, to which the Board is a party which creates rights and responsibilities for any of the parties involved.

The purpose of the Standing Orders is to ensure that contracts are appropriate for their purpose, provide the right balance between price and quality, and are procured in an open way that demonstrates probity and compliance with the Board's policies.

These Standing Orders apply equally where payment is expected to be received by the Board as where payment is to be made.

In entering contracts for or on behalf of the Board, every Sub-Committee, Officer or such other person as may have the power of entering into contracts on the Board's behalf, regardless of whether any such contracts are otherwise exempted from the application of these Standing Orders, shall be subject to an obligation to seek best value for the Board and be able to demonstrate openness, fairness and non-discrimination in the process of awarding contracts.

Notwithstanding the provisions and requirements of these Standing Orders, all contracts must comply with:

- (a) The Financial Regulations of the Board;
- (b) The Scheme of Delegation to Officers;
- (c) The requirements of the EU Procurement Directive and EU Treaty Principles; as implemented in Scotland by the Public Contracts (Scotland) Regulations;
- (d) The requirements of the Procurement Reform (Scotland) Act; and;
- (e) All other relevant legislation.

Due consideration should also be given to all Guidance and Policy Notes issued by the Scottish Government, Scottish Procurement Directorate in respect of procurement matters including the Scottish Procurement Policy Handbook. Details can be obtained from South Ayrshire Council's Procurement Manager.

1. Commencement

- 1.1 These Standing Orders relating to Contracts ('Contract Standing Orders') shall apply and have effect as from 16 December 2016 and supersede the Standing Orders relating to Contracts approved by the Board on 1 September 2015.

2. Glossary of Terms

- 2.1 **Best Value** means the optimum combination of price (whole life cost or acquisition cost, as appropriate) and quality for any particular requirement, and which supports the continuous improvement in the performance of the Board's functions having regard to (a) efficiency, (b) effectiveness, (c) economy, (d) equal opportunities and (e) sustainability.
- 2.2 **Call-off Contract** means a contract which is entered into between the Board and a Contractor on a framework agreement to which the Board has access. A call-off contract shall be awarded in accordance with the terms of the framework agreement, which may provide for:
- 2.2.1 A direct call-off by application of the terms set out in the framework agreement (which shall be referred to in these Contract Standing Orders as a Direct Award); or-
- 2.2.2 A mini-competition between the Contractors within the framework agreement that are capable of performing the proposed call-off contract (which shall be referred to in these Contract Standing Orders as a mini-competition).
- 2.3 **Collaboration (or Collaborative Procurement)** is where two or more contracting authorities, including the Board, aggregate demand for procurement purposes where it makes logical and commercial sense to do so. This results in the maximisation of procurement skills and resources while leveraging greater purchasing power and encouraging competition or innovation in the market place. For the purposes of these Standing Orders, collaboration relates only to the procurement exercise and tendering process up to the point of contract award.
- 2.4 **Contract Documents** means the documents to be used in any procurement exercise and where different those intended to form part of any contract following on from a procurement exercise. It includes, but is not limited to, the pre-qualification questionnaire, the invitation to tender for or negotiate a contract, the proposed conditions of contract, the specifications or the descriptions of the supplies, services or works required by the Board and any bill of quantities, and all supplementary documents.
- 2.5 **Contracting Authority** shall have the same meaning as provided for in the Public Contracts (Scotland) Regulations.

- 2.6 **Contractor** means a contractor or supplier or service provider (as the case may be) appointed by or on behalf of the Board under a contract to which these Contract Standing Orders apply.
- 2.7 **EU Treaty Principles** means the principles deriving from the Treaty on the Functioning of the European Union that are intended to support the single market by harmonising procedures, particularly the principles of equal treatment, non-discrimination, proportionality and transparency.
- 2.8 **EU Procurement Directive** means the European Union Directive which sets out the procedural rules for the co-ordination of procurement and the award of public works contracts, public supply contracts and public service contracts as are based on the EU Treaty Principles;
- 2.9 **EU Threshold** means the relevant contract value threshold specified under the terms of the EU Procurement Directive applicable to, as the case may be, contracts for the supply of goods, provision of services or works (all as may be amended from time to time). The current thresholds are set out under Standing order 3.5.
- 2.10 **Assessor & ERO** means the Assessor & ERO with responsibility for the Board, unless these Standing Orders provide otherwise.
- 2.11 **Framework Agreement** means an agreement or other arrangement between one or more contracting authorities and one or more contractors, which establishes the terms under which a call-off contract may be agreed in the period during which the framework agreement applies.
- 2.12 **Most Economically Advantageous Tender** means the tender offer that is most economically advantageous from the Board's point of view having regard to the subject matter of the contract and may include matters such as quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost effectiveness, after-sales service, technical assistance, delivery date and delivery period or period of completion and other matters (as may be considered appropriate in relation to any particular contract).
- 2.13 **National Advertising Portal** means the national portal for advertising public sector contract opportunities in Scotland, which may be found at the Public Contracts Scotland website
<http://www.publiccontractsscotland.gov.uk>
- 2.14 **Procurement Exercise** means any procurement process which is subject to these Standing Orders.
- 2.15 **Procurement Reform (Scotland) Act** means the Procurement Reform (Scotland) Act 2014 (as may be amended from time to time). These are available at <http://legislation.gov.uk/asp/2014/12/contents>. Any reference to the Procurement Reform (Scotland) Act shall include where the context permits reference to any secondary legislation made and statutory guidance issued under the powers conferred in terms of that Act;

- 2.16 **Procurement Strategy means** a procurement strategy in terms of the Procurement Reform (Scotland) Act, section 15;
- 2.17 **Public Contracts (Scotland) Regulations** means the Public Contracts (Scotland) Regulations 2015 (as may be amended from time to time), which gives the EU Procurement Directive effect in Scots Law. These are available at:
<http://www.scotland.gov.uk/Topics/Government/Procurement/policy/Legislation/ECDirandScotreg>.
- 2.18 **Scottish Procurement Threshold** means the relevant contract value threshold specified under the terms of the Procurement Reform (Scotland) Act applicable to, as the case may be, contracts for the supply of goods, provision of service or works (all as may be amended from time to time). The current thresholds are set out under Standing Order 3.4.
- 2.19 **Tender** means a formal process undertaken during a procurement exercise where potential contractors submit bid proposals for supplies, services or works

3. Extent and Application

- 3.1 These Contract Standing Orders are made under Section 81 of the Local Government (Scotland) Act 1973, as amended.
- 3.2 The Contract Standing Orders shall be interpreted and applied having regard always to the EU Treaty Principles of equal treatment, non-discrimination, proportionality and transparency. All Board employees shall treat tenderers equally and without discrimination and shall act in a transparent and proportionate manner at all times.

Subject to the exemptions of Standing Order 4 below and in accordance with the further provision at Standing Order 3.4, these Standing Orders shall apply to all contracts with an estimated total price or value (which shall always be calculated over the entire contract period, including any extension options) of or exceeding £50,000 (excluding VAT), made by or on behalf of the Board for the execution of works, the supply of goods and materials and the provision of services.

- 3.3 These Standing Orders are subject to the over-riding provisions of European Union, United Kingdom or Scottish legislation, including the EU Procurement Directive, Procurement Reform (Scotland) Act and Public Contracts (Scotland) Regulations. They are also subject to any EU Commission, UK Government or Scottish Government guidance on public procurement that may be issued from time to time. The rules and procedures that apply to the procurement of any particular contract will depend on the nature of that contract and its estimated total price or value over its duration. In the event of any conflict between these Standing Orders and any provision of the European Union, United Kingdom or Scottish legislation, the legislative provision(s) shall prevail.

3.4 The following table details the difference contract thresholds and, as appropriate, the procedures and legislation that apply at each level.

Type of contract	Threshold (excluding VAT)	Applicable procedures / legislation
Best Value Duty		
*All	< £10,000	Follow the relevant procurement journey procedure at http://www20.south-ayrshire.gov.uk/CorporateProcurement/SitePages/PJand20-and20Home.aspx
Quick Quote procedure		
All	£10,000 - £49,999	Follow the relevant procurement journey procedure at http://www20.south-ayrshire.gov.uk/CorporateProcurement/SitePages/PJand20-and20Home.aspx
Ayrshire Valuation Joint Board Standing Orders		
All	> £50,000	Follow the procedures set out in these standing orders, and comply with any applicable legislation as detailed below
Scottish Procurement Threshold		
- Supplies / services	> £50,000	Procurement Reform (Scotland) Act
- Works	> £2,000,000	Procurement Reform (Scotland) Act
EU Procurement Threshold		
- Supplies / services	> £164,176	Procurement Reform (Scotland) Act and Public Contracts (Scotland) Regulations
- Works	> £4,104,394	Procurement Reform (Scotland) Act and Public Contracts (Scotland) Regulations
- Social and Other Specific Services	> £589,148	Procurement Reform (Scotland) Act and Public Contracts (Scotland) Regulations

* 'All' is a reference to a supply, service and/ or works contract

3.5 All Board employees shall comply with the terms of the Contract Standing Orders and any failure to do so may result in disciplinary action.

- 3.6 The Assessor & ERO shall have power to vary these Standing Orders but only in the following circumstances:
- 3.6.1 to reflect changes in job titles, re-organisation and vacancies in posts;
 - 3.6.2 to change references to any piece of legislation where the legislation is repealed, and to insert references to new pieces of legislation where the new pieces of legislation largely re-enact the provisions of the repealed legislation;
 - 3.6.3 to change the financial values of the EU Threshold or Scottish Procurement Threshold where referred to in these Standing Orders, to implement any changes in those thresholds.

Any alterations made in terms of this Standing Order 3.6 shall be reported to the next meeting of the Board.

- 3.7 Other than alterations of a nature which fall within Standing Order 3.6, these Standing Orders may only be varied or revoked by the Board.
- 3.8 Any query regarding the application or interpretation of these Contract Standing Orders must be referred in the first instance to the Assessor & ERO.

4. Exemptions and Special Arrangements

- 4.1 It must be noted that whilst certain categories of contract are exempt from the Contract Standing Orders, they are not exempt from the application of the EU Procurement Directive or Public Contracts (Scotland) Regulations where these apply and all stated exemptions from Contract Standing Orders are subject to the proviso that such exemption is within the statutory powers of the Board and does not contravene any national, UK or EU legislation.
- 4.2 With the exception of Standing Orders 4.1 and 4.3 (which apply in all cases), these Contract Standing Orders shall not apply to:
- 4.2.1 Any contract for the execution of works, the supply of goods or materials or for the provision of services which, in the opinion of the Assessor & ERO, are urgently required to address a genuine emergency brought about by events which could not have been foreseen by the Board. Lack of forward procurement planning shall not constitute an emergency requirement.

- 4.2.2 Any contract declared to be exempt by the Board if they are satisfied that the exemption is justified by special and exceptional circumstances, such as where (a) the requirement is not readily obtainable from more than one contractor and it can be demonstrated that no equivalent is available; or (b) the prices of the supplies, services or works are wholly controlled by trade organisations or government order and it can be demonstrated that no equivalent is available; or (c) the requirements are subject to intellectual property rights and it can be demonstrated 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.
- 4.2.3 Any contract of direct employment.
- 4.2.4 Any contract of engagement of consultants (including junior and senior counsel) for the provision of specialist legal or financial advice and skills procured on an ad hoc basis on the authorisation of the Assessor & ERO.
- 4.2.5 Any contract for works, supplies or services procured and awarded on the Board's behalf by other contracting authorities, in accordance with Standing Order 8.4.
- 4.2.6 Any Direct Award placed in accordance with Standing Order 10.2 under the terms of a framework agreement which has been established by the Board; provided always that the terms of the relevant framework agreement are complied with. For the avoidance of doubt, these Standing Orders shall apply in respect of any mini-competition held under any such framework agreement.
- 4.2.7 Any Direct Award placed in accordance with Standing Order 10.3 under the terms of a framework agreement which has been established or is being utilised by any consortium, partnership, company or similar body of which the Board is a member or user, which body exists for the purpose of joint purchasing arrangements, and where such body has invited tenders for the provision of supplies, services or works; provided always that the terms of the relevant framework agreement are complied with. For the avoidance of doubt, these Standing Orders shall apply in respect of any mini-competition held by the Board under any such framework agreement.
- 4.3 The foregoing exemptions shall not be deemed in any way to detract from the requirement of the Board and every officer of the Board to ensure that every contract is constituted only after full assessment that:
- 4.3.1 its terms comply with the duty to achieve best value;
- 4.3.2 the Financial Regulations have been complied with; and

- 4.3.3 Unless the Assessor & ERO, directs otherwise in relation to a particular contract opportunity, a Request for Procurement Action has been submitted in accordance with Standing Order 11.2.2 (except in cases where Standing Orders 4.2.1 or 4.2.3 apply).
- 4.4 These Contract Standing Orders shall not apply to any proposals, transactions or contracts regarding the acquisition or disposal of lands or buildings owned by the Board.
- 5. Disaggregation**
- 5.1 Contracts must not be disaggregated, packaged or split into separate smaller contracts or requirements to avoid the application of any provision of these Standing Orders, the EU Procurement Directive and Public Contracts (Scotland) Regulations or any other legislative provisions.
- 5.2 In determining whether the Scottish Procurement Threshold or EU Threshold has been exceeded in respect of any single requirement for works, services or supplies, the value of that requirement will be aggregated across the Board.
- 6. Delegation of Duties under these Standing Orders**
- 6.1 No officer may award a contract without written delegated purchasing authority from the Assessor & ERO.
- 6.2 The Assessor & ERO may nominate, in writing, such other properly qualified officers as they consider appropriate to undertake any of the general duties set out in these Contract Standing Orders, as more fully detailed in the table at Annex 4 to these Contract Standing Orders, who will then have delegated authority to act in lieu of the Assessor & ERO in respect of the prescribed duties.
- 6.3 A note of all written nominations made in terms of Standing Order 6.2 shall be provided to the Assessor & ERO for his/her retention.
- 6.4 No officer who has a potential conflict of interest or a direct or indirect pecuniary interest in any tender is permitted to be involved in the tendering process.
- 7. Maintenance and Repair of Board Buildings**
- 7.1 All planned maintenance and/or responsive repairs to buildings or property owned by the Board shall be undertaken under the direction of the Property and Risk Service of South Ayrshire Council. Such work may, at the direction of the Head of Property and Risk of South Ayrshire Council, be undertaken either by South Ayrshire Council's Property Maintenance service in accordance with plans agreed with that service, or by external contractor(s). No external contractor(s) shall be appointed, to undertake any planned maintenance and/ or responsive repairs to the property owned by the Board, by any officer other than the Head of Property and Risk of South Ayrshire Council.

8. Collaborative Procurement

- 8.1 Where the Assessor & ERO considers that there is no suitable existing contract or framework agreement to meet the particular requirements of the Board, she may seek to enter into a collaboration with one or more of the unitary authorities which make up the Board or other Assessors provided that it would be in the best interests of the Board and in accordance with best value to do so. The provisions of this Standing Order 8 shall apply.
- 8.2 A contract strategy (which shall be in the format of the template form available on the Procurement page of the South Ayrshire Council intranet) shall be prepared in respect of every proposed collaboration and shall detail the justifying reasons for the collaboration. The contract strategy shall be approved by the Assessor & ERO.
- 8.3 Where it is proposed that the Board shall act as 'lead authority' in a collaborative procurement, the terms of these Contract Standing Orders shall apply to the procurement exercise and the written agreement of the other parties to the collaboration shall be obtained to this effect.
- 8.4 Where another contracting authority acts as 'lead authority' in a collaborative procurement, the procurement and award process shall be conducted in accordance with the Standing Orders of the 'lead authority'. In every such case, the Assessor & ERO must first be satisfied (after consultation with the Head of Legal and Democratic Services of South Ayrshire Council) that the procurement and award of any such contract shall be carried out in accordance with Standing Orders equivalent in all material respects to and no less robust than these Standing Orders such that the principles of best value are adhered to and the best interests of the Board are served at all times in the collaboration.
- 8.5 Prior to commencing any collaborative tender exercise, the Assessor & ERO shall agree the parameters for the collaboration with the appropriate officers in the other contracting authorities and shall record this in writing. Appropriate monitoring arrangements shall be put in place to ensure the agreed terms for the collaboration are adhered to by all parties.

9. Framework Agreements

- 9.1 Where there is likely to be a repeated requirement for a particular supply, service or works, the Assessor & ERO may seek to establish or participate in a framework agreement in line with Standing Orders 10.2 or 10.3, where she deems that offers best value. Before doing so, the Assessor & ERO shall consult with the South Ayrshire Council Procurement and Transformation Programme Office Manager.
- 9.2 Where the Assessor & ERO may elect to establish a framework agreement to provide for agreement on the terms for future call-off contracts (whether through Direct award or by the acceptance of a tender following a mini-competition) where permitted in accordance with the terms of that Framework Agreement. Standing Order 4.2.6 will apply to Call-Off Contracts awarded in such circumstances.

- 9.3 The Assessor & ERO may elect to participate in an existing framework agreement that is to be properly constituted by Scotland Excel, the Scottish Procurement and Commercial Directorate, another local authority, the Crown Commercial Service or public sector procurement agencies and may enter into call-off contracts (whether through direct award or by the acceptance of a tender following a mini-competition) where permitted in accordance with the terms of that framework agreement. Standing Order 4.2.7 will apply to call-off contracts awarded in such circumstances.
- 9.4 Where, in order to participate in an existing framework agreement of the type described in Standing Order 9.2, the Board is required to enter into a participation agreement or other similar agreement regulating the use of the framework agreement by the Board, the Assessor & ERO shall have the authority to enter into that agreement on behalf of the Board.
- 9.5 Any mini-competition run by South Ayrshire Council on behalf of the Board shall be conducted by means of electronic tendering for the purposes of Standing Order 13, and shall run in accordance with the procedures set out therein, unless contrary to any provisions set out in the relevant framework agreement (in which case, the terms of the framework agreement will have precedence).

10. Procedures Prior to Commencing Procurement Exercise

- 10.1 Prior to commencing with a procurement exercise, the Assessor & ERO shall consult with Procurement Manager of South Ayrshire Council to establish whether any existing contracts or framework agreements accessible to the Board might fulfil their requirement.
- 10.2 No tender shall be invited or any contract negotiations commenced, unless:
- 10.2.1 The estimated expenditure thereon is within the budgetary provision previously approved by the Board and in compliance with the Board's Financial Regulations. The Assessor & ERO shall be responsible for ensuring that sufficient funds are available prior to the commencement of any procurement exercise;
 - 10.2.2 A Request for Procurement Action (in the form made available on the Procurement page on South Ayrshire Council intranet) has been completed by the Assessor & ERO and returned to the Procurement and transformation Programme Office Manager of South Ayrshire Council; and
 - 10.2.3 In cases of collaborative procurement, the terms of Standing Order 8 have been complied with.
 - 10.2.4 In cases of procurement that will involve the evaluation of both price and quality criteria, to determine the most economically advantageous tender, advice must be sought in advance from South Ayrshire Council's Procurement Service on the weighting of such criteria.

11. Advertising of Contracts

- 11.1 In terms of the EU Procurement Directive, Procurement Reform (Scotland) Act and Public Contracts (Scotland) Regulations, the Board has a duty to ensure that contracts are procured in accordance with the principles of non-discrimination on grounds of nationality, equal treatment and transparency.
- 11.2 Contract opportunities that are subject to the requirements of the Procurement Reform (Scotland) Act or the Public Contracts (Scotland) Regulations must comply with the provisions relating to advertising of contracts set out in that legislation.
- 11.3 In relation to contract opportunities that are outside the scope of the requirements of the Public Contracts (Scotland) Regulations, and which therefore fall outside the scope of Standing Order 11.2, the Assessor & ERO (in consultation with the Procurement and Transformation Office Manager of South Ayrshire Council) must assess, on a case by case basis, the degree of advertising necessary to ensure that the contract opportunity will be subject to open competition, will satisfy the requirements of the principles of non-discrimination on grounds of nationality, equal treatment and transparency, and will achieve best value for the Board.
- 11.4 All contract opportunities shall be advertised using the National Advertising Portal; unless a decision has been reached by reason of either Standing Order 23 that the contract opportunity is to be awarded without advertising.

12. Tendering Procedures

- 12.1 Procurement exercises shall be carried out by electronic means, unless the Assessor & ERO considers that there are substantial reasons for not doing so (in which case Standing Order 12.2 shall apply).
- 12.2 The procedures set out in Annex 1 to these Standing Orders shall apply in place of Standing Orders 14 to 18 (*Submission of Tenders – Post Tender Negotiations*) in respect of the submission, opening and acceptance of non-electronic tenders and communication with tenderers in respect of any procurement exercise undertaken by the Board by hard copy means.

13. Submission of Tenders

- 13.1 Every invitation to tender shall state:-
- 13.1.1 The nature and purpose of the contract for which tenders are invited;

- 13.1.2 That electronic tendering will be used in the procurement and that submission of tenders will be subject to the tenderer registering as a user of the particular e-tendering platform chosen to host the process;
 - 13.1.3 The last date and time (in all cases being twelve noon) when tenders will be received (noting in particular that any such timeous submission of an electronic tender requires the tender to have been submitted and uploaded in full onto the electronic tendering platform before the closing date and time; partial submissions will not be accepted);
 - 13.1.4 The website/ system details/ electronic address through which the electronic tender is to be submitted;
 - 13.1.5 The period during which tenders must remain open for acceptance;
 - 13.1.6 the format in which tenders must remain open for acceptance;
 - 13.1.7 The award criteria and weightings to be used in the evaluation of tenders received, which shall be based either on the most economically advantageous tender, as assessed on the basis of criteria linked to the subject-matter of the contract and appropriate to securing Best Value for the Board. The award criteria and weightings must not be changed once agreed and published in the contract documents.
 - 13.1.8 That the Board is not bound to accept the most economically advantageous tender received;
 - 13.1.9 Any specific requirements regarding verification and authentication of the tender submission and the signature of the person making that submission, as the Head of Legal and Democratic Services of South Ayrshire Council may direct as being necessary and appropriate;
 - 13.1.10 The contact details and method of submitting all tenderer queries during the tender period; and
 - 13.1.11 The duration of the contract period (including any extension options).
- 13.2 Every set of contract documents shall state that no tender will be considered unless it is received at the website/electronic address notified before the last date and time specified and is submitted in the format specified.

14. Late Tenders

- 14.1 No tender submitted using electronic means will be considered unless it is received in the format and at the website/electronic address specified in the contract documents and unless it is received prior to the deadline for the receipt of tenders, all as stated in the contract documents.

- 14.2 Where a tender is late due to a failure or lack of availability of the electronic tendering platform, and which is not attributable to the tenderer or as the case may be their agent, the express approval of the Assessor & ERO shall be required to admit the tender for consideration.
- 14.3 Late tenders, save where these have by exception been admitted for consideration in accordance with paragraph 14.2 above, must remain unopened. The tenderer must be advised as soon as possible (and in any event within 2 working days of all other tenders being opened) that if the late tender is not re-called within 14 days it will be deleted. At the same time, the tenderer should be informed why the tender is not being considered.

15. Opening and Recording Tenders

- 15.1 Tenders shall be kept unopened in a single secure electronic mailbox until after the expiry of the time limit for the receipt of tenders.
- 15.2 All tenders relating to the same contract shall be opened immediately one after the other during one session, as soon as practicable after the time and date specified for return of tenders, and shall be opened by an officer from South Ayrshire Council Procurement nominated by the Assessor & ERO.

16. Checking, Clarification and Evaluation of Tenders

- 16.1 All tenders shall be subject to checking for completeness and errors by the Assessor & ERO. Any arithmetical errors that result in a change to the pricing submitted should be documented.
- 16.2 Between the last date and time for the receipt of tenders and the date on which a decision is taken as to which, if any, tender is to be accepted, the Assessor & ERO may instruct members of his/ her staff or consultants to contact a tenderer in respect of any tender submitted in cases where such contact may be necessary to clarify the terms of the tender or to effect any necessary adjustments but not otherwise for any reason.
- 16.3 Where any factor giving rise to post tender communications is not specific to one tenderer, all tenderers must be invited to participate in such communications. There must be no material change to the specification(s) and/ or criteria on which tenders are to be assessed. If it becomes apparent that a material change is required, the tender process must be recommenced with a revised specification or award criteria.
- 16.4 A full record of any contact between the Board and tenderers (which shall include copies of all written communications) shall be kept and retained with each tenderer's original tender.
- 16.5 This Standing Order shall not be used in any way to permit any tenderer to amend their bid in a manner that allows them to improve their offer, nor to put other tenderers at a disadvantage nor to distort competition. All tenderers must be treated at all times equally and in an open, transparent and fair manner.

16.6 Tenders shall be evaluated strictly in accordance with the award criteria or price/ quality weighting agreed at the commencement of the procurement exercise and detailed in the contract documents.

17. Post Tender Negotiations

17.1 Once the evaluation of tenders has been completed in accordance with Standing Order 16.6, the Assessor & ERO may instruct members of his/ her staff or consultants to enter into post tender negotiations. Such negotiations shall take place only in circumstances where the Assessor & ERO has:

17.1.1 Identified the tenderer who has submitted the most economically advantageous tender for a contract; and

17.1.2 Is satisfied that there is scope for improvement in the tender received and that such negotiations will be in the best interests of securing best value and improved terms and conditions for the Board.

17.2 Post tender negotiations may only be used with the tenderer identified in terms of Standing Order 17.1.1.

17.3 Where it is considered possible that post tender negotiations might apply, a clear indication will be given to prospective contractors in the instructions to tenderers that post tender negotiations might be considered.

17.4 A full record (which shall include copies of all written communications) shall be kept by South Ayrshire Council Procurement of all contracts where post tender negotiations have been used and the written record will be retained with the original tender. The written record will include the justification for authorising post tender negotiations, the nature of the negotiations undertaken, the outcome of such negotiations and shall detail any additional terms agreed by the Board.

17.5 This Standing Order 17 shall not be used in any way to put any tenderer at a disadvantage or to distort competition, and it shall not be used to make any change to the specification(s) and/ or criteria on which the identified tender is to be assessed.

18. Acceptance of Tenders

18.1 Contracts shall be awarded subject to Standing Order 18.2 in accordance with the evaluation of award criteria.

- 18.2 Without prejudice to the specified award criteria for any tender, authority to accept tenders may be given by:
- 18.2.1 the Assessor & ERO in the case of tenders for the supply of goods or materials, the provision of services or the execution of works where the value or amount is within the budgetary provision approved previously by the Board and the tender to be accepted is the lowest priced and most economically advantageous tender received(after checking) or
 - 18.2.2 the Assessor & ERO on the authority of the Board in the case of tenders for the execution of works where the value of amount is within the budgetary provision approved previously by the Board and the tender to be accepted is the lowest price (after checking) received; or
 - 18.2.3 The Assessor & ERO on the authority of the Board in the case of tenders which exceed the budgetary provision approved previously by the Board, and/or where the tender evaluated as the most economically advantageous tender is not the lowest priced tender received (after checking).
- 18.3 If the Assessor & ERO recommends that none of the tenders submitted should be accepted, he/she shall notify all tenderers accordingly, providing justification as to why the decision has been taken.

19. Contracts Register

- 19.1 The Head of Legal and Democratic Services for South Ayrshire Council shall keep and maintain a register of all awarded contracts having an estimated price or value of £50,000 or more. The register shall be compliant with the Public Contracts (Scotland) Regulations and the Procurement Reform (Scotland) Act and shall be referred to in these Standing Orders as the 'Contracts Register'.

20. Nomination of Sub-Contractor

- 20.1 Where a contract provides for the nomination by the Assessor & ERO of a sub-contractor or supplier for the execution of works or supply of goods or materials or for the provision of services, the provisions of these Contract Standing Orders shall apply, (with the necessary changes having been made), to the procurement, tender and award process.
- 20.2 The Assessor & ERO is hereby authorised to nominate the tenderer of the most economically advantageous tender (as appropriate in accordance with the award criteria stated in the invitation to tender documentation) as sub- contractor.

21. Serial and Phased Works Contracts

- 21.1 Where the Assessor & ERO considers that tenders should be obtained for a series of related works projects or for phased works projects, he/ she shall first obtain the approval of the Board to that course of action both in respect of the execution of the works and the proposed serial tender process.

22. Authority to Extend or Negotiate Contract without Prior Advertisement

- 22.1 If after consultation with the Head of Legal and Democratic Services of South Ayrshire Council, the Assessor & ERO decides that, in accordance with the terms of either the Procurement Reform (Scotland) Act or the Public Contracts (Scotland) Regulations, there are circumstances or reasons which justify the negotiation of a contract with any contractor without prior advertisement and competition, he/she shall before entering into negotiations, first obtain the approval of the Board in respect of the proposed negotiation of the contract to be awarded and the person whom the contract is to be negotiated.
- 22.2 In seeking prior approval in terms of Standing Order 22.1, the Assessor & ERO shall submit to the Board a report detailing the nature of the contract (including, where appropriate, the identity of any collaborative partners) and the reasons which are considered to justify the proposed negotiation without advertisement and competition, and which shall provide a fully reasoned assessment made in relation to the Board's obligations arising from the EU Procurement Directive, Procurement Reform (Scotland) Act and/or Public Contracts (Scotland) Regulations.

23. Periodic Supplies

- 23.1 Where a contract is for the supply of goods or services which will require to be delivered from time to time during a specified period the requirements of Standing Orders 8–19 shall be carried out only once prior to the commencement of such period. This will apply to term contracts and framework agreements where call-off contracts are ordered throughout the term of the contract.

24. Contractual Matters

- 24.1 Form of Contract and Terms and Conditions

Except where otherwise agreed by the Assessor & ERO, every contract shall be in writing, shall be signed by the appropriate Assessor & ERO or other officer specifically authorised by him/her for the purpose and shall be subject to the laws of Scotland and the jurisdiction of the Scottish Courts.

24.2 Equal Opportunity in Employment

During the procurement exercise and before entering into a contract, the Board shall obtain from the Contractor an assurance in writing that, to the best of its knowledge and belief it has complied with all statutory requirements in respect of ensuring equal opportunity in employment; and that it is not unlawfully discriminating within the meaning and scope of the provisions of the Equality Act 2010 (or any statutory modification or re-enactment thereof) including but not limited to discrimination on grounds of gender, marital or civil partnership status, race, disability, gender reassignment, religion or belief, sexual orientation, age, pregnancy or maternity leave.

24.3 Prevention of Collusion and Corrupt or Illegal Practices

Every contract shall contain a clause entitling the Board to cancel the contract and to recover from the Contractor the amount of any loss resulting from such cancellation if the Contractor or its representative (whether with or without the knowledge of the Contractor) shall have practised collusion in tendering for the contract or any other contract with the Board or shall have employed any corrupt or illegal practices either in the obtaining or execution of the contract or any other contract with the Board. Tenderers shall sign a declaration of non-collusion as part of any tender submission.

24.4 Assignment and Sub-Contracting

In every contract, there shall be included a provision whereby:

24.4.1 The Contractor shall be prohibited from transferring, assigning or sub- contracting a contract or any part thereof without the prior written consent of the Board; and

24.4.2 The Contractor shall be prohibited from changing any sub-contractors from those noted in the contract documents without the prior written consent of the Board.

24.5 Industry Standards

Where there is a recognised European or international or British Standards Specification or British Standard Code of Practice applicable to any commodity or service at the date of the invitation to tender, the contract documents shall require that, as the case may be, all goods and materials used or supplied, all services rendered, and all workmanship undertaken shall at least meet the requirements of that standard. In the absence of any such recognised European or other standard, the contract documents shall require an appropriate equivalent standard be used.

24.6 Copyright

The Assessor & ERO shall, in so far as practicable, ensure that in contracts for the commissioning of reports, research, graphics, design, media and other consultancy services to which copyright applies, that whilst copyright in the work vests in the Contractor, the Board has royalty free rights to utilise the information provided in relation to the continued development of the specific project and subsequent related projects.

24.7 Health and Safety

24.7.1 Every Contractor appointed by or on behalf of the Board shall be required to comply with current Health and Safety legislation and approved Codes of Practice, as may be applicable to the contract. The Assessor & ERO will have the ultimate decision as to whether a Contractor's Health and Safety qualification is equal to that required by the Board or in an approved form.

24.7.2 In the case of contracts for construction type works, in addition to the aforementioned, contractors appointed by or on behalf of the Board shall be required to hold either Contractors Health and Safety Scheme (CHAS), Safety Schemes in Procurement (SSIP) or equal and shall be required (prior to entering a contract) to exhibit an approved letter of compliance or accreditation certificate.

24.8 Insurance

Every contract shall contain a clause requiring the Contractor to take out and maintain, for the duration of the contract, such insurance cover for such amounts as the Assessor & ERO may deem relevant to the contract, including, if appropriate, but not restricted to:

24.8.1 Employers Liability Insurance;

24.8.2 Public (Third party) Liability Insurance;

24.8.3 Professional Indemnity Insurance, which shall remain in force for a period of 6 years beyond the end of the contract;

24.8.4 Other such specialist classes of insurance as advised by the Head of Property and Risk of South Ayrshire Council.

24.9 Bonds and Parent Company Guarantees

Where considered appropriate by the Assessor & ERO, the Board shall require the Contractor to take out a bond, obtain and deliver a formal parent company guarantee or provide other sufficient security for the due performance of the contract.

24.10 Sustainability and Community Benefits

- 24.10.1 Every contract shall provide that no goods, products or services shall require the contractor to take out a bond, obtain and deliver a formal parent company guarantee or provide other sufficient security for the due performance of the contract.
- 24.10.2 Where appropriate, community benefits clauses should be considered to cover, for example, training proposals, intentions regarding the provision of apprenticeships, recycling, whole life costs, environmentally friendly waste disposal policies, reuse of materials, proposals to generate local economic opportunities and development and general investment proposals for local communities. This list of examples is not exhaustive.

24.11 Variation and Termination

Every contract shall contain provisions allowing for the contract to be varied or amended, and allowing for the contract to be terminated in certain circumstances. The Assessor & ERO may exercise any power on behalf of the Board to:

- 24.11.1 Vary or amend any terms of a contract, provided: (i) the proposed variation or amendment will not in the view of the Assessor & ERO constitute a material difference to the terms originally agreed between the Board and Contractor; and (ii) the variation has been approved by the Head of Legal and Democratic Services or South Ayrshire Council; and
- 24.11.2 Terminate any contract or to terminate the Board's participation in a framework agreement, but only following consultation with the Head of Legal and Democratic Services of South Ayrshire Council and subject to their being satisfied that it is reasonable and in the interests of the Board to exercise that power.

25. Application to Procurement Consultants

- 25.1 Any agent or consultant (not being an officer of the Board) who is to be responsible to the Board for the procurement of a contract on its behalf shall, in relation to that contract:
 - 25.1.1 Comply with these Contract Standing Orders as though he/ she were an officer of the Board;
 - 25.1.2 At any time during the carrying out of the contract, produce, on request, to the Assessor & ERO, all records maintained by her in relation to the contract; and
 - 25.1.3 On completion of the contract, transmit all such records to the Assessor & ERO.

Annex 1

Procedures for Paper Tendering

A. Introduction

- A.1 In accordance with Standing Order 12.2, the following procedures are to apply in place of Standing Orders 13 to 17 in respect of any procurement exercise undertaken by the Board by hard copy means.

B. Submission of Paper Tenders

- B.1 Every set of contract documents shall state:

- B.1.1 the nature and purpose of the contract for which tenders are invited;
- B.1.2 the last date and time (in all cases being twelve noon) when tenders will be received;
- B.1.3 the address to which tenders are to be sent;
- B.1.4 the period during which tenders must remain open for acceptance;
- B.1.5 the award criteria and weightings to be used in the evaluation of bids received, which shall be based either on the most economically advantageous tender or to securing best value for the Board. The award criteria and weightings must not be changed once agreed and published in the contract documents.
- B.1.6 That the Board is not bound to accept the most economically advantageous tender;
- B.1.7 the contact details and method of submitting all tenderer queries during the tender period; and
- B.1.8 the duration of the contract period (including any extension options).

- B.2 Every set of contract documents shall state that no tender will be considered unless it is received at the address notified before the last date and time specified and is submitted in a plain sealed envelope.

C. Late Tenders

- C.1 Tenders received after the closing date and time for submission or received at a place other than as stated in the invitation to contract documents shall not be opened or considered.
- C.2 Late tenders shall be marked as late and returned to the tenderer within 2 working days of receiving it, together with an accompanying letter explaining why the tender is not being considered. Such tenders may be opened to ascertain the name of the tenderer, but no details of the tender shall be disclosed, and a statement to this effect shall be included in all contract documents.

D. Opening and Recording Tenders

- D.1 All tenders relating to the same contract shall be opened immediately one after the other during one session, as soon as practicable after the time and date specified for return of tenders, and shall be opened in the presence of:
 - D.1.1 in the case of contracts where the estimated value or amount is below the relevant EU Threshold set from time to time under the E.U. Directives, two officers nominated by the Assessor & ERO, at least one of whom shall be an authorised officer from South Ayrshire Council Procurement; and
 - D.1.2 in the case of contracts where the estimated value or amount equals or exceeds the EU Threshold set from time to time under EU Directives, any member of the Board and an officer duly nominated by the Assessor & ERO.
- D.2 The Tender Record Sheet (which shall be in the format of the template form available on the Procurement page of the South Ayrshire Council intranet) shall be completed and signed by both officers or the elected member and officer, as the case may be at the time of opening the tenders.
- D.3 In cases of urgency (during Board recess periods or otherwise), the Assessor & ERO shall be authorised to act in the absence of a member of the Board in terms of Standing Order D.1.2.

E. Checking, Clarification and Evaluation of Tenders

- E.1 All tenders shall be subject to checking for completeness and errors by the Assessor & ERO. Any arithmetical errors that result in a change to the pricing submitted should be documented, signed and dated.
- E.2 Between the last date and time for the receipt of tenders and the date on which a decision is taken as to which, if any, tender is to be accepted, the Assessor & ERO may instruct members of his/ her staff or consultants to contact a tenderer in respect of any tender submitted in cases where such contact may be necessary to clarify the terms of the tender or to effect any necessary adjustments but not otherwise for any reason.

- E.3 Where any factor giving rise to post tender communications is not specific to one tenderer, all tenderers must be invited to participate in such communications. There must be no material change to the specification(s) and/ or criteria on which tenders are to be assessed. If it becomes apparent that a material change is required, the tender process must be recommenced with a revised specification or award criteria.
- E.4 A full record of any contact between the Board and tenderers (which shall include copies of all written communications) shall be kept and retained with each tenderer's original tender.
- E.5 This Standing Order shall not be used in any way to permit any tenderer to amend their bid in a manner that allows them to improve their offer, nor to put other tenderers at a disadvantage nor to distort competition. All tenderers must be treated at all times equally and in an open, transparent and fair manner.
- E.6 Tenders shall be evaluated strictly in accordance with the award criteria or price/ quality weighting agreed at the commencement of the procurement exercise and detailed in the contract documents.

F. Post Tender Negotiations

- F.1 Once the evaluation of tenders has been completed in accordance with paragraph E.6 above, the Assessor & ERO may instruct members of his/ her staff or consultants to enter into post tender negotiations. Such negotiations shall take place only in circumstances where the Assessor & ERO has:
- F.1.1 identified the tenderer who has submitted the most economically advantageous tender for a contract; and
 - F.1.2 is satisfied that there is scope for improvement in the Tender received and that such negotiations will be in the best interests of securing best value and improved terms and conditions for the Board.
- F.2 Post tender negotiations may only be used with the tenderer identified in terms of Standing Order F.1.1.
- F.3 Where it is considered possible that post tender negotiations might apply, a clear indication will be given to prospective contractors in the instructions to tenderers that post tender negotiations might be considered.
- F.4 A full record (which shall include copies of all written communications) shall be kept by South Ayrshire Council Procurement of all contracts where post tender negotiations have been used and the written record will be retained with the original tender. The written record will include the justification for authorising post tender negotiations, the nature of the negotiations undertaken, the outcome of such negotiations and shall detail any additional terms agreed by the Board.
- F.5 This Standing Order shall not be used in any way to put any tenderer at a disadvantage or to distort competition, and there must be no material change to the specification(s) and/ or criteria on which the identified tender is to be assessed.

Annex 2

General Duties of Assessor & EROs under these Standing Orders

SO Number	Duty/ Power to...
4.2.1	Determine whether a contract is urgently required to address a genuine emergency situation to prevent or mitigate risk to life or damage
8.1	Determine whether it is in the best interests of the Board and in accordance with best value to enter into a collaborative arrangement, for the purposes of Standing Order 9
8.4	Satisfy themselves that the principles of best value will be adhered to and the best interests of the Board will be served, in entering a collaborative arrangement where another public body takes the role as lead authority
8.5	Agree the parameters for the collaboration with appropriate officers in the other public bodies and to record this in writing
9.1	Seek to establish or participate in a framework agreement, where he/she deems that offers best value. Duty to consult with the south Ayrshire Council Procurement and Transformation Officer Manager prior to acting under Standing Order 10.1
9.2	Establish a framework agreement and enter into call-off contracts, in accordance with Standing Order 10.2
9.3	Award call-off contracts under framework agreements to which the Board has access or is utilising
10.1	Consult with South Ayrshire Council's contract register in order to establish whether any existing contracts or framework arrangements are accessible to the Board which would fulfil their requirement
10.2.1	Ensure that sufficient funds are available prior to the commencement of any procurement exercise
10.2.2	Complete a Request for Procurement Action and return the same to the Procurement and Transformation Programme Office Manager
11.3	In consultation with the Procurement and Transformation Programme Office Manager, assess the appropriate competitive procedure to follow to ensure that the contract opportunity will be subject to open competition, will satisfy the requirements of the principles of non-discrimination on grounds of nationality, equal treatment and transparency, and will achieve best value for the Board
15.2	Nominate officers to open electronic tenders, at least one of whom shall be an authorised officer from Procurement

SO Number	Duty/ Power to...
16.1	Check all tenders for completeness and errors
16.2	Instruct officers to contact a tenderer in respect of any tender submitted
17.1	Instruct officers to contact the tenderer identified as offering the most economically advantageous, to enter into post tender negotiations; where they are satisfied that there is scope for improvement in the price of the tender
18.2.1	Award a contract to the most economically advantageous tender (after checking)
18.2.2	Obtain the approval of the Board to award a contract in the case of a tender exceeding the budgetary provision previously approved
18.3	Recommend that none of the tenders submitted should be accepted, and to notify all tenderers accordingly in such instances
19.3	Provide information to Procurement for Contracts Register, in relation to all contracts with an estimated price or value of or exceeding £50,000
21.2	Nominate the tenderer of the most economically advantageous tender (as appropriate) as sub-contractor
21	Obtain the approval of the Board before authorising a series of related works projects or phased works projects
22.1	Determine whether there are circumstances or reasons which justify the negotiation of a contract without prior advertising in accordance with the law; obtain the approval of the Board before authorising the extension/ award of contract
22.2	Submit a report, to the Board, detailing the nature of the proposed extension/ award of contract and the reasons for the proposed negotiation without competition
24.1	Sign contracts (subject to the Scheme of Delegation)
24.6	Ensure that, where applicable in relation to contracts for consultancy services, the Board has royalty free rights to utilise information provided in relation to the continued development of the specific project and subsequent related projects
24.8	Determine what insurance cover, if any, is relevant to the contract and which the Contractor will be required to take out and maintain for the duration of the contract
24.9	Determine whether the Board shall require the contractor to take out a bond, obtain and deliver a formal parent company guarantee or provide other sufficient security for the due performance of the contract
24.11.1	Vary or amend any terms of a contract, if satisfied that the variation or amendment will not constitute a material difference to the original terms
24.11.2	Terminate a contract or the Board's participation in a framework agreement, following consultation with the Head of Legal and Democratic Services of South Ayrshire Council
25.1.2	Request that any consultant (not being an officer of the Board) produce all records maintained by him/ her in relation to a contract

SO Number	Duty/ Power to...
Annex 1/ B.2	Nominate officers to take custody of returned tenders
Annex 1/ D.1.1	Nominate officers to open below EU Threshold tenders, at least one of whom shall be an authorised officer from Procurement of South Ayrshire Council
Annex 1/ D.1.2	Nominate an officer to open above EU Threshold tenders
Annex 1/ E.1	Check all tenders for completeness and errors
Annex 1/ E.2	Instruct officers to contact a tenderer in respect of any tender submitted
Annex 1/ F.1	Instruct officers to contact the tenderer identified as the most economically advantageous, to enter into post tender negotiations; where they are satisfied that there is scope for improvement in the price of the tender