

# STANDING ORDERS

## for the

# REGULATION OF CONTRACTS

| DOCUMENT HISTORY |   |  |
|------------------|---|--|
| 24 April 2012    | New Standing Orders approved following Corporate Procurement Review   | Council Executive (with effect from 1 June 2012)                 |
| 1 January 2013   | Amendment to Clause A.7 in relation to Bribery Act 2010   | Head of Finance & Estates in consultation with Chief Solicitor   |
| 1 July 2013      | Amended to reflect Corporate Procurement Strategy 2013/18   | Council Executive, 4 June 2013                                   |
| 31 December 2014 | Amended following adoption of Best Value Framework  | Council Executive, 5 June 2014                                   |
|                  | Amended to reflect changes to procurement and exemption spend thresholds  | Council Executive, 19 August 2014                                |
| August 2017      | Amended under delegated powers to reflect management changes and new legislation  | N/A  |
| March 2019       | Amended under delegated powers to amend errors in spelling, terminology and formatting  | N/A  |
| 6 October 2020   | Amended to reflect changes in relation to exit from the European Union, integration health and Social Care and clarification of Responsible Officer role in CAG, along with clarification of Works spend thresholds for tendering and other minor amendments. | P&R PDSP, 18 September 2020<br>Council Executive, 6 October 2020 |
| 1 January 2022   | Amendment under delegated powers to reflect changes to International procurement thresholds and other minor amendments.   | N/A  |
| 1 January 2024   | Amendment under delegated powers to reflect changes to International procurement thresholds and other minor amendments.   | N/A  |

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## A. EXTENT AND INTERPRETATION

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| <b>1</b> | <p>The purposes of these Standing Orders are:</p> <ul style="list-style-type: none"> <li>• to ensure that uniform contracting procedures of the highest standard are laid down for use throughout the council;</li> <li>• to secure competition and compliance with the law with respect to all contracts;</li> <li>• to ensure the council obtains best value in its procurement and contracting;</li> <li>• to provide a framework for detailed Corporate Procurement Procedures which can be made by Senior Officers under delegated powers; and</li> <li>• to afford protection to the council and its staff</li> </ul>   |
| <b>2</b> | <p>The Council makes these Standing Orders in terms of section 81 of the Local Government (Scotland) Act 1973. Section 81 requires the council to make Standing Orders with respect to the making of contracts by or on behalf of the council both for Works and for the supply of goods and materials. Such Standing Orders must include provision for securing competition for such contracts and for regulating the manner in which tenders are invited by the council. Section 81 also gives the council the power to make, if it chooses, Standing Orders for contracts for the supply of services, as distinct from the supply of goods and materials. These Standing Orders also cover contracts for Works and Services, including health and social care services.</p> <p>The Health and Social Care partnership is the name of the umbrella partnership body through which the council and NHS Lothian Health Board co-operate and work together to deliver health and social care services in West Lothian. It takes in delivery of Adult and Older Peoples Services, Children's Services, Criminal and Youth Justice service as directed by the West Lothian Integration Joint Board and the delivery of children's services under direct control of the partners. On 24 April 2012, the Council approved a separate process for health and social care services contracts and decided that approval of contracts covered by the West Lothian Health and Social Care Partnership, which are health and social care services, covered by the schedule in the Procurement (Scotland) Regulations 2016 should be devolved to the Responsible Officer and approval granted with advice and assistance from the Health and Social Care Contracts Advisory Group (CAG). Such contracts are treated differently in public procurement legislation and are of a particular nature where the needs of service users are of over-riding importance. Where applicable, these standing orders make provision for Health and social care contracts to be governed differently and the Corporate procurement procedures provide further information on the procurement and reporting arrangements.</p> |
| <b>3</b> | <p>These Standing Orders must be interpreted and applied in accordance with the key principles of transparency, equal treatment, non-discrimination and proportionality.</p>  |
| <b>4</b> | <p>These Standing Orders apply to all contracts made by or on behalf of the Council, on or after 6 October 2020, for the procurement of the execution of works, the supply of goods and materials to the Council, and/or for the provision of services, including health and social care services. Where the tender process to make the contracts began prior to the 6 October 2020, the previous Standing Orders will apply.</p>   |
| <b>5</b> | <p>The Standing Orders are subject to the over-riding provisions of public procurement legislation. Officers must also have regard to statutory guidance when using the Standing Orders.</p>  |

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| 6 | <p>Section 81 allows the council to exempt any contract from this requirement for competition where the council decides that it is satisfied that the exemption is justified by special circumstances. However, this exemption from competition can only apply to contracts where the aggregated Estimated Contract Value, for the same procurement requirement, is less than the relevant regulated procurement spend threshold under the applicable public procurement legislation. Even in some of those cases, consideration is still required about the appropriate method and extent of advertising or publicity. These Standing Orders contain procedures for the granting of such exemptions.</p>   |
| 7 | <p>The Standing Orders must be read in conjunction with (and all Council staff must comply with) the Scheme of Delegation, the Council's Financial Regulations and Corporate Procurement Procedures.</p>  |
| 8 | <p>Public Procurement legislation regulates the making of contracts by the council. The legislative framework seeks to ensure that public sector bodies such as the council award contracts in an efficient and non-discriminatory manner. It sets out general duties for public bodies to follow and more specific duties for specified types of procurement activity. Public Procurement legislation set out the procedures to be followed at each stage of the procurement process leading to the award of contracts above certain financial spend thresholds (regulated spend thresholds) for works, goods and materials and services, including health and social care services, by the council and other public bodies. They take account of techniques such as e-procurement and the provision of framework agreements, as well as the extent to which sustainable procurement and social, economic and environmental issues can be considered during the procurement process.</p> <p>Public Procurement legislation makes provision to exclude some types of spend from its scope and although, grant funding received by the Council, as a grant recipient, may be subject to public procurement legislation when the Council spends it, <a href="#">grant funding</a> paid out by the Council to grant recipients is not subject to public procurement legislation so falls outwith the scope of Standing Orders.</p>                 |
| 9 | <p>In addition, the Local Government in Scotland Act 2003, section 1 requires the council:</p> <ul style="list-style-type: none"> <li>• to secure best value in the performance of its functions;</li> <li>• to balance the quality and cost of the performance of its functions and the cost of council services to service users;</li> <li>• to have regard to efficiency, effectiveness, economy and the need to meet equal opportunity requirements in maintaining that balance; and</li> <li>• to discharge its duty to secure best value in a way which contributes to the achievement of sustainable development.</li> </ul> <p>The council has adopted a Best Value Framework to ensure compliance with the relevant legislation and statutory guidance. The Framework applies across the council to all services and areas of activity and is of particular relevance to the procurement process, as part of making the decision to procure goods, materials, services, including health and social care, and works from external providers and in seeking to achieve Best Value procurement. In making decisions about procurement and in applying these Standing Orders, officers must have regard to and comply with that Framework. Best Value procurement is a process that considers and returns more than just best price. It is a process that takes account of the whole life cost of buying products, services or works.</p> |

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|           | Best Value includes financial and non-financial elements such as time, administration, sourcing and benchmarking.   |
| <b>10</b> | The council's Scheme of Delegation to Officers sets out the powers which have been delegated by the council to senior officers. Subject to certain general conditions set out in this Scheme, such as the requirement to follow council policies, the day-to-day running of council services is delegated to the Chief Executive and Depute Chief Executives, and also to Head Teachers under the council's Scheme of Devolution of School Management. These senior officers are also authorised to delegate any of their authority to other officers under their direction and who are appropriately qualified and experienced. This means that, in the context of the making of contracts on behalf of the council, the Chief Executive, Depute Chief Executives, Heads of Service, as well as Head Teachers, must ensure that those officers whom they authorise to perform procurement functions and tasks on their behalf have sufficient training, knowledge and experience to determine compliant and relevant procurement issues and are aware of the extent and limitation of their delegated authority. Regardless of any delegations by them, the final responsibility for ensuring compliance with all applicable regulation's rests with the "Responsible Officer". The Responsible Officer for all types of procurement by the council is currently the Head of Corporate Services. |
| <b>11</b> | <p>The Responsible Officer will: -</p> <ul style="list-style-type: none"> <li>• ensure compliance with these Standing Orders;</li> <li>• determine disputes amongst officers engaged in the procurement and contracting process and procedures in accordance with clause A.15, below;</li> <li>• ensure that the award of any regulated contract applying to services is advertised within the relevant legislative timescales and contract award notices published;</li> <li>• include the details of regulated contract awards in the annual statistical returns and Annual Procurement Report to the Scottish Government;</li> <li>• add details of the contract awards into the council's corporate contract register; and</li> <li>• comply with provisions of Standing Orders in relation to delegation and training of officers, procurement strategies, use of standard terms of contract, use of the Corporate Contract Register, use of framework agreements and collaborative arrangements, contract monitoring, and reporting to committee and Policy Development and Scrutiny Panel.</li> </ul>  |
| <b>12</b> | All officers exercising delegated powers in relation to procurement and contracting functions must comply with these Standing Orders, with the relevant Procurement Procedure as approved by the Head of Corporate Services, and with the Employee Code of Conduct. They must also be aware of the provisions of the Bribery Act 2010 and the Councils Anti-Money Laundering Policy in relation to giving or accepting a financial or other advantage and the potential for personal and corporate criminal liability. Any failure in or disregard of these requirements may amount to gross misconduct or misconduct under the council's Disciplinary Code and may result in disciplinary action.  |
| <b>13</b> | <p>The council's Scheme of Delegation to Officers applies to the signature of contracts. Simple electronic signatures may be used where appropriate.</p> <p>The council's Corporate Procurement Strategy sets out the framework by which the council will ensure it maximises effective service delivery and the provision of best value for money.</p>   |

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|           | <p>The Strategy is aligned to the pursuit of the Scottish Government's national performance framework and the Sustainable Procurement Duty. It requires, in particular, the use of a Contract strategy template as defined, and updated from time to time, in the Corporate Procurement Procedures.</p> <p>These Standing Orders should be read in conjunction with the relevant Corporate Procurement Procedure and in the context of the Corporate Procurement Strategy.</p>  |
| <b>14</b> | <p>Amendment or replacement of these Standing Orders requires a decision of full council or committee, except that:</p> <ul style="list-style-type: none"> <li>• The Head of Corporate Services, in consultation with the Chief Solicitor, may make minor administrative changes required from time to time to any part of this document without reference to committee (arising from, for example, changes in legislation or changes in management structures); or</li> <li>• The Head of Corporate Services, in consultation with the Chief Solicitor, may revise and amend this section "(A) – Extent and Interpretation", and the documents comprised in the Appendices.</li> </ul> |
| <b>15</b> | <p>Any dispute arising from the application, operation or interpretation of these Standing Orders and Corporate Procurement Procedures shall be resolved by a decision of the Responsible Officer after discussion with the appropriate Head of Service and after consultation with the Chief Solicitor, Head of Finance &amp; Property Services or Governance Manager, as appropriate to the nature of the dispute.</p>  |

## B. DEFINITIONS

| TERM                      | MEANING   |
|---------------------------|---|
| 2014 Act                  | Procurement Reform (Scotland) Act 2014  |
| 2015 Regulations          | The Public Contracts (Scotland) Regulations 2015  |
| 2016 Regulations          | Procurement (Scotland) Regulations 2016   |
| Annual Procurement Report | Procurement Reform (Scotland) Act 2014 requires that all Contracting Authorities, who are eligible to prepare and publish a Procurement Strategy, must publish an annual procurement report which reports on actual and planned regulated procurement activities; achievement of community benefits; activity with supported businesses; and any regulated procurement, i.e. above £50,000 for goods and services and £2,000,000 for works contracts, that did not comply with the procurement strategy.  |
| Best Value Framework      | The regime adopted at Council Executive to guide the council in securing best value and complying with the relevant legislation and statutory guidance.   |
| Collaborative Contracts   | All contracts (including framework agreements) placed in conjunction with other contracting authorities or other public bodies, by the council or another authority or body, or through joint committees, or in partnership with other parties.   |
| Committee                 | Full council, or the committee established by the council with a remit which includes corporate procurement (presently Council Executive)   |
| Contract                  | <p>Legislation regulates how contracts can be made by or on behalf of the council. In this context, “contract” means any agreement:</p> <ul style="list-style-type: none"> <li>• with an individual, company or other organisation</li> <li>• for the execution of building and civil engineering works or</li> <li>• for the supply of goods, materials or services, and</li> <li>• which is authorised to be entered into by the council or one of its committees or sub-committees, usually in writing, or</li> <li>• which is entered into, either in writing or verbally, by an officer of the council, acting under their delegated powers to do so, and</li> <li>• which commits the council to the outcome of the agreement and, therefore, is legally enforceable by either the council or the other party or parties to the agreement.</li> </ul> |

| <b>TERM</b>                                 | <b>MEANING</b>   |
|---|--|
| Contracting Authority                       | The term used in public procurement legislation to define those organisations that must comply with it. West Lothian Council is a Contracting Authority.   |
| Contractor                                  | Contractor, also referred to as Supplier and/or service provider in these Standing Orders mean a third party organisation with whom West Lothian Council may contract.   |
| Contract Strategy                           | A pre-tender template, approved by the Responsible Officer, which is used by officers in carrying out procurement exercises to determine the route to market for tenders, in line with the Sustainable procurement duty. The contract strategy template is defined, and updated from time to time, in the Corporate Procurement Procedures.  |
| Corporate Contract Management System        | Council system used to hold information in relation to current and proposed contracts.   |
| Corporate Contract Register                 | Contract register required, in line with public procurement legislation, which holds information on regulated contracts awarded by the Council.  |
| Corporate Procurement Board                 | The group of officers chaired by the Depute Chief Executive with responsibility for the oversight and control of the corporate procurement function of the council   |
| Corporate Procurement Procedures            | The Corporate Procurement Procedures is a complementary and supportive set of procedures which set out the operational requirements of the Standing Orders for the Regulation of Contracts.  |
| Corporate Procurement Strategy              | Council-wide procurement strategy approved at Council Executive  |
| Estimated Contract Value                    | The aggregate Estimated Contract Value (total Estimated Contract Value), excluding VAT, established prior to tendering, over the entire term of the Contract and use across the whole council, including all options, permitted extensions and variations. (Section 5 of the Procurement Reform (Scotland) Act 2014, Regulation 6 of the Public Contracts (Scotland) Regulations 2015 and Regulation 3 of the Procurement (Scotland) Regulations 2016).  |
| Framework Agreement – External and Internal | <p>An agreement or other arrangement between one or more contracting authorities and one or more suppliers which establishes the terms (in particular the terms as to price and, where appropriate, quantity) under which the supplier will enter into one or more contracts with a contracting authority in the period during which the framework agreement applies (Section 6 of the 2014 Act and Regulations 2(1) and 34 of the 2015 Regulations)</p> <p>An “internal framework agreement” is where the council is the body letting the contract to a number of suppliers, an “external framework agreement” is where another body lets the contract but the council is entitled to participate in the contract</p> |



| TERM  | MEANING   |
|---|---|
| General duties  | Generally applicable principles of fairness, equal treatment, non-discrimination and transparency and compliance with the sustainable procurement duty (Sections 8 - 10 of the 2014 Act)  |
| Grant   | <p>A grant is awarded to individuals or organisations by public authorities for specific purposes, often covered in legislation, and usually following an application process. Grants are issued, depending on eligibility and funding, where:</p> <ul style="list-style-type: none"> <li>• The public authority has a legal basis to pay the grant and the grant will further the public authority's statutory duty</li> <li>• the project or organisation being funded contributes to the public authority's policy aims</li> <li>• The money will be used to deliver something (which can include goods, services or works) to someone other than the public authority itself.</li> </ul> <p>Further guidance can be found in the <a href="#">Scottish Public Finance Manual</a></p> |
| Health and Social Care services                                 | As defined by Regulation 12(1) and 13(1) of the Procurement Reform (Scotland) Act 2014 Act, Schedule 3 and Regulations 74 to 76 of the Public Contracts (Scotland) Regulations 2015 Regulations and Regulation 5, along with the associated schedule of The Procurement (Scotland) Regulations 2016.  |
| Health & Social Care Partnership Contracts Advisory Group (CAG) | Contracts for social and health care services in the West Lothian Health & Social Care Partnership for which a separate procedure has been approved by the council, including derogations and variations on some of the provisions of these Standing Orders. CAG advise the Responsible Officer on procurement of Health and Social Care contracts. Further information on the approach is provided in the  |
| International Legislation                                       | Any applicable residual European Procurement Legislation and any subsequent law that replaces it, such as a Government Procurement Agreement.   |
| Negotiated Tender Procedure                                     | A procedure leading to the award of a contract whereby the council negotiates the terms of the contract without prior publication of a contract notice or prior information notice. This may only be used in particular circumstances as identified by Regulations 2(1) and 33 of the 2015 Regulations.   |
| Open Procedure  | A procedure leading to the award of a contract whereby all interested suppliers may tender for the contract (Regulations 2(1) and 28 of the 2015 Regulations)   |

| TERM                                | MEANING  |
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| Procurement Legislation in Scotland | <a href="#">The Procurement (Scotland) Regulations 2016</a><br><a href="#">The Public Contracts (Scotland) Regulations 2015</a><br><a href="#">Procurement Reform (Scotland) Act 2014</a>  |
| Public Contracts Scotland           | The national advertising website for Scottish public sector organisations to post contracts, including those that are subject to public procurement legislation. It also allows contracting authorities to invite suppliers to submit quotations electronically via the website's secure tender post box (Section 22 of the 2014 Act)<br><br>( <a href="http://www.publiccontractsscotland.gov.uk/">http://www.publiccontractsscotland.gov.uk/</a> ) |
| Public Procurement Legislation      | Any legislation that applies to procurement processes in Scotland.   |
| Quick Quote                         | An online request for quotation facility provided through the Public Contracts Scotland website, used to obtain competitive quotes for low value/low risk procurement exercises or procurement mini competitions within framework agreements from suppliers who are registered on the website.   |
| Responsible Officer                 | The Head of Service, currently the Head of Corporate Services, with overall procurement responsibility for all council contracts (works, services - including health and social care services, supply of goods and materials).   |
| Restricted Procedure                | A procedure leading to the award of a contract whereby only economic operators selected by the council may submit tenders for the contract (Regulations 2(1) and 29 of the 2015 Regulations)   |
| Scheme of Delegations (to Officers) | The record maintained of all powers enduring for six months or more delegated to council officers by full council or committee   |
| Services (and Services Contracts)   | The provision of services by a person engaged by the council to do so but not including works or supplies/materials as described in Regulation 2(1) of <a href="#">The Public Contracts (Scotland) Regulations 2015</a>  |
| Service Provider                    | Service Provider, also referred to as Supplier and/or contractor in these Standing Orders mean a third party organisation with whom West Lothian Council may contract.   |
| Standstill Period                   | The standstill period provides for a short (at least 10 calendar day) pause between the point when the contract award decision is notified to bidders, and the final contract conclusion, during which time suppliers can challenge the decision. It is a legal requirement imposed through public procurement legislation.  |

| TERM                              | MEANING   |
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| Supplier                          | Supplier, also referred to as Contractor and/or service provider in these Standing Orders mean a third party organisation with whom West Lothian Council may contract.  |
| Supplies (and Supplies Contracts) | The purchase or hire of goods, or their siting or installation as defined in paragraph 2(1) of the <a href="#">2015 Regulations</a> .   |
| Thresholds                        | <p>Regulated spend thresholds, also known as tender thresholds, are the limits specified in legislation which determine applicable law and procedures (Regulation 5 of the 2015 Regulations) or as updated by Scottish Procurement through <a href="#">Scottish Procurement Policy Notes</a> from time to time which determine which procurement procedure should be followed.</p> <p>West Lothian Council also sets local spend thresholds below the regulated spend threshold values. All thresholds are set out in the Corporate Procurement Procedures. The thresholds in the Corporate Procurement Procedures will be amended from time to time. The current thresholds are at Appendix 1.</p> |
| Works (and Works Contracts)       | The carrying out of a work or works for the council, or under an arrangement whereby the council engages a person to procure by any means the carrying out for the council of a work corresponding to specified requirements Regulation 2(1) and Schedule 2 of the <a href="#">2015 Regulations</a> .   |

## **C. STANDING ORDERS**

### **1. ROLES AND RESPONSIBILITIES**

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| 1.1 | The Responsible Officer carries ultimate responsibility for the actions of all staff engaged in the procurement and contracting process.   |
| 1.2 | It is the duty of the Responsible Officer to ensure that all staff engaged in the procurement and contracting process are properly authorised to act, are properly trained and supervised, understand these Standing Orders and related Corporate Procurement Procedures, and that they comply with them.                      |
| 1.3 | All staff engaged in the procurement and contracting process must be properly authorised to act, must be properly trained and supervised, must understand these Standing Orders and related Corporate Procurement Procedures, and must comply with them.   |
| 1.4 | In carrying out functions and in the procurement and contracting process all staff must have regard to the need to take legal advice, shall ensure that legal advice is timeously taken where required, and shall record and retain a record of the advice requested and provided.   |
| 1.5 | External specialist procurement advice shall only be purchased when approved by the Responsible Officer in consultation with the Chief Solicitor.  |
| 1.6 | All staff engaged in the procurement and contracting process must act in accordance with these Standing Orders, with the relevant Corporate Procurement Procedures made from time to time by the Responsible Officer, and with the council's Best Value Framework, and must have regard to the Corporate Procurement Strategy. |
| 1.7 | All staff must ensure that all information in relation to a contract or proposed contract is entered when and where required in the Corporate Contract register which is currently held in the Corporate Contract Management System.   |

### **2. APPLICATION AND EXCEPTIONS**

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| 2.1 | These Standing Orders shall apply to the placing of any contract. All such contracts, and extensions to contracts, must be made within the terms of all applicable public procurement legislation and statutory guidance, these Standing Orders and the council's Corporate Procurement Procedures issued by the Responsible Officer. The council's duty at all times will be to achieve best value.   |
| 2.2 | Except where prohibited by legislation, committee may decide that these Standing Orders, or parts of them, shall not apply to a specific contract or to a specific class or category of contract, if it is satisfied that there are circumstances, such as arising from geographical, sole provider, technical, artistic or urgency factors, to justify the exemption. For supplies/materials and services certain officers may grant such exemptions where the Estimated Contract Value is less than £50,000 (SO2.3) but exemptions where the Estimated Contract Value is £50,000 or more may only be granted by the council committee. For Works certain officers may grant such exemptions where the Estimated Contract Value is less than £250,000 (SO2.3) but exemptions where the Estimated Contract Value is £250,000 or more may only be granted by the council committee. The Responsible Officer, with advice and guidance from The Health and Social Care Partnership Contracts Advisory Group (CAG), will grant any exemption for contracts for health and social care services with an estimated contract value of £50,000 or more. |

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| 2.3 | <p>In exceptional circumstances, such as arising from geographical, sole provider, technical, artistic or urgency factors, where the Estimated Contract Value is less than £50,000 for Supplies/Materials and Services (including Health and Social Care Services), and £250,000 for Works, certain officers may decide that the provisions of Standing Order 4.4 to 4.9 in relation to the obtaining of estimates, quotations or tenders shall not apply. Such exemptions may only be granted as follows:</p> <ul style="list-style-type: none"> <li>(a) For an Estimated Contract Value of less than £1,000 (Standing Order 4.5), no exemption is required or available;</li> <li>(b) For an Estimated Contract Value of between £1,000 and £4,999, by the relevant Head of Service (and by no other officer on his or her behalf, except in his or her absence from the service, the appropriate Depute Chief Executive) on completion of a <a href="#">Head of Service Business Case Exemption</a> and compliance with Corporate Procurement Procedures (Standing Order 4.6)</li> <li>(c) For an Estimated Contract Value of between £5,000 and £49,999 for supplies/materials and services, by the Responsible Officer (and by no other officer on his or her behalf, except in his or her absence from the service, the appropriate Depute Chief Executive) on completion of the <a href="#">Responsible Officer (Head of Corporate Services) Business Case Exemption</a> and compliance with Corporate Procurement Procedures (Standing Order 4.7)</li> <li>(d) For an Estimated Contract Value of between £5,000 and £249,999 for Works, by the Responsible Officer (and by no other officer on his or her behalf, except in his or her absence from the service, the appropriate Depute Chief Executive) on completion of the Responsible Officer Business Case Exemption and compliance with Corporate Procurement Procedures (Standing Order 4.7)</li> <li>(e) For an Estimated Contract Value of £50,000 or more, for supplies/materials and services (excluding Health and Social Care Services), by the council committee on a recommendation from the Responsible Officer (Standing Order 2.2)</li> <li>(f) For an Estimated Contract Value of £50,000 or more, for health and social care services, by the Responsible Officer, with advice and guidance from The Health and Social Care Partnership Contracts Advisory Group (CAG) (Standing Order 2.2)</li> <li>(g) For an Estimated Contract Value of £250,000 or more, for Works, by the council committee on a recommendation from the Responsible Officer (Standing Order 2.2)</li> </ul> <p>The officer granting such an exemption shall ensure that a record is kept.</p> |
| 2.4 | <p>For spend of £50,000 or more for supplies/materials and services and for Works of £2m or more, except where Scottish Government and Scotland Excel Frameworks for Category A and B spend are utilised, external Framework Agreements may only be used with the prior written approval of the Responsible Officer and as required in accordance with the council's Corporate Procurement Procedures.</p>  |
| 2.5 | <p>Pilot Schemes set up in accordance with the council's Corporate Procurement Procedures may only be used where approved by the Responsible Officer and only when a business case has been prepared and the Pilot Scheme provider has been identified following a competitive tender exercise.</p>   |

### 3. BEFORE COMMENCING THE PROCUREMENT PROCESS

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| 3.1 | <p>Heads of Service shall, subject to advice and guidance from the Responsible Officer, ensure compliance with the council's Best Value Framework in relation to the contract strategy and decision, and shall determine:</p> <ul style="list-style-type: none"> <li>• The nature of the contract (wholly works, wholly supplies/materials and services, wholly Health and Social Care Services or, where the contact shall include a mix, the category into which it falls);</li> <li>• Where the contract is for supplies/materials and services, the type of services (whether or not within the category of Health and Social Care Services or, where the contact shall include both, the category into which it falls);</li> <li>• Whether or not the Estimated Contract Value will be less than £1,000;</li> <li>• Whether or not the Estimated Contract Value will be greater than or equal to £1,000 but less than £5,000;</li> <li>• Whether or not the Estimated Contract Value will be greater than or equal to £5,000 but less than £50,000;</li> <li>• Whether or not the Estimated Contract Value will be greater than or equal to £50,000 but less than the relevant regulated spend threshold;</li> <li>• Whether or not the Estimated Contract Value will fall within the regulated spend threshold;</li> <li>• Whether or not the Estimated Contract Value will be greater than the relevant regulated spend threshold;</li> <li>• Whether the Estimated Contract Value is within the regulated spend threshold which indicates that wider advertising is needed;</li> <li>• Whether there are any existing, forthcoming or potential Collaborative Contracts or Framework Agreements, internal or external, which may be utilised.</li> </ul> <p>Regardless of any delegations, the final responsibility for ensuring compliance with all applicable public procurement legislation rests with the "Responsible Officer". The Responsible Officer for all types of procurement by the council is currently the Head of Corporate Services.</p> |
| 3.2 | <p>For Works, Supplies/Materials and Services contracts (including health and social care contracts), where the Responsible Officer identifies an existing Collaborative Contract or Framework Agreement (Internal or External) this may be utilised provided it is compliant with public procurement legislation and presents best value.</p>  |
| 3.3 | <p>The Responsible Officer shall determine the quotation or tender award criteria and the proposed contract strategy for the proposed procurement but the Responsible Officer may ask committee to do so if they believe there is good reason.</p>  |
| 3.4 | <p>The Responsible Officer shall prepare such documentation as is necessary to obtain competitive quotations or tenders for all contracts. The documentation shall be prepared and issued in accordance with the council's Corporate Procurement Procedures.</p>  |

#### 4. ISSUING DOCUMENTATION AND ADVERTISING

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| 4.1 | Officers shall ensure compliance with public procurement legislation and the Sustainable Procurement Duty and shall have regard to guidance relating to the extent of advertising and publicity required which is proportionate to the Estimated Contract Value, under reference to the spend thresholds in Appendix 1.  |
| 4.2 | The Responsible Officer shall issue contract documents and invitations to quote and to tender for all contracts in accordance with the council's Corporate Procurement Procedures.   |
| 4.3 | Contract documentation shall utilise the relevant set of the council's standard Terms and Conditions of Contract, and any departure from them must be approved in writing by the Responsible Officer and, where applicable, the Chief Solicitor.   |
| 4.4 | The Responsible Officer may utilise electronic tendering and electronic auction techniques where appropriate and as required in accordance with the council's Corporate Procurement Procedures.  |
| 4.5 | Where the Estimated Contract Value is less than £1,000 the procurement shall be carried out in such manner as the relevant Head of Service may determine, subject to the requirements to demonstrate best value and retain adequate records to substantiate the decision.  |
| 4.6 | Where the Estimated Contract Value is £1,000 or more but less than £5,000, the procurement shall be carried out in such manner as the relevant Head of Service may determine, subject to the requirement to obtain at least two competitive quotations.  |
| 4.7 | Where the Estimated Contract Value is £5,000 or more but less than £50,000 for Supplies/Materials and Services, the procurement shall be carried out by using Quick Quote and a minimum of three quotations must be sought. For Works, where the Estimated Contract Value is £5,000 or more but less than £250,000, the procurement shall be carried out by using Quick Quote and a minimum of three quotes must be sought.  |
| 4.8 | Quick Quotes must be carried out through Public Contracts Scotland (PCS) and, except where exempted by public procurement legislation, tenders must be carried out through Public Contracts Scotland Tender (PCS-Tender) but the Responsible Officer shall, in addition, consider and arrange for such additional advertising or publicity as may be required to secure compliance with public procurement legislation.  |
| 4.9 | <ul style="list-style-type: none"> <li>(a) For spend up to £999 there is no requirement to seek quotes. However, there is a requirement to ensure best value.</li> <li>(b) For spend between £1,000 and £4,999 a minimum of 2 quotations must be sought.</li> <li>(c) For Supplies/Materials and Services (including Health and Social Care) for spend between £5,000 and £49,999 a minimum of 3 quotes must be sought.</li> <li>(d) For Works spend between £5,000 and £250,000 a minimum of 3 quotes must be sought.</li> <li>(e) Except where exempted by public procurement legislation, for spend over £50,000 to £177,897 (excluding VAT) for regulated contracts for supplies/materials and services (including Health and Social Care), the procurement must be carried out through Public Contracts Scotland-Tender and, where there is a high level of bidders, selecting a minimum of 3 tenders</li> <li>(f) A minimum of 5 tenders should be selected, where there is a high level of bidders, for spend of £177,897 (excluding VAT) and above.</li> </ul> |

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|      | <p>(g) For Works spend between £250,000 to £4,447,447 (excluding VAT), the procurement must be carried out through Public Contracts Scotland-Tender and, where there is a high level of bidders, select a minimum of 3 tenders.</p> <p>(h) For Works spend over £4,447,447 (excluding VAT), where there is a high level of bidders, a minimum of 5 tenders must be sought.</p> |
| 4.10 | If the Estimated Contract Value to carry out work under any one Works Contract is more than £1,000,000 the council shall ask for security for completing the contract. The Head of Service, subject to advice and guidance from the Responsible Officer, shall ensure that the tender and conditions of contract shall set out the nature and amount of the security.          |
| 4.11 | The council may ask for security on any other contract where considered appropriate and the Head of Service, subject to advice and guidance from the Responsible Officer, shall ensure that the tender and conditions of contract shall set out the nature and amount of the security.   |
| 4.12 | After due consideration, but only where permitted by law, committee may decide that a tenderer or a contractor shall not be invited to or be allowed to quote or tender for any future contract for any part of the council.   |

## 5. RECEIVING QUOTATIONS AND TENDERS

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| 5.1 | All quotations and tenders shall be received and opened by the Responsible Officer in accordance with the relevant Procurement Procedure.   |
| 5.2 | In the event that Public Contracts Scotland or Public Contracts Scotland-Tender has not been utilised, all quotations and tenders not received at the specified return address by the specified closing date and time will not be considered, and shall be returned unopened. Quotations and tenders must be submitted in the form specified.   |
| 5.3 | In the case of unsatisfactory performance or conduct by any person submitting a quotation or tender before a decision is made as to which should be accepted, the Responsible Officer may, in consultation with the Chief Solicitor, as far as permitted by law, disqualify that person from further participation or reject the quotation or tender, after considering any representations made. |

## 6. EVALUATION

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| 6.1 | Quotations and tenders shall be evaluated by the Head of Service, in consultation with the Responsible Officer, in accordance with the Scheme of Delegation and the Corporate Procurement Procedures.   |
| 6.2 | Quotations and tenders shall be evaluated in accordance with the quotation or tender award criteria and the agreed contract strategy for the proposed procurement, and on the basis of establishing which offer is the most economically advantageous and provides Best Value to the council. |
| 6.3 | A written record must be maintained outlining the evaluation process, recording the process followed and the criteria applied, and detailing the reasons for the decision.  |



## **7. SELECTION AND ACCEPTANCE**

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| 7.1 | The decision as to which quotation or tender to accept shall be taken by Heads of Service, after consultation with the Responsible Officer, in accordance with the Scheme of Delegation and the Corporate Procurement Procedures, unless the Responsible Officer is required by a decision of the council to refer the decision to committee, or in any other case in which the Responsible Officer decides that committee approval is desirable. |
| 7.2 | Quotations and tenders shall thereafter be accepted by Heads of Service, after consultation with the Responsible Officer, in accordance with the Scheme of Delegation and the Corporate Procurement Procedures. In particular, Heads of Service, with advice and guidance from the Responsible Officer, shall observe any standstill period required before acceptance of a quotation or tender.  |

## **8. CONTRACT MONITORING**

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| 8.1 | The Responsible Officer shall ensure that the performance of the contract is monitored and reviewed, and shall maintain a record of those processes which is proportionate in light of the value, duration, subject matter, risk rating and complexity of the contract.   |
| 8.2 | In a case of unsatisfactory performance or conduct by a contractor following the award of a contract, the Responsible Officer may, in consultation with the Chief Solicitor, and subject to any failure to implement any applicable improvement action by the contractor, take action in terms of the contract to terminate the contract. |

## **9. EXTENSIONS AND RENEWALS**

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| 9.1 | Subject always to compliance with public procurement legislation and the relevant Corporate Procurement Procedures, the Responsible Officer may vary, alter, extend (but only where the contract allows the council those options) or re-negotiate any part of a contract to achieve best value for the council. |
| 9.2 | A Responsible Officer business case, in compliance with the relevant renewal/extension procedure documented in the Corporate Procurement Procedures, justifying the reasons for this course of action together must be prepared and retained before proceeding.  |
| 9.3 | A detailed written record of all negotiations and discussions with the contractors must be maintained and retained.  |

## 10. RECORDS AND REPORTING

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| 10.1 | Heads of Service shall report to the Head of Corporate Services all contracts let and other information required under the Corporate Procurement Strategy, and shall comply with the reporting procedures put in place by the Corporate Procurement Board.   |
| 10.2 | Unless an exception is made by the council for any class or value of contracts, the Responsible Officer shall ensure that reports are brought to the Corporate Procurement Board, on a quarterly basis, on those matters specified in the Corporate Procurement Strategy and otherwise as required by the Council Executive or the Corporate Procurement Board.  |
| 10.3 | An annual Procurement Strategy review will be conducted and reported annually to the Policy Development and Scrutiny Panel.  |
| 10.4 | The Annual Procurement Report, as required by the Procurement Reform (Scotland) Act 2014 will be brought to the Council Executive prior to publication. An update, reporting on the first 6 month of the financial year, will also be reported to Council Executive.   |
| 10.5 | As well as ensuring amendments and updates are made as required, the Responsible Officer shall carry out a review of these Standing Orders at least once in each administrative term and shall report the outcome to PDSP and Council Executive.   |
| 10.6 | Reporting on H&SCP contract activity will be carried out as follows: - <ul style="list-style-type: none"><li>• Annually to the Council Executive on the regulated contracts awarded, extended or renewed as a result of recommendations from the Health and Social Care Partnership Contract Advisory Group.</li><li>• Biannually to Social Policy Policy Development and Scrutiny Panel on the regulated contracts awarded, extended or renewed as a result of recommendations from the Health and Social Care Partnership Contract Advisory Group.</li></ul> |
| 10.7 | The Responsible Officer shall maintain a corporate contract register, comply with the statutory requirements for annual procurement reports, and comply with publication duties, all in accordance with the 2014 Act.  |

## 11. DISPOSALS

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| 11.1 | The Head of Finance and Property is responsible for disposing of assets and materials (including land and buildings) which are not needed on behalf of all council services, except for the disposal of IT hardware and software which is the responsibility of the Depute Chief Executive (Corporate, Operational & Housing Services). |
| 11.2 | All disposals of assets and materials except for IT hardware and software shall be undertaken in accordance with procedures approved by committee or issued by the Head of Finance and Property under delegated powers.   |
| 11.3 | All disposals of IT hardware and software shall be undertaken in accordance with the procedure issued by the Depute Chief Executive Corporate, Operational & Housing Customer and Building and Services).   |

**WEST LOTHIAN COUNCIL TENDER THRESHOLDS****Supplies/Materials and Services**

| Procurement Type               | Aggregate Estimated Contract Value, excluding VAT** | Aggregate Estimated Contract Value, including VAT** | Tender Advertising Requirement | Minimum No of Quotations/Tenders Sought |
|--------------------------------|---|---|--------------------------------|---|
| Informal Quotation/PECOS Order | £0-£999   | -   | N/A                            | Requirement to ensure best value        |
| Informal Quotation             | £1,000-£4,999                                       | -   | N/A                            | Two Quotes                              |
| Quick Quote                    | £5,000 to £49,999                                   | -   | PCS - Quick Quotes             | Three Quotes                            |
| Tender                         | £50,000 to £177,896                                 | -   | PCS – Tender                   | Three Tenders                           |
| Tender                         | £177,897 and above                                  | £213,487 and above                                  | PCS – Tender                   | Five Tenders                            |

**Health and Social Care Services**

| Procurement Type               | Aggregate Estimated Contract Value, excluding VAT** | Aggregate Estimated Contract Value, including VAT** | Tender Advertising Requirement | Minimum No of Quotations/Tenders Sought |
|--------------------------------|---|---|--------------------------------|---|
| Informal Quotation/PECOS Order | £0-£999   | -   | N/A                            | Requirement to ensure best value        |
| Informal Quotation             | £1,000-£4,999                                       | -   | N/A                            | Two Quotes                              |
| Quick Quote                    | £5,000 to £49,999                                   | -   | PCS - Quick Quotes             | Three Quotes                            |
| Tender                         | £50,000 to £552,949                                 | -   | PCS – Tender                   | Three Tenders                           |
| Tender*                        | £552,950 and above                                  | £663,540 and above                                  | PCS – Tender                   | Five Tenders                            |

## Works

| Procurement Type               | Aggregate Estimated Contract Value, excluding VAT** | Aggregate Estimated Contract Value, including VAT** | Tender Advertising Requirement | Minimum No of Quotations/Tenders Sought |
|--------------------------------|---|---|--------------------------------|---|
| Informal Quotation/PECOS Order | £0-£999   | -   | N/A                            | Requirement to ensure best value        |
| Informal Quotation             | £1,000-£4,999                                       | -   | N/A                            | Two Quotes                              |
| Quick Quote                    | £5,000 to £249,999                                  | -   | PCS - Quick Quotes             | Three Quotes                            |
| Tender                         | £250,000 to £1,999,999                              | -   | PCS – Tender                   | Three Tenders                           |
|                                | £2m to £4,444,446                                   | £2m to £5,336,937                                   | PCS – Tender                   | Three Tenders                           |
| Tender                         | £4,447,447 and above                                | £5,336,937 and above                                | PCS – Tender                   | Five Tenders                            |

\*Some Health and Social Care tenders in this threshold may be exempt, in line with public procurement legislation, from tendering requirements. Please contact CPU for guidance.

\*\*Updated from time to time in line with regulatory amendments.