



# **Orkney and Shetland Valuation Joint Board**

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# **Contract Standing Orders**

**June 2024 Version 1.1.**



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# 1. Introduction

1.1. The purpose of Contract Standing Orders (CSOs) is to set clear rules for the procurement of Supplies, Services and Works for the Board. Following the rules should ensure that the Board is fair and accountable in its dealings with Contractors and in the award of Contracts. CSOs are intended to ensure that the Board obtains value for money for its stakeholders. Value for money is defined as the optimum combination of whole life cost and quality (or fitness for purpose) to meet the end users' requirements.

1.2. The CSOs are compiled in accordance with the Procurement Reform (Scotland) Act 2014, Public Contracts (Scotland) Regulations 2015, the Procurement (Scotland) Regulations 2016, the Concession Contracts (Scotland) Regulations 2016, the Utilities Contracts (Scotland) Regulations 2016 and the Public Contracts (Scotland) Amendment Regulations 2016.

1.3. The CSOs are to be read in conjunction with the statutory guidance and policy notes as detailed below.

- [Procurement Reform \(Scotland\) Act 2014: statutory guidance - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/statutory-guidance/procurement-reform-act-2014/pages/introduction.aspx) - Guidance on procurement strategies and annual reports, the sustainable procurement duty, community benefit, tenders and award of contracts.
- [Addressing fair work practices, including the real living wage, in procurement: best practice - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/best-practice-addressing-fair-work-practices/pages/introduction.aspx)
- [Changes to procurement legislation at the end of the EU Exit Transition Period: SPPN 11/2020 - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/sppn-11-2020/pages/introduction.aspx)
- [Fair Work First implementation - Scottish public procurement update: SPPN 6/2021 - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/sppn-6-2021/pages/introduction.aspx)
- [Public procurement - taking account of climate and circular economy considerations: SPPN 3/2022 - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/sppn-3-2022/pages/introduction.aspx)
- [Public procurement - updates to procurement thresholds: SPPN5/2023 - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/sppn-5-2023/pages/introduction.aspx)
- [Fair Work First implementation - Scottish public procurement update: SPPN 1/2024 - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/sppn-1-2024/pages/introduction.aspx)

1.4. All Contracts that are awarded by the Board, regardless of value shall be subject to an obligation to seek best value and be able to demonstrate transparency, equal treatment, non-discrimination and proportionality.

1.5. CSOs are designed to protect the interests of the Board and protect the interests of officers involved in procurement. CSOs enable officers to act confidently for the Board in the pursuit of best value. It is the responsibility of the Assessor to ensure that officers within their Service have a good understanding and where applicable a working knowledge of these CSOs.

1.6. Relevant UK and Scottish legislation overrides these CSOs only in so far as to ensure compliance with said legislative requirements.

1.7. The Assessor, in consultation with the Clerk to the Board, may approve guidance notes on tendering and procurement matters for Contracts awarded by the Board. Guidance notes will be compiled by the Assessor in consultation with the Clerk, with support provided by the Procurement staff at Orkney Islands Council as required.

## 2. Definitions and Interpretation

2.1. Definition of terms is as follows:

Abnormally Low Tenders.	As defined within the Procurement (Scotland) Regulations 2015 and any subsequent Scottish Government Guidance when available.
The Board	The Orkney and Shetland Valuation Joint Board, established under the Valuation Joint Boards (Scotland) Order 1995.
Contract.	An agreement between the Board and any Contractor made by formal agreement or by issue of acceptance or an official order for Supplies, Services or Works.
Contract Documents.	Documents to be used in the tendering procedure and where different those that are intended to form part of any Contract following a tendering procedure. The Contract Documents include, but are not restricted to, the Single Procurement Document (SPD), the invitation to tender, the instructions to tenderers, terms and conditions of contract, the specification and technical requirements, pricing schedule, form of tender, certificate of bona fide tendering and any Bills of Quantities and includes any such documents or their equivalents using e-procurement.
Contractor(s).	Includes any sole trader, partnership or company (limited or unlimited) or any duly incorporated trade, professional or commercial body.
Delegated Authority.	Officers who have been given formal written authority by the Assessor to manage procurement exercises within a specified value range on behalf of the Board.
Dual Stage Procedure.	The below threshold procedure which is equivalent to the threshold Restricted Procedure.
Threshold.	The threshold for determining the application of the Regulations pursuant to the Public

	<p>Contracts (Scotland) Regulations 2015 is £214,904 (indicative value excluding 20% VAT £179,087) for Supplies and Services contracts and £5,372,609 (indicative value excluding 20% VAT £4,477,174) for Works contracts. Pursuant to the Utilities Contracts (Scotland) Regulations 2016 the threshold is £429,809 (indicative value excluding 20% VAT £358,174) for Supplies and Services contracts and £5,372,609 (indicative value excluding 20% VAT £4,477,174) for Works contracts. The remaining threshold values for small lots and the light touch regime for services remain unchanged. These are aligned with the World Trade Organisation and Government Procurement Agreement.</p>
Over Threshold Regulated Procurement.	Goods, Services or Works contracts with a value over the procurement threshold.
European Single Procurement Document (ESPD).	The standard form document which replaced the pre-qualification questionnaire, to be used for procurements linked to the European Structural and Investment Funds (ESIF) programmes.
Assessor	The officer appointed by the Board as the Assessor in terms of the Lands Valuation (Scotland) legislation.
Treasurer	The Treasurer to the Board appointed by the Board.
Clerk	The Clerk to the Board appointed by the Board.
Fair Work First	Fair Work First is the Scottish Government's flagship policy for driving high quality and fair work across the labour market in Scotland by applying fair work criteria to grants, other funding and contracts being awarded by and across the public sector, where it is relevant to do so.
Fair Work First Guidance	Outlines the Scottish Government's Fair Work First approach and exemplifies the Fair Work First criteria in practice. It should be used by those involved in awarding public sector grants, sponsorship and other funding, and contracts, and those seeking to access / accessing such funding and/or contracts.
Framework Agreement.	An overarching agreement with supplier(s) to establish terms governing individual contracts

	that may be awarded during the life of the agreement ('call-offs'), concluded in accordance with Section 34 of the Public Contracts (Scotland) Regulations 2015.
Government Procurement Agreement	The United Kingdom is a signatory to the World Trade Organisation's (WTO) Government Procurement Agreement (the GPA) and this remains as the UK is now a signatory in its own right following the end of the EU Transition Period.
Life-Cycle Costing.	All consecutive or interlinked stages, including research and development to be carried out, production, trading and its conditions, transport, use and maintenance, throughout the existence of the product or the works or the provision of the service, from raw material acquisition or generation of resources to disposal, clearance and end of service or utilisation.
Procurement.	The process leading to the award of a public contract or framework agreement or establishment of a dynamic purchasing system for the acquisition of works, supplies or services from an economic operator.
Procurement Plan.	A summary of the planned procurement providing sufficient information to ensure that all relevant Board policies have been followed, including the governance, identified budget, Contract Standing Orders and the Financial Regulations.
Public Contracts Scotland (PCS) portal.	The Scottish Government's official national advertising portal for public sector contract opportunities <a href="http://www.publiccontractsscotland.gov.uk">www.publiccontractsscotland.gov.uk</a> .
Relevant Officer	The Officer who has been delegated by the Assessor to carry out this instruction as part of their duties.
Quick Quote.	An online quotation facility which allows the Board to obtain competitive quotes electronically for: <ul style="list-style-type: none"> <li>• Low value requirements between £10,000 and £50,000; and</li> <li>• Unregulated Works Contracts (below the value of £2,000,000), depending on complexity of contract (as defined in Clause 19).</li> </ul>



Quotation.	A formal offer to supply or purchase supplies or provide services where the estimated value of the contract is below £50,000 or to execute works with a value above £2,000,000 for works.
Regulated Procurement.	As defined by the Procurement Reform (Scotland) Act 2014 a regulated procurement for Supplies or Services Contracts with a value of £50,000 or above and for Works Contracts over £2,000,000 and less than the relevant Thresholds.
Regulations.	The Public Contracts (Scotland) Regulations 2015, the Procurement Reform (Scotland) Act 2014, the Procurement (Scotland) Regulations 2016 and / or the Concession Contract (Scotland) Regulations 2016 as the context requires.
Single Procurement Document (SPD).	The standard form document which replaces the European Single Procurement Document (ESPD) introduced by the new WTO/GPA Public Procurement Directive (Directive 2014/241/WTO/GPA) which replaced the pre-qualification questionnaire. The SPD is the particular form of which has been approved by the Scottish Government.
Single Stage Procedure.	The below Threshold procedure which is equivalent to the Threshold Open Procedure.
Supplies.	Goods or the hire of goods and for any siting or installation of those goods.
Sustainable Procurement Impact Assessment (SPiA)	A Sustainable Procurement Impact Assessment (SPiA) may be carried out in appropriate cases for contracts where there is potential to minimise the use of carbon-based energy and its associated emissions.
Tender.	A formal offer to supply or purchase supplies, execute works or provide services where the estimated value of the contract is £50,000 (excluding Value Added Tax (VAT)) or more.
Tender Evaluation Panel	Established ahead of the tender period and consisting of at least two individuals with demonstratable technical ability to evaluate tenders.
Tender Opening Panel	As described in Clause 36.2

Unregulated Works Procurement.	A contract for Works with a value of between £50,000 and £2,000,000, being procurement not covered by the Regulations.
Works.	Building construction, building maintenance or engineering works.

2.2. In interpreting these CSOs, any reference to any legislation, regulations or guidance shall be to that legislation, regulations or guidance as the same may be updated, amended, supplemented or replaced from time to time.

### **3. Compliance with Contract Standing Orders**

3.1. Contracts awarded by the Board must comply with CSOs.

3.2. Officers are required to comply with these CSOs, the Scheme of Delegation to Officers, and the Board's Financial Regulations. The Assessor will have in place policies, practices, procedures and training which ensure compliance. Failure to comply with the Scheme of Delegation to Officers, the CSOs and the Board's Financial Regulations may result in disciplinary action.

### **4. Conduct of Officers and Members**

4.1. Board Members must abide by the Councillors' Code of Conduct published by the Standards Commission for Scotland available at:  
<http://www.standardscommissionscotland.org.uk/codes-of-conduct/councillors-code-of-conduct>.

4.2. Officers must comply with the provisions of any Code of Conduct for Employees.

### **5. Ethical Standards**

5.1. In all dealings with Contractors, the Assessor and all officers must preserve the highest standards of honesty, integrity, impartiality and objectivity. In particular, officers engaged in procurement matters must:

5.1.1. Be fair, efficient, firm and courteous;

5.1.2. Maintain the highest possible standard of integrity in all business relationships;

5.1.3. Acquire and maintain current technical knowledge;

5.1.4. Achieve appropriate professional standards in the management of contracts;

5.1.5. Foster appropriate standards of professional competence amongst those for whom they are responsible;

5.1.6. Comply with the law, guidance on professional practice and contractual obligations;

5.1.7. Declare any personal interest which may affect or be seen by others to affect impartiality;

5.1.8. Respect the confidentiality of information received in the course of duty and ensure that information given in the course of duty is honest and clear;

5.1.9. Respond promptly, courteously and efficiently to suggestions or enquiries, including Freedom of Information (FOI) request obligations according to Board policies;

5.1.10. Not knowingly work with suppliers that trade in slavery, prostitution or illegal drugs, or who breach International Labour Organisation conventions;

5.1.11. Not offer, give or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the procurement agreement or for showing or refraining from showing favour or disfavour to any person in relation to said Agreement which may constitute an offence under the Bribery Act 2010; and

5.1.12. Take all reasonable steps, in accordance with good industry practice, to prevent fraud by Board Staff and the Supplier (including its shareholders, members and directors) in connection with the procurement of supplies, services and shall in the first instance notify their Line Manager or the Assessor immediately if they have reason to suspect that any fraud has occurred or is occurring or is likely to occur.

## **6. Authority to Procure**

6.1. No officer may manage a Procurement exercise unless authority has been delegated to them by the Assessor. Oversight of a procurement exercise will be undertaken by a qualified procurement professional of Orkney Islands Council.

6.2. The diversity of the work involved in procurement necessitates that officers are competent in a wide variety of generic procurement skills in addition to the specific technical skills and knowledge required when procuring specific Supplies, Services and Works. Officers with delegated authority to invite and manage Procurement exercises will be required to undertake specific procurement training which is available through Orkney Islands Council's Procurement Service.

6.3. The relevant officer must complete a Procurement Plan before proceeding with a procurement exercise.

## **7. Separation of Duties**

7.1. The roles of the client / budget holder and the officer with delegated authority to manage a Procurement exercise must not be performed by the same officer. The Assessor will ensure separation of these key roles within the Procurement process.

## **8. Suspension, Variation and Revocation**

8.1. These CSOs may be varied or revoked by the Board. Any variation to, or revocation of CSOs, will be effective on the first working day after the conclusion of the Board Meeting at which it was approved.

8.2. CSOs or any part of them may be suspended by the Board in respect of a Contract on receiving a joint recommendation from the Assessor and the Treasurer, that there are special circumstances which justify such a suspension and that it is in the interests and within the powers of the Board to do so.

8.3. The Assessor will be able to vary these CSOs in the following operational circumstances:

8.3.1. To reflect changes in job titles, reorganisation of Board Services and vacancies in posts;

8.3.2. 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; and

8.3.3. To change the financial values of the Threshold where referred to in these CSOs.

8.4. The Assessor will be responsible for ensuring that an up to date control copy of CSOs is available to staff and placed on the Board's website.

## **9. Value of Contract**

9.1. The financial values stated throughout these CSOs represent the total value of the Contract over its whole life and are not, for example, the estimated annual value of the Contract.

9.2. Where the Contract is for Supplies or Services, the value of the Contract shall include all options under the Contract. For example, if the Contract allows the Board to either purchase additional Supplies or Services, or to extend the Contract beyond its original term, the financial implications of these must be included in the value of the Contract, even if the likelihood of taking up these options is small.

9.3. It is not permitted to deliberately divide any procurement exercise into two or more Contracts if the intention in doing so is to avoid the application of the financial thresholds in these CSOs or the Regulations.

9.4. All financial values stated in these CSOs are exclusive of VAT unless otherwise stated.

9.5. Wherever VAT may be payable under a contract, an allowance for VAT shall be included in the calculation of the estimated value of the contract for the purposes of determining whether the contract equals or exceeds the new threshold values.

## **10. Financial Provision**

10.1. Before inviting Tenders or Quotations or recommending the acceptance of Tenders, the Assessor will be required to be satisfied that all necessary Board approvals are in place and sufficient budgetary provision has been made or will be made to cover the contractual commitment by the Board.

## **11. Equalities and Prevention of Discrimination**

11.1. Before entering into a Contract, the Assessor will obtain from the Contractor an assurance, in writing, that to the best of the Contractor's knowledge the Contractor has complied with all statutory requirements under the Equality Act 2010.

11.2. The assurance referred to in CSO 11.1 may be obtained as part of the selection process as contained in the Single Procurement Document which includes a requirement to comply with relevant Social Laws.

11.3. Contracts awarded by the Board will contain a condition obliging the Contractor to comply with all duties arising from the Equality Act 2010.

## **12. Fair Work First**

12.1. Fair Work First award criteria must be considered for inclusion in award criteria for the procurement of supplies, services and works where it is appropriate to do so and in accordance with the Fair Work First Guidance as referred to in SPPN 06/2021 at CSO 1.3.

12.2. Fair Work First asks businesses bidding for a public contract to commit to adopting the following:

- appropriate channels for effective voice, such as trade union recognition
- investment in workforce development
- no inappropriate use of zero hours contracts
- action to tackle the gender pay gap and create a more diverse and inclusive workplace
- providing fair pay for workers (for example, payment of the real Living Wage)
- offer flexible and family friendly working practices for all workers from day one of employment
- oppose the use of fire and rehire practices.

## **13. Form of Contract**

13.1. Except in circumstances where the Assessor and the Clerk to the Board agree otherwise, every Contract shall be:

13.1.1. In the name of the Board;

13.1.2. In writing and in an approved form.

13.1.3. Signed by either the Assessor, the Treasurer, the Clerk, or other officer with written delegated authority to sign Contracts on behalf of the Board in accordance with the Scheme of Delegation to Officers for procurement matters; and

13.1.4. Subject to the laws of Scotland.

13.2. The Contract Documents in respect of all Contracts will be prepared by the Assessor. When it is appropriate to do so, the Assessor may make use of Contract Documents prepared by the Government Procurement Service, Scottish Procurement, Scotland Excel and other framework agreement providers where permitted by those bodies to do so. It is the Assessor's responsibility to ensure that the Contract Documents are suitable for the Contract.

13.3. All Procurement documents must clearly state that the Freedom of Information (Scotland) Act 2002 applies to Contracts awarded by the Board. This is to ensure that Contractors are aware that the Board may be required, as a matter of law, to release information to third parties.

## **14. Exemptions and Exceptions**

14.1. Supplies, Services and Works shall be acquired by effective competition, including adequate publicity of the Contract, unless there are justifiable reasons to the contrary.

14.2. These CSOs will not apply to a Contract where:

14.2.1. The value of the Contract is less than £10,000 for Supplies and Services and Works;

14.2.2. It is a Contract of employment (Note: this exemption will not apply to Contracts for temporary staff or interim managers supplied by recruitment agencies, or an equivalent organisation);

14.2.3. The Contract relates to the transfer, acquisition or disposal of an interest in heritable property including a licence to occupy or use heritable property;

14.2.4. Tenders are invited on behalf of any consortium, or similar body, of which the Board is a member, in accordance with any such method adopted by such a body; or

14.2.5. The Contract relates to the appointment of legal counsel to act on behalf of the Board.

14.3. The Board may make an exception from these CSOs where:

14.3.1. The Board is satisfied that there are special circumstances justifying an exception from these CSOs or any part of them;

14.3.2. In the opinion of the Assessor action is urgently required to prevent danger to life, serious risk to health, or damage to property;

14.3.3. The Contract is an extension to an existing Contract and is not a Regulated Procurement, an over Threshold Procurement or an Unregulated Works Procurement (in which case see CSOs 17 and 19), and which has been identified by the Relevant Officer as necessary and being so urgent as not to permit the invitation to tenders;

14.3.4. In the opinion of the Assessor, it is essential that the Contract is entered into for the settlement of any claim or litigation raised by or against the Board; or

14.3.5. The Contract is funded by money provided by the government or another public body (including funds from the National Lottery) and the award of that money to the Board is subject to such conditions that make it impractical for the Board to comply with these CSOs in the letting of the Contract.

14.4. Where exceptions are sought in respect of Contracts with a value of greater than £10,000 the Assessor will comply with the Non-Competitive Action (NCA) procedure set out at Appendix 1.

14.5. Where an NCA procedure is used, a proportionate financial and insurance assessment shall be carried out prior to the NCA being requested.

14.6. The Assessor will maintain a central register of exceptions.

## **15. Contracts below £10,000**

15.1. Where the contract value is less than £10,000 for Supplies and Services and Works, the Assessor will proceed in a manner which they consider to be the most expedient to the efficient management of their Service whilst ensuring that the Contract represents value for money to the Board.

15.2. The Assessor may dispense with the need to obtain competitive quotations and instead maintain a written record of price checking or benchmarking where the value of the Contract is less than £10,000 in the case of Supplies and Services or Works.

## **16. All Contracts for Supplies and Services or Works having a value of £10,000 or above– Procurement Plan**

16.1. Where a contract value is £10,000 or higher the relevant Officer will ensure that a Procurement Plan is completed and that an Officer with Delegated Procurement Authority is identified to undertake the procurement.

16.2. The Procurement Plan will describe the procurement planned and provide sufficient information to ensure that all relevant Board Policies have been followed, including the governance, identified budget, Contract Standing Orders, the Financial Regulations and any Sustainable Procurement Policy requirements.

16.3. The Relevant Officer will ensure that the Procurement Plan is authorised by the relevant Managers prior to the procurement exercise commencing. The Procurement Plan is to be submitted to Orkney Islands Council's Procurement Service in the first instance for checking who will forward to the Assessor and the Clerk to the Board for further approval.

## **17. Unregulated Procurements with a contract value between £10,000 and £50,000 for Supplies and Services or Works**

17.1. Where the value of the Contract is between £10,000 and £50,000 for Supplies and Services or Works, the Assessor and the Clerk to the Board will invite a minimum of three written quotations from prospective Contractors with the experience and expertise to meet the requirement for Supplies, Services or Works. In circumstances where fewer than three quotations are obtained a written record shall be retained as to the reasons for this.

17.2. Technical and financial checks by means of the SPD (Scotland) shall not be necessary for Contracts below £50,000, instead a selection procedure relevant and proportionate to the subject matter and value of the contract shall be incorporated into the invitation to quote documentation.

17.3. Quotations may be invited and returned by either the Quick Quote system or by an open quotation contract advertisement placed on the PCS portal or, in very exceptional circumstances, by hard copy or email.

## **18. Regulated Procurements (with a contract value of £50,000 or above for Supplies and Services or more than £2,000,000 for Works, and below the Thresholds)**

18.1. The Board will seek the assistance and guidance of Orkney Islands Council's Service Manager (Procurement) where Regulated Procurements described above are required.

## **19. Unregulated Works Procurements (Works contracts with a value between £50,000 and £2,000,000)**

19.1. The Board will seek the assistance and guidance of Orkney Islands Council's Service Manager (Procurement) where Unregulated Procurements described above are required.

## **20. Regulated Procurements (with a contract value at and above the Thresholds for Supplies and Services and Works)**

20.1. The Board will seek the assistance and guidance of Orkney Islands Council's Service Manager (Procurement) where Regulated Procurements described above are required.

## **21. Publicity of Contract Opportunities**

21.1. The Board is under a duty to ensure that for each Contract that it intends to award the Contract is given a degree of advertising which is sufficient to ensure open competition and to meet the requirements of the principles of equal treatment,



non-discrimination and transparency. Contracts that are Regulated Procurements and those that exceed the Threshold must comply with the advertising requirements set out in the Regulations.

21.2. The following minimum advertising procedures will apply:

21.2.1. Contract Notice for Supplies and Services where the Contract is or above £50,000 will be uploaded on the PCS portal and advertised in the local newspaper or appropriate additional means where there is a local market for a minimum duration of one week;

21.2.2. Contracts for Works where the Contract is or above £50,000 will be advertised in the local newspaper for a minimum duration of one week;

21.2.3. In addition to the advertising requirements at CSO 21.2.2, where the value of a Contract for Works is or above £2,000,000, the contract notice will be uploaded on the PCS portal; and

21.2.4. Contract Notice for Supplies and Services and Works where the Contract exceeds the Thresholds will be uploaded to the new Find a Tender System via the PCS Portal.

21.3. The requirement to publish notices on Public Contracts Scotland (PCS), which comes from the Procurement Reform (Scotland) Act 2014, remains. Whilst public bodies are no longer required to publish notices in the Official Journal of the European Union (OJEU), these notices are now published on a new UK e-notification system called Find a Tender System (FTS) instead.

21.3.1. FTS has been developed to comply with international agreements such as the GPA (Agreement on General Procurement), which requires relevant procurements in the UK to be advertised through a single point of access available free of charge. To meet this requirement to publish on FTS, public bodies should continue to use PCS.

21.4. In addition to the advertising requirements referred to in CSO 21.2, or where it is felt that insufficient interest may be generated, the Assessor and the Clerk to the Board may decide to advertise the Contract opportunity in any other way.

21.5. In exceptional circumstances, for example where using market knowledge it is known that there is no capacity locally to meet the requirements of a Contract, the Assessor and the Clerk to the Board may dispense with the requirement to advertise in the local newspaper.

21.6. All Contract Notices published on the PCS portal will be subject to the prior approval of the Orkney Islands Council's Service Manager (Procurement) for over Threshold Regulated Procurements.

21.7. Contract notices advertising Contracts will include the selection and award criteria to be used to evaluate submissions for both the SPD selection stage and the award criteria stage of both Open and Restricted Procedure procurements.

21.8. Where a Contract is to be awarded following a restricted procedure or competitive procedure with negotiation, a call for competition may be made by means of a prior information notice, published in accordance with the Regulations.

## **22. Procedures**

22.1. Where the estimated value of any Contract is likely to be equal to the value of a Regulated Procurement or exceed the Threshold, the Assessor and the Clerk to the Board will be responsible for determining whether or not the Regulations apply and will refer the matter to Orkney Islands Council's Service Manager (Procurement) who will provide guidance and assistance in determining the appropriate Contract award procedure.

22.2. Where it is established that the full procedural requirements of the Regulations apply, the Assessor and the Clerk to the Board will ensure that the Contract is advertised, tendered, evaluated and awarded in accordance with the Regulations.

22.3. Where other competitive routes are available to the Board for consideration such as the Dynamic Purchasing System, Competitive Dialogue, Negotiated Procedure without Prior Publication, Competitive Procedure with Negotiation, and Innovation Partnership, the Assessor and the Clerk to the Board will refer the matter to Orkney Islands Council's Service Manager (Procurement) and the Head of Legal and Governance, who will provide guidance and assistance in determining the appropriate Contract award procedure and the specific Regulation(s) that will apply.

22.4. The Relevant Officer will determine, in consultation with Orkney Islands Council's Service Manager (Procurement), where the use of lotting strategies is appropriate and would have the effect of ensuring that the Contract opportunity is accessible to small and medium-sized enterprises.

## **23. Commodity Strategy**

23.1. The Relevant Officer, in consultation with the Orkney Islands Council's Service Manager (Procurement), will ensure that an appropriate Commodity Strategy is prepared for each individual Regulated Procurement and over Threshold Regulated Procurement.

23.2. The Commodity Strategy must be prepared by officers with the appropriate Delegated Authority and be proportionate to risk, value and the strategic importance of the commodity to the Board.

23.3. Preparation of the Commodity Strategy will ensure that proportionate consideration is given to planning, Sustainable Procurement and Risk Management prior to commencement of the procurement. See more at: [Route 2 Introduction | Procurement Journey](#)

23.4. A Commodity Strategy is not required for mini-competitions carried out or work packages called off under Framework Agreements established by external agencies, by the Board; or for work packages placed under the Board's framework arrangements. This CSO will apply in instances where the justification to utilise these

arrangements have been authorised by the Assessor and the Clerk to the Board as appropriate.

## **24. Contract Award Criteria**

24.1. For Regulated Procurements and over Threshold Regulated procurements award criteria must in all cases be advertised and awarded on the basis of the most economically advantageous tender (MEAT), it is not permissible to award on the basis of cost only.

24.2. For Procurements at or over the value of £10,000 for Supplies and Services, and for Works over the value of £50,000, Contracts shall be awarded on the basis of the Tender which is the MEAT using both quality and cost award criteria unless there are exceptional reasons that are proportionate and related to the subject matter of the contract and always in the context overall of best value.

24.3. Contracts may in exceptional circumstances be awarded on the basis of a fixed price or cost where economic operators may compete on quality criteria only.

24.4. For Procurement of Works under the value £50,000, contracts may in exceptional circumstances be awarded on the basis of cost or price and always in the context of best value. Prior to utilising this CSO, a risk assessment shall be undertaken which evidences overall best value and is recorded on the contract award recommendation report as referred to in CSO 38.

24.5. When developing the Contract Documents, the Assessor and the Clerk to the Board will include award criteria that relate directly to, and are proportionate with, the subject matter of the Contract.

24.6. The award criteria will be clearly defined in the Contract Documents and in the contract notice so that Contractors have a common understanding and will, depending on the subject matter of the Contract, include:

24.6.1. Quality / technical merit;

24.6.2. Qualification and experience of staff assigned to performing the contract, where the quality of the staff assigned can have a significant impact on the level of performance of the contract;

24.6.3. Design, functional characteristics and aesthetics;

24.6.4. Sustainability and community benefit / social issues where appropriate;

24.6.5. Innovation;

24.6.6. Maintenance, including on-going technical support and after sales support;

24.6.7. Delivery or period of completion;

24.6.8. Price; and

24.6.9. Life Cycle Costing which shall be objectively verifiable, non-discriminatory and indicated in the procurement documentation.

24.7. The Assessor and the Clerk to the Board will decide on an overall ratio or split between criteria and allocate weightings and sub-criteria as appropriate.

## **25. Contract Payments**

25.1. Proposed payment arrangements under a Contract must be discussed and agreed by the Treasurer in advance of any Contract being entered into. However, the Treasurer may issue guidance on approved payment arrangements.

## **26. Restricted or Dual Stage Procedure**

26.1. The Assessor or the Clerk to the Board may approve the use of a Restricted or Dual Stage Procedure which, subject to CSO 31 Electronic Tendering, will be advertised and conducted in accordance with CSOs 21 and 26.

26.2. The contract notice will contain sufficient information to enable potential tenderers to determine whether they are interested in bidding for the Contract. The information contained within the contract notice will include the title and a short description of the proposed Contract, the duration, estimated commencement date, the estimated value and the selection criteria used. The contract notice shall also indicate whether e-procurement is to be used and a link to <https://www.publiccontractsscotland.gov.uk/>.

26.3. The contract notice will specify a date and time by which requests to be selected to tender must be received. For the selection stage, this must be no sooner than 30 days from the date the contract notice is published unless reductions in timescales are available. For the tender stage, this must be no sooner than 30 days from when the invitation to tender is issued. Where the submission of tenders electronically is permitted, the minimum time limit for receipt of tenders can be reduced to 25 days. Where the Contract exceeds the Threshold the timescales referred to in the Regulations will apply.

26.4. The Assessor or the Clerk to the Board will issue an SPD to all Contractors responding to the contract notice via the PCS portal.

26.5. The Relevant Officer will ensure that the SPD Supporting Statements that are issued to all Contractors responding to the contract notice are tailored to, and are relevant and proportionate to, the subject matter of the proposed Contract.

26.6. No Contractor will be invited to submit a Tender unless they have successfully complied with the technical and financial checks in CSO 32 and have met the selection criteria to be invited to tender set out in the SPD.

26.7. The Relevant Officer will select a sufficient number of Contractors to be invited to tender. To ensure genuine competition, the number of Contractors selected to be invited to tender shall not be less than five, unless agreed by the Assessor or the Clerk to the Board. In circumstances where fewer than five Contractors submit an

SPD, all of the Contractors that have met the selection criteria shall be invited to tender.

26.8. The Assessor or the Clerk to the Board will send invitations to tender, in writing, simultaneously to each Contractor selected to tender and the invitation to tender will be accompanied by the Contract Documents. The invitation to tender shall state the requirements in CSOs 33 and 34.

26.9. As a minimum, the invitation to tender will include the following:

26.9.1. Instructions to tenderers;

26.9.2. Final date and time for the receipt of tenders by the Board;

26.9.3. Where e-procurement is not being used the address to which tenders must be sent;

26.9.4. Terms and conditions of Contract;

26.9.5. The specification which clearly describes what is required;

26.9.6. The award criteria to be used in the evaluation of tenders;

26.9.7. Tender response requirements;

26.9.8. Form of tender;

26.9.9. Certificate of bona fide tendering; and

26.9.10. Compliance Statement as appropriate.

## **27. Open or Single Stage Procedure**

27.1. The Relevant Officer may approve the use of an Open or Single Stage Procedure which, subject to CSO 31 Electronic Tendering, will be conducted and advertised in accordance with CSOs 21 and 27.

27.2. The contract notice will contain sufficient information to enable any potential tenderer to determine whether they are interested in bidding for the Contract. The information contained within the contract notice will include the title and a short description of the proposed Contract, the duration, estimated commencement date, the estimated value, the selection criteria used and community benefits clauses where they are being used. The contract notice shall also indicate if e-procurement is being used and provide a link to <https://www.publiccontractsscotland.gov.uk/>.

27.3. The contract notice will specify a date and time by which applications for invitations to tender must be made. The date and time specified will be no sooner than 35 days from the date the contract notice is published. Where the submission of tenders electronically is permitted, the minimum time limit for receipt of tenders can be reduced to 30 days. Where the Contract exceeds the Threshold the timescales referred to in the Regulations will apply.

## **28. Use of Framework Agreements provided by External Agencies**

28.1. The Assessor and the Clerk to the Board will consider the use of Framework Agreements established by other bodies as part of the route to procurement decision.

28.2. Where a market outwith the framework suppliers is established and where the contract value is below that of a Regulated Procurement or an over Threshold Regulated Procurement, the Assessor and the Clerk to the Board will determine if the Contract should be advertised directly to the known suppliers in addition to the call off contract opportunity sourced through a Framework Agreement.

28.3. Where a Framework Agreement is provided by a Framework Provider other than the Board, a check should be undertaken by Orkney Islands Council's Service Manager (Procurement), in consultation with the Head of Legal and Governance, to determine the Board's eligibility to use that Framework Agreement prior to its use.

28.4. Where it has been clearly identified that the Board is eligible to utilise the Framework Agreement, the procedures for the use of that Framework Agreement must be strictly complied with in all instances.

28.5. The duration of the individual contracts based on a Framework Agreement do not need to coincide with the duration of that Framework Agreement, but might as appropriate be shorter or longer.

28.6. A contract award notice will be published on conclusion of a call-off from a Framework Agreement. A contract award letter will also be issued to the provider, and the Contract will be entered in the Contracts Register.

## **29. Concluding a Framework Agreement**

29.1. The Board may establish a Framework Agreement with either one or a minimum of three economic operators, where there are three economic operators to satisfy the selection criteria.

29.2. The Board must advertise the Contract in accordance with these CSOs, depending on the value of the Contract.

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

29.4. Where the Board concludes a framework agreement with more than one economic operator, a specific contract may be awarded:

29.4.1. By direct award in accordance with the terms laid down in the framework agreement without re-opening competition; or

29.4.2. Where the terms of the Framework Agreement permit, by carrying out a mini competition prior to award.

29.5. Where a contract is for the supply of goods or materials or the provision of services or works by means of a call off contract within a framework agreement, and where that framework agreement allows for direct award of call-off contracts without further competition, formal tendering shall be carried out only once prior to the commencement of such arrangement.

29.6. Once awarded, a framework agreement shall remain closed to the admission of new contractors / suppliers / service providers for the lifetime of the Framework Agreement.

29.7. The Board must not use a framework agreement improperly or in such a way as to prevent, restrict or distort competition.

## **30. Extensions to Existing Contracts**

30.1. Subject to CSOs 30.2 to 30.5, where the Relevant Officer considers that an existing Contract should be extended and the option to extend is given to the Board in terms of the Contract, the Assessor or the Clerk to the Board may authorise the take-up of that option.

30.2. Where the Contract does not make provision for the extension of the Contract, the Relevant Officer shall not extend the Contract, unless the use of the procedure in CSO 30.3 has been followed.

30.3. Contracts awarded as Regulated Procurements and over Threshold Regulated Procurements may only be extended where the procedure in Regulation 72 of the Public Contracts (Scotland) Regulations 2015 is followed.

30.4. For the purposes of CSO 30.1, an extension of a Contract includes the option to increase the number of Supplies, Services or amount of Works as well as the option to lengthen the duration of the Contract.

30.5. Where the Contract does not make provision for the extension of the Contract and the initial Contract was below the Threshold, the total value of the Contract, including the value of the extension will not exceed the Threshold.

30.6. Where the Contract has been established for a low value supply, service or works below £10,000 or a Contract established following approval of a Non-Competitive Action and are not Regulated procurements, subsequent variations to that Contract should not exceed 50% of the initial value of the Contract.

## **31. Electronic Tendering**

31.1. Unless the Relevant Officer has agreed otherwise, tendering exercises shall be conducted by electronic means, provided that:

31.1.1. Electronic tendering is to take place within Orkney Islands Council; and

31.1.2. To use electronic tendering would not significantly restrict or distort competition.

31.2. Where electronic tendering is in use, the contract notice will be published in accordance with CSO 21 and will provide information as to the internet address which offers unrestricted and full access by electronic means to the Contract Documents.

31.3. This CSO shall replace CSOs 33.1 and 35 in their entirety and where electronic tendering is in use the Relevant Officer will ensure that:

31.3.1. No Tender submitted by electronic means will be considered unless it is received in the format requested by the Board and at the electronic address specified by the Board before the deadline for the receipt of tenders;

31.3.2. Each tender is kept unopened in a single secure electronic mailbox that cannot be opened before the deadline for the receipt of tenders; and

31.3.3. For each tendering exercise the electronic tendering system shall, and if required for audit purposes, produce a record to show the time and date of the receipt of tenders.

31.4. Managers with Delegated Procurement Authority to a Level 4, in consultation with Orkney Islands Council's Service Manager (Procurement), may extend the deadline for the submission of tenders by notifying all tenderers of the extension in the following circumstances:

31.4.1. Before Tenders are received by the Board;

31.4.2. Following the receipt of Tenders but before the Board has opened the tenders due to the functionality of the e-procurement system, and

31.4.3. Independent evidence has been obtained by the Board that the electronic tender advertising portal used was not operational immediately prior to and during the submission of tender deadline due to technical reasons.

31.5. Where an extension of the deadline for the submission of Tenders has been granted in accordance with CSO 31.4, tenderers that have submitted Tenders may be given the opportunity to re-submit their Tenders. Where tenderers are permitted to re-submit Tenders, the same opportunity will be extended to all tenderers.

31.6. Tenders with a value of over £50,000 that have been submitted by electronic means in accordance with this CSO 31 will be opened by the appropriately qualified Service Manager (Procurement), employed by Orkney Islands Council.

31.7. When recording Tenders that have been submitted by electronic means, the Tender Opening panel must check the following:

31.7.1. That the Form of Tender has been signed and dated by the tenderer;

31.7.2. That the Certificate of Bona Fide Tendering has been signed and dated by the tenderer; and

31.7.3. That the Price schedule has been completed.



31.8. If a Tender is incomplete, or does not conform to the Contract Documents, the Relevant Officer may decide to disqualify the Tender. If the Tender is disqualified the Relevant Officer must inform the tenderer at the earliest opportunity that the Tender has been disqualified and the reasons for disqualification.

31.9. Formal Tender opening procedures are not required for receipt of tenders for selection stage of the Restricted Procedure, establishment of a Dynamic Purchasing System or for the establishment of a Framework Agreement where no pricing is fixed at the initial stage.

31.10. For the avoidance of doubt, for regulated procurement, formal Tender opening procedures are required for all Open Procedure Tender submissions, and for subsequent call offs or mini-competitions from a Framework Agreement in accordance with CSOs 31.6 and 31.7 above.

## **32. Technical and Financial Checks**

32.1. No Contractor may be awarded a Contract unless, following a review of the proposed Contractor, the Relevant Officer is satisfied as to:

32.1.1. The technical capability of the proposed Contractor; and

32.1.2. The financial standing of the proposed Contractor.

32.2. The assessment of the financial standing of proposed Contractors will be undertaken by the Treasurer.

32.3. It shall not be necessary to review the financial standing of a Contractor where the estimated value of the Contract is £50,000 or below.

32.4. It shall not be necessary to review the financial standing of a Contractor where a Contract is awarded either following a further competition under a Framework Agreement or a Dynamic Purchasing System. Further review of the financial standing of a Contractor will not be necessary where a periodic financial review is undertaken as a condition of the Contractor's appointment to the Framework Agreement or Dynamic Purchasing System.

32.5. The Relevant Officer will keep a record showing the results of each check of technical capacity and financial standing of Contractors.

32.6. Where the budget has increased following evaluation of the tenders there will be a requirement for a further review of the financial standing of the Contractor by the Treasurer in accordance with 32.2 above.

## **33. Receipt and Custody**

33.1. For hard copy Tenders the envelope containing the tender will be addressed to the Assessor or the Clerk to the Board, as specified in the Contract Documents in whose custody it shall remain until the time arranged for its opening.

33.2. CSO 33.1 will not apply where e-procurement is used. Where e-procurement is in use CSO 31 will be complied with.

## **34. Late Tenders**

34.1. Tenders received after the closing date and time specified in the Contract Documents will not be considered. Late Tenders will be returned to the Tenderer with a covering letter explaining why the Tender is not being considered. Late Tenders may be opened to ascertain the name of the tenderer but no details of the tender shall be disclosed.

## **35. Opening of Hard Copy Tenders**

35.1. Tenders must be opened, simultaneously, in the presence of a Board Member and two officers, one of whom must be on a salary grade of G9 or above.

35.2. When opening the Tenders, the Tender Opening Panel comprising the Board Member and two officers in accordance with CSO 35.1 must check the following:

35.2.1. That the Form of Tender has been signed and dated by the tenderer;

35.2.2. That the Certificate of Bona Fide Tendering has been signed and dated by the tenderer; and

35.2.3. That the Price schedule has been completed.

35.3. If a Tender is incomplete, or does not conform to the Contract Documents, the Relevant Officer may decide to disqualify the Tender. If the Tender is disqualified the Assessor or the Clerk to the Board must inform the tenderer at the earliest opportunity that the Tender has been disqualified and the reasons for disqualification.

35.4. Electronic tenders received via an electronic post box will be opened and recorded in accordance with CSOs 31.6 to 31.8.

## **36. Tender Evaluation**

36.1. All Contracts will be awarded in accordance with the published award criteria and no others.

36.2. Tenders will be evaluated by a Tender Evaluation Panel which consists of at least two officers with demonstrable technical ability to evaluate tenders.

36.3. Officers are required to complete a conflict of interest form for each individual tender evaluation prior to consideration and acceptance as a member of the Tender Evaluation Panel.

36.4. As a matter of good practice no member of the Tender Evaluation Panel shall assess both the quality and price aspects of a Tender.

36.5. In instances where evaluation of price requires expert analysis, additional advice will be sought from the service area.

36.6. Where an Abnormally Low Tender is identified, Orkney Islands Council's Service Manager (Procurement) and the Head of Legal and Governance will be consulted prior to any decision made as to the treatment of the Abnormally Low Tender submission.

## **37. Checking of Tenders and Post Tender Negotiations**

37.1. All Tenders shall be subject to checking by the Relevant Officer who will prepare a written report in respect of all Tenders received in a form that complies with CSO 37 and contains a specific recommendation as to the acceptance of the successful Tender or Tenders and the reasons for the award recommendation.

37.2. 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 Relevant Officer may choose to enter into post tender negotiations. Post tender negotiations will only be undertaken in circumstances where the Relevant Officer has identified the tenderer who has submitted either the lowest price or most economically advantageous tender, and where the Relevant Officer is satisfied that there is scope for improvement in the Tender received and that such negotiations will be in the best interests of securing better value for money or improved terms to the Board. Post tender negotiations may only be used where that Tenderer is clearly identified. Post tender negotiation shall not be used to put other tenderers at a disadvantage or distort competition.

37.3. Where it is considered possible that post tender negotiations might apply, a clear indication will be given to prospective Contractors in the contract documents that post tender negotiation might be considered.

37.4. 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 Relevant Officer may contact a tenderer in respect of any Contract to validate or to clarify the terms of the Tender.

37.5. Notwithstanding the other terms of this CSO 37, where examination of the Tenders reveals obvious errors and discrepancies which would affect the tender figures, errors will be dealt with as follows:

37.5.1. Any obvious arithmetical errors will be rectified by the Relevant Officer checking the tenders and the amount of tender shall be held to be correct so rectified and the tenderer informed of the corrected amount;

37.5.2. Where there is an obvious and genuine error in rates occurring, the tenderer will be given the opportunity of either confirming that he / she agrees with their tender being considered with the error remaining or withdrawing their tender. This procedure must be undertaken in writing. In the event that the tenderer decides to withdraw his / her tender, it will not be considered for acceptance. The tenderer must not be given the opportunity to submit an amended tender;

37.5.3. Tenders which include Bills of Quantities must be checked for arithmetical accuracy, and where inaccuracies are found, the tenderer must be given the opportunity to correct them in accordance with any applicable Code of Practice e.g. ACE, NEC, Institution of Civil Engineers (ICE) or Joint Contracts Tribunal (JCT).

37.6. A written record will be kept by the Relevant Officer where post tender negotiation has been used. The written record will include the justification for authorising post tender negotiations, the nature of the negotiations and the outcome of the negotiations.

## **38. Contract Award Recommendation Reports**

38.1. For all Contracts established through a competitive procedure, a Contract award recommendation report will be prepared for consideration and approval by the Assessor or the Clerk to the Board detailing the following information:

38.1.1. The nature of the requirements of the Contract and date that the Procurement Plan was completed and authorised;

38.1.2. The tendering procedures adopted;

38.1.3. A comparative digest of offers received;

38.1.4. For unregulated procurements for Supplies and Services and Works, the reason, where applicable, for receiving less than three quotations;

38.1.5 For procurement of works with a value of under £50,000, where the award criteria is based solely on cost/price, a summary of the risk assessment undertaken and the outcome of this;

38.1.6. Identification of Abnormally Low Tenders where applicable and actions taken;

38.1.7. A statement to confirm that CSOs have been complied with;

38.1.9. Confirmation that the Contract is within budget and details of budget ledger code and where applicable, capital approval;

38.1.10. Details of any clarifications carried out and where post tender negotiation has been used a written record of the justification for its use, and the nature and outcome of the negotiations;

38.1.11. Benefits and savings available; and

38.1.12. A recommendation on the award of the Contract or Contracts.

## **39. Acceptance**

39.1. Contracts will be signed by the Assessor or the Clerk to the Board or other officer with delegated authority to sign Contracts on behalf of the Board in accordance with CSO 13.1.

39.2. In relation to all Contracts, the Assessor and the Clerk to the Board will keep a written record showing the assessment of each Tender against the published award criteria. The written record will demonstrate why the successful Tender was chosen and a statement to confirm that the Board's CSOs have been complied with.

39.3. All Tenderers will be informed in writing of the success or otherwise of their Tender as soon as reasonably practicable after the approval of the Contract award recommendation report prepared in accordance with CSO 38.

39.4. Where the Contract exceeds the Threshold and the full procedural requirements of the Regulations apply, no Tender will be accepted until the mandatory standstill period has expired and the Assessor and the Clerk to the Board are satisfied that no valid challenge has been received in relation to the Contract award decision.

39.5. The mandatory standstill period is a period of at least 10 calendar days between the date of dispatch of the letters issued (by email) and the date when it is proposed to enter into the Contract.

39.6. Where a challenge is made to the Contract award decision before the Contract is made, the Assessor or the Clerk to the Board will refer the matter to the Board's Legal Advisor for consideration.

## **40. Contracts Register**

40.1. Orkney Islands Council's Service Manager (Procurement) will maintain a central register of all Contracts and ensure that an up to date web-based contracts register for contracts with value of £50,000 or more are available via the <https://www.publiccontractsscotland.gov.uk> portal. To meet the Board's statutory requirements of transparency, Orkney Islands Council's live Contracts Register is publicly available via the PCS Portal.

40.2. The Contract information that shall be entered into the register is as follows:

40.2.1. The date of the award of contract;

40.2.2. The name and address of the Contractor;

40.2.3. A description of the purpose of the Contract;

40.2.4. The duration of the Contract;

40.2.5. The estimated value of the Contract including any extensions available;

40.2.6. The start date;

40.2.7. The end date for the contract, or the circumstances in which the contract will end;

40.2.8. The duration of the potential extension periods to the Contract; and

40.2.9. Any other information relating to the Contract which the Assessor considers to be material.

40.3. The Board shall maintain a single, centrally managed internal contracts register for the purposes of business planning which shall be managed by Orkney Islands Council's Procurement Team.

40.4. For the purpose of maintaining a register in accordance with CSO 40, the Relevant Officer will send a copy of all Contract award letters to Orkney Islands Council's Service Manager (Procurement).

## **41. Contract Award Notice**

41.1. For the purpose of transparency, where the Contract has been advertised in accordance with CSO 21.2, the Relevant Officer will publish a Contract award notice on the PCS portal.

41.2. A contract award notice must be published on the PCS portal for all over Threshold Regulated Procurements, Regulated Procurements, all Framework Agreement call-offs and purchases under a Dynamic Purchasing System or Negotiated Procedure where appropriate.

41.3. Where the Contract exceeds the Threshold and is subject to the Regulations, a contract award notice must be published no later than 30 days after the award of the Contract.

41.4. For Regulated procurements and for over Threshold Regulated Procurements which are equal to or greater than £4,000,000, the contract must include the following:

41.4.1. A summary of the community benefit requirement that will be included in the contract, or

41.4.2. Where the public body does not intend to include any such requirements, a statement of its reasons for not including any requirements.

41.5. Where community benefits are included in a Regulated Procurement and / or an over Threshold Regulated Procurement, the Board must include in the award notice a statement of the benefits it considers will be derived from those requirements.

## **42. Specifications**

42.1. Where there is a recognised British or International Standard applicable to any Contract which is current at the date of Tender, the Contract Documents shall require that the Supplies and Services shall meet the requirement of that standard.

42.2. The Relevant Officer shall avoid reference within specifications which has the effect of favouring or eliminating any particular Contractors by specifying a particular material or a specific make. In exceptional circumstances such references may be justified e.g. where the subject matter of the proposed Contract makes the use of

such references as indispensable. In circumstances where the use of such references becomes indispensable, it will be accompanied by the words 'or equivalent'.

### **43. Assignment, Sub-Contracting, Termination and Variation**

43.1. In every Contract there shall be included a provision whereby the Contractor shall be prohibited from transferring or assigning to any persons without the prior consent of the Board.

43.2. The sub-contracting of any part of a Contract except to the extent permitted in writing by the Relevant Officer shall be prohibited.

43.3. The Relevant Officer may terminate any Contract or part of a Contract or may agree to vary or amend the terms of any Board Contract but only following consultation with the Treasurer and the Clerk to the Board and subject to their confirmation that it is reasonable and in the best interests of the Board to exercise that power.

### **44. Liquidated and Ascertained Damages**

44.1. Where the value of a Contract exceeds £100,000 or for complex procurements assessed on a case by case basis, the Assessor and the Clerk to the Board will consider whether it is appropriate for the Contract to include a provision for liquidated and ascertained damages. The amount to be specified in the Contract will be determined by the Relevant Officer in consultation with the Treasurer. The assessment of liquidated and ascertained damages will be a pre-determined and genuine estimate of loss to the Board.

### **45. Performance Bonds**

45.1. Where the contract value exceeds £1,000,000 the Relevant Officer will consider whether it is appropriate to provide for performance bonds. The amount for each performance bond will be approved by the Treasurer. The bond will be in a form that is acceptable to the Treasurer and the Clerk to the Board, following receipt of legal advice.

### **46. Insurance**

46.1. The Relevant Officer will ensure that appropriate risk management measures are in place to protect the Board, and that Contractors hold adequate insurance for the period of the Contract. The level of insurance cover held by Contractors will be considered on a case by case basis and will be commensurate with the scale, complexity and associated risks of the Contract.

46.2. The Assessor or the Clerk to the Board will consult with the Treasurer where there is any doubt regarding the level of insurance cover that is required to be held by Contractors.

## **47. Prevention of Collusion and Corrupt or Illegal Practices**

47.1. In every written Contract a clause shall be inserted to secure that the Board shall be entitled to cancel the Contract and to recover from the Contractor the amount of any loss resulting from such cancellation if the Contractor or the Contractor's representative (whether with or without the knowledge of the Contractor), shall have practiced collusion in tendering for the Contract or shall have employed any corrupt or illegal practices either in the obtaining or performance of the Contract.

## **48. Sustainable Procurement**

48.1. Before undertaking a regulated procurement exercise the Relevant Officer shall take into account the social, economic and environmental impacts of the proposed Contract and whether the Contract will contribute to the achievement of sustainable development in accordance with Orkney Islands Council's Sustainable Procurement Duty and the Board's Sustainable Procurement Policy  
<https://www.orkney.gov.uk/Service-Directory/P/sustainable-procurement.htm>.

48.2. For any procurement equal to or greater than £4,000,000, the Board must consider whether to impose community benefit requirements as part of the procurement.

48.3. The Relevant Officer will consider under CSO 48.1, only factors that are relevant and proportionate to the proposed Contract.

48.4. The Relevant Officer will ensure that a Sustainable Procurement Impact Assessment (SPiA) is carried out for all procurement exercises for all relevant goods, services and works contracts where there is potential to minimise the use of carbon-based energy and its associated emissions.

## **49. Consultants**

49.1. The appointment of consultants is subject to these CSOs (unless the appointment is exempt in terms of CSO 14.2 or subject to an exception as per CSO 14.3) and the Board's Financial Regulations. Due to their specialist and fixed term nature, consultancy appointments are closely scrutinised. Therefore, prior to the commencement of a procurement exercise, and subject to the exemptions and exceptions referred to above, the Relevant Officer shall obtain specific Board approval to appoint a consultant unless the appointment is in respect of a construction or engineering project.

49.2. The Board report which seeks approval for the appointment of a consultant will include:

49.2.1. A summary of the requirements, including the expected benefits and when they are likely to be delivered;

49.2.2. Details of any alternatives to consultancy e.g. in-house expertise;

49.2.3. The estimated start and end date of the proposed Contract; and



49.2.4. The maximum estimated value of the Contract over its lifetime.

49.3. The Relevant Officer will ensure that effective contract management arrangements are established to ensure the delivery of cost effective consultancy services which meet the Contract, i.e. the work required is completed on time, within budget and to specification.

49.4. Where it is appropriate and possible to do so, the Relevant Officer shall procure that ownership of Intellectual Property Rights in reports and other documents generated by consultants shall be assigned to the Board on such terms as the Board may reasonably require.

## **50. Collaborative Procurement**

50.1. The Board may enter into a joint procurement exercise with another public body, which in its entirety, is carried out jointly and in the name of all the public bodies concerned, and shall be jointly responsible for ensuring that the legislation is complied with. This also applies in cases where one public body manages the procedure, acting on its own behalf and on the behalf of the other public bodies concerned.

## **51. Prevent Duty**

51.1. The Assessor or the Clerk to the Board will ensure that Tendering and Contract documentation will include a requirement for all Contractors to the Board to support the Board's PREVENT duty to prevent radicalisation and support counter-terrorism where appropriate to the subject matter of the Contract.

# Appendix 1

## Non-Competitive Action (NCA)

1. It is Board policy that Contracts for Supplies, Services and Works should be awarded on the basis of value for money following a genuine and effective competition. This policy recognises that there may be occasions where it is appropriate to award a Contract without following a genuine and effective competition. This procedure is known as NCA and can only be applied in exceptional circumstances.
2. Officers should refer to CSO 14 where the exemptions and exceptions are detailed; please note that an NCA is not required where the value of the Contract is less than £10,000 for Supplies and Services or Works;

Where the NCA refers to the procurement of Services, Supplies or Works under a new Contract instead of an extension or variation to an existing Contract, CSO 16 applies and a Procurement Plan is required.

3. An NCA will only be approved when a genuine business need exists which outweighs the need to subject the requirement to competition. Evidence in support of the NCA must stand up to scrutiny or challenge.
4. Only the Assessor or their designated substitute has the authority for final approval of an NCA.
5. Prior to seeking authority from the Assessor for an NCA, advice and guidance must be sought from Orkney Islands Council's Service Manager (Procurement) to ensure that there is sufficient information contained within the request to enable the Assessor to consider the NCA.
6. The Assessor, in consultation with the Treasurer, the Clerk to the Board and Orkney Islands Council's Service Manager (Procurement), as appropriate, will decide whether or not to authorise the request to proceed without competition.
7. Following approval a scanned copy of the NCA Form must in all cases be sent to Orkney Islands Council's Service Manager (Procurement) for inclusion on the Board's NCA register.
8. Where a request for NCA is rejected then a competition will be necessary. The level of competition will depend on the value, nature and complexity of the purchase.

# Request for Non-Competitive Action NCA xxx



**Note:** Once completed and signed by the Relevant Officer seeking the Exception this form must be sent to the Assessor for Approval.

<b>Details of the Service seeking Non-Competitive Action</b>	
1. Name	
2. Service	
<b>Details of NCA exception request</b>	
3. Contractors Name	
4. Contract Title	
5. Type of Contract	Supplies/Services/Works
6. Value (excluding VAT)	
7. Duration	
8. Is the request an amendment to an existing contract?	Yes/No
9. If Yes, was the original contract competitively tendered?	NA
10. Has a financial and insurance assessment been carried out?	Yes/No
11. Justification for non-competitive action	
12. Include reference to CSOs – Clause 14 Exemptions and Exceptions – detailing the exemption or exception referred to in the NCA request (including full details and explanation as necessary)	
Signature	

Name of Relevant Officer seeking approval for NCA	
Date	
I approve the exception requested / I am unable to agree to the exception request (please delete or highlight as applicable)	
Signature	
Assessor	
Date	