ARGYLL AND BUTE COUNCIL

STANDING ORDERS RELATING TO CONTRACTS

1. PRELIMINARY

1.1 Extent and Application

1.1.1 Argyll and Bute Council makes these Standing Orders in terms of section 81 of the Local Government (Scotland) Act 1973.

1.1.2 The Standing Orders must be interpreted in accordance with the key principles of openness, fairness and non-discrimination.

1.1.3 Subject to the provisions of Standing Order 1.1.7, the Standing Orders apply to all contracts made by or on behalf of the Council for the execution of works, for the supply of goods and materials, and for the provision of services.

1.1.4 The Standing Orders are subject to the over-riding provisions of European Union, United Kingdom, or Scottish legislation. They are also subject to any EU Commission, UK or Scottish Government guidance on public procurement that may be issued from time to time.

1.1.5 The Standing Orders shall not apply to any contracts made on behalf of the Council by any central purchasing body with whom the Council has made arrangements for the award of works, supplies or services contracts on its behalf.

1.1.6 The Standing Orders do not apply to any of the following:

1.1.6.1 contracts of employment;

1.1.6.2 contracts relating to the disposal of heritable property; and

1.1.6.3 contracts for the execution of works, the supply of goods and materials, or the provision of services which are, in the reasonable opinion of the Executive Director whose service are arranging the contract (hereinafter referred to throughout as “the relevant Executive Director) urgently required for the immediate prevention of risk to life or damage to property.

1.1.6.4 such other contracts that the relevant Executive Director and the Executive Director - Customer Services shall agree may legitimately be excluded from all or part of the provisions of the Standing Orders, by reason of the circumstances relating to the requirement for such contracts.

1.1.7 The Standing Orders must be read in conjunction with the Council’s Procurement Manual (“Procurement Manual”). Where there is any discrepancy between the Standing Orders and the Procurement
Manual, the Standing Orders shall take precedence. All Council employees must comply with the Standing Orders and the Council’s Procurement Manual and failure to comply may result in disciplinary proceedings. The provisions of the Council’s Procurement Manual shall be as approved of from time to time by the Council.

2. TENDER REGISTER

2.1 The relevant Executive Director will maintain a register of all tenders received in respect of contracts where the amount or value of the contract is estimated to be £150,000 or more, using such information from the Public Contracts Scotland Portal (“the Portal”) operated on behalf of the Scottish Government and such other information as s/he may deem appropriate.

2.2 The Register referred to in paragraph 2.1 above will contain in respect of each contract the following information:

(1) The name of the contract and/or any identifying code or number;

(2) The closing date and time for the receipt of tenders;

(3) The name of each contractor issued with tender documents;

(4) The name of each contractor who submitted a tender (whether or not the tender was subsequently held to be invalid) by the closing time;

(5) The amount of each tender as noted at the opening of tenders or where the tender is based on a schedule of rates an entry to that effect;

(6) Where factors other than cost are assessed the basis and criteria of such assessment and any other information which the Executive Director - Customer Services may specify.

3. FRAMEWORK AGREEMENT REGISTER

3.1 Framework Agreement

A Framework Agreement is a general term for agreements with economic operators which set out terms and conditions under which specific purchases (call-offs) can be made throughout the term of the agreement.

3.2 The Executive Director - Customer Services will maintain a register of all Framework Agreements entered into by the Council.
3.3 The register referred to in paragraph 3.2 above will contain in respect of each contract:

(1) The name of the contract and/or any identifying code or number.

(2) The nature of the goods and/or services covered by the contract.

(3) The duration of the contract.

4. ADVERTISING, TENDERING AND ACCEPTANCE OF TENDERS

4.1 All public works contracts to be tendered and awarded in accordance with the Public Contracts (Scotland) Regulations 2012 by the Council having an estimated contract value exceeding £350,000 or such figure as may be advised by the Scottish Government from time to time, whichever is lower, and all contracts for the supply of goods and services having an estimated contract value exceeding £50,000 will be advertised on the Portal, and, unless the circumstances of the particular contract require otherwise, it shall be a requirement that all tenders and other responses are submitted electronically through the Portal, where there is the technical capability to do so. The relevant Executive Director shall ensure that once awarded the required contract details are entered upon the Portal.

When the Council proposes to award a public works contract which has an estimated value which is below the threshold in paragraph 4.1 but exceeds £50,000, or where a proposed public works contract is otherwise exempt from the requirement for prior publication of a contract notice, the relevant Executive Director will ensure a degree of advertising which is sufficient to enable open competition and meet the requirements of the principles of equal treatment, non-discrimination and transparency, and will be let and awarded through the Portal.

4.2 All new contracts to which the Standing Orders apply where the estimated contract value is less than £50,000 will not require to be tendered provided the relevant Executive Director is satisfied the arrangements can be shown to be in the best interests of the Council, the contract demonstrates value for money, the process is conducted with sufficient advertising as deemed appropriate. The procedure for the award of any contract depends upon the estimated value of that contract and any related contracts over their intended duration. Such awards to be reported by the relevant Executive Director on a quarterly basis to the Council. Detailed provisions in relation to the tendering and award of contracts are contained in the Procurement Manual and all Council employees should refer to the Procurement Manual prior to commencing any purchase.

4.3 Before any contract is awarded, the relevant Executive Director shall satisfy himself that the proposed contractor has the requisite technical
or professional ability and financial standing to enable that contractor to carry out the contract requirements.

4.4 Tenders which are approved for acceptance will be accepted under the hand of the relevant Executive Director if the proposed contract is under £350,000, and otherwise under the hand of the Executive Director - Customer Services on receipt of the required information from the relevant Executive Director.

4.5 Every contract will be in writing and will specify:

(a) the work, materials, matters or things to be provided, had or done, (including any appropriate technical specifications(s));

(b) the price to be paid with a statement of discounts or other deductions, together with the arrangements for payment,

(c) the time or times within which the contract is to be performed, including the financial consequences of non-compliance;

(d) any other relevant matter relating to the due performance of the contract.

5. ASSIGNATION

5.1 In every contract for the execution of work or the supply of goods, materials or services, the following clause will be inserted –

The Contractor is prohibited from transferring or assigning directly or indirectly, to any person or persons whatever, any portion of the contract without the written permission of the relevant Executive Director, or an officer authorised by that Executive Director. Subletting of any part(s) of the work, except to the extent permitted in writing by the officer authorised, is prohibited.

6. LIQUIDATED DAMAGES

6.1 A contract which is for the execution of works or the supply of goods or materials by a particular date or series of dates may provide for liquidated damages

6.2 Where completion of a contract is delayed beyond the contract period, it will be the duty of the relevant Executive Director to take appropriate action in respect of a claim for damages due under the terms of the contract.
7. PERFORMANCE BOND

7.1 Where a contract is estimated to exceed £1,000,000, or in exceptional cases is for the execution of works or for the supply of goods or materials by a particular date or series of dates, the relevant Executive Director will consider whether the Council should require security for due performance and will either certify no such security is necessary or will specify in the conditions of tender the nature and the amount of the security to be given. In the latter event, the relevant Executive Director will require and take a bond or other sufficient security for the due performance of the contract.

8. INDEMNITIES

8.1 All contracts will specify that the contractor will be required to indemnify the Council against -

(a) any claim which may be made in respect of Employers Liability against the Council or the contractor by any workers employed by the contractor or any sub-contractor in the execution of the works; and

(b) any claim for injury or damage to the persons or property of third parties;

(d) any claim which the Council may have or receive arising from the professional negligence of the contractor and the contractor will, when required by the relevant Executive Director produce satisfactory evidence that there is Employers Liability. Public Liability and Professional Indemnity insurance against any such claims.

9. SPECIFICATION AND STANDARDS

9.1 All tenders for the execution of works or the supply of goods, materials or services will be based on a defined specification appropriate to the requirements of the proposed contract.

9.2 All contracts, where a specification issued by the Agrément Board of the European Union or by the British Standards Institution or any other equivalent standard of any other EU state is current at the date of the tender and is applicable will require, as a minimum, that goods and materials used in the execution of the contract will be in accordance with that specification, or equivalent.

9.3 All contracts will contain provision for the compliance with all current Health and Safety legislation and the relevant Executive Director will satisfy himself as to the arrangements in place in this respect.
10. PREVENTION OF FRAUD

10.1 In every contract a clause will be inserted to secure that the Council will be entitled to cancel the contract and to recover from the contractor the amount of any loss resulting from such cancellation –

- if the contractor has offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or for not doing or having done or not having done any action in relation to obtaining, or the execution of, the contract or any other contract with the Council, or for showing favour or disfavour to any person in relation to the contract or any other contract with the Council.

- or if the like acts have been done by any person employed by the contractor or acting on the contractors behalf (whether with or without the knowledge of the contractor).

- or if in relation to any contract with the Council, the contractor or any person employed by, or acting on the contractor’s behalf, (whether with or without the knowledge of the contractor) will have committed any offences under the Bribery Act 2010, or will have given any fee or reward the receipt of which is an offence under Section 68 of the Local Government (Scotland) Act 1973.

11. APPOINTMENT OF NOMINATED SUB-CONTRACTORS

Where a contract provides for the appointment of a nominated sub-contractor or supplier for the execution of work or the supply of goods or materials, and it is considered necessary by the relevant Executive Director that tenders be invited then the following provisions will apply -

(a) tenders will be invited and processed in accordance with these Contract Standing Orders 4;

(b) the most economically advantageous tenderer will be nominated as the sub-contractor or supplier unless consent has been obtained from the relevant Executive Director to the nomination for some good and sufficient reason of another tenderer.

12. ENGAGEMENT OF CONSULTANTS

12.1 It will be a condition of the engagement of the services of any architect, engineer, surveyor or other consultant who is to be responsible to the Council for, or to be involved in, the process of obtaining or assessing tenders, or for the supervision of a contract on the Council’s behalf, that in relation to that contract they will –
(a) comply with these Contract Standing Orders, subject to the
modification that the procedure to be followed in inviting and
opening tenders will be approved in advance by the Executive
Director - Customer Services.

(b) at any time during the carrying out of the contract, produce to the
relevant Executive Director on request, all relevant records in
relation to the contract; and

(c) on certified completion of a contract by the consultant, transmit
appropriate records to the relevant Executive Director.

13. FINAL CERTIFICATE

13.1 The final certificate of payment of a contract should not be issued until
there has been approval by the relevant Executive Director, or
nominee under arrangements approved by her/him, a detailed
statement of account, with all vouchers and documents as may
reasonably be required, relating to prime cost items and particulars,
deductions, omissions and price variations.

14. CONTRACT PAYMENTS AND OTHER PROVISIONS

14.1 Where contracts provide for payment to be made by instalments,
arrangements will be made by the relevant Executive Director, for
keeping a contract register to show the state of account on each
contract between the Council and the contractor together with any
other payments and related professional fees.

14.2 Payments to contractors by instalment will be made only on an
authorisation issued by the relevant Executive Director (or other
authorised officer) or by a consultant engaged by the Council for the
purpose of supervising the contract.

14.3 Subject to the provisions of the contract, in each case, every extra
provision or variation will be authorised in writing by the relevant
Executive Director (or other authorised officer) or by a consultant
engaged by the Council for the purpose of supervising the contract.

14.4 All such extra provisions or variations will, in respect of contracts
where the contract value exceeds £350,000 be reported to the Council
as soon as practicable if the cumulative effect of these is to increase
the value of the contract by the greater of 10% or £50,000, or where
the effect is a material variation to the contract, regardless of the
contract value.

14.5 Claims from contractors in respect of matters not clearly within the
terms of any contract will be referred to the Executive Director -
Customer Services for consideration of the Council’s liability and, where necessary, to the Head of Strategic Finance in respect of any significant financial consideration before a settlement is reached.

15. CONTRACT TERMS AND THE FREEDOM OF INFORMATION (SCOTLAND) ACT 2002

15.1 The Freedom of Information (Scotland) Act 2002 and Environmental Information (Scotland) Regulations 2004 give a statutory right of access to all information held by Scottish public authorities, except where an exemption can be applied. All invitations to tender, invitations to negotiate and pre-qualification questionnaires should, accordingly, give notice of this.

15.2 On occasions, parties with whom the Council contracts will seek to incorporate stipulations that all or some information is provided in confidence. No such provision should be accepted without the prior approval of the Executive Director - Customer Services.

15.3 In all cases other than those specifically approved by the Executive Director - Customer Services, all contract conditions should include the following provision:

“All information submitted to the Council may need to be disclosed and/or published by the Council. Without prejudice to the foregoing generally, the Council may disclose information in compliance with the Freedom of Information (Scotland) Act 2002 or the Environmental Information (Scotland) Regulations 2004 (the decisions of the Council in the interpretation thereof shall be final and conclusive in any dispute, difference or question arising in respect of disclosure under its terms), any other law or as a consequence of judicial order or order by any court, tribunal or body with the authority to order disclosure (including the Scottish Information Commissioner). Further, the Council may also disclose all information submitted to them by the members, employees, agents and contractors of the Council”.

16. EQUAL OPPORTUNITY IN EMPLOYMENT

16.1 Before entering into a contract, the Council shall obtain from the contractor an assurance in writing that, to the best of his knowledge and belief, he has complied with all statutory requirements in respect of ensuring equal opportunity in employment and is able to comply with the provisions of the Council’s Equality and Diversity Scheme.

17. BREACH

17.1 Any employee discovering a possible breach of these Standing Orders or the Council’s Procurement Manual must report the matter immediately to the Executive Director - Customer Services and to his
or her own Executive Director. Failure by any employee to comply with the orders, or in the case of staff with appropriate supervisory responsibilities, failure to ensure the compliance with others, can be a serious matter, which may give rise to disciplinary consequences.