

10.00am, Thursday, 5 February 2015

Operational Governance: Review of Contract Standing Orders and Guidance on the Appointment of Consultants

| | |
|-------------------|--------|
| Item number | 8.2(b) |
| Report number | |
| Executive/routine | |
| Wards | All |

Executive summary

On 23 October 2014 the Council referred the report by the Director of Corporate Governance “Operational Governance: Review of Contract Standing Orders and Guidance on the Appointment of Consultants” to the Finance and Resources Committee for detailed scrutiny.

Following detailed scrutiny by the Finance and Resources Committee on 30 October 2014 the attached adjusted Contract Standing Orders (“CSOs”) and Guidance on the Appointment of Consultants (“Appointment of Consultants”) are recommended for adoption.

Links

| | |
|--------------------------|-----------|
| Coalition pledges | P30 |
| Council outcomes | CO24 - 27 |
| Single Outcome Agreement | |

Operational Governance: Review of Contract Standing Orders and Guidance on the Appointment of Consultants

Recommendations

The Council is requested to:

- 1.1 approve the proposed revisals to the existing CSOs and Appointment of Consultants as adjusted by the Finance and Resources Committee on 30 October 2014 (Appendices 1 and 2 of this report), with approval to take effect from the date of the Council decision;
- 1.2 to approve Option 1 in the report of 23 October 2014 as proposed by the Finance and Resources Committee on 30 October 2014, by inserting the following in the Contract Standing Orders: Where legally permissible the Council shall seek to ensure that for purchases or contracts of an estimated value of £50,000 or less that at least one Small or Medium Enterprise (SME) from the City of Edinburgh or an SME who is a significant employer within the City of Edinburgh is invited to tender in any process. For future repeat procurements for similar goods, services or works the Council shall seek to ensure that at least one new SME from the City of Edinburgh or a new significant employer within the City of Edinburgh is invited to tender in any process;
- 1.3 delegate authority to the Director of Corporate Governance to make such revisals to CSOs and Appointment of Consultants:
 - i) as may be necessary in order to implement the decisions of Council in relation to this report;
 - ii) as required as a result of changes to legislation or statutory guidance; and
 - iii) any other minor or consequential changes;in consultation with the Convener and Vice-Convener of the Finance and Resources Committee;
- 1.4 note that there will be an annual review of CSOs to ensure that they continue to work effectively and secure continuous improvement and Best Value and that any proposed amendments are reported to Council together with the reasons for those proposed amendments; and

- 1.5 approve the revisals to the Appointment of Consultants as noted in Table 2 and Appendix 2 of this report.

Background

- 2.1 A report by the Director of Corporate Governance “Operational Governance: Review of Contract Standing Orders and Guidance on the Appointment of Consultants” proposing revisals to the current CSOs was put before the Council on 23 October 2014. The Council made the decision to refer the proposed revisals to the current CSOs and Appointment of Consultants to the Finance and Resources Committee for more detailed scrutiny.
- 2.2 The report by the Director of Corporate Governance was referred by the Council to the Finance and Resources Committee on 30 October for more detained scrutiny prior to approval.

Main report

- 3.1 Following detailed scrutiny by the Finance and Resources Committee on 30 October 2014 the attached adjusted CSOs and Appointment of Consultants (Appendices 1 and 2 of this Report) are recommended for adoption. The only change to the proposed revised CSOs (Appendix 1) as recommended by the Finance and Resources Committee is shown in track change at 2.6 for ease of reference.

Measures of success

- 4.1 The measure of success of the revised CSOs will be improved controls, increased compliance and delivery and management of better value contracts.

Financial impact

- 5.1 There are no direct financial impacts as a result of this report. The changes to CSOs and Appointment of Consultants are expected to support the delivery of planned savings.

Risk, policy, compliance and governance impact

- 6.1 The revisals will improve controls, increase compliance and improve the governance of contracts.

Equalities impact

7.1 There are no equalities impacts as a result of this report.

Sustainability impact

8.1 The inclusion of a requirement that new SMEs should be included in the tender process for tenders of a value not exceeding £50,000 will encourage SMEs from the City of Edinburgh or who are significant employers within the City of Edinburgh to participate in the Council's tender processes. By considering costs throughout the entire life cycle of a contract, the most economically, environmentally and socially sustainable choices can be made.

Consultation and engagement

9.1 The CSOs were prepared in consultation with the Convenor and Vice Convenor of the Finance and Resources Committee and a wide range of officers involved in procuring and commissioning across all service areas of the Council. The revisions have been prepared in response to review by CPS and feedback as to improvements that could be made and practical difficulties experienced following implementation.

Background reading/external references

[Report to City of Edinburgh Council dated 29 October 2012, Item No.8 .4\(a\): "Operational Governance: Contract Standing Orders"](#)

[Report to City of Edinburgh Council dated 23 October 2014, Item No. Item No 8.3 "Operational Governance: Review of Contract Standing Orders and Guidance on the Appointment of Consultants"](#)

Alastair D Maclean

Director of Corporate Governance

Contact: Nick Smith, Commercial and Procurement Manager

E-mail: nick.smith@edinburgh.gov.uk | Tel: 0131 529 4377

Links

| | |
|--------------------------|--|
| Coalition pledges | P30 - Continue to maintain a sound financial position including long-term financial planning |
| Council outcomes | CO24 - The Council communicates effectively internally and externally and has an excellent reputation for customer care CO25 - The Council has efficient and effective services that deliver on |

objectives

CO26 - The Council engages with stakeholders and works in partnership to improve services and deliver on agreed objectives

CO27- The Council supports, invests in and develops our people

Single Outcome Agreement

Appendices

Appendix 1 – Contract Standing Orders

Appendix 2 – Operational Governance: Review of Contract Standing Orders and Guidance on the Appointment of Consultants

CITY OF EDINBURGH COUNCIL

CONTRACT STANDING ORDERS

23 October 2014

Contents

| | | |
|-----|--|----|
| 1. | Preliminary, definitions and general principles | 3 |
| 2. | Procedures | 6 |
| 3. | Role and responsibilities of Directors | 7 |
| 4. | Tender documents | 9 |
| 5. | Evaluation of tenders and quotes | 9 |
| 6. | Acceptance and award of contracts | 10 |
| 7. | Eligibility to tender and termination, variation or suspension of a contract | 10 |
| 8. | Electronic procurement | 11 |
| 9. | Waiver of Contract Standing Orders | 11 |
| 10. | Contract extensions or variations | 12 |
| 11. | Review of Contract Standing Orders | 12 |
| | Schedule: Relevant values and associated tendering procedure. | 13 |
| | Contract Standing Orders flow chart | 16 |

CONTRACT STANDING ORDERS

These Contract Standing Orders of the City of Edinburgh Council (“**Council**”) apply from 23 October 2014 and apply (with certain exceptions) to all contracts made by or on behalf of the Council for the procurement of the execution of works, the supply of goods and materials to the Council, and/or for the provision of services.

1 Preliminary

1.1 Extent and interpretation

- 1.1.1 The Council makes these Standing Orders in terms of section 81 of the Local Government (Scotland) Act 1973.
- 1.1.2 These Standing Orders must be interpreted in accordance with the key principles of transparency, equal treatment, non-discrimination and proportionality.
- 1.1.3 These Standing Orders apply from 23 October 2014 and apply, subject to the provisions of Standing Order 1.1.5, to all contracts made by or on behalf of the Council 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 consultancy 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 government or Scottish Executive guidance on public procurement that may be issued from time to time.
- 1.1.5 The Standing Orders do not apply to any of the following:
 - 1.1.5.1 contracts of employment;
 - 1.1.5.2 contracts solely relating to the lease or disposal of heritable property;
 - 1.1.5.3 the allocation of direct payments or personal budgets under options 1, 2 or 4 of the Social Care (Self Directed Support) (Scotland) Act 2013 and
 - 1.1.5.4 circumstances in which a waiver of the Standing Orders has been granted in accordance with Standing Order 9.
- 1.1.6 The Standing Orders must be read in conjunction with, and all Council staff must comply with, the Scheme of Delegation to Officers, the Council’s Financial Regulations, the Procurement Handbook and the Council’s guidance on the Appointment of Consultants. Where there is any discrepancy, the Standing Orders shall take precedence.

- 1.1.7 Failure to comply with these Standing Orders when making purchases or seeking offers may result in disciplinary action.
- 1.1.8 Any query regarding the application or interpretation of these Standing Orders should be made in the first instance to the Director of Corporate Governance.

1.2 Definitions and interpretation

- 1.2.1 “Act” means the Procurement Reform (Scotland) Act 2014;
- 1.2.2 “Best Value” means the legal duty to secure continuous improvement in the performance of the Council’s functions as set out in section 1 of the Local Government in Scotland Act 2003 as follows:-
- “1 Local authorities’ duty to secure best value**
- (1) It is the duty of a local authority to make arrangements which secure best value.
- (2) Best value is continuous improvement in the performance of the authority’s functions.
- (3) In securing best value, the local authority shall maintain an appropriate balance among—
- (a) the quality of its performance of its functions;
 - (b) the cost to the authority of that performance; and
 - (c) the cost to persons of any service provided by it for them on a wholly or partly rechargeable basis.
- (4) In maintaining that balance, the local authority shall have regard to—
- (a) efficiency;
 - (b) effectiveness;
 - (c) economy; and
 - (d) the need to meet the equal opportunity requirements.
- (5) The local authority shall discharge its duties under this section in a way which contributes to the achievement of sustainable development.
- (6) In measuring the improvement of the performance of a local authority’s functions for the purposes of this section, regard shall be had to the extent to which the outcomes of that performance have improved.
- (7) In this section, “*equal opportunity requirements*” has the same meaning as in Section L2 of Part II of Schedule 5 to the Scotland Act 1998 (c.46);
- 1.2.3 “Contract Owner” means the nominated contract owner for a specific contract;
- 1.2.4 “Convener” means the Convener of the Council, a committee or sub-committee of the Council;
- 1.2.5 “Director” means the relevant Director of the procuring service area or for the purpose of exercising any powers set out in these Standing Orders the Chief Executive of the Council or, in the case of cross-directorate purchasing or absence of the relevant Director, such Head of Service as that Director has nominated in accordance the Scheme of Delegation, the Director of Corporate Governance or such director as the Chief Executive may nominate.

- 1.2.6 “EU Thresholds” means the prescribed threshold values set by the EU Commission for supply, services or works contracts as they may be amended from time to time;
- 1.2.7 “Procurement Handbook” means the procurement handbook issued by the Director of Corporate Governance, setting out the detailed requirements for the conduct of procurement activity within the Council (as amended from time to time);
- 1.2.8 “Procurement Requirement” means a document setting out as a minimum:-
- 1.2.8.1 what is the Council's requirement for the goods, works or services and why do we need it?
 - 1.2.8.2 what are all the available options, including internal provision, which is the best and why?
 - 1.2.8.3 can and should the Council afford it?
 - 1.2.8.4 what are the proposed supplier management arrangements and who is the nominated Contract Owner as required by Contract Standing Orders?
 - 1.2.8.5 how do we track, measure and account for the benefits?
- 1.2.9 “Regulations” means the Public Contracts (Scotland) Regulations 2012 or successor legislation (as amended from time to time);
- 1.2.10 “Schedule” means the schedule to these Standing Orders; and
- 1.2.11 “Standing Orders” means these standing orders including the Schedule and “Standing Order” shall be interpreted accordingly.

1.3 General Principles

- 1.3.1 The relevant officer with responsibility for commissioning and/or procuring shall, prior to commencing any procurement process, ensure that an appropriate Procurement Requirement that meets the strategic and service objectives of the Council is completed in order to ensure that Best Value is achieved and that it complies with relevant sustainable development and equality requirements. Such Procurement Requirement shall include consulting with other Council service areas to ensure that where there is a need for the same or similar services that they are jointly procured where appropriate. Where the approximate value of any proposed

procurement is likely to exceed £1 million (or £25,000 in the case of consultancy spend) the relevant Procurement Requirement or options appraisal shall require the approval of the relevant Director prior to proceeding to procurement.

- 1.3.2 Throughout the life of a contract the contract should be monitored by the Contract Owner in respect of performance; compliance with the specification and other terms of the contract; cost and benefits; Best Value requirements; equality requirements, delivery and risk management.
- 1.3.3 All procedures for initiating procurement, developing procurement plans, inviting and receiving tenders, approval of contracts, and all contractual arrangements entered into shall comply with the Council's equality and sustainability requirements and policies and, where appropriate, contractual or procurement arrangements shall include the use of community benefit clauses.
- 1.3.4 All expenditure must comply with the Council's Financial Regulations.
- 1.3.5 Grants while not subject to the full application of these Standing Orders are subject to the requirement to secure Best Value and the Council's Finance Rules.

2 Procedures

- 2.1 In addition to the obligations in Standing Order 1.3.3, before commencing a tendering procedure or making a purchase where no contract exists the relevant Director must consult with the Commercial and Procurement Manager to establish whether:
 - 2.1.1 any existing contracts or framework contracts accessible to the Council may fulfil their requirements; or
 - 2.1.2 there is any existing internal provision (including the Council's significant trading operations) or other resources which could be used.
- 2.2 The procedure for the award of any contract shall depend upon the estimated aggregated value of that contract. The EU rules on aggregation of contracts shall apply and the artificial splitting of purchase orders or requirements to avoid the application of these Standing Orders is not permitted.
- 2.3 Subject to Standing Order 9, or where otherwise legally permitted in respect of proposed contracts which exceed the EU Thresholds, the minimum associated tendering procedures that must be applied are detailed in the Schedule. For supported persons services the Procurement of Care and Support Services Guidance issued by the Scottish Government and COSLA and any guidance published under the Act or subsequent Regulations should be followed.

- 2.4 The general EU principles of equal treatment, non discrimination, transparency and proportionality requiring a degree of advertising to enable open competition apply to all public contracts. Certain specified contracts are, however, subject to a different procurement regime. These services are referred to in the Procurement Handbook together with guidance on how to procure these services, which must be applied.
- 2.5 The Council may reserve the right to participate in a tendering procedure to providers operating supported businesses, supported employment programmes or supported factories where more than 50% of the workers are disabled persons. Where this right is exercised by the Council the contract award procedures provided by the Regulations and Act shall be followed.
- 2.6 Where legally permissible the Council shall seek to ensure that for purchases or contracts of an estimated value of £50,000 or less that at least one Small or Medium Enterprise (SME) from the City of Edinburgh or an SME who is a significant employer within the City of Edinburgh is invited to tender in any process. For future repeat procurements for similar goods, services or works the Council shall seek to ensure that at least one new SME from the City of Edinburgh or a new significant employer within the City of Edinburgh is invited to tender in any process.
- 2.7 Direct purchasing below £3,000 without competitive tendering is permissible subject to the Council's duty to secure Best Value. Best Value will normally be secured by obtaining 3 quotes and/or evidence of firm fixed prices.
- 2.8 The Commercial and Procurement Manager shall be consulted as appropriate in respect of tendering arrangements for any proposed contracts with an estimated value of less than £25,000.
- 2.9 The Commercial and Procurement Manager shall advise on and make all tendering arrangements for any proposed contracts with an estimated value in excess of £25,000.
- 2.10 Direct purchasing above £3,000 without competitive tendering is permissible only in those circumstances that would be permitted by the Regulations or in accordance with Standing Order 9.
- 2.11 If an unsuccessful tenderer brings a written or formal challenge against the Council in relation to a tender exercise or questions the integrity of the tender process, the recipient of the notice of challenge or query must inform the Commercial and Procurement Manager. The Commercial and Procurement Manager must inform the Head of Legal, Risk and Compliance as to potential legal challenges.

3 The Role and Responsibilities of Directors

- 3.1 Each Director retains responsibility for selecting and appointing contractors, providers or suppliers for their directorate, but shall seek guidance as appropriate from the Commercial and Procurement Manager. The

Commercial and Procurement Manager shall be consulted at the earliest opportunity to ensure that all purchasing arrangements are made in compliance with these Standing Orders.

- 3.2 Each Director has responsibility for all contracts tendered and let by their Directorate and is accountable to the Council for the performance of their duties in relation to contract letting and management, which are:
- 3.2.1 to ensure compliance with these Standing Orders and the Procurement Handbook;
 - 3.2.2 to ensure no contract is entered into by the Council without seeking advice where appropriate from the Commercial and Procurement Manager and Head of Legal, Risk and Compliance and having proper regard to such advice;
 - 3.2.3 to ensure that appropriate contract security (for example guarantees or performance bonds) is obtained where required or considered prudent;
 - 3.2.4 to prepare and approve where required by these Standing Orders an appropriate Procurement Requirement for each proposed purchase or contract;
 - 3.2.5 to prepare, in consultation with the Commercial and Procurement Manager, appropriate contract and tender documents which clearly specify the scope, quality and quantity of the works, goods or services;
 - 3.2.6 to check whether there is any existing Council or other collaborative framework that can appropriately be used to achieve Best Value for the Council before undergoing a further competitive tender process;
 - 3.2.7 to keep all bids confidential subject to any legal requirements;
 - 3.2.8 To ensure no supplier is requested by the Council to provide goods, services or works without first having a valid purchase order in place;
 - 3.2.9 to enter all purchase order information onto the relevant Council financial system prior to the service or goods being delivered;
 - 3.2.10 to ensure that all necessary contract information for contracts of a value of £3,000 for goods and services and £10,000 for works or more is provided to the Commercial and Procurement Manager for the purposes of maintaining an up-to-date contract register within one month of entering into a contract;

- 3.2.11 to ensure all relevant staff are familiar with these Standing Orders and the Procurement Handbook or other guidance issued in respect of these Standing Orders;
- 3.2.12 to ensure contracts and any appropriate contract security documents are signed before work, services or supply provision commences;
- 3.2.13 to put in place arrangements for efficient supplier management including the identification of a Contract Owner and monitoring of benefits and performance, for the entire duration of the contract;
- 3.2.14 to retain a copy of the contract and keep proper records of all contracts and tenders, including minutes of tender evaluation panels and other meetings;
- 3.2.15 to take immediate action in the event of a breach of these Standing Orders or the Procurement Handbook within his/her directorate;
- 3.2.16 to consult with Elected Members on matters reasonably considered politically, reputationally or financially sensitive in relation to proposed procurement activity; and
- 3.2.17 to make appropriate arrangements for the opening of tenders and their secure retention so as to protect the integrity of the procurement process and where tenders are received in paper form to ensure they are opened in the presence of an officer nominated by the Commercial and Procurement Manager together with a witness.

4 Tender Documents

- 4.1 The tender documents shall clearly set out the proposed method of evaluation as well as the scope, timing, quality and quantity of the works, services and supplies required by the Council.
- 4.2 The Head of Legal, Risk and Compliance will be consulted on conditions of contract for particularly significant or complex projects or contracts.

5 Evaluation of Tenders and Quotes

- 5.1 Tenders and quotes shall be evaluated on the basis of either of the following:
 - a) lowest cost; or
 - b) most economically advantageous.

Lowest cost should generally only be the basis of evaluation for simple procurements of short-term, low-level services or goods of a standard specification.

- 5.2 Tenders and quotes received after the closing date and time stipulated for return of tenders, or tenders which are incomplete or in an incorrect format will not be opened or considered unless the Council, acting proportionately, decides that there are circumstances which allow it to exercise discretion in allowing consideration of the tender. The Commercial and Procurement Manager must be consulted if tenders are submitted late, incomplete or in an incorrect format.
- 5.3 Tenders shall be evaluated by a tender evaluation panel which should comprise officers having sufficient knowledge and technical ability to enable them to evaluate detailed tenders appropriately. The evaluation process shall follow any guidance issued by the Commercial and Procurement Manager and be fully and appropriately documented. Where a tender involves the use, adoption or purchase of an Information Communication Technology (ICT) or digital service, software or hardware this must be undertaken in collaboration with the Council's ICT Solutions service.

6 Acceptance and Award of Contracts

- 6.1 Following the conclusion of the procedure for awarding contracts set out in these Standing Orders and, where applicable, the expiry of the mandatory standstill period, the resulting contract between the Council and successful tenderer shall be entered into following the approval process detailed in the Schedule. The signing of the contract document or letter of acceptance shall be in accordance with the Scheme of Delegation.

7 Eligibility to tender and termination, variation or suspension of a contract

- 7.1 The relevant Director, having due regard to legal advice from the Head of Legal, Risk and Compliance, may treat a potential tenderer as ineligible to tender where there are reasonable grounds to conclude that the contractor or potential tenderer:
- 7.1.1 has committed an act of grave misconduct in the course of their business or profession; or
 - 7.1.2 falls within one or more of the other grounds set out in Regulation 23 of the Regulations or
 - 7.1.3 has compiled, used, sold or supplied a prohibited list which:(i) contained details of persons who are or have been members of trade unions or persons who are taking part or have taken part in the activities of trade unions, and (ii) was compiled with a view to being used by employers or employment agencies for the purposes of discrimination in relation to recruitment or in relation to the treatment of workers, within the meaning of the Employment Relations Act of 1999 (Blacklists) Regulations 2010.

7.2 The relevant Director may terminate, suspend or vary a contract, in accordance with the express or implied terms of the contract and may also take such further action with regard to any contract as the Council is legally entitled to take.

7.3 The relevant Director will where appropriate report any actions taken in accordance with Standing Order 7.1 to 7.3 to the next meeting of the Finance and Resources Committee.

8 Electronic Procurement

8.1 Requests for quotations and invitations to tender should where practicable be issued and/or received by electronic means.

9 Waiver of Contract Standing Orders

9.1 The requirement to comply with any provision of these Standing Orders may be waived in accordance with the table in 9.2 below if on considering a written report by an appropriate officer it is considered that the waiver is justified because:-

9.1.1 the circumstances of the proposed contract are covered by legislative exemptions including the nature of the market for the works to be carried out or the goods or services to be provided has been investigated and is demonstrated to be such that a departure from the requirement of Standing Orders is justifiable in accordance with EU law and principles (for example when for artistic or technical reasons, or for reasons connected with the protection of exclusive rights, the contract may only be awarded to a particular provider) or the contract is for works, goods or services that are required in circumstances of extreme urgency that could not have been foreseen; or

9.1.2 it is in the Council's best interests.

9.2 Table setting out the relevant values and waiver approval requirements:

| Value | Reason | Approval Procedure |
|---|---|--|
| 0-£25,000 | 9.1.1 EU exemptions 9.1.2 best interests | The relevant Head of Service in consultation with the Commercial and Procurement Manager |
| 0-£250,000 (0-£25,000 in the case of consultancy spend) | 9.1.1 EU exemptions 9.1.2 best interests | The relevant Director in consultation with the Director of Corporate Governance (or any other Director where the relevant Director is the Director of Corporate Governance |

| | | |
|--|----------------------|--|
| Between £250,000 and £1million for services or goods contracts and £250,000 and £1.5million for works contracts. | 9.1.1 EU exemptions | The relevant Director in consultation with the Director of Corporate Governance (or any other Director where the relevant Director is the Director of Corporate Governance |
| Above £250,000 (above £25,000 in the case of consultancy spend) | 9.1.2 best interests | The Council or Finance and Resources Committee |
| Above £1million for services or goods contracts and £250,000 and £1.5million for works contracts | 9.1.1 EU exemptions | The Council or Finance and Resources Committee |

9.3 A record of the decision approving a waiver must be kept by the relevant Director and a copy of such signed waiver provided to the Commercial and Procurement Manager who shall where appropriate make an entry in the appropriate register.

10 Contract extensions or variations

10.1 Subject to 10.2, a Director (or where the value or consequent change in price does not exceed £25,000, the relevant Head of Service) may authorise an extension to a contract, or any other variation including a consequent change in price, provided such extension or variation is not contrary to the Regulations or the Council's EU obligations and that any consequent change in price does not exceed £250,000 without first obtaining the approval of Council or the Finance and Resources Committee

10.2 A Director or Head of Service shall not extend or vary a contract if such extension or variation is not expressly permitted by the contract without seeking advice from the Head of Legal, Risk and Compliance.

10.3 The EU rules on aggregation of contracts shall apply.

11 Review of Standing Orders

11.1 These Standing Orders will be reviewed annually.

SCHEDULE

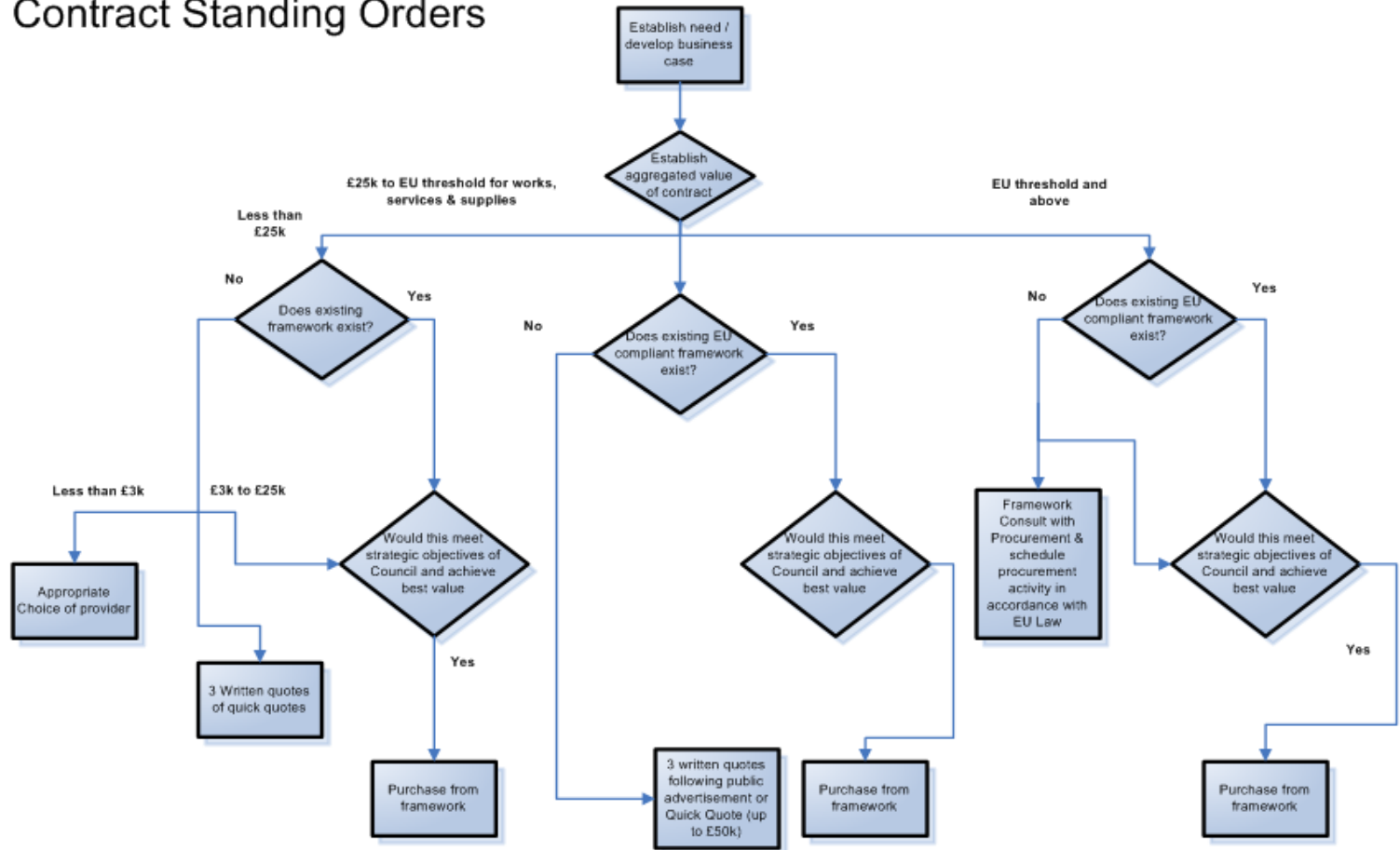
RELEVANT VALUES AND ASSOCIATED TENDERING PROCEDURE

| Total value for duration of contract or purchase (aggregation rules apply) | Procedure | Approval of contractual obligation | Committee Approval |
|--|--|--|---|
| Up to £3,000 | <p>Appropriate choice of provider documenting reasoning and quote <i>or</i> use existing local, national, Council framework or call- off contracts <i>or</i> Public Contracts Quick Quote facility.</p> <p>Best Value must be delivered and this will usually be demonstrated by more than one quote.</p> | Director, Head of Service or such other officer to whom the relevant Director or Head of Service has appropriately delegated their powers to in consultation with Commercial and Procurement Manager as appropriate | Not required |
| £3,000 to £25,000 * | <p>3 written/formal quotations –written description of requirements followed by written / electronic submission of quotes <i>or</i> use existing local, national, Council framework or call- off contracts <i>or</i> Public Contracts Quick Quote facility.</p> | Director, Head of Service or such other officer to whom the relevant Director or Head of Service has appropriately delegated their powers to in consultation with Commercial and Procurement Manager as appropriate, and Head of Legal, Risk and Compliance as appropriate | Not required |
| £25,000 to EU Thresholds for services and supplies * | <p>Invitation to tender following public advertisement - Public Contracts Scotland portal and/or equivalent should be used <i>or</i> use existing local, national, Council framework or call- off contracts <i>or</i> Public Contracts Quick Quote facility up</p> | Director or Head of Service (where delegated authority has been given) in consultation with Commercial and Procurement Manager (and Head of Legal, Risk | Not required with the exception of appointment of consultants where the value exceeds £25,000 as set out in the guidance on the appointment of consultants. |

| | | | |
|---|---|---|---|
| | to a value of £50,000. | and Compliance as appropriate) or up to £25,000 in the case of services of a consultant as set out in the guidance on the appointment of consultants. | |
| £25,000 to EU Thresholds for works | Invitation to tender following public advertisement - Public Contracts Scotland portal and/or equivalent should be used <i>or</i> use existing local, national, Council framework or call- off contracts <i>or</i> Public Contracts Quick Quote facility up to a value of £50,000. | Director or Head of Service (where delegated authority has been given) in consultation with Commercial and Procurement Manager (and Head of Legal, Risk and Compliance as appropriate) up to £500,000 Director approval between £500,000 and £1.5million. | Approval to award sought from Finance and Resources Committee or Council where value exceeds £1.5million |
| Above EU Threshold for services and supplies * | Invitation to tender following advertisement in OJEU - Public Contracts Scotland portal and/or equivalent should be used <i>or</i> use existing local, national, Council framework or call- off contracts | Director approval in consultation with Commercial and Procurement Manager (and Head of Legal, Risk and Compliance as appropriate), up to £1million or £25,000 in the case of services of a consultant as set out in the guidance on the appointment of consultants. | Approval to award sought from Finance and Resources Committee or Council where value exceeds £1million or £25,000 in the case of services of a consultant as set out in the guidance on the appointment of consultants. |
| Above EU Threshold for works | Invitation to tender following advertisement in OJEU - Public Contracts Scotland portal and/or equivalent should be used <i>or</i> use existing local, national, Council framework or call- off contracts | Director approval in consultation with the Commercial and Procurement Manager, Head of Legal, Risk and Compliance to be consulted as appropriate | Approval to award sought from Finance and Resources Committee or Council |

*In terms of Standing Order 2.4 certain specified contracts are subject to a different procurement regime. These services are set out in the Procurement Handbook together with guidance on how to procure these services, which must be applied.

Contract Standing Orders



10.00am, Thursday, 23 October 2014

Operational Governance: Review of Contract Standing Orders and Guidance on the Appointment of Consultants

| | |
|-------------------|-----|
| Item number | 8.3 |
| Report number | |
| Executive/routine | |
| Wards | All |

Executive summary

The Council approved the current Contract Standing Orders (“CSOs”) and the Guidance on the Appointment of Consultants (“Appointment of Consultants”) on 29 October 2012. CSOs are a legal requirement and provide the powers to control and regulate purchasing throughout the Council, and place requirements on service areas to effectively plan and contract manage the resulting contracts.

The CSOs have been kept under review by Commercial and Procurement Services (CPS) since October 2012 to ensure that they work effectively. This report explains the results of the review of CSOs and summarises the main changes that are proposed following extensive consultation, and seeks approval for the proposed changes.

Links

| | |
|--------------------------|-----------|
| Coalition pledges | P30 |
| Council outcomes | CO24 - 27 |
| Single Outcome Agreement | |

Operational Governance: Review of Contract Standing Orders and Guidance on the Appointment of Consultants

Recommendations

- 1.1 The Council is requested to:
- 1.1.1 approve the proposed revisals to the existing CSOs (as noted in Table 1 and Appendix 1 of this report), with approval to take effect from the date of the Council decision;
 - 1.1.2 consider whether it approves Option 1 to encourage the inclusion of local suppliers in Council tendering processes, as set out in 3.3 of this report;
 - 1.1.3 delegate authority to the Director of Corporate Governance to make such revisals to CSOs:
 - i) as may be necessary in order to implement the decisions of Council in relation to this report;
 - ii) as required as a result of changes to legislation or statutory guidance; and
 - iii) any other minor or consequential changes.
 - 1.1.4 note that there will be an annual review of CSOs to ensure that they continue to work effectively and secure continuous improvement and Best Value; and
 - 1.1.5 approve the revisals to the Appointment of Consultants as noted in Table 2 and Appendix 2 of this report.

Background

- 2.1 The Council is required to have CSOs under the Local Government (Scotland) Act 1973. CSOs provide the powers to control and regulate purchasing throughout the Council, and place requirements on service areas to effectively plan and contract manage the resulting contracts.
- 2.2 The purpose of the revised CSOs and the Appointment of Consultants is to improve purchasing controls to ensure Best Value is delivered.

- 2.3 The review of working practices ongoing since October 2012 has recognised that there is a need:
- to increase the threshold from £1,000 to £3,000, which allows for direct purchasing subject to best value requirements, addressing practical difficulties in relation to low value contracts;
 - to improve enforcement of the Purchase to Pay (P2P) process to ensure a reduction in retrospective spend;
 - to improve opportunities for local suppliers and SMEs;
 - to clarify the rules on aggregation (whereby artificial splitting of a contract's value to avoid the application of the CSO rules is not permitted);
 - to improve the rules on Waivers and extensions;
 - for further definition of appropriate consultation with elected members;
 - for appropriate delegation below the level of Director for low value/low risk contracts;
 - to address the issue of contractor blacklisting; and
 - to make changes to Appointment of Consultants.
- 2.4 The suggested revisals are as a result of feedback from service areas and elected members following nearly two years of implementation and the ongoing review of our purchasing practices as part of the Commercial Excellence Programme.
- 2.5 The revisals seek to improve controls on purchasing whilst balancing the need for sufficient flexibility to allow Council officers to purchase what they need when they need it.

Main report

Summary of proposed changes to the CSOs

- 3.1 The proposed CSOs changes will address practical difficulties encountered, clarify the rules and improve purchasing controls. Minor changes have also been made for stylistic reasons. The proposed revised CSOs and Appointment of Consultants are set out in Appendices 1 and 2 to this report and the significant amendments are explained in Tables 1 and 2 below.
- 3.2 There is also an option to be considered by the Council as set out in paragraph 3.3 of this report. The inclusion of this option increases contracting opportunities for local suppliers and SMEs.

Table 1

| Standing Order No. | Change | Explanation for the Change |
|---|--|---|
| 1.1 Extent and Interpretation | Extent: inclusion of Scheme of Delegation and Financial Regulations. | A requirement to read the CSOs in conjunction with and comply with the Scheme of Delegation (SoD) to Officers and the Council's Financial Regulations has been inserted. |
| 1.2.1 Definitions and Interpretation | Extent: exclude direct payments or personal budgets under the Social Care (Self- directed Support) Act 2013 (SDS Act) from application of CSOs. | Payment will be to individuals. Option 3 of the SDS Act where the Council is contracting with a provider will still be subject to the CSOs. |
| 1.2 | Definitions and Interpretations Procurement Reform Act Best Value Director Procurement Requirement | Definitions have been added for the purposes of clarification. The term 'Director' has been amended to allow powers to be exercised by the Chief Executive of the Council, other Directors or a Head of Service. In recognition that many of the Council's contracts will be re-procurements, the term 'business case' and its association with the Treasury Green book and detailed 5 case model has been replaced with the broader term 'Procurement Requirement', encompassing business cases or options appraisals as appropriate. |
| 1.3.1 | General Principles Procurement Requirements to be signed off by Director where they exceed £1M (or £25,000 for consultancy spend). | For procurement requirements which exceed £1million (or £25,000 in the case of consultancy spend) Director approval will now be required prior to commencing any procurement. |

| | | |
|-----------------|---|--|
| | | |
| 1.3.5 | <p>General Principles</p> <p>Grants subject to Best Value requirements but not procurement regime.</p> | Grants, while not subject to the application of procurement rules, are subject to the requirement to secure Best Value. |
| 2.2 | <p>Procedures</p> <p>The rules of aggregation apply and artificial splitting of contracts to avoid the application of the rules is not permitted.</p> | An explanation is now provided to clarify and ensure the rule prohibiting aggregation is observed. |
| 2.3 | <p>Procedures</p> <p>Clarification that adult and children's care services must follow Scottish Government Guidance.</p> | The 2014 Procurement Directive will impact upon care services once it is implemented by Scottish Regulations (expected late 2015). In the meantime the current Guidance will apply. Delegated authority is requested to allow the Director of Corporate Governance to amend the CSOs to introduce the minimal changes required for compliance prior to reviewing these CSOs. |
| 2.7 | <p>Procedures</p> <p>Direct purchasing below £3,000 (raised from £1,000) permissible subject to duty to secure Best Value, which will normally be by securing 3 quotes or evidence of firm fixed prices.</p> | Changes proposed in response to feedback that disproportionate resources and practical difficulties were required in obtaining 3 quotes for purchasing low value goods or services. Will include emergency situations outwith the Council's control. Will allow purchases from companies who do not tender e.g. online companies and supermarkets. |
| 3.2.8 and 3.2.9 | <p>The Role and Responsibilities of Directors</p> | To increase the percentage of compliant spend and reduce current high levels of retrospective spend, the swifter clearing of invoices and |

| | | |
|----------------|---|--|
| | Introduction of a requirement that a purchase order is required before a supplier is requested to provide goods, works or services and that the necessary information is entered on Oracle etc before the goods or services are delivered. | payment of contractors. A new requirement to ensure that no supplier is requested by the Council to provide goods, services or works without first having a purchase order has been included. |
| 3.2.10 | <p>The Role and Responsibilities of Directors</p> <p>Responsibility of Directors to ensure all required contract information provided for purposes of updating the Contracts Register above £3,000 for goods and services and £10,000 for works.</p> | For contracts exceeding £25,000 it will become a requirement of the Procurement Reform (S) Act 2014 to publish a contract register and make specified minimum details publicly available. This change is expected to be introduced by the end of 2015. Lowering the threshold to £3,000 will ensure more efficient and faster payment of suppliers as well as better visibility. |
| 3.2.16 | <p>The Role and Responsibilities of Directors</p> <p>To consult with Elected Members as appropriate in relation to proposed procurement activity.</p> | Following feedback from members there is a desire to be consulted on matters reasonably considered politically, reputationally or financially sensitive in relation to proposed procurement activity. |
| 5.3 | <p>Evaluation of Tenders and Quotes</p> <p>The Council's ICT Solutions service must oversee purchases of ICT Software or hardware.</p> | To allow corporate solutions to be sought. |
| 6 and Schedule | Acceptance and Award of Contracts | In recognition of the practical difficulties for approval of low value |

| | | |
|-------|--|--|
| | <p>Approvals of contract award for a value not exceeding £25,000 may be delegated below Head of Service.</p> <p>Signing of contract documents to dealt with by the SoD.</p> <p>Deletion of signing schedule in schedule.</p> | <p>contracts following feedback .</p> <p>Allows directorates to put in place their own arrangements under SoD.</p> |
| 7.1.3 | <p>Acceptance and Award of Contracts</p> <p>Finding of Contractor Blacklisting may result in exclusion or termination of contract.</p> | <p>Recognition of requirement in Scottish Public Procurement Note issued by the Scottish Government, to ensure blacklisting not used in connection with public contracts.</p> |
| 9 | <p>Waiver of CSOs</p> <p>0-£25,000 Head of Service and Commercial and Procurement Manager</p> <p>0-£250,000 Director and Director of Corporate Governance</p> <p>£250,000 plus – Committee or Council unless permitted by EU rules</p> | <p>Changes are proposed following a review of waivers and feedback from service areas that process needs to be clarified, simplified and speeded up. Those waivers that are permitted by EU rules are not strictly speaking waivers as in accordance with the law. While the process provides a useful audit, Committee approval should not be required.</p> |
| 10 | <p>Contract extensions or variations</p> <p>Head of Service may approve extensions or variations under £25,000.</p> <p>Director may approve extensions or variations under £250,000.</p> <p>Committee approval required where value of extension or variation</p> | <p>For the purposes of easing practical difficulties it is now provided that Heads of Service may approve contract extensions or variations where the value does not exceed £25,000 (and the extension or variation is provided for in the contract). To tie in with waivers level Directors may approve extensions or variations up to £250,000.</p> |

| | | |
|--|-------------------|--|
| | exceeds £250,000. | |
|--|-------------------|--|

3.3 Option for additional powers

OPTION 1: The Council is asked to consider the following option which will increase opportunities for local suppliers, by encouraging their inclusion in Council tendering processes:-

“Where legally permissible the Council shall seek to ensure that for purchases or contracts of an estimated value of £50,000 or less, that at least one Small or Medium Enterprise (SME) from the City of Edinburgh, a new SME or an SME who is a significant employer within the City of Edinburgh and which has not previously contracted with the Council is invited to tender in any process.”

If adopted, guidance to support this requirement will be produced by CPS.

3.4 Proposed changes to the Appointment of Consultants

Table 2

| Provision No | Change | Explanation for the Change |
|-----------------------------------|---|---|
| 2.2 Definition of “consultant” | The definition of consultant shall exclude ‘agency and temporary workers’. | These are more appropriately dealt with by employment policies and through the relevant staffing agency contracts procured under CSOs. |
| 4 Committee Approval | Committee approval not required for design teams for works projects that would not otherwise go to Committee. Definition of pre-approved Council Project included must have approved revenue or capital expenditure and a Committee report seeking consent for the project which includes explicit requirement for consultants. Standing Orders urgency provisions can be relied upon | Addresses anomaly that that Committee approval required for appointment of cost consultants, structural engineers etc, implicit in works projects that would not normally require Committee approval e.g. £300,000 refurbishment works. Mitigates against consequent delays to works programme due to approval process. |

| | | |
|--|--------------|--|
| | if required. | |
|--|--------------|--|

Measures of success

- 4.1 The measure of success of the revised CSOs will be improved controls, increased compliance, delivery of better value contracts and a reduction in retrospective spend.

Financial impact

- 5.1 There are no direct financial impacts as a result of this report. The changes to CSOs are expected to support the delivery of planned savings.

Risk, policy, compliance and governance impact

- 6.1 The revisions will improve controls, increase compliance and improve the governance of contracts.

Equalities impact

- 7.1 There are no equalities impacts as a result of this report.

Sustainability impact

- 8.1 Should Option 1 be adopted, it will also encourage SMEs from the City of Edinburgh or who are significant employers within the City of Edinburgh to participate in the Council's tender processes. By considering costs throughout the entire life cycle of a contract, the most economically, environmentally and socially sustainable choices may be made.

Consultation and engagement

- 9.1 The CSOs were prepared in consultation with the Convenor and Vice Convenor of the Finance and Resources Committee and a wide range of officers involved in procuring and commissioning across all service areas of the Council. The revisions have been prepared in response to review by CPS and feedback as to improvements that could be made and practical difficulties experienced following implementation.

Background reading/external references

City of Edinburgh Council's Contract Standing Orders

[Report to City of Edinburgh Council dated 29 October 2012, Item No.8 .4\(a\): "Operational Governance: Contract Standing Orders"](#)

Alastair D Maclean

Director of Corporate Governance

Contact: Nick Smith, Commercial and Procurement Manager

E-mail: nick.smith@edinburgh.gov.uk | Tel: 0131 529 4377

Links

| | |
|---------------------------------|---|
| Coalition pledges | P30 - Continue to maintain a sound financial position including long-term financial planning |
| Council outcomes | CO24 - The Council communicate effectively internally and externally and has an excellent reputation for customer care CO25 - The Council has efficient and effective services that deliver on objectives CO26 - The Council engages with stakeholders and works in partnership to improve services and deliver on agreed objectives CO27 - The Council supports, invests in and develops our people |
| Single Outcome Agreement | |
| Appendices | Appendix 1 –Contract Standing Orders Appendix 2 – Guidance on the Appointment of Consultants |

CITY OF EDINBURGH COUNCIL

CONTRACT STANDING ORDERS

23 October 2014

Contents

| | | |
|-----|--|----|
| 1. | Preliminary, definitions and general principles | 3 |
| 2. | Procedures | 5 |
| 3. | Role and responsibilities of Directors | 7 |
| 4. | Tender documents | 9 |
| 5. | Evaluation of tenders and quotes | 9 |
| 6. | Acceptance and award of contracts | 10 |
| 7. | Eligibility to tender and termination, variation or suspension of a contract | 10 |
| 8. | Electronic procurement | 11 |
| 9. | Waiver of Contract Standing Orders | 11 |
| 10. | Contract extensions or variations | 12 |
| 11. | Review of Contract Standing Orders | 12 |
| | Schedule: Relevant values and associated tendering procedure. | 13 |
| | Contract Standing Orders flow chart | 15 |

CONTRACT STANDING ORDERS

These Contract Standing Orders of the City of Edinburgh Council (“**Council**”) apply from 23 October 2014 and apply (with certain exceptions) to all contracts made by or on behalf of the Council for the procurement of the execution of works, the supply of goods and materials to the Council, and/or for the provision of services.

1 Preliminary

1.1 Extent and interpretation

- 1.1.1 The Council makes these Standing Orders in terms of section 81 of the Local Government (Scotland) Act 1973.
- 1.1.2 These Standing Orders must be interpreted in accordance with the key principles of transparency, equal treatment, non-discrimination and proportionality.
- 1.1.3 These Standing Orders apply from 23 October 2014 and apply, subject to the provisions of Standing Order 1.1.5, to all contracts made by or on behalf of the Council 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 consultancy 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 government or Scottish Executive guidance on public procurement that may be issued from time to time.
- 1.1.5 The Standing Orders do not apply to any of the following:
 - 1.1.5.1 contracts of employment;
 - 1.1.5.2 contracts solely relating to the lease or disposal of heritable property;
 - 1.1.5.3 the allocation of direct payments or personal budgets under options 1, 2 or 4 of the Social Care (Self Directed Support) (Scotland) Act 2013 and
 - 1.1.5.4 circumstances in which a waiver of the Standing Orders has been granted in accordance with Standing Order 9.
- 1.1.6 The Standing Orders must be read in conjunction with, and all Council staff must comply with, the Scheme of Delegation to Officers, the Council’s Financial Regulations, the Procurement Handbook and the Council’s guidance on the Appointment of Consultants. Where there is any discrepancy, the Standing Orders shall take precedence.

- 1.1.7 Failure to comply with these Standing Orders when making purchases or seeking offers may result in disciplinary action.
- 1.1.8 Any query regarding the application or interpretation of these Standing Orders should be made in the first instance to the Director of Corporate Governance.

1.2 Definitions and interpretation

- 1.2.1 “Act” means the Procurement Reform (Scotland) Act 2014;
- 1.2.2 “Best Value” means the legal duty to secure continuous improvement in the performance of the Council’s functions as set out in section 1 of the Local Government in Scotland Act 2003 as follows:-
- “1 Local authorities’ duty to secure best value**
- (1) It is the duty of a local authority to make arrangements which secure best value.
- (2) Best value is continuous improvement in the performance of the authority’s functions.
- (3) In securing best value, the local authority shall maintain an appropriate balance among—
- (a) the quality of its performance of its functions;
- (b) the cost to the authority of that performance; and
- (c) the cost to persons of any service provided by it for them on a wholly or partly rechargeable basis.
- (4) In maintaining that balance, the local authority shall have regard to—
- (a) efficiency;
- (b) effectiveness;
- (c) economy; and
- (d) the need to meet the equal opportunity requirements.
- (5) The local authority shall discharge its duties under this section in a way which contributes to the achievement of sustainable development.
- (6) In measuring the improvement of the performance of a local authority’s functions for the purposes of this section, regard shall be had to the extent to which the outcomes of that performance have improved.
- (7) In this section, “*equal opportunity requirements*” has the same meaning as in Section L2 of Part II of Schedule 5 to the Scotland Act 1998 (c.46)”;
- 1.2.3 “Contract Owner” means the nominated contract owner for a specific contract;
- 1.2.4 “Convener” means the Convener of the Council, a committee or sub-committee of the Council;
- 1.2.5 “Director” means the relevant Director of the procuring service area or for the purpose of exercising any powers set out in these Standing Orders the Chief Executive of the Council or, in the case of cross-directorate purchasing or absence of the relevant Director, such Head of Service as that Director has sub delegated authority to in accordance the Scheme of Delegation, the Director of Corporate Governance or such director as the Chief Executive may nominate.

- 1.2.6 “EU Thresholds” means the prescribed threshold values set by the EU Commission for supply, services or works contracts as they may be amended from time to time;
- 1.2.7 “Procurement Handbook” means the procurement handbook issued by the Director of Corporate Governance, setting out the detailed requirements for the conduct of procurement activity within the Council (as amended from time to time);
- 1.2.8 “Procurement Requirement” means a document setting out as a minimum:-
 - 1.2.8.1 what is the Council's requirement for the goods, works or services and why do we need it?
 - 1.2.8.2 what are all the available options, including internal provision, which is the best and why?
 - 1.2.8.3 can and should the Council afford it?
 - 1.2.8.4 what are the proposed supplier management arrangements and who is the nominated Contract Owner as required by Contract Standing Orders?
 - 1.2.8.5 how do we track, measure and account for the benefits?
- 1.2.9 “Regulations” means the Public Contracts (Scotland) Regulations 2012 or successor legislation (as amended from time to time);
- 1.2.10 “Schedule” means the schedule to these Standing Orders; and
- 1.2.11 “Standing Orders” means these standing orders including the Schedule and “Standing Order” shall be interpreted accordingly.

1.3 General Principles

- 1.3.1 The relevant officer with responsibility for commissioning and/or procuring shall, prior to commencing any procurement process, ensure that an appropriate Procurement Requirement that meets the strategic and service objectives of the Council is completed in order to ensure that Best Value is achieved and that it complies with relevant sustainable development and equality requirements. Such Procurement Requirement shall include consulting with other Council service areas to ensure that where there is a need for the same or similar services that they are jointly procured where appropriate. Where the approximate value of any proposed

procurement is likely to exceed £1 million (or £25,000 in the case of consultancy spend) the relevant Procurement Requirement or options appraisal shall require the approval of the relevant Director prior to proceeding to procurement.

- 1.3.2 Throughout the life of a contract the contract should be monitored by the Contract Owner in respect of performance; compliance with the specification and other terms of the contract; cost and benefits; Best Value requirements; equality requirements, delivery and risk management.
- 1.3.3 All procedures for initiating procurement, developing procurement plans, inviting and receiving tenders, approval of contracts, and all contractual arrangements entered into shall comply with the Council's equality and sustainability requirements and policies and, where appropriate, contractual or procurement arrangements shall include the use of community benefit clauses.
- 1.3.4 All expenditure must comply with the Council's Financial Regulations.
- 1.3.5 Grants given by the Council, while not subject to the full application of these Standing Orders, are subject to the requirement to secure Best Value and the Council's Finance Rules.

2 Procedures

- 2.1 In addition to the obligations in Standing Order 1.3.3, before commencing a tendering procedure or making a purchase where no contract exists the relevant Director must consult with the Commercial and Procurement Manager to establish whether:
 - 2.1.1 any existing contracts or framework contracts accessible to the Council may fulfil their requirements; or
 - 2.1.2 there is any existing internal provision (including the Council's significant trading operations) or other resources which could be used.
- 2.2 The procedure for the award of any contract shall depend upon the estimated aggregated value of that contract. The EU rules on aggregation of contracts shall apply and the artificial splitting of purchase orders or requirements to avoid the application of these Standing Orders is not permitted.
- 2.3 Subject to Standing Order 9, or where otherwise legally permitted in respect of proposed contracts which exceed the EU Thresholds, the minimum associated tendering procedures that must be applied are detailed in the Schedule. For supported persons services the Procurement of Care and Support Services Guidance issued by the Scottish Government and COSLA and any guidance published under the Act or subsequent Regulations should be followed.

- 2.4 The general EU principles of equal treatment, non discrimination, transparency and proportionality requiring a degree of advertising to enable open competition apply to all public contracts. Certain specified contracts are, however, subject to a different procurement regime. These services are referred to in the Procurement Handbook together with guidance on how to procure these services, which must be applied.
- 2.5 The Council may reserve the right to participate in a tendering procedure to providers operating supported businesses, supported employment programmes or supported factories where more than 50% of the workers are disabled persons. Where this right is exercised by the Council the contract award procedures provided by the Regulations and Act shall be followed.
- 2.6 **[Option:** Where legally permissible the Council shall seek to ensure that for purchases or contracts of an estimated value of £50,000 or less that at least one Small or Medium Enterprise (SME) from the City of Edinburgh or an SME who is a significant employer within the City of Edinburgh is invited to tender in any process. For future repeat procurements for similar goods, services or works the Council shall seek to ensure that at least one new SME from the City of Edinburgh or a new significant employer within the City of Edinburgh is invited to tender in any process.]
- 2.7 Direct purchasing below £3,000 without competitive tendering is permissible subject to the Council's duty to secure Best Value. Best Value will normally be secured by obtaining 3 quotes and/or evidence of firm fixed prices.
- 2.8 The Commercial and Procurement Manager shall be consulted as appropriate in respect of tendering arrangements for any proposed contracts with an estimated value of less than £25,000.
- 2.9 The Commercial and Procurement Manager shall advise on and make all tendering arrangements for any proposed contracts with an estimated value in excess of £25,000.
- 2.10 Direct purchasing above £3,000 without competitive tendering is permissible only in those circumstances that would be permitted by the Regulations or in accordance with Standing Order 9.
- 2.11 If an unsuccessful tenderer brings a written or formal challenge against the Council in relation to a tender exercise or questions the integrity of the tender process, the recipient of the notice of challenge or query must inform the Commercial and Procurement Manager. The Commercial and Procurement Manager must inform the Head of Legal, Risk and Compliance as to potential legal challenges.

3 The Role and Responsibilities of Directors

- 3.1 Each Director retains responsibility for selecting and appointing contractors, providers or suppliers for their directorate, but shall seek guidance as appropriate from the Commercial and Procurement Manager. The

Commercial and Procurement Manager shall be consulted at the earliest opportunity to ensure that all purchasing arrangements are made in compliance with these Standing Orders.

- 3.2 Each Director has responsibility for all contracts tendered and let by their Directorate and is accountable to the Council for the performance of their duties in relation to contract letting and management, which are:
- 3.2.1 to ensure compliance with these Standing Orders and the Procurement Handbook;
 - 3.2.2 to ensure no contract is entered into by the Council without seeking advice where appropriate from the Commercial and Procurement Manager and Head of Legal, Risk and Compliance and having proper regard to such advice;
 - 3.2.3 to ensure that appropriate contract security (for example guarantees or performance bonds) is obtained where required or considered prudent;
 - 3.2.4 to prepare and approve where required by these Standing Orders an appropriate Procurement Requirement for each proposed purchase or contract;
 - 3.2.5 to prepare, in consultation with the Commercial and Procurement Manager, appropriate contract and tender documents which clearly specify the scope, quality and quantity of the works, goods or services;
 - 3.2.6 to check whether there is any existing Council or other collaborative framework that can appropriately be used to achieve Best Value for the Council before undergoing a further competitive tender process;
 - 3.2.7 to keep all bids confidential subject to any legal requirements;
 - 3.2.8 To ensure no supplier is requested by the Council to provide goods, services or works without first having a valid purchase order in place;
 - 3.2.9 to enter all purchase order information onto the relevant Council financial system prior to the service or goods being delivered;
 - 3.2.10 to ensure that all necessary contract information for contracts of a value of £3,000 for goods and services and £10,000 for works or more is provided to the Commercial and Procurement Manager for the purposes of maintaining an up-to-date contract register within one month of entering into a contract;

- 3.2.11 to ensure all relevant staff are familiar with these Standing Orders and the Procurement Handbook or other guidance issued in respect of these Standing Orders;
- 3.2.12 to ensure contracts and any appropriate contract security documents are signed before work, services or supply provision commences;
- 3.2.13 to put in place arrangements for efficient supplier management including the identification of a Contract Owner and monitoring of benefits and performance, for the entire duration of the contract;
- 3.2.14 to retain a copy of the contract and keep proper records of all contracts and tenders, including minutes of tender evaluation panels and other meetings;
- 3.2.15 to take immediate action in the event of a breach of these Standing Orders or the Procurement Handbook within his/her directorate;
- 3.2.16 to consult with Elected Members on matters reasonably considered politically, reputationally or financially sensitive in relation to proposed procurement activity; and
- 3.2.17 to make appropriate arrangements for the opening of tenders and their secure retention so as to protect the integrity of the procurement process and where tenders are received in paper form to ensure they are opened in the presence of an officer nominated by the Commercial and Procurement Manager together with a witness.

4 Tender Documents

- 4.1 The tender documents shall clearly set out the proposed method of evaluation as well as the scope, timing, quality and quantity of the works, services and supplies required by the Council.
- 4.2 The Head of Legal, Risk and Compliance will be consulted on conditions of contract for particularly significant or complex projects or contracts.

5 Evaluation of Tenders and Quotes

- 5.1 Tenders and quotes shall be evaluated on the basis of either of the following:
 - a) lowest cost; or
 - b) most economically advantageous.

Lowest cost should generally only be the basis of evaluation for simple procurements of short-term, low-level services or goods of a standard specification.

- 5.2 Tenders and quotes received after the closing date and time stipulated for return of tenders, or tenders which are incomplete or in an incorrect format will not be opened or considered unless the Council, acting proportionately, decides that there are circumstances which allow it to exercise discretion in allowing consideration of the tender. The Commercial and Procurement Manager must be consulted if tenders are submitted late, incomplete or in an incorrect format.
- 5.3 Tenders shall be evaluated by a tender evaluation panel which should comprise officers having sufficient knowledge and technical ability to enable them to evaluate detailed tenders appropriately. The evaluation process shall follow any guidance issued by the Commercial and Procurement Manager and be fully and appropriately documented. Where a tender involves the use, adoption or purchase of an Information Communication Technology (ICT) or digital service, software or hardware this must be undertaken in collaboration with the Council's ICT Solutions service.

6 Acceptance and Award of Contracts

- 6.1 Following the conclusion of the procedure for awarding contracts set out in these Standing Orders and, where applicable, the expiry of the mandatory standstill period, the resulting contract between the Council and successful tenderer shall be entered into following the approval process detailed in the Schedule. Any contract documents or letters of acceptance must be signed by a proper officer with signing authority who has been appointed in accordance with the Scheme of Delegation.

7 Eligibility to tender and termination, variation or suspension of a contract

- 7.1 The relevant Director, having due regard to legal advice from the Head of Legal, Risk and Compliance, may treat a potential tenderer as ineligible to tender where there are reasonable grounds to conclude that the contractor or potential tenderer:
- 7.1.1 has committed an act of grave misconduct in the course of their business or profession; or
 - 7.1.2 falls within one or more of the other grounds set out in Regulation 23 of the Regulations or
 - 7.1.3 has compiled, used, sold or supplied a prohibited list which:(i) contained details of persons who are or have been members of trade unions or persons who are taking part or have taken part in the activities of trade unions, and (ii) was compiled with a view to being used by employers or employment agencies for the purposes of discrimination in relation to recruitment or in relation to the

treatment of workers, within the meaning of the Employment Relations Act of 1999 (Blacklists) Regulations 2010.

7.2 The relevant Director may terminate, suspend or vary a contract, in accordance with the express or implied terms of the contract and may also take such further action with regard to any contract as the Council is legally entitled to take.

7.3 The relevant Director will where appropriate report any actions taken in accordance with Standing Order 7.1 to 7.3 to the next meeting of the Finance and Resources Committee.

8 Electronic Procurement

8.1 Requests for quotations and invitations to tender should where practicable be issued and/or received by electronic means.

9 Waiver of Contract Standing Orders

9.1 The requirement to comply with any provision of these Standing Orders may be waived in accordance with the table in 9.2 below if on considering a written report by an appropriate officer it is considered that the waiver is justified because:-

9.1.1 the circumstances of the proposed contract are covered by legislative exemptions including the nature of the market for the works to be carried out or the goods or services to be provided has been investigated and is demonstrated to be such that a departure from the requirement of Standing Orders is justifiable in accordance with EU law and principles (for example when for artistic or technical reasons, or for reasons connected with the protection of exclusive rights, the contract may only be awarded to a particular provider) or the contract is for works, goods or services that are required in circumstances of extreme urgency that could not have been foreseen; or

9.1.2 it is in the Council’s best interests.

9.2 Table setting out the relevant values and waiver approval requirements:

| Value | Reason | Approval Procedure |
|---|---|---|
| 0-£25,000 | 9.1.1 EU exemptions 9.1.2 best interests | The relevant Head of Service in consultation with the Commercial and Procurement Manager |
| 0-£250,000 (0-£25,000 in the case of consultancy spend) | 9.1.1 EU exemptions 9.1.2 best interests | The relevant Director in consultation with the Director of Corporate Governance (or any other |

| | | |
|--|----------------------|--|
| | | Director where the relevant Director is the Director of Corporate Governance |
| Between £250,000 and £1million for services or goods contracts and £250,000 and £1.5million for works contracts. | 9.1.1 EU exemptions | The relevant Director in consultation with the Director of Corporate Governance (or any other Director where the relevant Director is the Director of Corporate Governance |
| Above £250,000 (above £25,000 in the case of consultancy spend) | 9.1.2 best interests | The Council or Finance and Resources Committee |
| Above £1million for services or goods contracts and £250,000 and £1.5million for works contracts | 9.1.1 EU exemptions | The Council or Finance and Resources Committee |

9.3 A record of the decision approving a waiver must be kept by the relevant Director and a copy of such signed waiver provided to the Commercial and Procurement Manager who shall where appropriate make an entry in the appropriate register.

10 Contract extensions or variations

10.1 Subject to 10.2, a Director may authorise an extension to a contract, or any other variation including a consequent change in price, provided that (i) such extension or variation is not contrary to the Regulations or the Council's EU obligations; and (ii) any difference between the original and revised contract price does not exceed £250,000. A Head of Service may authorise such an extension or variation to a contract provided that (i) such extension or variation is not contrary to the Regulations or the Council's EU obligations and (i) any difference between the original and revised contract price does not exceed £25,000.

10.2 A Director or Head of Service shall not extend or vary a contract if such extension or variation is not expressly permitted by the contract without seeking advice from the Head of Legal, Risk and Compliance.

10.3 The EU rules on aggregation of contracts shall apply.

Review of Standing Orders

10.4 These Standing Orders will be reviewed annually.

SCHEDULE

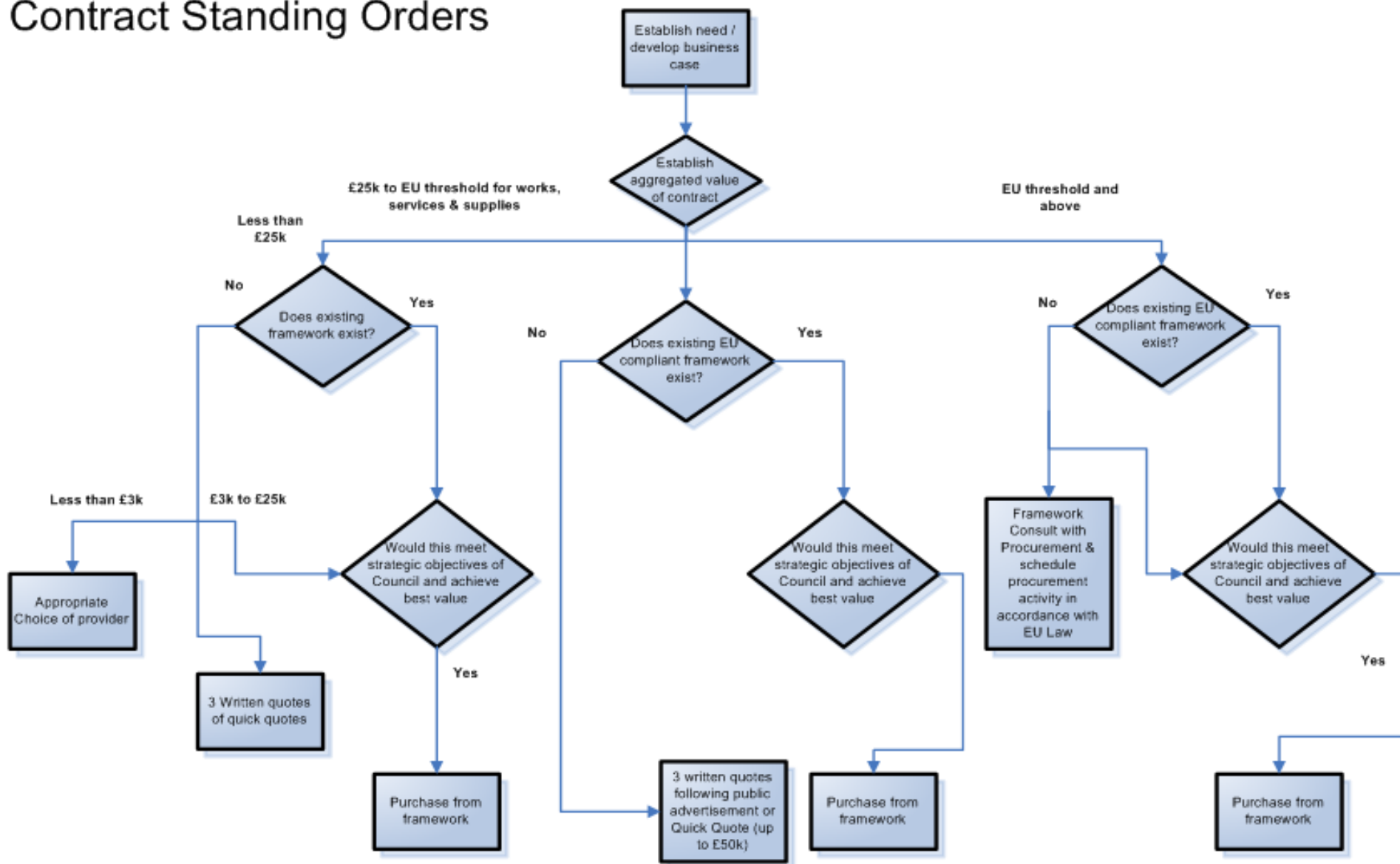
RELEVANT VALUES AND ASSOCIATED TENDERING PROCEDURE

| Total value for duration of contract or purchase (aggregation rules apply) | Procedure | Approval of contractual obligation | Committee Approval |
|--|---|--|---|
| Up to £3,000 | <p>Appropriate choice of provider documenting reasoning and quote <i>or</i> use existing local, national, Council framework or call- off contracts or Public Contracts Quick Quote facility.</p> <p>Best Value must be delivered and this will usually be demonstrated by more than one quote.</p> | Director, Head of Service or such other officer to whom the relevant Director has appropriately sub-delegated authority in accordance with the Scheme of Delegation, in consultation with Commercial and Procurement Manager as appropriate | Not required |
| £3,000 to £25,000 * | <p>3 written/formal quotations –written description of requirements followed by written / electronic submission of quotes <i>or</i> use existing local, national, Council framework or call- off contracts or Public Contracts Quick Quote facility.</p> | Director, Head of Service or such other officer to whom the relevant Director has appropriately sub-delegated authority in accordance with the Scheme of Delegation, in consultation with Commercial and Procurement Manager as appropriate, and Head of Legal, Risk and Compliance as appropriate | Not required |
| £25,000 to EU Thresholds for services and supplies * | <p>Invitation to tender following public advertisement - Public Contracts Scotland portal and/or equivalent should be used <i>or</i> use existing local, national, Council framework or call- off contracts or Public Contracts Quick Quote facility up to a value of £50,000.</p> | Director or Head of Service, in consultation with Commercial and Procurement Manager (and Head of Legal, Risk and Compliance as appropriate) or up to £25,000 in the case of services of a consultant as set out | Not required with the exception of appointment of consultants where the value exceeds £25,000 as set out in the Guidance on the Appointment of Consultants. |

| | | | |
|---|---|---|---|
| | | in the Guidance on the Appointment of Consultants. | |
| £25,000 to EU Thresholds for works | Invitation to tender following public advertisement - Public Contracts Scotland portal and/or equivalent should be used <i>or</i> use existing local, national, Council framework or call- off contracts <i>or</i> Public Contracts Quick Quote facility up to a value of £50,000. | Director or Head of Service , in consultation with Commercial and Procurement Manager (and Head of Legal, Risk and Compliance as appropriate) up to £500,000 Director approval between £500,000 and £1.5million. | Approval to award sought from Finance and Resources Committee or Council where value exceeds £1.5million |
| Above EU Threshold for services and supplies * | Invitation to tender following advertisement in OJEU - Public Contracts Scotland portal and/or equivalent should be used <i>or</i> use existing local, national, Council framework or call- off contracts | Director approval in consultation with Commercial and Procurement Manager (and Head of Legal, Risk and Compliance as appropriate), up to £1million or £25,000 in the case of services of a consultant as set out in the Guidance on the Appointment of Consultants. | Approval to award sought from Finance and Resources Committee or Council where value exceeds £1million or £25,000 in the case of services of a consultant as set out in the Guidance on the Appointment of Consultants. |
| Above EU Threshold for works | Invitation to tender following advertisement in OJEU - Public Contracts Scotland portal and/or equivalent should be used <i>or</i> use existing local, national, Council framework or call- off contracts | Director approval in consultation with the Commercial and Procurement Manager, Head of Legal, Risk and Compliance to be consulted as appropriate | Approval to award sought from Finance and Resources Committee or Council |

*In terms of Standing Order 2.4 certain specified contracts are subject to a different procurement regime. These services are set out in the Procurement Handbook together with guidance on how to procure these services, which must be applied.

Contract Standing Orders



CITY OF EDINBURGH COUNCIL

**GUIDANCE ON THE APPOINTMENT OF
CONSULTANTS**

23 October 2014

Guidance on the Appointment of Consultants

This guidance of the City of Edinburgh Council (“**Council**”) applies from 23 October 2014 and has been produced to supplement the Council’s Contract Standing Orders and Procurement Handbook with principles that relate specifically to the appointment of consultants. This guidance is intended to ensure consultants are used only where necessary and in a way which achieves best value for the Council.

1. Preliminary

- 1.1. When appointing a consultant, Directors shall comply with the terms of the Council’s Contract Standing Orders and the Procurement Handbook.

2. Definition of “consultant”

- 2.1. For the purposes of this guidance, a consultant is a specialist who charges a fee for providing advice or services in a particular area of expertise such as business management, human resources, environment, communication, information technology, property and estates and financial services, but excluding agency and temporary workers and professional services provided by solicitors, counsel and actuaries.

3. Principles to be applied when appointing consultants

No alternative resource

- 3.1. Directors shall only appoint a consultant where the service in question cannot be provided internally due to a lack of expertise or capacity.

Within approved budget

- 3.2. The cost of appointing a consultant shall be contained within the budget of the service or project for which the consultant is to be appointed.

Monitoring of outcomes

- 3.3. Directors shall prepare a clear task definition and identify the required outcomes of the service prior to appointing a consultant.
- 3.4. Directors shall ensure that appropriate monitoring arrangements, such as gateway reviews, are in place prior to a consultant’s appointment in order that payments to the consultant are only made in accordance with the satisfactory achievement of measurable outcomes.

Knowledge transfer

- 3.5. Where consultants are appointed, Directors shall ensure that where appropriate, Council staff fill key project roles and work closely with consultants to maximise the potential for transfer of skills and knowledge to Council staff.

4. Reporting and approval

Reporting to committee

- 4.1. Directors shall maintain up-to-date records on the consultancy spend within their service area and shall include consultancy spend as a line in the detailed monitoring reports for months three, six, nine and twelve of each financial year to the Finance and Resources Committee and the relevant executive committee(s).

Committee approval and definition of Pre-Approved Council Project

- 4.2. Subject to 4.3 and 4.4 the appointment of a consultant where the services (or series of related services) are anticipated to be provided at an aggregate cost of £25,000 or more shall be approved by the relevant executive committee and reported to the Finance and Resources Committee,
- 4.3. Committee approval shall not be required for services that are essential to the completion of a Pre-Approved Council Project For the purposes of this guidance a Pre-Approved Council Project is a project for which there is:
 - 4.3.1 approved revenue or capital expenditure in accordance with the Council's Financial Regulations; and
 - 4.3.2 There is a Council or appropriate committee report seeking consent to commence the project which includes an explicit reference to the requirement for consultants in the delivery of that project.
- 4.4. In the event that the requirements of 4.3.2 are not met and the use of consultants is required as a matter of urgency the urgency provisions set out in provision 4 of the Council's Committee Terms of Reference and Delegated Functions and the Waiver provisions contained in Contract Standing Order 9 where appropriate should be followed.
- 4.5. Committee approval shall not be required for the appointment of a consultant employed in the design, evaluation and delivery of a works contract the value of which is below the Committee reporting requirements as set out in the Contract Standing Orders. Any such appointment shall require the prior approval of the relevant Director and the Commercial and Procurement Manager and details of any such appointments shall be included in a regular update report to the Finance and Resources Committee for noting.

5. Re-engagement of former employees as consultants

- 5.1. A Director shall not appoint a former employee who has been granted early retirement or been given a redundancy or severance package ("former employee") as a consultant unless:
 - 5.1.1. a minimum of 3 years has elapsed since the former employee ceased to be employed by the Council; or

5.1.2. subject to consultation with the Convener/Vice-Convener of the Finance and Budget Committee, the Director is satisfied that there is a clear and robust justification for the appointment of the former employee as a consultant.