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

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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 and subsequently approved updates on 23 October 2014, 5 February 2015 and 2 June 2016. CSOs are a legal requirement and provide the powers to control and regulate purchasing throughout the Council. They place requirements on service areas to effectively plan and contract manage the resulting contracts.

The CSOs are kept under review by the Finance Service Commercial and Procurement team to ensure that they work effectively, and address changes in legislation. This report sets out the results of the review of current CSOs, the engagement that was undertaken, and summarises the main changes that are proposed following consultation. The report seeks approval for the proposed changes.

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1. Recommendations

It is recommended that Council:

- 1.1 approve the proposed revisals to the existing CSOs (as noted in Table 1 and Appendix 1 of this report);
- 1.2 note that there will continue to be an annual review of CSOs to ensure that they work effectively and secure continuous improvement and Best Value; and
- 1.3 approve the repeal of the Appointment of Consultants as noted in Table 1 '11 Consultants' of this report.

2. 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 is to improve purchasing controls to ensure Best Value is delivered, and the Council's statutory obligations are observed.
- 2.3 Review of the operation of the current CSOs since June 2016 has identified that there is a need to
 - 2.3.1 make the changes identified in Table 1; and
 - 2.3.2 keep approval thresholds under review in the light of fewer Finance and Resource Committees leading to increasing number of procurement approval reports tabled at each Committee.

3. Main report

- 3.1 The proposed changes to CSOs will incorporate the Appointment of Consultants into the CSOs to create a single document, address practical issues encountered,

clarify the rules, and improve purchasing controls. Minor changes have also been made for stylistic reasons. The proposed revised CSOs are set out in Appendix 1 to this briefing note and the significant amendments are explained in Table 1 below.

3.2 Table 1

Standing Order No.	Change	Explanation for the Change
1.1 Extent and Interpretation	Deletion of reference to Guidance on Appointment of Consultants	The Guidance of Appointment of Consultants is to be incorporated into the CSOs to provide clarity as to status and ease of reference to a single document.
1.2. Definitions and Interpretation	<p>Definition of CLT included</p> <p>Definition of Consultant included.</p> <p>Amendments to the definition of Director</p>	<p>Definitions have been added for the purposes of clarification.</p> <p>Incorporates the previous definition from the Guidance on Appointment of Consultants</p> <p>The term Director has been amended to refer to Executive Directors and Chief Executive to accurately reflect the Council's organisational structure.</p>
2. Procedures	<p>Amendment to the requirement to establish whether the Council has an existing contract (2.1.1)</p> <p>Deletion of reference to light touch threshold. (2.5)</p>	<p>Not all existing public contracts provide best value for the Council whereas Council contracts will have established best value for the Council.</p> <p>Duplication as transparency and equal treatment provisions set out in the regulations and CSOs.</p>

	Escalation procedure to legal provided. (2.13)	Making current practice explicit.
3. Role and Responsibilities	<p>Duty of Executive Directors to carry out a Privacy Impact Assessments as appropriate.</p> <p>Duty to brief Elected Members as appropriate at the initiation of procurements.</p>	<p>Reflects new Data Protection requirements</p> <p>Reflects feedback from elected members. Influencing procurement decisions should be at the outset when the strategy is being set. At the approval stage influence is limited to approval or rejection of proposed contract.</p>
4. Tender Documents	Requirement to use Council conditions of contract unless otherwise agreed by Legal and Risk.	Contractor's conditions may not provide adequate protection for the Council or service users.
5. Evaluation	Contract may be awarded on basis of lowest cost below Regulated Procurement thresholds.	Clarity of the changes introduced by the 2016 Regulations i.e. for goods and services below £50,000 and works below £2million.
7. Termination	Requirement to notify Head of Finance and not automatic referral to Finance and Resources Committee of instances of grave misconduct, contractor deficiencies and instances of Contractor Blacklisting.	Recognition of need for proportionality and potential legal consequences of self cleansing rules. The Head of Finance (as the statutory Chief Financial Officer) can use discretion as to when it is appropriate to notify the Finance and Resources Committee.
9. Waivers	<p>Waiver approval process deleted and moved to Schedule</p> <p>A Head of Service may</p>	Change to threshold levels for Heads of Service as result of feedback and to reduce burden on Executive Directors.

	approve a waiver up to the value of £50,000 (an increase from £25,000)	
10. Contract Extensions or Variations	Extensions permitted to be delegated to Directors or Heads of Service provided they are permitted by the procurement rules. (10.1)	Reflects feedback particularly about to delays to a project in progress and to address the anomaly that Finance and Resources Committee might be asked to approve an extension to a low value contract which itself had not required Committee approval initially.
11. Consultants	<p>Consultancy provisions incorporated from the Guidance on the Appointment of Consultants</p> <p>Minor changes to 11.3 and 11.7</p> <p>11.5 new requirement that services which are financial, legal or ICT in nature must come through the relevant Head of Service</p> <p>11.11 new urgency provision</p>	<p>Easier to reference and clarity on status if Guidance incorporated in CSOs</p> <p>Finance/Legal/ICT can appropriately scope requirement and determine what service can be provided in house</p> <p>Urgency provision to prevent disproportionate delays to projects</p>
12 National Frameworks	To allow immediate adoption of National Frameworks subject to providing a follow up report to Committee.	Scotland Excel and Scottish Procurement frameworks may have little time built in between contracts expiring and new contracts commencing. Council reporting lead in times can mean a delay of several months before adopting the replacement contract. Elected members are represented on the joint committee for Scotland Excel. Delegation to Executive Directors would be based upon anticipated spend.

Schedule	Incorporates Guidance on Appointment of Consultants Waivers approval thresholds included	
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4. Measures of success

- 4.1 The measure of success of the revised CSOs will be improved compliance and controls through increased clarity of the rules, allowing for flexibility where appropriate to allow delivery of better value contracts and reduce delays.

5. Financial impact

- 5.1 The changes to CSOs are expected to support the delivery of planned savings through the Commercial Excellence programme and in line with Council Business Plan and the medium term financial strategy.
- 5.2 Approval of these revised financial controls will continue to enhance the management of purchasing across all service areas.

6. Risk, policy, compliance and governance impact

- 6.1 The revisals will improve controls, increase compliance and improve the governance of contracts and reduce the risk of legal challenge

7. Equalities impact

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

8. Sustainability impact

- 8.1 There are no adverse sustainability impacts as a result of this report.

9. Consultation and engagement

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

10. Background reading/external references

- 10.1 [City of Edinburgh Council's Contract Standing Orders](#)
- 10.2 [Operational Governance: Review of Contract Standing Orders and Guidance on the Appointment of Consultants - Report to City of Edinburgh Council of 2 June 2016](#)
- 10.3 [Operational Governance: Review of Contract Standing Orders and Guidance on the Appointment of Consultants - Report to City of Edinburgh Council of 5 February 2015](#)

Stephen S. Moir

Executive Director of Resources

Contact: Tammy Gillies, Chief Procurement Officer

E-mail: tammy.gillies@edinburgh.gov.uk | Tel: 0131 529 4930

11. Appendices

Appendix 1 – Contract Standing Orders

Appendix 1



CONTRACT STANDING ORDERS

14 December 2017

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Introduction

These Contract Standing Orders of the City of Edinburgh Council (“Council”) apply from 14 December 2017 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 14 December 2017 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, purchase 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;
 - 1.1.5.4 appointed guardians or legal services designated by a court of tribunal, any persons appointed under The Curators ad Litem and Reporting Officers (Panels) Scotland Regulations 2001 and the appointment of board members required by statute;
 - 1.1.5.5 contracts with statutory or public bodies on the basis of an exclusive right enjoyed by law; and
 - 1.1.5.6 those contracts excluded by the 2015 or 2016 Regulations for example arbitration or conciliation services.

- 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 and the Procurement Handbook. 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 Executive Director of Resources.

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 'CLT' means the Corporate Leadership Team
- 1.2.4 'Consultant' means a specialist who charges a fee for providing advice or services such as but not limited to business or project 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;

- 1.2.5 “Contract Manager” means the nominated Contract Manager for a specific contract who is responsible for dealing with supplier performance and contractual matters of a day to day basis;
- 1.2.6 Co-production – means the real and meaningful involvement of the citizens of Edinburgh including future recipients of the services and key stakeholders and suppliers (both current and potential) in how and what community services and related goods and works are delivered with regard to the National Standards for Community Engagement.
- 1.2.7 “Executive Director” means the relevant Executive Director or in the case of Safer and Stronger Communities the Chief Executive) 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 Executive Director or the Chief Executive, such Head of Service as that Executive Director has nominated in accordance with the Scheme of Delegation, the Executive Director of Resources or such director as the Chief Executive may nominate.
- 1.2.8 “EU Thresholds” means the prescribed threshold values set by the EU Commission for supply, services, works, Social and other Specific Services or concession contracts as they may be amended from time to time;
- 1.2.9 “Legislative Exemptions” means an exemption from the application of procurement rules under EU law and principles developed through case law and other means
- 1.2.10 “Procurement Handbook” means the procurement handbook issued by the Executive Director of Resources, setting out the detailed requirements for the conduct of procurement activity within the Council (as amended from time to time);
- 1.2.11 “Procurement Requirement” means a document setting out as a minimum: -
- 1.2.11.1 what is the Council's requirement for the goods, works or services and why do we need it?
 - 1.2.11.2 what are all the available options, including internal provision, which is the best and why?
 - 1.2.11.3 can and should the Council afford it?
 - 1.2.11.4 what are the proposed supplier management arrangements and who is the nominated Contract Manager as required by Contract Standing Orders?
 - 1.2.11.5 how do we track, measure and account for the benefits?
- 1.2.12 “2015 Regulations” means the Public Contracts (Scotland) Regulations 2015 or successor legislation (as amended from time to time);

- 1.2.13 “2016 Regulations” means the Procurement (Scotland) Regulations 2016 or successor legislation (as amended from time to time);
- 1.2.14 “Regulated procurement” means a procedure to award a regulated contract being a public contract which is equal to or greater than £50,000 (other than works or health or social care contracts) or £2million for works contracts;
- 1.2.15 “Schedule” means the schedule to these Standing Orders;
- 1.2.16 “Social and other Specific Services means a public contract or framework for social and other specific services as defined by the 2015 Regulations including:-
- 1.2.16.1 Health, social and related services
 - 1.2.16.2 Administrative social, educational, healthcare and cultural services
 - 1.2.16.3 Other community, social and personal services
 - 1.2.16.4 Legal services
 - 1.2.16.5 Investigation and security services
 - 1.2.16.6 Postal services
- 1.2.17 “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, that it complies with relevant sustainable development and equality requirements required by law and Co-production with key stakeholders is planned as appropriate and proportionate to the nature of the proposed contract,
- 1.3.2 The 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 shall require the approval of the relevant Executive Director prior to proceeding to procurement.
- 1.3.3 All potential contracts above the EU thresholds and Regulated procurements must comply with the general principles of equal

treatment, non discrimination, transparency and proportionality. Procurements must not be designed with the intention of unduly favouring or disadvantaging any potential tenderer.

- 1.3.4 Throughout the life of a contract the contract should:-
- a. comply with the minimum standards set out in the Procurement Handbook and
 - b. be managed by the Contract Manager in respect of
 - i. performance;
 - ii. compliance with the specification and other terms of the contract;
 - iii. cost and benefits;
 - iv. Best Value requirements;
 - v. equality requirements;
 - vi. delivery and risk management; and
 - vii. continuous improvement and Co-production principles.
- 1.3.5 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, shall encourage fair working practices and payment of the Living Wage and, where appropriate, contractual or procurement arrangements shall include the use of community benefit clauses.
- 1.3.6 All expenditure must comply with the Council's Financial Regulations.
- 1.3.7 Grants while not subject to the full application of the procurement regulations should be allocated in consultation with the Chief Procurement Officer and are subject to the requirement to
- a. secure Best Value
 - b. comply with the Council's Finance Rules
 - c. adhere to the Compact values in particular fairness, transparency, equality of treatment and mutual respect; and
 - d. comply with any guidance on grants in the Procurement Handbook

2 Procedures

- 2.1 In addition to the obligations in Standing Order 1.3, before commencing a tendering procedure or making a purchase where no contract exists the relevant Executive Director must consult with the Chief Procurement Officer to establish whether:
 - 2.1.1 The Council has an existing contract for the same or similar requirement which may fulfill their requirements and provide best value; or
 - 2.1.2 there is any existing internal provision 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 Regulated procurement thresholds provided by the Act or the EU Thresholds, the minimum associated tendering procedures that must be applied are detailed in the Schedule.
- 2.4 For a procedure other than competitive tendering e.g. the negotiated procedure without prior advertisement, advice must be sought from the Head of Legal and Risk and/or Chief Procurement Officer.
- 2.5 Health, social care and community services shall be procured in accordance with the Act, the 2015 Regulations, the 2016 Regulations, the Procurement of Care and Support Services 2016 (Best Practice) any statutory guidance issued under the Act and the principles of Co-production.
- 2.6 For all purchases in excess of £50,000 for goods and services and £2million for works the sustainable procurement duty introduced by the Act requires that before buying anything the Council must think about how it can improve the social, environmental and economic wellbeing of the area in which it operates with a particular focus on inequality and then act in a way that secures these improvements.
- 2.7 In accordance with its sustainable procurement duty the Council must consider how its procurement processes can facilitate the involvement of SMEs, third sector bodies and supported businesses and how innovation can be promoted. For contracts over the EU thresholds a contract may be awarded in the form of separate lots and where the decision is not to award in the form of separate lots this should be explained in the procurement documents.
- 2.8 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 30% of the workers are disabled or disadvantaged persons in accordance with the 2015 Regulations. Where this right is exercised by the Council the contract award procedures provided by the Regulations and Act shall be followed.

- 2.9 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.
- 2.10 Direct purchasing below £3,000 where the purchase cannot be secured from an existing contracted supplier without competitive tendering is permissible subject to the Council's duty to secure Best Value. Best Value will normally be secured by seeking 3 quotes and/or evidence of firm fixed prices.
- 2.11 Direct purchasing above £3,000 without seeking quotes is permissible only in those circumstances that would be permitted by the Act, the 2015 Regulations, the 2016 Regulations or in accordance with Standing Order 9.
- 2.12 The Chief Procurement Officer shall be consulted as appropriate in respect of tendering arrangements for any proposed contracts with an estimated value of less than £25,000.
- 2.13 The Chief Procurement Officer may seek advice and escalate such risks as considered appropriate to the Head of Legal and Risk who shall advise as to the appropriate action.
- 2.14 The Chief Procurement Officer shall advise on and make all tendering arrangements for any proposed contracts with an estimated value in excess of £25,000.
- 2.15 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 Chief Procurement Officer. The Chief Procurement Officer must inform the Head of Legal and Risk as to potential legal challenges.
- 2.16 Parent Teacher Association monies may be subject to the application of the procurement regulations where the contract is entered into by the Council. The prior consent of the Council must be obtained where the expenditure of Parent Teacher Association monies will result in alterations to Council land or buildings require equipment to be fixed to Council land or buildings, have health or safety implications or maintenance obligations.

3 The Role and Responsibilities of Executive Directors

- 3.1 Each Executive Director retains responsibility for selecting and appointing contractors, providers, suppliers or Consultants for their directorate, but shall seek guidance as appropriate from the Chief Procurement Officer. The Chief Procurement Officer shall be consulted at the earliest opportunity to ensure that all purchasing arrangements are made in compliance with these Standing Orders.
- 3.2 Each Executive 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 Chief Procurement Officer and Head of Legal and Risk 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 Chief Procurement Officer, 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 take appropriate measures to prevent, identify and remedy conflicts of interest arising in the conduct of procurement procedures so as to avoid distortion of competition and to ensure equal treatment of tenderers;
- 3.2.9 to ensure that any evaluation panel is suitably qualified and trained to assess tenders;
- 3.2.10 to ensure no supplier is requested by the Council to provide goods, services or works without first having a valid purchase order in place;
- 3.2.11 to enter all purchase order information onto the relevant Council financial system prior to the service or goods being delivered;
- 3.2.12 to ensure that for contracts of a value greater than £3,000 for goods and services and £10,000 for works, the contract register record is updated within 5 working days following issue of contract award and in any event prior to start date of contract;
- 3.2.13 to ensure all relevant staff putting in place a contract have read and understood and are familiar with these Standing Orders and the Procurement Handbook or other guidance issued in respect of these Standing Orders;
- 3.2.14 to conduct a timely Equality and Impact Rights Assessment and/or privacy impact assessment as appropriate;

- 3.2.15 to ensure contracts are awarded and any appropriate contract security documents are signed before work, services or supply provision commences;
- 3.2.16 to put in place arrangements for efficient contract and supplier management including the identification of a Contract Manager and management of benefits and performance, for the entire duration of the contract;
- 3.2.17 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;
- 3.2.18 to take immediate action in the event of a breach of these Standing Orders or non compliance with the Procurement Handbook within his/her directorate;
- 3.2.19 to consult with Elected Members on matters reasonably considered politically, reputationally or financially sensitive in relation to proposed procurement activity and to brief Elected Members as appropriate at the Procurement Requirement stage of such procurements; and
- 3.2.20 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 Chief Procurement Officer 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 and Risk will be consulted on conditions of contract for particularly significant or complex projects or contracts.
- 4.3 The Council's conditions of contract shall be used for all purchases over £3,000 unless the Head of Legal and Risk has advised that this is not required.

5 Evaluation of Tenders and Quotes

- 5.1 Tenders and quotes shall be evaluated on the basis of most economically advantageous and the best price-quality ratio. The award of a contract on the basis of lowest cost alone will only be permitted for goods and services contracts below £50,000, works contracts below £2million or under frameworks awarded prior to 18 April 2016.
- 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 Chief Procurement Officer must be consulted if tenders which are submitted late, incomplete or in an incorrect format are to be evaluated.

- 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 Chief Procurement Officer and be fully and appropriately documented.
- 5.4 Where a proposed purchase or tender involves the use, adoption or purchase of an Information Communication Technology (ICT) or digital service, software or hardware the advice of the Council's ICT services must be sought at the Procurement Requirement stage and any purchase must be undertaken in collaboration with the Council's ICT Solutions service. The Council's ICT contract should be used for any Council requirements unless it is unsuitable or will not provide best value.

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 follow 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 Executive Director, having due regard to legal advice from the Head of Legal and Risk, 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 has shown significant or persistent deficiencies in the performance of a substantive requirement under a prior public contract which led to early termination of that prior contract, damages or other comparable sanctions, subject to consideration by the Council of any measures taken to demonstrate reliability; or
 - 7.1.3 falls within one or more of the other grounds set out in the 2015 Regulations or
 - 7.1.4 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 Executive 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 Executive Director will notify the Head of Finance and Chief Procurement Officer without delay of any actions taken in accordance with Standing Order 7.1 to 7.2.

8 Electronic Procurement

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

9 Waiver of Contract Standing Orders or Legislative Exemptions

9.1 The requirement to comply with any provision of these Standing Orders may be waived in accordance with the waiver approval process detailed in the Schedule if on considering a written report by an appropriate officer the waiver is considered to be in the Council's best interests having regard to

9.1.1 best value

9.1.2 any potential risk of successful legal challenge

9.1.3 the principles of transparency, equal treatment, non discrimination and proportionality and

9.1.4 any impact upon services users

9.2 A record of the decision approving a waiver must be kept by the relevant Executive Director and a copy of such approved waiver provided to the Chief Procurement Officer who shall where appropriate make an entry in the contract register and any other appropriate register.

9.3 Where approval for a waiver of these Standing Orders has not been obtained in advance the reason for this must be contained in the waiver or Committee report.

9.4 Where a waiver, committee approval or procedure permitted by this Standing Order 9 allows the direct award of a contract which exceeds £50,000 then a contract award notice must be recorded on the Public Contracts Scotland portal and the relevant Executive Director must notify Commercial and Procurement Services of the details to allow entry on the contract register and any other appropriate register,

9.5 Where these Standing Orders have been waived in accordance with this

Standing Order 9 the relevant Director shall put in place a written contract for that requirement without delay, inform the Chief Procurement Officer and ensure appropriate plans are made for tendering the requirement where appropriate.

9.6 The requirement to waive these Standing Orders is not required where:-

9.6.1 a procedure or specific situation other than the open or restricted procedure is permitted by the 2015 Regulations, 2016 Regulations, the Act, EU law or relevant case law. In deciding whether the use of another procedure or specific situation is permitted the relevant Head of Service or Director shall seek advice from the Chief Procurement Officer and/or Head of Legal and Risk

9.6.2 the circumstances of the proposed contract are covered by legislative exemptions, for example certain research and development services

9.6.3 contracts with another public body for the purposes of ensuring co-operation with the aim of providing public services or

9.6.4 a tender process or contract negotiations are currently in progress and contact award and contract commencement is anticipated within four months.

10 Contract extensions or variations

10.1 Subject to 10.2, an Executive 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 has been provided for in the initial procurement documents which may include price revision clauses or options, is not contrary to the Act, the 2015 or 2016 Regulations or the Council's EU obligations.

10.2 An Executive 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 and Risk or the Chief Procurement Officer.

10.3 The EU rules on aggregation of contracts shall apply.

11 Consultants

11.1 Consultants shall only be appointed where the service cannot be provided by Council staff due to a lack of expertise or capacity.

11.2 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.

11.3 Executive Directors shall ensure a clear specification identifying the required outcomes shall be in place at the time of appointing the Consultant.

11.4 Executive 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.

- 11.5 Where a Consultant is to be appointed and the services are:-
- 11.5.1 of a financial nature the Head of Finance must be consulted on the scope and specification of the services prior to appointment
 - 11.5.2 of a legal nature the Head of Legal and Risk must be consulted on the scope and specification of the services prior to appointment
 - 11.5.3 of an ICT nature the Head of ICT must be consulted on the scope and specification of the services prior to appointment

For all other appointments the relevant Executive Director shall approve the scope and specification where the services (or series of related services) are anticipated to be provided at an aggregate cost of up to £25,000.

- 11.6 Where Consultants are appointed, Executive 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.
- 11.7 Executive 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 six and twelve of each financial year to CLT.
- 11.8 Subject to 11.9 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 follow the approval process detailed in the Schedule.
- 11.9 Further approval shall not be required for services that are essential to the completion of a Pre-Approved Council Project. A Pre-Approved Council Project is a project for which there is:
- 11.9.1 approved revenue or capital expenditure in accordance with the Council's Financial Regulations; and
 - 11.9.2 for projects that have a Council or appropriate committee report approving the recommendation to commence the project which includes an explicit reference to the requirement for consultants in the delivery of that project.
- 11.10 Committee approval shall not be required for the appointment of a Consultant employed in the design, evaluation and delivery of a works contract where the value is below the Committee reporting requirements as set out in the Contract Standing Orders for services or works. Any such appointment shall require the prior approval of the relevant

Executive Director and the Chief Procurement Officer and details of any such appointments shall be included in a regular update report to CLT for noting.

- 11.11 In the event that the requirements of 11.9.2 are not met and the use of a Consultant 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.
- 11.12 An Executive 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:
- 11.12.1 a minimum of 1 year has elapsed since the former employee ceased to be employed by the Council; or

subject to consultation with the Chief Executive, the Executive Director is satisfied that there is a clear and robust justification for the appointment of the former employee as a consultant.

12 National Frameworks

- 12.1 In order to purchase from National Frameworks such as those put in place by Scotland Excel or Scottish Procurement without delay the Council may make use of the framework and make purchases under that framework subject to reporting the adoption of such frameworks in a six monthly report to the Finance and Resources Committee.

13 Review of Standing Orders

- 13.1 These Standing Orders will be reviewed annually.

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>Use existing local, national, Council framework or call- off contracts or</p> <p>Appropriate choice of provider documenting reasoning and quote <i>or</i></p> <p>Public Contracts Quick Quote facility.</p> <p>Best Value must be delivered and this will usually be demonstrated by seeking 3 quotes.</p>	Executive Director, Head of Service or such other officer to whom the relevant Executive Director or Head of Service has appropriately delegated their powers to in consultation with Chief Procurement Officer as appropriate	Not required
£3,000 to £25,000 (excluding health or social care services)	<p>Use existing local, national, Council framework or call- off contracts or</p> <p>Seek a minimum of 3 quotes using Public Contracts Scotland "Quick Quote" facility or</p> <p>written/formal quotations – written description of requirements followed by written / electronic submission of quotes</p>	Executive Director, Head of Service or such other officer to whom the relevant Executive Director or Head of Service has appropriately delegated their powers to in consultation with Chief Procurement Officer as appropriate, and Head of Legal and Risk as appropriate	Not required
£3,000 up to £25,000 for Consultancy spend	Use existing local, national, Council framework or call- off contracts or	Executive Director, Head of Service or such other officer to whom the relevant Executive Director or Head of Service has appropriately delegated their	Not required

	<p>Seek minimum of 3 quotes using Public Contracts Scotland "Quick Quote" facility or</p> <p>written/formal quotations – written description of requirements followed by written / electronic submission of quotes</p>	<p>powers to in consultation with Chief Procurement Officer and Head of Legal and Risk as appropriate</p>	
<p>£25,000 and above for Consultancy spend***</p>	<p>Use existing local, national, Council framework or call- off contracts, or-</p> <p>Invitation to tender following public advertisement - Public Contracts Scotland portal and where these are Regulated Procurements comply with the provisions for Regulated procurements required by the Act and the 2016 Regulations</p> <p>or</p> <p>Public Contracts Quick Quote facility up to a value of £50,000.</p>		<p>Approval to award sought from Finance and Resources Committee** or Council</p>
<p>£25,000 up to EU Thresholds for services and supplies (excluding health or social care services and consultancy services)</p>	<p>Use existing local, national, Council framework or call- off contracts, or-</p> <p>Invitation to tender following public advertisement - Public Contracts Scotland portal and where these are Regulated Procurements comply with the provisions for Regulated procurements required by the Act and the 2016 Regulations</p> <p>or</p> <p>Public Contracts Quick Quote facility up to a value of £50,000.</p>	<p>Executive Director or Head of Service (where delegated authority has been given) in consultation with Chief Procurement Officer (and Head of Legal and Risk as appropriate).</p>	<p>Not required</p>

<p>£25,000 up to EU Thresholds for works</p>	<p>Use existing local, national, Council framework or call-off contracts, or</p> <p>Public Contracts Quick Quote facility up to a value of £2million.</p> <p>Invitation to tender following public advertisement - Public Contracts Scotland portal and where these are Regulated Procurements comply with the provisions for Regulated procurements as set out in the Act and the 2016 Regulations</p>	<p>Executive Director or Head of Service (where delegated authority has been given) in consultation with Chief Procurement Officer (and Head of Legal and Risk as appropriate) up to £500,000.</p> <p>Executive Director approval in consultation and Chief Procurement Officer (and Head of Legal and Risk as appropriate), between £500,000 and £2million.</p>	<p>Approval to award sought from Finance and Resources Committee** or Council where value exceeds £2million</p>
<p>£25,000 up to EU Threshold for Social and other Specific Services for Health or Social Care Services</p>	<p>Use existing local, national, Council framework or call-off contracts or</p> <p>Contracts to be awarded in accordance with the Procurement of Care and Support Services 2016 (Best Practice) and any statutory guidance issued under the Act</p>	<p>Executive Director or Head of Service (where delegated authority has been given) in consultation with Chief Procurement Officer (and Head of Legal and Risk as appropriate) up to EU threshold for Social and other Specific Services for Health or Social Care Services</p>	<p>Not required.</p>
<p>Above EU Threshold for services, Social and other Specific Services and supplies</p>	<p>Use existing local, national, Council framework or call-off contracts, or</p> <p>Invitation to tender following advertisement in OJEU - Public Contracts Scotland portal</p> <p>or</p>	<p>Executive Director approval in consultation with Chief Procurement Officer (and Head of Legal and Risk as appropriate), up to £1million</p>	<p>Approval to award sought from Finance and Resources Committee** or Council where value exceeds £1million</p>

	negotiated procedure without prior publication, competitive procedure with negotiation, competitive dialogue or innovative partnerships where permitted by the 2015 Regulations		
Above EU Threshold for works	Use existing local, national, Council framework or call- off contracts, or Invitation to tender following advertisement in OJEU - Public Contracts Scotland portal or negotiated procedure without prior publication, competitive procedure with negotiation, competitive dialogue or innovative partnerships where permitted by the 2015 Regulations		Approval to award sought from Finance and Resources Committee** or Council
Above EU Threshold for concession contracts	Publication of a Concession Notice in OJEU and compliance with the requirements of the Concession Contracts (Scotland) Regulations 2016	Executive Director approval in consultation with the Chief Procurement Officer (and Head of Legal and Risk) as appropriate) up to £5million	Approval to award sought from Finance and Resources Committee** or Council where the value exceeds £5million

* the estimated value of the contract is the value of the total consideration (not including VAT) which the Council expects to be payable under or by virtue of the contract. Contracts must not be artificially disaggregated.

**Pensions contracts may seek the approval of the Pensions Committee.

*** The provisions of 11.9 Consultants shall apply

WAIVER APPROVAL PROCEDURE

Total value for duration of Waiver (aggregation rules apply)*	Approval of contractual obligation	Committee Approval
Up to £3,000	Not required	Not required
£3,000 to £50,000 (excluding consultancy spend)	The relevant Executive Director or Head of Service to whom the relevant Executive Director has appropriately delegated their powers to and the Chief Procurement Officer	Not required
£50,000 -£250,000 (£3,000-£25,000 in the case of consultancy spend)	The relevant Executive Director, and the Executive Director of Resources (or the Chief Executive where the relevant Executive Director is the Executive Director of Resources)	Not required
Above £250,000 (above £25,000 in the case of consultancy spend)		Approval to waive sought from Finance and Resources Committee** or Council as the Chief Executive considers appropriate

Contract Standing Orders

