

Leadership Advisory Panel

10.00am, Tuesday, 31 March 2020

Temporary Changes to Contract Standing Orders

Item Number	
Executive/Routine	Executive
Wards	All
Council Commitments	2, 3 and 7

1. Recommendations

- 1.1 It is recommended that the Leadership Advisory Panel approves the following:
- 1.2 The immediate adoption of the proposed temporary amendments to the Contract Standing Orders, as set out in paragraph 4.9 of this report; and,
- 1.3 delegate authority to the Chief Executive to suspend or vary these amendments as and when appropriate to do so to enable the operational effectiveness of the Council during the Covid-19 situation.

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Temporary Amendments to Contract Standing Orders

2. Executive Summary

- 2.1 The Council's Contract Standing Orders (CSOs) provide controls and regulation around all of the Council's purchasing and contract management activity. In light of the COVID-19 outbreak, and its unprecedented impact on all aspects of Scottish life, and all operational activity of the Council, this report proposes certain temporary amendments to the CSOs. The proposed changes aim to provide a balance between improved controls and scrutiny of the higher value and more strategic projects at this challenging time, whilst enabling lower value purchases to be subject to a more proportionate purchasing and approval regime.

3. Background

- 3.1 The CSOs provide controls and regulation around all of the Council's purchasing and contract management activity, and place requirements on Directorates to effectively plan and contract manage the resulting contracts.
- 3.2 The CSOs were last reviewed by full Council on 27 June 2019, and link to that report is provided [here](#). The CSOs provide clear roles and responsibilities across the Council, and specific detail on the governance arrangements and approval that are required for contracts to be awarded.
- 3.2 These approval arrangements are set out by value thresholds linked to role, with the approval of the Finance and Resources Committee required for the award of contracts with a value of over £1m for supplies or services, over £2m for works and over £50,000 for consultants. It is noted that the Committee is currently in an extended recess period.
- 3.3 The Council's Commercial and Procurement Service (CPS) supports all procurement and contract management activity across the Council, to ensure the Council's purchasing requirements are met, and the associated internal and external regulatory controls complied with, including the CSOs.

4. Main report

- 4.1 The current COVID-19 outbreak is having an unprecedented impact on all aspects of Scottish life, and all operational activity of the Council. In particular, from a purchasing perspective, all service areas are having to urgently assess what their supply needs are, to enable the Council to deliver core services and deal with a rapidly changing situation. By way of context, the Council has a substantial level of spend with third parties, approximately £635m in 2018/19, this being across a wide range of goods, works and services
- 4.2 COVID-19 is also having a huge global impact, and on 11 March 2020 the World Health Organisation declared the outbreak as a pandemic. This impact is felt not only in public health terms, but also financially, affecting all economies and their financial markets. Collectively, this gives rise to a number of key risks to the Council's supply chain:
- A risk that key suppliers will be unable to fulfil contractual commitments, and deliver what the Council was expecting, be it goods, works or services, which might also in part be due to uncertainties in their own supply chains;
 - A risk that suppliers might seek to invoke “force majeure” clauses, given the nature of the outbreak, and their inability to meet contractual commitments, or only feel able to do so on revised commercial terms;
 - Linked to the above, a risk that key suppliers will have difficulty even continuing to trade; and,
 - A risk that Council officers will be unable to actively manage the delivery and performance of key contracts, at a time when the Council's own workforce is dealing with a number of new and competing demands.
- 4.3 With the rapidly changing environment the Council is now operating within, there is now a need to make urgent purchases that were not previously envisaged. This, together with the wider impact of the outbreak on the Council, its service users and its partners, will result in significant expenditure that the Council was not previously anticipating.
- 4.4 In addition, given the impact of the outbreak, it is likely that a number of ongoing procurement exercises will need to be reviewed, to re-assess timescales and the underlying need for the goods/works/services in question. This will, in turn, likely result in a need for the Council to consider extending or varying existing contracts, which might otherwise have shortly expired.
- 4.5 The CSOs already provide an established method by which the Council can depart from (or waive) its normal procedures for awarding contracts, after having assessed relevant considerations, including the need to secure Best Value. It is expected that the Council will likely need to make increased use of this waiver process in the coming months, and in doing so the Council will have a documented audit trail, with awards being retrospectively reported to Committee. Such waivers will continue to be subject to appropriate scrutiny by Executive Directors.

- 4.6 On 20 March the Scottish Government also issued a guidance note on the application of the procurement regulations during the COVID-19 outbreak, a link to which is included [here](#). Similar guidance was also issued by the Cabinet Office on 18 March, a link to which is included [here](#).
- 4.7 It is to be noted that for regulated procurements (i.e. the purchase of goods and services above £50,000 and works above £2m) Section 33(1)(c) of [The Public Contracts \(Scotland\) Regulations 2015](#) (the 2015 Regulations) enables the direct awards of contracts, without any form of competition, “where (but only if it is strictly necessary) for reasons of extreme urgency brought about by events unforeseen by the contracting authority the time limits for [normal competitive regulated procurement procedures] cannot be complied with”. This legislative exemption can only be applied where the circumstances invoked to justify it are not attributable to the Council. However, it is clearly applicable to the impact of the COVID-19 outbreak and provides a clear legislative justification for direct awards in particular circumstances, subject to the normal considerations, including the need to secure Best Value. The 2015 Regulations contain other provisions that might also assist the Council in ensuring contracts are awarded in a compliant manner during this period of uncertainty.
- 4.8 Given the above, the Council is actively engaging with key suppliers to seek to mitigate the supply chain risk associated with the COVID-19 outbreak. In addition, and in particular to ensure there is senior officer oversight for all material contracting decisions at this time, and a suitable decision-making audit trail, it is also recommended that the Council apply new procedures, effective immediately, in relation to the award of new contracts or variation of existing contracts.
- 4.9 Specifically, it is proposed that the CSOs are temporarily amended, to provide that no new major contractual commitments (which would include proposed contract extensions/variations as well as call-offs under existing Council or National Framework Agreements and the use of Consultants for Pre-Approved Council Projects, as defined in the CSOs) are to be entered into by the Council other than where the same have first been approved by the Chief Executive or the relevant Executive Director, and only following advice having been taken from the Head of Legal and Risk and the Chief Procurement Officer. In this context “major contractual commitments” would be those with a value of over £500,000 whether for supplies, services or works.
- 4.10 If approved, the CSOs would require to be construed in accordance with this report.
- 4.11 It is to be noted that the approval of the Finance and Resources Committee, or consultation with the Leadership Advisory Panel during this extended recess period, would still be required for the award of contracts with a value of over £1m for supplies or services, over £2m for works, over £50,000 for consultants and over £250,000 for a waiver of the CSOs.
- 4.12 The proposed changes are intended to be temporary, and it is also proposed that authority is delegated to the Chief Executive to suspend or vary such changes as and when he considers it necessary to do so.

5. Next Steps

- 5.1 If adopted, the changes to the CSOs will be cascaded to Council officers by publication on the Orb and internal communication.
- 5.2 A review of all current and planned procurement activity is being undertaken, the outcomes of this will be shared with senior officers to identify how this programme can best be revised to meet the Council's changing needs, and the requirements of the amended CSOs as proposed in this report.
- 5.3 Publishing rights for Council staff on Public Contracts Scotland will be suspended immediately for all staff other than in CPS, to enable a full review by CPS of all current tendering activity, to ensure it aligns to the above-mentioned review, and the requirements of the amended CSOs as proposed in this report.

6. Financial impact

- 6.1 There are no adverse financial impacts as a result of this report. By maintaining proportionate procurement and contract management controls, it is anticipated their impact will continue to support the delivery of needed Council purchasing, and appropriate financial controls.

7. Stakeholder/Community Impact

- 7.1 The proposed revisions will have little or no impact on the community other than to improve outcomes and help ensure appropriate use of public funds at this time.

8. Background reading/external references

- 8.1 None

9. Appendices

- 9.1 None.