

Finance and Resources Committee

10.00am, Tuesday, 20 June 2023

Review of Contract Standing Orders

Executive	
Wards	All
Council Commitments	2,3 and 7

1. Recommendations

It is recommended that the Committee:

- 1.1 approve the proposed revisions to the existing Contract Standing Orders, as summarised in Appendix 1 to this report, and adopt the Contract Standing Orders included in Appendix 2 to this report; and
- 1.2 note that there will continue to be an annual review of the Contract Standing Orders to ensure that they work effectively and provide effective scrutiny of Council purchasing and contract management.
- 1.3 note that the proposed revised Contract Standing Orders will be referred on to full Council on 24 June 2023 for approval

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Finance and Resources Committee

Review of Contract Standing Orders

2. Executive Summary

The Council's Contract Standing Orders (CSOs) provide controls and regulation around all of the Council's purchasing and contract management activity as well as promoting improved economic, environmental and social outcomes through the Council's considerable spending power. To allow for continuous improvement and to reflect any changes to Council commitments or policies the CSOs are reviewed annually and changes are recommended where considered necessary. This report provides a summary of the proposed changes to the CSOs and seeks approval for the proposed changes.

3. Background

- 3.1 The Council is required to have standing orders under the Local Government (Scotland) Act 1973. 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. The CSOs are regularly reviewed and amended as required to support continuous improvement and reflect legislative changes.
- 3.2 The CSOs are the rules which regulate procurement spend as well as complementing the Council's strategic objectives. The [Sustainable Procurement Strategy](#) approved on [5 March 2020](#), sets out 7 key strategic objectives being:
 - 3.2.1 Making procurement spend more accessible to local small business and the third sector;
 - 3.2.2 Improving Fair Work practices adopted by suppliers;
 - 3.2.3 Increasing community benefits delivered by suppliers;
 - 3.2.4 Contributing to the Council's 2030 zero-carbon city target;
 - 3.2.5 Delivering savings and Best Value outcomes;
 - 3.2.6 Ensuring legal compliance and robust and transparent governance; and
 - 3.2.7 Promoting innovative and best practice solutions.

4. Main report

- 4.1 The CSOs are the subject of regular reviews. This most recent review has considered the operation of the current CSOs since they were amended in February 2021, and has identified a number of potential improvements that could be made, particularly in relation to effective governance and the use of officer resources. The proposed changes are summarised in Appendix 1 to this report and identified in track changes in the CSOs appended in Appendix 2 of this report.
- 4.2 The current lead in times for reporting, the eight-week cycle, summer recess and the Special Finance and Resources Committees reserved for consideration of budget issues can mean delays in awarding contracts of up to two to three months following evaluation of the bids. For straightforward procurements that are standalone, these timescales can be built into the project plan. However, where there are many interdependent appointments and contracts or the procurement timescales change e.g. to allow sufficient clarification of bids, or further market engagement then this can lead to delays which can impact the critical path for strategic projects. Increasingly, to avoid delay to projects, the urgency procedure or delegation to Directors to allow the award of contracts, prior to identifying the successful bidder is being relied upon.
- 4.3 To address these operational difficulties the amendments include a proposal to increase the current delegated threshold for approving the spend on services and supplies from £1million in aggregate (the current level) to £1million per annum or £5million in total over the duration of the contract whichever threshold is exceeded first, and from £2million in aggregate (the current level) for works contracts to £4million in aggregate. Above these new levels the approval of the Finance and Resources Committee would be required as is the case at present.
- 4.4 The current thresholds have never been amended since the Contract Standing Orders were substantially revised originally 11 years ago in 2012. Raising the thresholds would allow for effective governance by allowing resources (both elected member and officer) to be focused on the higher value often more strategic procurements by reducing the number of reports going to Finance and Resources Committee to a more manageable number. Based on the period May 2021 to November 2022 this would have reduced the 63 reports over this period to 47. Taking account of the committee frequency having reduced over recent years this would on average be 6 or 7 procurement reports going to each committee rather than 9.
- 4.5 To enable effective scrutiny in advance of procurements reaching the award stage it is proposed that the six monthly procurement report to Finance and Resources Committee is supplemented with a report which includes details of all procurement projects that Commercial and Procurement Services are currently progressing and all recurring expiring contracts above the regulated level. This would include all recurring contracts above £50,000 expiring over the next year taken from the Council contract register. The requirement of Service Directors to consult with Elected Members on matters considered politically, reputationally or financially

sensitive in relation to proposed procurement activity and to brief Elected Members as appropriate will remain unchanged.

- 4.6 Additionally, amendments are proposed to clarify the rules on the requirement for three quotes over and above the £5,000 threshold and to take account of changes in officer titles. More recent Council commitments and Scottish Government guidance on Fair Work First have also been included.

5. Next Steps

- 5.1 The changes to the CSOs shall be highlighted to Council officers by publication on the Orb and a series of online awareness raising events and training delivered by Commercial and Procurement Services.

6. Financial impact

- 6.1 There are no direct financial impacts as a result of this report. By maintaining proportionate procurement and contract management controls, and improving these through annual reviews of the CSOs, it is anticipated the CSOs will continue to support the delivery of planned Council savings targets and the delivery of the wider non-financial benefits that can be secured through the Council's procurement activity.

7. Stakeholder/Community Impact

- 7.1 The CSOs were prepared as result of feedback and consultation with service areas and a wide range of officers involved in procuring and commissioning across all service areas of the Council throughout the year.

8. Background reading/external references

- 8.1 [Sustainable Procurement Annual Report 2022 - Report to Finance & Resources Committee](#)
- 8.2 [Operational Governance – Annual Review of Contract Standing Orders](#)

9. Appendices

Appendix 1 – Summary Table of Material Changes to Contract Standing Orders

Appendix 2 – Contract Standing Orders (as revised)

Appendix 1 – Summary of Material Changes to Contract Standing Orders

Standing Order No.	Change	Explanation for the Change
1.2. Definitions and Interpretation	<p>A revised definition of 'Fair Work First' has been included.</p> <p>Procurement Requirement Form</p>	<p>The Scottish Government has built upon its commitment to encourage Fair Work practices amongst employers. The Fair Work First commitment extending the five principles to seven. Now including the requirement to encourage the offer of flexible and family friendly practices for all workers and oppose the use of fire and rehire practices</p> <p>The instruction document for procurement setting out requirements and considerations signed by Directors or Service Directors now includes a requirement that the implications for sustainability and Council outcomes such as becoming a net zero city by 2030 and increased opportunities for SMEs and the local economy be considered.</p>
1.3 General Principles	Aim of becoming a net zero city by 2030	Reference to aims to become a net zero city by 2030 included
Schedule: Relevant Values and Associated Tendering Procedure	Quotes	Reflecting difficult market conditions and the difficulty often obtaining 3 quotes for low value or specific purchases the rules are amended purchases up to £5,000. Now for £5,000 or over alternative quotes

		<p>and/or evidence of firm fixed prices should be sought where reasonably practicable.</p> <p>Between £5,000 and £25,000 there is a recognition that the various Procurement laws allow for direct awards and that these should be reflected in the choice of procedures more clearly</p>
Schedule: Relevant Values and Associated Tendering Procedure	Approval to award sought from Finance and Resources Committee or Council where value is equal to or exceeds £1 million per annum or £5million in total whichever value is exceeded first.	As explained in 4.3 above to address operational difficulties the amendments include a proposal to increase the current delegated threshold for approving the spend on services and supplies from £1million in aggregate (the current level) to £1million per annum with a aggregate cap at £12million, and from £2million in aggregate (the current level) for works contracts to £4million in aggregate.

Appendix 2 [CSOs to be appended]



CONTRACT STANDING ORDERS

22 June2023

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Introduction

These Contract Standing Orders of the City of Edinburgh Council (“Council”) apply from 22 June 2023 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 22 June 2023 and apply, subject to the provisions of Standing Order 1.1.5 and 1.1.6, 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 To the extent relevant these Standing Orders are subject to the overriding provisions of United Kingdom (UK) or Scottish legislation. They are also, to the extent relevant, subject to any UK government or Scottish Government guidance on public procurement that may be issued from time to time.
- 1.1.5 These 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 Act, the 2015 or 2016 Regulations for example arbitration or conciliation services.

- 1.1.6 These Standing Orders shall apply only as follows to contracts made on behalf of the Lothian Pension Fund for which the Council is the administering authority:
- 1.1.6.1 In Standing Order 1.1.references to the Procurement Handbook and the Contract Management Manual shall be construed accordingly; Standing Order 2.1 shall not apply, Standing Order 2.9 to (and including) 2.13 shall apply only where it is appropriate in the circumstances, Standing Order 2.16 shall not apply, Standing Orders 4.2 and 4.3 shall apply only where it is appropriate in the circumstances, Standing Orders 11 and 12 shall not apply; and
- 1.1.6.2 The procedures set out in the Schedule shall apply but only to the extent required by the Act, the 2015 Regulations or the 2016 Regulations, and the corresponding approvals required shall apply for such proposed contracts.
- 1.1.7 These 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 Contract Management Manual. Where there is any discrepancy, these Standing Orders shall take precedence.
- 1.1.8 Failure to comply with these Standing Orders when making purchases or seeking offers may result in disciplinary action.
- 1.1.9 Any query regarding the application or interpretation of these Standing Orders should be made in the first instance to the Head of Commercial and Procurement Services acting on behalf of the Executive Director of Corporate Services.

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 (i) agency, secondments and temporary workers, (ii) professional services provided by solicitors, counsel and actuaries, and (iii) technical or specialist services required for works contracts or proposed works contracts such as quantity surveyors, cost consultants, design engineers and architects;
- 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 on 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 the Edinburgh Integration Joint Board the Chief Officer) of the procuring Directorate/Division 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 Service Director as that Executive Director has nominated in accordance with the Scheme of Delegation, the Executive Director of Corporate Services or such Executive Director as the Chief Executive may nominate;
- 1.2.8 "Fair Work First" means, as promoted by the Scottish Government, the commitment by employers to investment in skills and training, no inappropriate use of zero hours contracts, action to tackle the gender pay gap, genuine workforce engagement, including with trade unions, payment of the Real Living Wage, offer flexible and family friendly working practices for all workers and oppose the use of fire and rehire practices;
- 1.2.9 "Procurement Thresholds" means the prescribed threshold values set for the supply of goods, services, works, Social and other Specific Services or concession contracts as they may be amended from time to time under the 2015 Regulations;

- 1.2.10 “Framework” means an arrangement under which the terms and conditions are agreed, but where there is normally no commitment to subsequently place orders or call off contracts;
- 1.2.11 “Legislative Exemptions” means an exemption from the application of procurement rules under the relevant legislative provisions and principles developed through case law and other means, as is relevant;
- 1.2.12 “Procurement Handbook” means the procurement handbook issued by the Executive Director of Corporate Services, setting out the detailed requirements for the conduct of procurement activity within the Council (as amended from time to time) and as updated by the Scottish Government’s Procurement Journey;
- 1.2.13 “Contract Management Manual” means the contract management manual issued by the Executive Director of Corporate Services, setting out the detailed requirements for the conduct of contract management activity within the Council (as amended from time to time);
- 1.2.14 “Procurement Requirement Form” means a document setting out as a minimum: -
- 1.2.15.1 what is the Council's requirement for the goods, works or services and why do we need it?
 - 1.2.15.2 what are all the available options, including internal provision, which is the best and why?
 - 1.2.15.3 can and should the Council afford it?
 - 1.2.15.4 what are the proposed supplier management arrangements and who is the nominated Contract Manager as required by Contract Standing Orders?
 - 1.2.15.5 how do we track, measure and account for the benefits?
 - 1.2.15.6 the implications for sustainability and delivery of Council outcomes such as the aim of becoming a net zero city by 2030, increased opportunities for SMEs/ the local economy and delivery of the Council’s sustainable procurement outcomes
- 1.2.15 “Project Manager” means the nominated Project Manager for a specific contract who is responsible for dealing with the contractor’s performance and contractual matters on a day to day basis;
- 1.2.16 “Real Living Wage” means the hourly rate of pay which is independently calculated each year and overseen by the Living Wage Foundation and announced during Living Wage week in October/November each year;

- 1.2.17 “2015 Regulations” means the Public Contracts (Scotland) Regulations 2015 or successor legislation (as amended from time to time);
- 1.2.18 “2016 Regulations” means the Procurement (Scotland) Regulations 2016 or successor legislation (as amended from time to time);
- 1.2.19 “Regulated procurement” means a procedure to award a regulated contract being a public contract which is equal to or greater than £50,000 or £2million for works contracts;
- 1.2.20 “Schedule” means the schedule to these Standing Orders;
- 1.2.21 “Service Director” means the relevant Service Director of the procuring Division (or in the case of the Edinburgh Integration Joint Board the direct reports to the Chief Officer) or in the case of the absence of the relevant Service Director such other Service Director that the Executive Director may nominate;
- 1.2.22 “Social and other Specific Services” means a public contract or framework for social and other specific services as defined by the 2015 Regulations including:-
- 1.2.22.1 Health, social and related services
 - 1.2.22.2 Administrative social, educational, healthcare and cultural services
 - 1.2.22.3 Other community, social and personal services
 - 1.2.22.4 Legal services
 - 1.2.22.5 Investigation and security services
 - 1.2.22.6 Postal services
- 1.2.23 “Standing Orders” means these standing orders including the Schedule and “Standing Order” shall be interpreted accordingly;
- 1.2.24 “Sustainable Procurement Objectives” means the seven key strategic procurement objectives that the Council has agreed to promote, namely (i) making procurement spend more accessible to local small businesses and the third sector, (ii) improving fair work practices adopted by suppliers, (iii) increasing community benefits delivered by suppliers, (iv) becoming a net zero city by 2030 (v) delivering savings and Best Value outcomes, (vi) ensuring legal compliance and robust and transparent governance and (vii) promoting innovative and best practice solutions; and,
- 1.2.25 “Sustainable Procurement Strategy” means the Council’s five-year Sustainable Procurement Strategy (March 2020-March 2025) published as a requirement of the Procurement

Reform (Scotland) Act 2014 and as amended from time to time, which includes the Strategic Procurement Objectives.

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 Form that meets the strategic and service objectives of the Council is completed in order to ensure (i) that Best Value is achieved, (ii) that the proposal supports the delivery of the Sustainable Procurement Strategy and the promotion of the Sustainable Procurement Objectives, (iii) that the proposal complies with the Council's equality and sustainability duties to become a net zero city by 2030 (iv) that Co-production with key stakeholders is planned as appropriate and proportionate to the nature of the proposed contract.
- 1.3.2 The Procurement Requirement Form 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 £50,000 in the case of consultancy spend) the relevant Procurement Requirement Form shall require the approval of the relevant Executive Director prior to proceeding to procurement.
- 1.3.3 All potential contracts above the Procurement 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 the Contract Management Manual and
 - b. be managed by the Contract Manager or as appropriate the Project Manager in respect of
 - i. performance;
 - ii. compliance with the specification and other terms of the contract;
 - iii. cost and benefits including the delivery of community benefits;
 - iv. Best Value requirements;
 - v. equality requirements;
 - vi. compliance with the Sustainable Procurement Strategy;

- vii. delivering the aim of becoming a net zero city by 2030;
- viii. delivery and risk management; and
- ix. 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 support the delivery of the Council's Sustainable Procurement Strategy and the promotion of the Sustainable Procurement Objectives. This shall include compliance with the Council's equality and sustainability duties and so far as practicable making procurement spend more accessible to local small businesses and the third sector, contributing to the Council's aim of becoming a net zero city by 2030, encouraging and promoting Fair Work First principles, payment of the Real Living Wage and increasing community benefits delivered by suppliers.

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 Head of Commercial and Procurement Services and are subject to the requirement to

- a. secure Best Value;
- b. comply with the Council's Grant Standing Orders;
- c. comply with the Council's Finance Rules; and,
- d. adhere to the Compact values of fairness, transparency, equality of treatment and mutual respect.

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 Head of Commercial and Procurement Services 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. Regulatory duties 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 and 1.1.6, or where otherwise legally permitted in respect of proposed contracts which exceed the Procurement 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 Service Director for Legal and Assurance and/or Head of Commercial and Procurement Services.
- 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 of £50,000 and above for the supply of 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 and supports the delivery of the Sustainable Procurement Strategy and the promotion of the Sustainable Procurement Objectives.
- 2.7 In accordance with its sustainable procurement duty and the Sustainable Procurement Strategy the Council must consider how its procurement processes can facilitate the involvement of Small or Medium Enterprises (SMEs), third sector bodies and supported businesses and how innovation can be promoted. For contracts over the Procurement 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 less than £50,000 that at least one 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 £5,000 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 alternative quotes and/or evidence of firm fixed prices where reasonably practicable.

2.11 Direct purchasing above £5,000 requires a minimum of 3 quotes for all purchases except where it would be permissible 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 Head of Commercial and Procurement Services shall be consulted as appropriate in respect of tendering arrangements for any proposed contracts with an estimated value of less than £25,000 including individual call off contracts and direct awards under Frameworks.

The Head of Commercial and Procurement Services may seek advice and escalate such risks as considered appropriate to the Service Director of Legal and Assurance who shall advise as to the appropriate action.

2.13 The Head of Commercial and Procurement Services shall advise on and make all tendering arrangements for any proposed contracts with an estimated value in excess of £25,000 including individual call off contracts and direct awards under Frameworks.

2.14 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 Head of Commercial and Procurement Services. The Head of Commercial and Procurement Services must inform the Service Director of Legal and Assurance as to potential legal challenges.

2.15 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 or require equipment to be fixed to Council land or buildings, or have health or safety or ICT 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 and shall seek guidance, as appropriate, from the Head of Commercial and Procurement Services. The Head of Commercial and Procurement Services 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, the Procurement Handbook and the Contract Management Manual;

3.2.2 to ensure no contract is entered into by the Council without seeking advice, where appropriate, from the Head of Commercial and Procurement Services and Service Director of Legal and Assurance and having proper regard to such advice;

- 3.2.3 to ensure adequate time is allowed to consult the market and allow the market to respond;
- 3.2.4 to ensure that appropriate contract security (for example guarantees or performance bonds) is obtained where required or considered prudent;
- 3.2.5 to prepare and approve where required by these Standing Orders an appropriate Procurement Requirement Form for each proposed purchase or contract;
- 3.2.6 to prepare, in consultation with the Head of Commercial and Procurement Services, appropriate contract and tender documents which clearly specify the scope, quality and quantity of the works, goods or services;
- 3.2.7 to check whether there is any existing Council or other adopted collaborative framework that can appropriately be used to achieve Best Value for the Council before undergoing a further competitive tender process;
- 3.2.8 to keep all bids confidential subject to any legal requirements;
- 3.2.9 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 and to maintain written records of the measures taken and any conflicts arising;
- 3.2.10 to ensure that any evaluation panel is suitably qualified and trained to assess tenders;
- 3.2.11 to ensure no supplier is requested by the Council to provide goods, services or works without first having a valid purchase order in place;
- 3.2.12 to enter all purchase order information onto the relevant Council financial system prior to the service or goods being delivered;
- 3.2.13 to ensure that for contracts of a value greater than £5,000 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;
- 3.2.14 to arrange for the publication of a contract award notice on Public Contracts Scotland for Regulated procurements including call offs from frameworks where the value (including aggregate values) is equal to or exceeds £50,000 or £2million for works as required by the Regulations
- 3.2.15 to ensure all relevant staff putting in place a contract have read and understood and are familiar with these Standing Orders, the Procurement Handbook, the Contract Management Manual or other guidance issued in respect of these Standing Orders;

- 3.2.16 to conduct a timely Integrated Impact Rights Assessment and/or privacy impact assessment as appropriate;
- 3.2.17 to ensure contracts are awarded, any necessary checks such as IR35 or Disclosure Scotland checks are carried out and any appropriate contract security documents are signed before the supply of goods, works, services provision commences;
- 3.2.18 to put in place arrangements for efficient contract and supplier management including the identification of a Contract Manager or Project Manager and management of benefits and performance, for the entire duration of the contract or Framework. For Frameworks or contracts used by more than one Directorate the arrangements for contract and supplier management shall be made by the Executive Director for the Directorate with the largest spend or anticipated spend in respect of the same and pending such decision being made the contract management arrangements shall be made by the Executive Director for the Directorate submitting the Procurement Requirement Form;
- 3.2.19 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;
- 3.2.20 to take immediate action in the event of a breach of these Standing Orders or non-compliance with the Procurement Handbook or the Contract Management Manual within his/her directorate;
- 3.2.21 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 Form stage of such procurements; and,
- 3.2.22 to make appropriate arrangements for the opening of tenders and their secure retention to protect the integrity of the procurement process.

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 supply of goods required by the Council.
- 4.2 The Service Director for Legal and Assurance 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 £5,000 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 shall be limited to low value and straightforward

requirements which are below the Procurement threshold values and only with the prior agreement of the Head of Commercial and Procurement Services.

- 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 Head of Commercial and Procurement Services 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 and such others as may be approved by the Head of Commercial and Procurement Services all of whom must have sufficient knowledge and technical ability to enable them to evaluate detailed tenders appropriately. The evaluation process shall follow any guidance issued by the Head of Commercial and Procurement Services and be fully and appropriately documented.
- 5.4 Where a proposed purchase or tender involves the use, adoption or purchase of any form of Information and Communications Technology (ICT) device or digital service, software or hardware then the approval of the Council's Digital Services must be sought at the Procurement Requirement Form stage and any purchase for any value (including those for nil value) must be undertaken in collaboration and with the approval of the Council's Digital Services. The Council's existing Strategic ICT and Transformation 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 Service Director of Legal and Assurance, 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 Service Director of Finance and Procurement and the Head of Commercial and Procurement Services 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;

9.1.4 any impact upon services users; and,

9.1.5 the Sustainable Procurement Strategy.

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 Head of Commercial and Procurement Services 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 report.

- 9.4 Where a waiver, committee approval or procedure permitted by this Standing Order 9 allows the direct award of a contract which is equal to or 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 Executive Director shall put in place a written contract for that requirement without delay, inform the Head of Commercial and Procurement Services 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, other legislation or relevant case law. In deciding whether the use of another procedure or specific situation is permitted the relevant Service Director or Executive Director shall seek advice from the Head of Commercial and Procurement Services and/or Service Director of Legal and Assurance ;
 - 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 Service Director) 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 legal obligations.
- 10.2 An Executive Director or Service Director shall not extend or vary a contract if such extension or variation is not expressly permitted by the contract without seeking advice from the Service Director of Legal and Assurance or the Head of Commercial and Procurement Services.
- 10.3 The regulatory 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 Service Director of Finance and Procurement must be consulted on the scope and specification of the services prior to appointment.
 - 11.5.2 of a legal nature the Service Director of Legal and Assurance must be consulted on the scope and specification of the services prior to appointment.
 - 11.5.3 of an ICT or Digital Services nature, the Service Director of Customer and Digital Services 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 £50,000.

- 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 Directorate and shall include consultancy spend as a line in the annual consultants' report for the Finance and Resources Committee each financial year.
- 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 £50,000 or more shall follow the approval process detailed in the Schedule.
- 11.9 Further approval shall not be required for consultancy 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 delivery of a works contract where the value of that works contract 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 Head of Commercial and Procurement Services 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,
- 11.12.2 subject to consultation with the Chief Executive, the Executive Director concerned 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 without delay from National Frameworks which comply with the relevant procurement legislation such as those put in place by Scotland Excel, Scottish Procurement, Yorkshire Purchasing Organisation (YPO), Crown Commercial Services (CCS) or the East Shires Purchasing Organisation (ESPO) the Council may make use of the Framework subject to reporting the initial adoption of such Frameworks in a six-monthly report to the Finance and Resources Committee.
- 12.2 Individual call-off contacts placed under Council or National Frameworks shall be subject to the approvals thresholds as detailed in the Schedule. For the avoidance of doubt, where the value of individual call-offs exceed these thresholds then approval or delegated authority must be sought from the Finance and Resources Committee (or as otherwise required under in these Standing Orders).

13 Review of Standing Orders

- 13.1 These Standing Orders will be reviewed at least 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 £5,000*	<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, for up to £5,000 alternative quotes and/or evidence of firm fixed prices should be sought where reasonably practicable</p>	<p>Executive Director, Service Director or such other officer to whom the relevant Executive Director or Service Director has appropriately delegated their powers to in consultation with Head of Commercial and Procurement Services as appropriate**</p>	<p>Not required</p>
£5,000* to £25,000* (including 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 unless the circumstances for a direct award that would be permitted by the Act, the 2015 Regulations or the 2016 Regulations are present</p> <p>or 3 written/formal quotations – written description of requirements followed by written / electronic submission of quotes.</p> <p>for Social and other Specific Services for Health or Social</p>	<p>Executive Director, Service Director or such other officer to whom the relevant Executive Director or Service Director has appropriately delegated their powers to in consultation with Head of Commercial and Procurement Services as appropriate, and Service Director of Legal and Assurance as appropriate**</p>	<p>Not required</p>

	Care Services: 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		
£5,000* up to £50,000* for Consultancy spend****	<p>Use existing local, national, Council framework or call-off contracts or</p> <p>Seek minimum of 3 quotes using Public Contracts Scotland "Quick Quote" facility up to a value of £50,000 unless the circumstances for a direct award that would be permitted by the Act, the 2015 Regulations or the 2016 Regulations are present</p> <p>or</p> <p>written/formal quotations – written description of requirements followed by written / electronic submission of quotes up to a value of £50,000 unless otherwise agreed with Head of Commercial and Procurement Services</p> <p>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 as set out in the Act and the 2016 Regulations (generally above £50,000)</p>	Executive Director, Service Director or such other officer to whom the relevant Executive Director or Service Director has appropriately delegated their powers to in consultation with Head of Commercial and Procurement Services and Service Director for Legal and Assurance as appropriate up to £50,000.**	Not required
£50,000* and above for Consultancy spend****	Use existing local, national, Council framework or call-off contracts where they comply with the 2015 and 2016 Regulations as applicable, or-	Not applicable subject to **	Approval to award sought from Finance and Resources Committee***or Council where value is equal to or exceeds

	<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>		£50,000 per annum
<p>£25,000* and above for services and supplies (including health or social care services)</p>	<p>Where Best Value can be demonstrated use existing local, national, Council framework or call- off contracts where they comply with the 2015 and 2016 Regulations as applicable, or-</p> <p>Invitation to tender following public advertisement – using the 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>or</p> <p>for Social and other Specific Services for Health or Social Care Services- Contracts below the Procurement thresholds to be awarded in accordance with the Procurement of Care and Support Services 2016 (Best Practice) and any statutory guidance issued under the Act Contracts above the Procurement thresholds follow the relevant light touch provisions in the Procurement Regulations</p>	<p>Executive Director or Service Director (where delegated authority has been given) in consultation with Head of Commercial and Procurement Services (and Service Director for Legal and Assurance as appropriate) up to £1million per annum but not exceeding £5million in total.**</p>	<p>Approval to award sought from Finance and Resources Committee***or Council where value is equal to or exceeds £1 million per annum or £5million in total.</p>

<p>£25,000* and above for works</p>	<p>Use existing local, national, Council framework or call-off contracts where they comply with the 2015 and 2016 Regulations as applicable, 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 Service Director (where delegated authority has been given) in consultation with Head of Commercial and Procurement Services (and Service Director for Legal and Assurance as appropriate) up to £500,000.</p> <p>Executive Director approval in consultation and Head of Commercial and Procurement Services (and Service Director for Legal and Assurance as appropriate), between £500,000 and less than £4million.</p>	<p>Approval to award sought from Finance and Resources Committee*** or Council where value is equal to or exceeds £4 million.</p>
<p>Above £50,000* for individual call off-contracts for services and supplies placed under National Frameworks subject to compliance with the relevant procurement legislation (excluding consultancy services)</p>	<p>In accordance with the call-off provisions specified for that National Framework.</p>	<p>Executive Director or Service Director (where delegated authority has been given) in consultation with Head of Commercial and Procurement Services (and Head of Legal and Risk as appropriate) up to £1million per annum but not exceeding £5million in total **.</p>	<p>Approval to award sought from Finance and Resources Committee*** or Council where value is equal to or exceeds £1million per annum or £5million in total.</p>
<p>Above £50,000* for individual call off-contracts for works placed under National Frameworks subject to compliance with the relevant procurement legislation</p>	<p>In accordance with the call-off provisions specified for that National Framework.</p>	<p>Executive Director or Service Director (where delegated authority has been given) in consultation with Head of Commercial and Procurement</p>	<p>Approval to award sought from Finance and Resources Committee*** or Council where value is</p>

(excluding consultancy services)		Services (and Service Director for Legal and Assurance as appropriate) up to £500,000**. Executive Director approval in consultation with the Head of Commercial and Procurement Services (and Service Director for Legal and Assurance as appropriate), between £500,000 and less than £4million**.	equal to or exceeds £4 million.
Above the Procurement 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 Head of Commercial and Procurement Services (and Service Director for Legal and Assurance) as appropriate) up to £5million	Approval to award sought from Finance and Resources Committee*** or Council where the value is equal to or exceeds £5 million

* 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.

** The purchase (even for nil value) of any form of ICT device or digital service, software or hardware shall require the approval of the Council's Digital Services, in accordance with the provisions of the foregoing Standing Orders

***Contracts for Lothian Pension Fund shall be subject to 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 waiver	Committee Approval
Up to £5,000*	Not required**	Not required
Above £5,000 to £50,000*	The relevant Executive Director or Head of Service to whom the relevant Executive Director has appropriately delegated their powers to and the Head of Commercial and Procurement Services **	Not required
Above £50,000 - £250,000 (£5,000 - £50,000 in the case of consultancy spend)*	The relevant Executive Director, and the Executive Director of Corporate Services (or the Head of Commercial and Executive where the relevant Executive Director is the Executive Director of Corporate Services)**	Not required

Above £250,000 (above £50,000 in the case of consultancy spend)*	**	Approval to waive sought from Finance and Resources Committee** or Council as the Chief Executive considers appropriate

* 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.

** The purchase (even for nil value) of any form of ICT device or digital service, software or hardware shall require the approval of the Council's Digital Services, in accordance with the provisions of the foregoing Standing Orders.

***Contracts for Lothian Pension Fund shall be subject to the approval of the Pensions Committee.

**** The provisions of 11.9 of the foregoing Standing Orders (Consultants) shall apply.