

# Aberdeen City Council Procurement Regulations

Approved by Council ~~4 March 2019~~ [date]



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## 1. Overview

- 1.1 The purpose of these Procurement Regulations is to:
- a. ensure that uniform contracting procedures of the highest standard are laid down for use throughout the Council;
  - b. secure compliance with the law;
  - c. ensure that the Council obtains best value in its procurement activity and all resultant contracts;
  - d. provide a framework for a more detailed Procurement Manual; and
  - e. protect the Council and its staff.
- 1.2 This shall ensure the Council consistently acts in a transparent and proportionate manner and in a way that is equal and without discrimination. In turn this shall lead to value for money, and more sustainable outcomes.

## 2. Definitions

- 2.1 Throughout this document the following definitions shall apply:
- 2.1.1 **Annual Procurement Report** means a report published by the Council annually in relation to Regulated Procurements.
- 2.1.2 **Capital Programme** means a list of the budgets allocated to capital projects, and the associated funding, either (i) approved at the annual Council budget meeting; (ii) approved by the City Growth and Resources Committee; or (iii) approved under Powers Delegated to Officers, or a specific delegation from Council or committee.
- 2.1.23 **City Region Deal Committee** means the Joint Committee established by Aberdeen City Council and Aberdeenshire Council under sections 56 and 57 of the Local Government (Scotland) Act 1973 with authority to approve business cases for City Region Deal projects; to approve operational expenditure within agreed Aberdeen City Region Deal Joint Committee budgets; and with responsibility for supporting and overseeing the implementation of the Aberdeen City Region Deal;
- 2.1.34 **Committee** means the Strategic Commissioning Committee of the Council with responsibility for monitoring best value, internal financial control, corporate governance relating to procurement, or any other matter to which the procedure for award of Council contracts may be relevant; or the City Growth and Resources Committee of the Council with responsibility for approving expenditure and procurement related to the Capital Programme, which may include an element of revenue spend;
- 2.1.45 **Concession Contract** means a works concession contract or a services concession contract as defined by the Concession Contracts (Scotland) Regulations 2016.
- 2.1.56 **Contract of Employment** means a contract between the Council and an individual that sets out an employee's employment conditions, rights, responsibilities and duties. This is distinct from an agreement to provide services for the Council, for example by a consultancy arrangement.

- 2.1.67** **Contract Value** means the estimated aggregate total value (total estimated value), excluding VAT, over the entire term of the Contract which the Council expects to be payable under the contract. In the case of a works concession contract or a services concession contract, the value shall be calculated on the basis of the total net turnover of the concessionaire generated over the duration of the contract, as estimated by the Council, in consideration for the works and services that are the object of the concession.
- 2.1.78** **Contracts Register** means a record of contract details currently in place within the Council.
- 2.1.89** **Corporate Procurement Plan Strategy** means a document giving details on how the Council intends to carry out regulated procurements as required by Section 15 of the Procurement Reform (Scotland) Act 2014.
- 2.1.910** **Council** means Aberdeen City Council.
- 2.1.101** **Delegated Procurement Authority** or DPA means the authority that permits a Delegated Procurer to conduct a procurement, and to agree to award, amend or vary contracts for supplies, services or works on behalf of the Council.
- 2.1.112** **Delegated Procurer** means any officer holding Delegated Procurement Authority and authorised to carry out procurement activities.
- 2.1.123** **E-Tendering or Electronic Tendering** means a tendering process where the contract documents are published electronically and the tender response to these is also submitted electronically in the first instance. E-tender shall be construed accordingly.
- 2.1.134** **EU Procurement Directive** means the European legislative framework for public procurement in force at the time a procurement process is entered into.
- 2.1.15** **EU Threshold** means the Contract Value thresholds set by the EU from time to time, current thresholds are set out in the Procurement Manual.
- 2.1.164** **Framework Agreement** means an agreement between one or more contracting authorities and one or more suppliers. The purpose of such agreements is to establish the terms governing public contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.
- 2.1.175** **IJB** means the Aberdeen City Integration Joint Board established by Order under section 9 of the Public Bodies (Joint Working) (Scotland) Act 2014.
- 2.1.186** **Inside Information** means information which relates directly or indirectly to the Council or any of its group entities; has not been made public; is precise; and if it were made public, would be likely to have a significant effect on the prices of one or more of the Council's Bonds or could have an impact on the Council's credit rating.
- 2.1.197** **Pensions Committee** means the Committee of the Council with responsibility for discharging all functions and responsibilities relating to the Council's role as administering authority for the North East Scotland Pension Fund;
- 2.1.2018** **Procurement Manual** means a supplement to these Procurement Regulations which gives detailed guidance on the Procurement Regulations.

- 2.1.219 Procuring ~~Service-Cluster~~ means the ~~service department-Cluster~~ of the Council with responsibility for procuring any particular requirement for supplies, services, ~~or~~ works or a concession on behalf of the Council or for the disposal of surplus materials.
- 2.1.220 Proper Officer means any officer in the employment of the Council who is duly authorised for the purpose of signing contracts on behalf of the Council under the Council's Scheme of Delegation or any other resolution of the Council authorising officers to sign contracts.
- 2.1.234 Public Contracts Scotland means the national portal for advertising public sector contract opportunities in Scotland, which may be found at [www.publiccontractsscotland.gov.uk](http://www.publiccontractsscotland.gov.uk).
- 2.1.242 Regulated Procurements means a procurement where any contract formed will be a public contract the Contract ~~Value~~ of which is equal to or greater than the relevant contract Threshold, and which is not for the procurement of an excluded contract as defined in Section 4 of the Procurement Reform (Scotland) Act 2014 or a contract excluded from the scope of the Concession Contracts (Scotland) Regulations 2016.
- 2.1.253 Relevant Legislation means the Scottish procurement legislation in effect at the time any procurement process is entered into, along with EU Procurement Directives and any other relevant applicable law.
- 2.1.264 Terms and Conditions means the special and general arrangements, provisions and requirements of a contract.
- 2.1.275 Thresholds means the financial value that determines how a procurement is to be undertaken.

### 3. Extent and Application

- 3.1 These Procurement Regulations are made under section 81 of the Local Government (Scotland) Act 1973.
- 3.2 These Procurement Regulations must be interpreted in accordance with the principles of openness, fairness and non-discrimination.
- 3.3 All Council personnel shall comply with the terms of the Procurement Regulations. Any breach or non-compliance with these Regulations must, on discovery, be reported immediately to the Head of Commercial and Procurement ~~Services~~. The Head of Commercial and Procurement ~~Services~~ may consult other relevant officers, including the Chief Executive, in order to determine the appropriate action. Failure by any employee to comply with the Procurement Regulations or the associated Procurement Manual may be grounds for disciplinary action. Employees of NHS Grampian appointed as officers of the Council for the purpose of delivering integrated services will be required to comply with Aberdeen City Council Procurement Regulations when undertaking a procurement pursuant to a Direction issued by the IJB to the Council. The Council's Head of Commercial and Procurement will maintain a list of such individuals. Any breach or non-compliance may result in being removed from the appointment as an officer of the Council and may result in a referral for disciplinary action in line with the policies of the NHS Grampian. The Council's Head of Commercial and Procurement will maintain a list of those officers of the Council that are required to comply with the Procurement Regulations of NHS Grampian. Any breach of those regulations will be treated as non-compliance with Council's Procurement Regulations.

3.4 Subject to the provisions of Paragraph 3.11, the Procurement Regulations shall apply to:

- a. Any procurements undertaken by, or on behalf of, the Council with the intention of creating a contract or contracts (including the creation of a framework agreement) for the purchase of goods and/or services, ~~or~~ for the execution of works, or for the award of a concession;
- b. Any procurements undertaken by, or on behalf of, the Council with the intention to enter into a call-off contract under an external framework agreement. Prior to call-off from any external framework agreement, an Adoption Report must be completed in accordance with the Procurement Manual;
- c. Any amendment or variation of an existing contract for the purchase of goods or services, or for the execution of works, or an existing Concession Contract where:
  - I. that amendment or variation would exceed the parameters of the approval of the original procurement, or
  - II. the aggregate ~~C~~contract ~~v~~value of the original contract and the variation of that contract would exceed a threshold requiring approval at a higher level, or
  - III. the amendment would result in an assignation or novation to a new supplier;and
- d. Any procurement undertaken by, or on behalf of, the Council with the intention of leading to the award of a public services concession contract or public works concession contract.

3.5 The Procurement Regulations are subject to the over-riding provisions of European, United Kingdom or Scots law governing public procurement. They are also subject to any statutory guidance issued from time to time by the EU Commission, UK Government or Scottish Government on public procurement.

3.6 When determining the ~~C~~contract ~~v~~value for the purchase of goods or services, or for the execution of works, the Delegated Procurer must take into account the aggregate value of the particular requirement for supplies, services or works across the whole Council and any contract extension option. When determining the Contract Value of a Concession Contract, the Delegated Procurer shall follow the Procurement Manual. Where any single requirement is divided into Lots the Contract Value will equal the aggregate value of all the Lots. If the procurement of any such requirements is split amongst a number of contracts which, taken individually, are below the threshold values, each of these contracts will be subject to the relevant EU Procurement Directive in place at the time of the procurement in the same way as if the requirements were procured through a single large contract.

3.7 Contracts related for “care and support services” are subject to a Light-Touch Regime as defined in the legislation. Details of the services covered under this regime, and how the Council will procure such services are covered by Procurement Regulation 15 and also included within the Procurement Manual.

3.8 All tendering for Supplies, Services and/or Works, or a Concession Contract by a Delegated Procurer shall be carried out following consultation with the Head of Commercial and Procurement ~~Services~~.

- 3.9 The following types of contract are exempted from the provisions of these Procurement Regulations:-
- a. Any contract of employment;
  - b. Any contract relating to the acquisition or disposal or lease of heritable property or any other interest in land;
  - c. Any award or receipt of a Grant;
  - d. Any contract for the Sponsorship of an event;
  - e. Any contract which relates to the appointment of legal counsel or expert witnesses in any legal proceedings on behalf of the Council subject to Procurement Regulation 4.1.1.3;
  - f. Any contract which, in the opinion of the Director of the ~~p~~Procuring ~~ServiceCluster~~, or of the Chief Executive, is urgently required to prevent danger to life, serious risk to health or damage to property. Where practicable the Director or the Chief Executive shall consult with the Head of Commercial and Procurement ~~Services~~ before taking any action under this paragraph. In all circumstances where this exemption has been used:
    - i. the Head of Commercial and Procurement ~~Services~~ shall be notified as soon as reasonably practicable; and
    - ii. any contract with a Contract Value of greater than £10,000 (supplies/ services or works) or £4.5m (concessions) entered into, varied or terminated on behalf of the Council must be noted in the Contracts Register and be reported to the appropriate Committee by the Delegated Procurer as soon as practicable; and
  - g. Any contract that is to be performed in-house.
- 3.10 The Procurement Regulations may be suspended either in whole or in part by the Director of Commissioning and the Head of Commercial and Procurement ~~Services~~ in writing in respect of an award of any contract where the award of that contract is urgently required to meet the exigencies of the ~~ServiceFunction/ Cluster~~.
- 3.11 Where the Director of Commissioning and the Head of Commercial and Procurement ~~Services~~ have decided that the criteria for suspension of Procurement Regulations are fulfilled, then a contract may be awarded to the preferred supplier or contractor as appropriate and the reason(s) must be noted in the Contracts Register if the Contract Value is greater than £10,000 (supplies/ services or works) or £4.5m (concessions). Any contract made on behalf of the Council under this paragraph shall be reported to the Strategic Commissioning Committee or the City Growth and Resources Committee, as appropriate by the Delegated Procurer as soon as practicable.
- 3.12 The Procurement Regulations must be read in conjunction with the Procurement Manual issued by the Head of Commercial and Procurement ~~Services~~. Where there is any discrepancy between documents, the Procurement Regulations will take precedence.
- ~~3.13~~ Any query regarding the application or interpretation of the Procurement Regulations should be made in the first instance to the ~~-Commercial and Procurement Cluster Services~~.

## 4. Procurement Procedures

### 4.1 Authority to Incur Expenditure

4.1.1 No tender shall be invited or contract entered into for the purchase of goods or services, or for the execution of works unless the total estimated expenditure has been previously approved and can be met from an approved budget. No tender shall be invited for a concession or Concession Contract entered into unless it has been previously approved. The method of authorising a procurement is dependent on the Contract Value as follows:

4.1.1.1 Contract ~~Values~~ below £50,000 (supplies/services), ~~or £250,000~~ (works) or £4.5m (concessions). Subject to budget approval, the relevant Chief Officer may give authority to conduct any procurement where the estimated ~~value of contract~~ Contract Value is below ~~£50,000 (supplies/services) or £250,000 (works)~~ these thresholds. The Such procurements shall be undertaken by a Delegated Procurer in line with Section 4.3 of these Procurement Regulations.

4.1.1.2 Contracts ~~Value~~ above £50,000 (supplies/services) ~~or £250,000~~ (works), or £4.5m (concessions). Contracts with an estimated ~~Contract Value~~ Value of above ~~£50,000 (for supplies/services) or above £250,000 (works)~~ these thresholds shall be listed on the workplan to be submitted by the relevant Director or Chief Officer in accordance with Procurement Regulation 14.6. Each individual contract will also require a Business Case (conforming to a template approved by the Head of Commercial and Procurement ~~Services~~) to be submitted by the relevant Chief Officer to the Strategic Commissioning Committee or the City Growth and Resources Committee as appropriate or where the contract relates to a capital project that is already part of the Capital Programme, to the Director of Resources.

~~Such~~ Business cases may only be submitted to the ~~relevant~~ Strategic Commissioning ~~Committee~~ on the approval of the Head of Commercial and Procurement ~~Services~~. The approval of the ~~applicable~~ Strategic Commissioning Committee is required prior to the procurement being undertaken.

Business cases may only be submitted to the City Growth and Resources Committee on the approval of the Chief Officer – Capital, following consultation with the Director of Resources and Chief Officer – Finance. The approval of the City Growth and Resources Committee is required prior to the procurement being undertaken.

Business Cases that relate to a capital project that is already part of the Capital Programme, may be approved by the Director of Resources following consultation with Chief Officer – Capital, Head of Commercial and Procurement and Conveners of the Capital Programme Committee and the City Growth and Resources Committee.



**4.1.1.3 Contracts above £5,000 for consultancy and accountancy services and services provided by Advocates and QCs**

Where the estimated ~~value of a e~~Contract Value or appointment for:

- a. Business and management consultancy and related services;
- b. Financial consultancy and accountancy related services; or
- c. Services provided by Advocates or QCs;

exceeds £5,000, the relevant Chief Officer may only give authority to engage the services following consultation with the Leader of the Council. In determining the estimated ~~C~~contract Value of any contract or appointment covered by this Regulation 4.1.1.3, each individual contract or appointment shall be considered separately and there shall be no aggregation of separate contracts or appointments for the purposes of arriving at an estimated expenditure.

**4.1.1.4 Expenditure via Framework Agreements**

Delegated Procurers ~~may~~must whenever possible procure supplies, services and works under ~~external~~Scotland Excel or Scottish Government framework agreements provided that authority to incur expenditure for each call-off contract has been approved in accordance with these Procurement Regulations and also provided that: -

- i. An Adoption Report has been completed in accordance with the Procurement Manual,
- ii. No material change has been made to the call-off terms under the framework agreement and calling-off from the framework has been done in accordance with the procedures laid down within that framework,
- iii. All call-off contracts with a Contract Value of greater than £10,000 (supplies/ services or works) or £4.5m (concessions) must be added to the Contracts Register, and
- iv.** If the aggregate Contract Value of call-off contracts under a framework agreement is likely to exceed the thresholds stated in Procurement Regulation 4.1.1.2 then the authority of the Strategic Commissioning Committee to incur the expenditure must be obtained in advance of the applicable thresholds being exceeded.

If it is not possible to procure supplies, services and works under a Scotland Excel or Scottish Government framework agreement, where the Contract Value exceeds £50,000 (services) or £250,000 (works) the Delegated Procurer must detail the reasons why in the business case to be submitted in accordance Procurement Regulation 4.1.1.2. Procurement Regulation 4.1.1.4(i) to (iv) will also apply.

#### 4.1.1.5 Expenditure Approved by the Integrated Joint Board

Notwithstanding Procurement Regulation 4.1.1.2, the Director of Commissioning can approve (or nominate a person as having authority to approve) any procurement or contract, as a result of a Direction from the Integrated Joint Board to the Council and/or a relevant business case, where the ~~estimated Contract Value~~ of the contract is above £50,000 (supplies/services) or £250,000 (works) or £4.5m (concessions), subject to the approval of the Chief Officer – Finance and the Head of Commercial and Procurement ~~Services~~ without the need for the approval of any other Committee .

#### 4.1.1.6 Expenditure Approved by the Pensions Committee

Notwithstanding Procurement Regulation 4.1.1.2, the Director of Resources can approve (or nominate a person as having authority to approve) any procurement or contract, as a result of a decision of the Pensions Committee and/or a relevant business case, where the ~~estimated Contract Value~~ of the contract is of or above £50,000 (supplies/ services) or £250,000 (works) or £4.5m (concessions), following consultation with the Chief Officer – Finance and the Head of Commercial and Procurement ~~Services~~.

#### 4.1.1.7 Expenditure Approved by the City Region Deal Joint Committee

Notwithstanding Procurement Regulation 4.1.1.2, the Director of Resources can approve (or nominate a person as having authority to approve) any procurement, contract and/or business case for the inclusion of a project onto the Council's Capital Programme, as a result of a decision of the Aberdeen City Region Deal Joint Committee and/or a relevant business case, where the ~~estimated value of the eContract Value~~ is of or above £50,000 (supplies/services) or £250,000 (works) or £4.5m (concessions), following consultation with the Chief Officer – Finance, Chief Officer - Capital and the Head of Commercial and Procurement ~~Services~~.

#### 4.1.2 Exceeding approved ~~eContract Value~~

4.1.2.1 Where a ~~eContract Value~~ has been previously approved by the relevant Chief Officer, or Committee and it becomes apparent to the Chief Officer of the ~~pProcuring ServiceCluster~~ that the indicative total ~~Contract Value of the contract~~ as previously reported is likely to be exceeded, the relevant Chief Officer shall consult with the Head of Commercial and Procurement ~~Services~~ on what action requires to be taken and no further orders shall be made under the contract until such advice has been obtained.

4.1.2.2 In all cases Subject to 4.1.2.3 where the ~~eContract Value~~ is likely to exceed what has previously been approved, and the additional cost is more than either the lesser of ~~1~~ £100,000; or 50% of the approved ~~eContract Value~~, in the case of supplies/ services or works, or the additional turnover from the contract is more than the lesser of £4.5m and 10% of the original Contract Value in the case of a Concession Contract; the relevant Chief Officer shall ensure that a report on the matter is submitted to the next meeting of the Strategic

Commissioning Committee or the City Growth and Resources Committee, as appropriate, for consideration. This Regulation applies to contracts equal to or greater than £50,000 for Goods and/or Services and to contracts equal to or greater than £250,000 for Works or a Contract Value of equal or greater than £4.5m for concessions. In such circumstances the indicative previously agreed total Contract Value cannot be exceeded without the relevant approval being received.

#### 4.1.3 **Competition absent for Technical Reasons**

**4.1.3.1** Where the works, supplies or services can only be provided by a particular economic operator because competition is absent for technical reasons or because that operator has an exclusive right (including intellectual property rights), and no reasonable alternative or substitute exists, following consultation with the Convener of the Strategic Commissioning Committee or the Convener of the City Growth and Resources Committee (as appropriate) the Head of Commercial and Procurement may approve a direct award to that economic operator and the estimated expenditure associated with that without the need for a business case to be presented to the relevant Committee. In all other respects, Regulation 4.1.1 will continue to apply, including the requirement that expenditure can be met from an approved budget.

4.1.4 There shall be no artificial splitting of a contract to avoid the application of the provisions of Scottish, UK or EU procurement law and/or these Procurement Regulations

#### 4.2 **Authority to Carry Out Procurements**

4.2.1 All contracts let by or on behalf of the Council shall be subject to an obligation on the Head of Commercial and Procurement ~~Services~~ to seek best value for the Council. The Head of Commercial and Procurement ~~Services~~ and the Delegated Procurer will be responsible for demonstrating fairness, non-discrimination, equal treatment and transparency in the contract procedures chosen to all parties having an interest in those procedures.

4.2.2 Procurements shall only be carried out by Delegated Procurers who have been designated as such by the Head of Commercial and Procurement ~~Services~~ and who hold relevant Delegated Procurement Authority (Procurement Manual).

4.2.3 Delegated Procurement Authority will be reviewed on an annual basis, or as required, and may be increased, reduced or withdrawn by the Head of Commercial and Procurement ~~Services~~ as necessary.

#### 4.3 **Quotations - Contracts below £50,000 (Supplies/Services) or £250,000 (Works)**

4.3.1 The procedure to be followed for the award of any contract by the Council depends on the estimated Contract Value. Values or amounts referred to in these Procurement Regulations shall be based on the best available estimate at the time of tendering.

4.3.2 For any contract with a total estimated Contract Value below £50,000 (for supplies and services) ~~or £250,000 (for works)~~, or £4.5m (for concessions) the Delegated Procurer shall follow the Procurement Manual and obtain written

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quotations to ensure the demonstration of best value to the Council in the sourcing decision. If quotations cannot be obtained the Delegated Procurer shall complete a Non-Competitive Action Form (included in the Procurement Manual) explaining why this is the case and submit it to the relevant Chief Officer for approval.

4.3.3 All requests for quotations shall be advertised, and submissions received, via the Quick Quote online procurement tool available via Public Contracts Scotland, unless authorisation has been given by the Head of Commercial and Procurement ~~Services~~ to the contrary.

#### 4.4 Competitive Tendering (Where the Contract Value is below the EU Threshold)

4.4.1 Where any contract has an estimated ~~Contract~~ value of between £50,000 and the EU Threshold (for supplies/services) or between £250,000 and the EU Threshold (works), or is otherwise exempt from the full application of EU Procurement Rules, competitive tendering shall be undertaken.

4.4.2 To ascertain how the procurement shall be undertaken in relation to the requirement, the Delegated Procurer shall follow the Procurement Manual.

4.4.3 All tenders shall be appropriately advertised, and submissions received, via Public Contracts Scotland or such other platform as may be authorised by the Head of Commercial and Procurement ~~Services~~.

#### 4.5 EU Procurement

4.5.1 An EU Procurement means a procurement undertaken in accordance with the Public Contracts (Scotland) Regulations 2015 ~~or the Concession Contracts (Scotland) Regulations 2016~~ and requires advertising in the Official Journal of the European Union (OJEU). An EU Procurement must be undertaken where the Council proposes to tender for any contract with an estimated value equal to or exceeding the applicable EU Threshold (Supplies, Services or Works).

4.5.2 To ascertain how the procurement shall be undertaken in relation to the requirement, the Delegated Procurer shall follow the Procurement Manual.

4.5.3 All tenders shall be appropriately advertised, and submissions received, via Public Contracts Scotland or such other platform as may be authorised by the Head of Commercial and Procurement ~~Services~~.

## 5. Roles and Responsibilities

### 5.1 General Responsibilities

5.1.1 It is the duty of all employees within the Council to ensure that these Procurement Regulations, and the Procurement ~~Manual~~, are adhered to in order to ensure ~~best~~ value is achieved in relation to expenditure relating to supplies, services or works ~~and the granting of Concession Contracts~~. The allocation of a budget as part of the Council's budget setting process is not sufficient to comply with these Procurement Regulations.

### 5.2 Head of Commercial and Procurement ~~Services~~

5.2.1 The Head of Commercial and Procurement ~~Services~~ is responsible for all procurement and tendering arrangements for ~~the purchase of~~ supplies, services ~~and~~ works ~~and the granting of concessions~~.

5.2.2 The Head of Commercial and Procurement ~~Services~~ shall authorise, by means of Delegated Procurement Authority, adequately trained staff to undertake procurement activity (Delegated Procurers).

5.2.3 The Head of Commercial and Procurement ~~Services~~ shall ensure that the Procurement Manual is in place and that necessary revisions are made to it on a regular basis to reflect changes in legislation, Council policy or good practice.

5.2.4 The Head of Commercial and Procurement ~~Services~~ shall maintain a consolidated workplan for the Strategic Commissioning Committee and for the City Growth and Resources Committee. The workplans will contain a list of proposed procurement activity for the next financial year where the estimated expenditure per contract is £50,000 or more (supplies/services) or £250,000 (works) or £4.5m (concession) and will be compiled with the information provided by Directors/Chief Officers in accordance with Procurement Regulation 14.6.

### 5.3 Directors (including Chief Officer of Integrated Health & Social Care Partnership)

5.3.1 Each Director has responsibility to ensure that staff in their Function follow the Procurement Regulations for all contracts let by their Function and is accountable to the Council for the performance of their duties in relation to contract management. Each Director shall be able to evidence that the procurements are compliant with these Procurement Regulations and the Procurement Manual.

5.3.2 Each Director shall ensure that all contracts in place within their Function with a Contract Value of greater than £10,000 (supplies/ services or works) or £4.5m (concessions) are entered into the corporate Contracts Register. The details required to be provided are detailed within the Procurement Manual.

### 5.4 Delegated Procurers

5.4.1 All Delegated Procurers will ensure compliance with relevant procurement legislation, these Procurement Regulations and the Procurement Manual.

5.4.2 Delegated Procurers are authorised to undertake procurements to the levels stated within their individual Delegated Procurement Authority. They must ensure that these are not exceeded without the authority of the Head of Commercial and Procurement ~~Services~~.

5.4.3 Delegated Procurers will undertake regular training in order to maintain their Delegated Procurement Authority.

## 6. Sustainable Procurement

6.1 The Council is committed to working towards sustainable development, and in particular sustainable procurement and will work to embed the principles of sustainability at all stages of procurement activities to ensure that social, environmental and economic impacts are considered throughout the procurement and contract management process, consistent with relevant legislation.

6.2 In the context of these Procurement Regulations “sustainable development” shall be taken to mean development which secures a balance of social, economic, health and environmental well-being in the impact of activities and decisions. Sustainable development seeks to meet the needs of the present without compromising the ability of future generations to meet their own needs.

6.3 Before carrying out a Regulated Procurement (other than the procurement of a concessionaire), the Council must consider how in conducting the procurement process it can:

- i. improve the economic, social and environmental wellbeing of the Council's area.
- ii. facilitate the involvement of small and medium enterprises, third sector bodies and
- iii. supported businesses in the process ~~, and;~~

6.4 In carrying out the procurement the Council must act with a view to securing such improvements as identified within paragraph 6.3. However the Council must only consider matters that are relevant to what is proposed to be procured and, in doing so, consider the extent to which it is proportionate in all the circumstances to take those matters in to account.

6.5 Detailed information is available within the Procurement Manual.

## **7. Purchase Orders**

7.1 No supplies, services or works shall be ordered or instructed except on an official order form, which shall be in an approved format unless one of the alternative control processes listed in Appendix A to the Council's Financial Regulations is in place. Where, by reason of urgency or necessity, a verbal order is issued, it must be confirmed within 3 working days with the issue of an official order form from the ordering system. The supplier shall be requested to quote order numbers on all invoices. The budget holder risks disciplinary action for noncompliance.

7.2 The order, with the contract references/schedule numbers added, shall be approved by the Director or other authorised signatory. All Directors must furnish the Chief Officer - Finance with a list of signatories approved for this purpose, and shall advise him or her of additions to or deletions from the list as they occur as per the Council's Scheme of Delegation. The officer approving the purchase order must be satisfied that there is appropriate budgetary provision covering the estimated cost and that Council procurement procedures have been followed prior to authorisation.

## **8. Special Matters**

### **8.1 Internal Services**

8.1.1 Where supplies, services or works can be provided by another Service-Cluster of the Council, this may be delivered by that Council Service-Cluster following consultation between the Chief Officers of the relevant ServiceCluster(s) and the Head of Commercial and Procurement Services. It is the responsibility of the Chief Officer of the in-house provider to ensure that Best Value for the Council is achieved by either:

- a. carrying out such supplies, services or works at cost; or
- b. providing requested advice and support in relation to contracting with an external provider.

### **8.2 Second Hand Goods**

8.2.1 Second hand goods up to a Contract Value of £50,000 may be acquired by the Council without a competitive quotation being obtained provided that:

- a. The Director of the relevant **Service-Function** can demonstrate that the purchase is necessary to facilitate service delivery;
- b. The Director of the relevant **Service-Function** can demonstrate that the purchase represents best value, having given due consideration to the cost of an equivalent new purchase and estimated life of the asset both from new and current age;
- c. The goods have been subject to inspection to ascertain their physical condition, with a record kept of the outcome of the inspection
- d. The Council has clear title to the goods; and
- e. The Director obtains in writing (which may be by e-mail) the prior agreement of the Head of Commercial and Procurement before effecting the purchase.

### 8.3 Grants

- 8.3.1 The award of grants is a means by which the Council provides subsidies or funding to external bodies (including individuals, businesses and third sector organisations) to further the aims of those external bodies. Grants must not be used to procure supplies, services or works which the Council would otherwise have to procure in accordance with these Procurement Regulations.
- 8.3.2 Whilst an award of a grant by the Council may not be subject to these Procurement Regulations, it is essential that the Council's procedures on Following the Public Pound are considered.
- 8.3.3 Where it is envisaged that there may be any procurement or state aid implications in the award of grants, then the Head of Commercial and Procurement **Services** must be consulted prior to entering into any such arrangement.
- 8.3.4 Purchase of supplies, services or works in relation to grant funding awarded to the Council will be carried out in accordance with the provisions within these Procurement Regulations, as per the values within Regulation 4.1.

### 8.4 Shared Services

- 8.4.1 Shared Services are arrangements where the Council collaborates with other public authorities to obtain supplies, services or works from them. Advice on the operation of procurement rules in respect of any proposed shared service arrangement should be sought from the Head of Commercial and Procurement **Services**.
- 8.4.2 Identification of a proposed shared service arrangement should be undertaken only following consultation with the Head of Commercial and Procurement **Services** and can only be entered into where the Director of the relevant **Service-Function** can demonstrate that such an arrangement represents **Best Value** to the Council.
- 8.4.3 Approval to enter into a shared service arrangement may also require the approval of the Strategic Commissioning Committee or City Growth and Resources Committee, as appropriate, as per Regulation 4.1.

## 8.5 Income Generation

- 8.5.1 Where a contract is to be entered into by the Council for income generation purposes and there will be no expenditure by the Council outwith approved budgets, the Head of Commercial and Procurement ~~Services~~, following consultation with the Convener of the Strategic Commissioning Committee or City Growth and Resources Committee, as appropriate, shall approve the decision to enter into the contract and the Terms and Conditions of Contract to be utilised and there shall be no requirement for Committee approval.

## 8.6 Inside Information

- 8.6.1 The Council has issued Bonds on the London Stock Exchange and must comply with the Market Abuse Regulations which control how Inside Information must be dealt with by the Council. The Council may from time to time be required to make Inside Information public as part of the procurement process and must do so through the London Stock Exchange. All Delegated Procurers must ensure that they comply with the requirements of the Market Abuse Regulations in this regard and that they take advice as necessary from the Chief Office – Finance, Chief Officer - Governance or the Head of Commercial and Procurement ~~Services~~. Further information may be sought in the Council's Bond Governance Protocol.

## 8.7 Procurement of Consultants

- 8.7.1 The appointment of consultants or sub-contractors shall be done in accordance with Procurement Regulation 4.1.1.3. Such appointments may fall within the IR35 rules which may result in the Council being liable to pay income tax and national insurance contributions in respect of the engagement. The Council must not enter into contracts with any individual or company direct without the prior approval of the Head of Commercial and Procurement ~~Services~~. Officers must follow these Procurement Regulations and must engage with the Commercial and Procurement ~~Services-Cluster~~ prior to agreeing to contract with an individual or organisation.
- 8.7.2 In appointing consultants Directors / Chief Officers must ensure that the terms of agreement are controlled and knowledge transfer to Council officers should be effected where beneficial.
- 8.7.3 Any contract for consultancy services shall be subject to the approval of the Head of Commercial and Procurement ~~Services~~. IR35 implications must be established prior to commencing the procurement process. Amongst other things the contract shall specify:
- the precise scope of the commission;
  - cost limits and controls;
  - lines and levels of reporting, responsibility and authority;
  - insurance cover (which must be verified by Council officers);
  - the method of determining completion of work and payment thereof;
  - standard Aberdeen City Council terms of payment; and



- the ownership of intellectual property rights relating to any material or computer software developed during the consultancy.

It shall be the responsibility of the relevant Director to ensure that any consultancy contract complies with the Procurement Regulations and the Financial Regulations.

## 8.8 ALEOs

- 8.8.1 Notwithstanding the regulations relating to Concession Contracts contained within these Procurement Regulations, no agreements setting out the terms and conditions of annual funding shall be entered into with an ALEO unless previously approved by the Strategic Commissioning Committee.

## 9. Tender Issue and Receipt

- 9.1 The Delegated Procurer shall issue invitations to quote/tender and contract documents for all contracts in compliance with these Procurement Regulations and the Procurement Manual.

### 9.2 Terms and Conditions of Contract

- 9.2.1 Except where specialist Terms and Conditions are required, the Delegated Procurer shall use the standard Terms and Conditions of Contract in use by the Council, or those within a relevant framework agreement. Any specialist Terms and Conditions must be approved in writing by the Head of Commercial and Procurement ~~Services~~. Terms and Conditions of Contract are detailed within the Procurement Manual.
- 9.2.1 On no occasion will the Council contract under Terms and Conditions supplied by any tenderer/contractor unless these have been reviewed and agreed by the Head of Commercial and Procurement ~~Services~~.

### 9.3 Advertisement

- 9.3.1 Unless agreed otherwise in writing by the Head of Commercial and Procurement ~~Services~~, any tender which requires to be advertised in accordance with these Procurement Regulations shall be advertised via the Public Contracts Scotland website ([www.publiccontractsscotland.gov.uk](http://www.publiccontractsscotland.gov.uk)), notwithstanding any other form of advertisement or notice required by law or otherwise.

### 9.4 Issue of Tenders

- 9.4.1 Electronic ~~Tendering procurement~~ (e-~~procurement~~tendering) processes will be utilised for all tender exercises where this is practically possible. Contracts shall be advertised, contract documents issued, information exchanged, tenders submitted, received and opened via electronic means. Detailed information is available within the Procurement Manual.
- 9.4.2 Where in exceptional circumstances, ~~E~~electronic ~~procurement~~Tendering is not utilised all procedures shall reflect as closely as possible those where ~~e~~Electronic ~~procurement~~Tendering is utilised. Tender issue, submission and opening shall, in these circumstances, be undertaken as per ~~the~~ Procurement ~~Guidance Note 12~~Manual.

## 9.5 Receipts of Tenders

- 9.5.1 Tenders will be received and opened electronically via the electronic tendering system utilised by the Council. Where, in exceptional circumstances, ~~e~~Electronic ~~procurement-Tendering~~ is not utilised, tender receipt and submission shall be undertaken as per the Procurement Manual.

## 10. Tender Evaluation

- 10.1 Tenders shall be evaluated by a group of nominated individuals in accordance with ~~the relevant~~ the Procurement Manual.
- 10.2 Tenders shall be evaluated in accordance with the quotation or tender award criteria, and on the basis of establishing which offer is the most economically advantageous and provides ~~B~~est ~~v~~alue to the Council.
- 10.3 Tenders shall be evaluated strictly in accordance with the evaluation criteria set out in the tender documents. No tender shall be accepted based on evaluation of criteria not set out in the tender documents
- 10.4 A written record shall be maintained outlining the evaluation process, recording the process followed, the criteria applied, and detailing the reasons for the decision. This record shall be retained as per the Council's Corporate Retention & Disposal Schedule and is further detailed within the Procurement Manual.

## 11. Supplier Selection and Tender Acceptance

- 11.1 As soon as reasonably practicable after a decision has been made to eliminate a supplier or tender at any stage of a procurement procedure the Council must notify those tenderers and candidates concerned of their elimination by notice in writing.
- 11.2 As soon as possible after a decision has been made to award any contract following a procurement process where Contract Value is above the relevant EU ~~T~~hreshold the Council shall, by notice in writing, inform all candidates and economic operators concerned of the Council's decision to award the contract.
- 11.3 Tender ~~a~~Acceptance letters and debrief letters shall be prepared by the Delegated Procurer and approved by the relevant Category Manager within Commercial and Procurement ~~S~~ervices. Debriefs shall be undertaken in accordance with relevant legislation.
- 11.4 An ~~a~~Award ~~r~~Report must be completed in accordance with the Procurement Manual.

## 12. Award of Contract

- 12.1 At the conclusion of the tender procedure and (if applicable) after the expiry of any Standstill Period the final contract shall be entered into between the Council and the successful tenderer. Officers awarding contracts on behalf of the Council must be aware of the requirements in relation to disclosure of Inside Information as detailed in Procurement Regulation 8.6.
- 12.2 Contracts shall be entered into and executed as follows:
- 12.2.1 Contracts with a ~~C~~ontract ~~v~~alue equal to or exceeding the relevant EU Threshold, through the execution of a written contract executed in accordance with Scots law, unless otherwise agreed in accordance with Paragraph 9.2.1,

signed on behalf of the Council by a Proper Officer and signed by the contractor by a duly authorised person.

**12.2.2 Contract Values of less than the relevant EU Threshold**, unless the Head of Commercial and Procurement ~~Services~~ has directed a particular option in the case of a procurement, the Delegated Procurer shall determine whether the contract should be executed either:

- i. through the execution of a written contract executed in accordance with Scots law (unless otherwise agreed in accordance with Paragraph 9.2.1) and signed on behalf of the Council by a Proper Officer and signed by the contractor by a duly authorised person; or
- ii. by the issuing of an Award Letter by the Chief Officer of the ~~p~~Procuring ~~Service~~Cluster, and the return of such letter signed by a duly authorised person on behalf of the tenderer signifying their acceptance of the appointment on the terms and conditions stated therein.

### **13. Contract Management**

13.1 It is the responsibility of the Delegated Procurer to ensure that details of all contracts ~~with a Contract Value of greater than £10,000 (supplies/ services or works) or £4.5m (concessions)~~ are included within the Contracts Register and that copies of all concluded contracts are available to Commercial and Procurement ~~Services~~ as required.

13.2 The Delegated Procurer shall ensure that the performance of the contract is monitored and reviewed in a way which is proportionate to the value, duration, subject matter and complexity of the contract, and in accordance with the Manual and any other guidelines on contract management issued by the Council from time to time.

13.3 Officers managing contracts on behalf of the Council must be aware of the requirements in relation to disclosure of Inside Information as detailed in Procurement Regulation 8.6.

### **14. Records and Reporting**

14.1 The Head of Commercial and Procurement ~~Services~~ shall maintain and publish a Contracts Register for the monitoring of all contracts and framework agreements developed or in use across the Council, which shall include, as a minimum, all information as required by relevant legislation. This information is detailed within the Procurement Manual.

14.2 Each Procuring ~~Service~~Cluster shall ensure that the required information as detailed within the Procurement Manual is communicated to Commercial and Procurement ~~Services~~ in order to maintain the Contracts Register.

14.3 The Head of Commercial and Procurement ~~Services~~ shall produce and publish a Corporate Procurement ~~Plan~~Strategy, which shall be reviewed on an annual basis. The Corporate Procurement ~~Strategy~~Plan shall include, as a minimum, all information as required by relevant legislation.

14.4 The Head of Commercial and Procurement ~~Services~~ shall produce and publish an Annual Procurement Report as soon as practicable after the end of each financial year. The Annual Procurement Report shall include, as a minimum, all information as required by relevant legislation.

14.5 Delegated Procurers shall comply with all reporting procedures put in place by the Head of Commercial and Procurement ~~Services~~.

14.6 The Chief Operating Officer, the Directors of Resources, Commissioning and Customer ~~Services~~, the Chief Officer – Governance, the Chief Officer – Strategic Place Planning, ~~and~~ the Chief Officer – City Growth ~~and the Chief Officer of the IJB~~ shall: -

14.6.1 submit to the Head of Commercial and Procurement, a workplan for their Function/Cluster prior to the commencement of each financial year (conforming to a template approved by the Head of Commercial and Procurement ~~Services~~) detailing all contracts to be procured in the coming year with a Contract Value of £50,000 or more (supplies/services) or £250,000 or more (works) ~~or £4.5m or more (concession)~~; and

14.6.2 ~~submit a workplan for their Function/Cluster to the Strategic Commissioning Committee or the City Growth and Resources Committee, as appropriate, prior to the commencement of each financial year (conforming to a template approved by the Head of Commercial and Procurement Services) detailing all contract to be procured in the coming year with a Contract Value of £50,000 or more (supplies/services) or £250,000 or more (works), and updating~~ ~~update~~ the ~~Committee~~ ~~Head of Commercial and Procurement~~ from time to time in the event of any new procurements being added to the workplan; and

14.6.3 submit business cases for their Function/Cluster as and when required to the ~~Strategic Commissioning Committee or the City Growth and Resources Committee~~ ~~Head of Commercial and Procurement, as appropriate,~~ (conforming to a template approved by the Head of Commercial and Procurement ~~Services~~) for each contract to be procured with a Contract Value of £50,000 or more (supplies/services), ~~or £250,000 or more (works)~~ ~~or £4.5m or more (concessions)~~. The ~~Director of the procuring Function/Cluster~~ ~~Head of Commercial and Procurement~~ shall ensure that required business cases are brought to the appropriate Committee prior to any tender process commencing.

14.7 The Head of Commercial and Procurement ~~Services~~ shall ensure that reports on matters specified in the Corporate Procurement ~~Plan~~ ~~Strategy~~, and otherwise as required by the Procurement Regulations, are brought to the Strategic Commissioning Committee. or City Growth and Resources Committee, as appropriate.

## 15. Contracts for Care and Support Services

15.1 Except as otherwise stated in this section, these Procurement Regulations shall apply to Care and Support Services. For the purposes of this section of the Procurement Regulations, Contracts for Care and Support Services shall mean contracts for the provision of services under the Social Work (Scotland) Act 1968; the Children (Scotland) Act 1995; the Mental Health (Care and Treatment) (Scotland) Act 2003 or any other function of the Council covered by the definition of a care service in the Regulation of Care (Scotland) Act 2001, including housing support services and any other relevant legislation, and included in Schedule 3 of the Public Contracts (Scotland) Regulations 2015.

15.2 The degree and method of competition required approving expenditure will depend on the total estimated expenditure for the contract as follows: -

Estimated Contract Value / Threshold	Degree of Competition Required
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i. Up to £50,000	Written quotations must be obtained to demonstrate best value to the Council in accordance with the Procurement Manual.
ii. £50,000 up to the EU Light Touch Regime ("LTR") Threshold (from 1st January 2018 set at £615,278 but subject to change every second 1st of January)	Direct awards may be made subject to appropriate approval in accordance with Procurement Regulation 15.3, otherwise a competitive tendering process shall be undertaken in accordance with procurement legislation.
iii. LTR Threshold and above	Must be advertised in OJEU and the light touch provisions in The Public Contracts (Scotland) Regulations 2015 apply.
iv. <u>Contract Value over £4.5m (concessions only)</u>	<u>Prior Information Notice must be published in OJEU. A contract Notice is not required. Concession contract award notices must be published in OJEU, but may be grouped and published quarterly, containing the information set out in s49 of the Concession Contracts (Scotland) Regulations 2016.</u>

### 15.3 Justification of Direct Awards

Justification for making a direct award in relation to Threshold (ii), including call off contracts directly awarded from Framework Agreements, may include the following: -

- a. Where the relevant Chief Officer is satisfied that the requirement of the contract is unique or, after research, only one suitable source of supply can be identified;
- b. When, for reasons of extreme urgency or risk to life or health and wellbeing, the other procurement procedures cannot be complied with;
- c. Where, for example, in the case of certain residential or supported living services, there are only limited places available for a specific type of care and/or support and those places only become available occasionally and/or at short notice;
- d. Where the Council is instructed by a Children's Hearing or Educational Tribunal to place a child in a particular setting;
- e. Where the individual has a right to choose and direct their own accommodation and/or support;
- f. Where the Relevant Chief Officer is satisfied that the risk to service user(s) outweighs the benefits of advertising the requirement and awarding the contract or framework following competition; or
- g. In exceptional circumstances, a direct award may be made in relation to Threshold (iii), for example in relation to residential care homes, where the provider owns the property and delivers the service and we have no ability to re-tender to change the provider. In accordance with the Scottish Government's Best Practice Guidance: A public body should decide, on a case-by-case basis, whether or not to advertise the requirement and award a contract or framework agreement by

competition. A number of factors should be taken into account, including application of the procurement legislation, procurement policy and risk of legal challenge; application of local financial regulations and standing orders; and benefits and risks to people who use services and service delivery.

#### **15.4 Authority to Incur Expenditure in relation to Direct Awards**

**15.4.1** Where the contract is for a service that does not facilitate individual placements:

**15.4.1.1** In relation to Threshold (i) – Approval by the relevant Chief Officer;

**15.4.1.2** In relation to Threshold (ii) - £50,000 up to the LTR Threshold and Threshold (iii): - The submission of a business case by the relevant Chief Officer to the IJB or, if applicable, the Strategic Commissioning Committee in advance of the contract being awarded: -

Where the direct award of a contract is being made for a service that does not facilitate individual placements, the business case must be approved by the Chief Officer in advance of the contract being issued. Where the direct award of a contract is being made as a call off from a framework agreement, i.e. relating to care and support for an individual, authorisation to incur expenditure will be obtained in accordance with Care Management processes.

**15.4.2** Where the contract is for an individual placement, for any value, including call-off contracts from framework agreements, authorisation will be obtained in accordance with social work / care management procedures, for example, resource allocation or placing panel. Prior to call-off from any external framework agreement, an Adoption Report must be completed in accordance with the Procurement Manual.

#### **15.5 Authority to Carry Out Procurements**

The Social Care Commissioning, Procurement and Contracts team are Delegated Procurers for Health and Social Care Services, designated as such by the Head of Commercial and Procurement ~~Services~~.

