



# **Aberdeen City Council Procurement Regulations**

**2018**

# Aberdeen City Council Procurement Regulations

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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 the Council obtains best value in its procurement activity and all resultant contracts;
- d) provide a framework for detailed Procurement Guidance Notes; 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 **Committee** means the Strategic Commissioning Committee of the Council with responsibility for monitoring best value, internal financial control, corporate governance (including procurement), or any other matter to which the procedure for award of Council contracts may be relevant.

2.1.3 **Concession Contract** means a works concession contract or a services concession contract as defined by the Concession Contracts (Scotland) Regulations 2016.

2.1.4 **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.

2.1.5 **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.

2.1.6 **Contracts Register** means a record of contract details currently in place within the Council.

2.1.7 **Corporate Procurement 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.

- 2.1.8 **Council** means Aberdeen City Council.
- 2.1.9 **Delegated Procurement Authority (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.
- 2.1.10 **Delegated Procurer** means any officer holding Delegated Procurement Authority and authorised to carry out procurement activities.
- 2.1.11 **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.
- 2.1.12 **EU Procurement Directive** means the European legislative framework for public procurement in force at the time a procurement process is entered into.
- 2.1.13 **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.
- 2.1.14 **Inside Information** means information which relates directly or indirectly to ACC 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.
- 2.1.15 **Procurement Guidance Note** means a supplement to these Procurement Regulations which gives detailed guidance on an area within the Procurement Regulations.
- 2.1.16 **Procuring Service** means the service department of the Council with responsibility for procuring any particular requirement for supplies, services or works on behalf of the Council or for the disposal of surplus materials.
- 2.1.17 **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.
- 2.1.18 **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).
- 2.1.19 **Regulated Procurements** means a procurement where any contract formed will be a public contract the 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.
- 2.1.120 **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.

- 2.1.21 **Terms and Conditions** means the special and general arrangements, provisions and requirements of a contract.
- 2.1.22 **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 associated Procurement Guidance Notes may be grounds for disciplinary action.
- 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.
  - 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, the Head of Commercial and Procurement Services must give written approval for the use of the proposed framework agreement.
  - c) Any amendment or variation of an existing contract for the purchase of goods or services, or for the execution of works, where:
    - i. that amendment or variation would exceed the parameters of the approval of the original procurement, or
    - ii. the aggregate contract 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.

- 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 contract value, the Delegated Procurer must take into account the aggregate value of the particular requirement for supplies, services or works across the whole Council. 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 [Procurement Guidance Note 19](#).
- 3.8 All tendering for Supplies, Services and/or Works 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.
  - f) Any contract which, in the opinion of the Director of the procuring Service, 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 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.
  - 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 Service.

- 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. Any contract made on behalf of the Council under this paragraph shall be reported to the Strategic Commissioning Committee by the Delegated Procurer as soon as practicable.
- 3.12 The Procurement Regulations must be read in conjunction with the Procurement Guidance Notes 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 Commercial and Procurement Services.

## **4 Procurement Procedures**

### **4.1 Authority to Incur Expenditure**

- 4.1.1 No tender shall be invited or contract entered into unless the total estimated expenditure has been previously approved. The method of authorising a procurement is dependent on the Contract Value as follows:

4.1.1.1 Contracts below £50,000 (supplies/services) or £250,000 (works)

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

4.1.1.2 Contracts above £50,000 (supplies/services) or £250,000 (works) up to £1,000,000 (both supplies/services and works).

Contracts with an estimated value of above £50,000 (for supplies/services) or above £250,000 (works) up to £1,000,000 (both supplies/services and works) 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) seeking authority to conduct a procurement for the purchase of supplies, services or works. This will be submitted by the relevant Chief Officer to the Head of Commercial and Procurement Services. The approval of the Head of Commercial and Procurement Services is required prior to procurement being undertaken.

4.1.1.3 Contracts above £1,000,000 (supplies/services and works)

Contracts with an estimated value of above £1,000,000 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. The approval of that Committee is required prior to the procurement being undertaken.

#### 4.1.1.4 Expenditure via Framework Agreements

Delegated Procurers may procure supplies, services and works under external 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. Use of an external framework agreement by the Council has been approved in writing by the Head of Commercial and Procurement Services,
- 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 must be reported to the Head of Commercial and Procurement Services, and
- iv. If the aggregate Contract Value of call-off contracts under a framework agreement is likely to exceed £1million then the authority of the Strategic Commissioning Committee to incur the expenditure must be obtained in advance of expenditure of £1million being exceeded.

#### 4.1.2 Exceeding approved contract value

4.1.2.1 Where a contract value has been previously approved by the relevant Chief Officer, or Committee and it becomes apparent to the Chief Officer of the procuring Service that the indicative total 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 where the contract 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 2) 50% of the approved contract value; the relevant Chief Officer shall ensure that a report on the matter is submitted to the next meeting of the Strategic Commissioning Committee for consideration. This regulation applies to contracts equal to or greater than £1million. In such circumstances the indicative previously agreed total contract value cannot be exceeded without the relevant approval being received.

4.1.3 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 Guidance Note 3](#)).

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 value below £50,000 (for supplies and services) or £250,000 (for works), the Delegated Procurer shall follow [Procurement Guidance Note 4a \(supplies and services\)](#) and [4b \(works\)](#) and obtain written 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 Quotation Exemption Form (included in [Procurement Guidance Note 4a \(supplies and services\)](#) and [4b \(works\)](#)) 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 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 [Procurement Guidance Note 5a \(supplies and services\)](#) and [5b \(works\)](#).

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 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).

- 4.5.1 To ascertain how the procurement shall be undertaken in relation to the requirement, the Delegated Procurer shall follow [Procurement Guidance Note 6](#).
- 4.5.2 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 any associated Procurement Guidance Notes, are adhered to in order to ensure Best Value is achieved in relation to expenditure relating to supplies, services or works. 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 supplies, services and works.
- 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 relevant Procurement Guidance Notes are in place and that necessary revisions are made to these on a regular basis to reflect changes in legislation, Council policy or good practice.

### **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 Directorate follow the Procurement Regulations for all contracts let by their Directorate 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 associated Procurement Guidance Notes.
- 5.3.2 Each Director shall ensure that all contracts in place within their Directorate are entered into the corporate Contracts Register. The details required to be provided are detailed within [Procurement Guidance Note 9](#).

### **5.4 Delegated Procurers**

- 5.4.1 All Delegated Procurers will ensure compliance with relevant procurement legislation, these Procurement Regulations and Procurement Guidance Notes.
- 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, 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 supported businesses in the process, and;
  - iii. promote innovation.
- 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.
- 6.4 Detailed information is available within [Procurement Guidance Note 10](#).

## **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. 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 non-compliance.
- 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 of the Council, this may be delivered by that Council Service following consultation between the Chief Officers of the relevant Service(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 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 can demonstrate that the purchase is necessary to facilitate service delivery;
- b) The Director of the relevant Service 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 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, 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, 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 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 Commercial and Procurement Services 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.

## **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 relevant Procurement Guidance Notes.

### **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 **Procurement Guidance Note 11**.

9.2.2 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 procurement (e-procurement) 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 [Procurement Guidance Note 12](#).

- 9.4.2 Where in exceptional circumstances, electronic procurement is not utilised all procedures shall reflect as closely as possible those where electronic procurement is utilised. Tender issue, submission and opening shall, in these circumstances, be undertaken as per [Procurement Guidance Note 12](#).

## **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, electronic procurement is not utilised, tender receipt and submission shall be undertaken as per [Procurement Guidance Note 12](#).

## **10 Tender Evaluation**

- 10.1 Tenders shall be evaluated by a group of nominated individuals in accordance with the relevant Procurement Guidance Note.
- 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 Best Value 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 [Procurement Guidance Note 16](#)

## **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 threshold 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 Acceptance letters and debrief letters shall be prepared by the Delegated Procurer and approved by the relevant Category Manager within Commercial and Procurement Services. Debriefs shall be undertaken in accordance with relevant legislation.

## 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 value 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 procuring Service, 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 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 [Procurement Guidance Note 18](#).

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 [Procurement Guidance Note 9](#).



- 14.2 Each Procuring Service shall ensure that the required information as detailed within **Procurement Guidance Note 9** 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 Strategy, which shall be reviewed on an annual basis. The Corporate Procurement Strategy 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, the Chief Officer – Governance, the Chief Officer – Strategic Place Planning and the Chief Officer – City Growth shall submit a workplan for their Directorate/Service to the Head of Commercial and Procurement Services 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), and updating the Committee from time to time in the event of any new procurements being added to the workplan. The Director of the procuring Service shall ensure that required reports are brought to the Strategic Commissioning Committee.
- 14.7 The Head of Commercial and Procurement Services shall ensure that reports on matters specified in the Corporate Procurement Strategy, and otherwise as required by the Procurement Regulations, are brought to the Strategic Commissioning Committee.

## 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 and the process for approving expenditure will depend on the total estimated expenditure for the contract as follows: -

Estimated Contract Value / Threshold	Degree of Competition Required	Approval of Expenditure
(i) Up to £50,000	Written quotations must be	Chief Officer

		obtained to demonstrate best value to the Council in accordance with <b>Procurement Guidance Note 19.</b>	
(ii)	£50,000 up to the EU Light Touch Regime (“LTR”) Threshold (from 1 <sup>st</sup> January 2018 set at £615,278 but subject to change every second 1 <sup>st</sup> of January)	Direct awards may be made if supported by a Business Case approved by a Chief Officer in accordance with Procurement Regulation 15.4, otherwise a competitive tendering process must be undertaken in accordance with these Procurement Regulations. Fundamental EU Treaty principles must always be considered.	Chief Officer
(iii)	LTR Threshold up to £1million	Must be advertised in OJEU and the light touch provisions in The Public Contracts (Scotland) Regulations 2015 apply.	Submission of a Business Case by the relevant Chief Officer to the Chief Officer of the Integrated Health & Social Care Partnership, and approval by the Chief Officer of the Integrated Health & Social Care Partnership, prior to procurement being undertaken.
(iv)	£1million and above	Must be advertised in OJEU and the light touch provisions in The Public Contracts (Scotland) Regulations 2015 apply.	Submission of a Business Case by the relevant Chief Officer to the IJB and approval by the IJB prior to the procurement being undertaken.

### 15.3 Format of Business Case

Business Cases must be submitted in the format for Care and Support services, as approved by the Head of the Commercial and Procurement Service.

### 15.4 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.

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.

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

### **15.5.1 In relation to Threshold (ii) - £50,000 up to the LTR Threshold: -**

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.

### **15.5.2 In relation to Threshold (iii) - LTR Threshold and above: -**

The Business Case must be approved by.

### **15.5.3 In relation to Threshold (iv) - £1million and above: -**

The Business Case must be approved by the IJB or, if applicable, the Strategic Commissioning Committee in advance of the procurement being undertaken.

## **15.6 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.