

## Review of Procurement Regulations

Existing PR Reference	Proposed Change	Rationale for Change
Various	<p>Incorporation of the governance for concession contracts. A contract is a concession contract when the Council allows a third party to operate a service or undertake works (usually it is a service from a council owned premises) with a view to making a profit. Usually such an arrangement is without cost to the council.</p> <p>New provisions include:</p> <ul style="list-style-type: none"> <li>• Chief Officer of the commissioning cluster, following consultation with the Head of Commercial and Procurement has delegated authority to approve concession contracts under the EU threshold;</li> <li>• Permission to procure a concessionaire for concession contracts with a Contract Value over the EU Threshold must be approved by committee</li> <li>• Both under and over EU threshold Concession Contracts must be procured following the same processes as are set out for under and over EU threshold services or works contracts.</li> </ul> <p>(The EU Threshold in respect of Concession Contracts is £4,551,413 of <u>turnover from the contract</u> (this is already explained in the definition of Contract Value). Concession Contract above that value become subject to the rules of the Concession Contracts (Scotland) Regulations 2016.)</p>	<p>The regulations do mention concession contracts in places (for example the definition of "Contract Value" already includes what that means in the context of a concession contract), but there is no mention of them in other places. As concession contracts over a certain value are regulated (in the same way as services contracts over £50,000 and Works contracts over £250,000) the regulations should set out the procedure to be followed to award regulated concession contracts, and the committee approval and delegations.</p>

2.1.2	New definition: <b>Capital Programme</b> 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.	Term is used in proposed changes to para 4.1.1.2.
2.1.8	Defined term “Corporate Procurement Strategy” changed to “Corporate Procurement Plan” and similarly amended throughout the document. No change to the definition.	Procurement Strategy didn’t meet ACC’s definition of a strategy so wasn’t included as a strategy in the framework that was approved by the SCC. It was reclassified as a plan.
3.3	Addition of the following wording at the end of clause 3.3:  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.	The Aberdeen City Health and Social Care Partnership (ACHSCP) is a collection of NHS Grampian and Council employees undertaking procurements as directed by the ACHSCP. This addition has been made to clarify the requirement to follow the regulations of organisation for which the procurement is being undertaken for.  This also aligns with a similar addition proposed in the financial regulations.
4.1.1	Addition of wording to clarify that expenditure must be met from an approved budget.	Reflects what is stated in the Financial Regulations and also will clarify that “expenditure approval” and having an approved budget are two distinct requirements. Officers often think that if they have an approved budget, they can

		spend from it without further approval, however that is not the case.
4.1.1.2	<p>Expenditure and procurement approval for Business Cases above £250,000 for works contracts that relate to capital projects that are already part of the Capital Programme may be approved by 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.</p> <p>Business Cases that above £250,000 for works contracts that are not already part of the capital programme can only be submitted to the City Growth and Resources Committee with the approval of Chief Officer – Capital (previously it was Head of Commercial and Procurement).</p>	<p>To align with amendments proposed to Powers Delegated to Officers which were suggested to reflect the delegation of power approved at the previous Budget Meeting.</p> <p>To reflect that Full Council will approve the capital programme as part of the budget process and proposed additions out with that considered by CG&amp;R.</p>
4.1.1.4 (Expenditure via Frameworks)	Procurement of supplies, services and works must whenever possible be procured under Scotland Excel or Scottish Government Frameworks. Where this is not possible and the Contract Value is above £50,000 (services) and £250,000 (works), the delegated procurer must justify why it is not possible in their business case.	<p>Using frameworks not only give assurance on best value, the use of them mitigates the need for numerous and recurring individual procurement exercises reducing demand on internal resources.</p> <p>Scotland Excel and Scottish Government Frameworks are proposed as the first port of call because, as a member authority of the Scotland Excel Joint Committee, the Council pays an annual fee and is consulted on the frameworks that are put in place. Similarly, as a stakeholder, the Council is also consulted by the Scottish Government in respect of the framework agreements it puts in place. This means that it is more likely that the framework will meet the needs of the Council.</p>
4.1.3.1	Introduction of the delegated authority to Head of Commercial and Procurement, following consultation with the convener of Strategic	This is in line with procurement legislation (i.e. it is compliant to direct award in such circumstances).

	Commissioning Committee or the City Growth and Resources Committee (as appropriate) to approve expenditure on direct awards or contract extensions without the need for committee approval when 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.	The change is requested to streamline the commissioning of such goods, works or services where there is no other reasonable option.
3.9(ii), 3.11, 4.1.1.4(iv), 5.3.2, 13.1	Requirement to record contracts on the contracts register clarified to state that it is all contracts over £10,000 (supplies/ services or works) and £4.5m (concessions)	A clarification to bring the regulations in line with the Procurement Manual and what is happening in practice. (The legal requirement to record contracts on the Councils contract register applies only to regulated procurements (over £50k for supplies/services, £250k for works).
8.8	New provision setting out that agreements with ALEOs setting out terms and conditions of annual funding will require the approval of the Strategic commissioning committee.	Some of the service level agreements with the Council's ALEOs could fall within the definition of a Concession Contract. As the rules regarding Concession Contracts are now written into the regulations, without this new provision, such ALEO concession arrangements may not be subject to member scrutiny. It is assumed that members will wish to retain the right to scrutinise and approve all concession arrangements with ALEOs.
14.6	Chief Officer to the IJB included in the requirement to provide work plans and business cases to the Head of Commercial and Procurement	A clarification to reflect what is happening in practice. The procurements on this work plan are being conducted by the Council and the related expenditure is Council money, so the Chief Officer of the IJB follows the same processes as any other Chief Officer in the Council.
14.6.2 and 14.6.3,	Deleted the requirement for directors/ Chief Officers to submit workplans to the Strategic Commissioning committee/ City Growth and Resources Committee.	This is a duplication/ not what has been happening in practice. As is already set out in the regulations, the directors/ Chief Officers submit their work plans to the Head of Commercial and Procurement and he submits them to SCC/ CG&R.
none	Insert definition of "EU Threshold" being the thresholds published from time to time on	The term is used throughout the regulations at present but is not defined. There are different thresholds for different

	<a href="https://www.gov.scot/publications/eu-procurement-thresholds">https://www.gov.scot/publications/eu-procurement-thresholds</a>	types of contracts, so quoting the website is the most succinct way of doing this.
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