

Review of Procurement Regulations

Explanation of Proposed Amendments

Existing PR Reference	Proposed Change	Rationale for Change
2.1.14, 2.1.15, 2.1.25, 3.2, 3.5, 3.6, 3.7, 4.1.4, 4.4, 4.4.1, 4.4.3, 4.5, 4.5.1, 4.5.3, 9.3.1, 11.2, 12.2.1, 12.2.2, 15.2 iii, 15.2 iv	This includes the removal of references to the EU such as the EU Procurement Directive, EU Thresholds, the European Commission and the Official Journal of the European Union (OJEU). Then replacing those references with the relevant national references including the applicable Scots Law Procurement Legislation, the new U.K e-notification Service and re-defining EU Thresholds as Higher Value Thresholds. A new definition was added for the U.K e-notification Service.	Amendments were made to reflect changes to Procurement Legislation as a result of the UK's withdrawal from the EU. These are technical changes as the procedure remains unchanged with the exception of the requirement to advertise tenders on the new UK e-notification system.
3.11	Addition of IJB to the list of committees that it may be appropriate to report a use of the power under 3.10 of the procurement regulations (power to suspend the procurement regulations)	A technical change to reflect practice. The report should go to the committee that a business case detailing the expenditure would otherwise have gone. Contracts in relation to health and social care come under the remit of the IJB.
3.14	New regulation: Officers and members shall have regard to the Council's Risk Appetite Statement approved the Audit Risk and Scrutiny Committee in December 2020 (as may be updated from time to time) when undertaking procurements and/ or making decisions relating thereto.	To incorporate the Council's Risk Appetite Statement into the into the Council's Scheme of Governance as per the Instruction of the Audit Risk and Scrutiny Committee.
4.1.1.3	Added that in respect of the engagement of the services of an advocate or QC, Chief Officer – Governance should be consulted.	To align with Delegated Power to Officers, Chief Officer – Governance no. 5.

4.1.2.1	Changing the requirement to consult with the Head of Commercial and Procurement to an obligation to obtain approval.	To increase the emphasis on the need for people to come to the Commercial and Procurement Service before they exceed a previously approved contract value.
4.1.2.2	<p>removed works contracts from the remit of this regulation which requires committee to approve further expenditure where a contract is likely to exceed what has previously been approved and the additional cost is more than the lesser of £100,000 or 50% of the approved Contract Value.</p> <p>Added IJB as a relevant committee for contract variations requiring approval to be reported to (in addition to the Strategic Commissioning Committee).</p>	<p>Given the nature and value of works contract, contract change notices/ variations for greater than £100,000 are common and require a swift approval process. A requirement to refer to Committee for approval is not in the Council's best interests, as it could result in wider delay to a capital project (which as a result would likely result in additional costs to the Council) and could result in the Council being in breach of contract for failing to respond within required timescales (which will vary from project to project). A new regulation 4.1.2.3 has been added with arrangements that are more suitable for works contracts.</p> <p>A technical change to reflect practice. The report should go to the committee that a business case detailing the expenditure would otherwise have gone. Contracts in relation to health and social care come under the remit of the IJB.</p>
4.1.2.3	<p>New regulation: Where the Contract Value of a works contract is likely to exceed the indicative total Contract Value of that contract that has previously been approved, Chief Officer – Capital or Chief Officer - Corporate Landlord (as appropriate) may approve further expenditure provided it is affordable within the assigned budget including any contingency allowances following consultation with the Convener of the Capital Programme Committee. The requirement to obtain the prior approval of the Head of Commercial and Procurement in accordance with regulation 4.1.2.1 must be observed in all cases unless unforeseeable events occurring at a works site require an immediate</p>	<p>Explanation as to why 4.1.2.2 is not an appropriate governance mechanism for works is stated above.</p> <p>4.1.2.3 is proposed as an appropriate governance mechanism because:</p> <ul style="list-style-type: none"> • It enables a swift response to contractors; • It may only be used if expenditure is within the Chief Officer's assigned budget for the project (including contingency allowances); and • Provides for a gateway to check compliance with procurement law; • Retrospective reporting to committee throughout the life of a contract (rather than at the conclusion of the contract)

	<p>decision. Chief Officer - Capital and Chief Officer - Corporate Landlord shall keep a record of contract change notices/ contract variations that increase the price of a works contract procured by their cluster, and report them to the next scheduled Capital Programme Committee.</p>	<p>allows members to monitor how frequently and for what reasons a previously approved contract value is being exceeded.</p> <ul style="list-style-type: none"> • Retrospective reporting to committee is a proportionate solution to the need to approve a change swiftly, as Chief Officers are only to do so where possible within assigned budgets. <p>If this is not adopted another mechanism which facilitates swift (often same day) approval should be proposed, as the current situation is unworkable.</p>
<p>4.1.3 and corresponding change to 4.1.2.2</p>	<p>4.1.3 Added in additional text to reflect an alternative scenario where a contract may be considered for award to an existing supplier: a change of economic operator cannot be made for economic or technical reasons and would cause significant inconvenience or substantial duplication of cost.</p> <p>4.1.2.2 added “unless competition is absent for technical or economic reasons, in which case para 4.1.3 applies.</p>	<p>This is not materially different from the text already present, but has its roots in a different part of procurement legislation. The missing text is an omission we are seeking to close off to save renewals having to go to committee for approval when it is legal and in the best interests of the council to continue using the same supplier.</p> <p>The existing text of this regulation means the renewal would be subject to a legal check (to ensure the circumstances comply with procurement law) and would be subject to the approval of the Head of Commercial and Procurement Services and the Convener of the Strategic Commissioning Committee.</p>
<p>15.2(ii)</p>	<p>£50,000 up to the Light Touch Regime (“LTR”) Threshold (from 1st January 2020 set at £663,540 but subject to change every second 1st of January)</p>	<p>This is a technical change to reflect the increase in the Light Touch threshold set by government.</p>
<p>15.4.1.1 and 15.4.1.2</p>	<p>Deletion from 15.4.1.1. replaced with new sub-regulation 15.4.1.2:</p>	<p>Drafting changes for clarification.</p>

	In relation to Concession Contracts below threshold (iv), the submission of a business case by the relevant Chief Officer to Head of Commercial and Procurement, who shall consult with the convener of the Strategic Commissioning Committee or the Chair of the IJB as appropriate.	
15.4.2	Delegated Authority to approve expenditure on contracts for individual placements moved from another paragraph into this paragraph.	Drafting change only. To consolidate a previous paragraph that has now been deleted.