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Operational Governance: Review of Contract Standing Orders and Guidance on the Appointment of Consultants

Item number 8.5
Report number
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Wards

Executive Summary

The Council approved the current Contract Standing Orders (“CSOs”) and the Guidance on the Appointment of Consultants (“Appointment of Consultants”) on 29 October 2012, and subsequently approved updates on 5 February 2015. CSOs are a legal requirement and provide the powers to control and regulate purchasing throughout the Council. They place requirements on service areas to effectively plan and contract manage the resulting contracts.

The CSOs are kept under review by Commercial and Procurement Services (CPS) to ensure that they work effectively, and address changes in legislation. This report sets out the results of the review of current CSOs, the engagement that was undertaken, and summarises the main changes that are proposed following consultation. The report seeks approval for the proposed changes.

Links

Coalition Pledges P27 and P30
Council Priorities CP13
Single Outcome Agreement SO1

Operational Governance: Review of Contract Standing Orders and Guidance on the Appointment of Consultants

1. Recommendations

- 1.1 It is recommended that Council:
 - 1.1.1 approve the proposed revisals to the existing CSOs (as noted in Table 1 and Appendix 1 of this report)
 - 1.1.2 note that there will continue to be an annual review of CSOs to ensure that they work effectively and secure continuous improvement and Best Value; and
 - 1.1.3 approve the revisals to the Appointment of Consultants as noted in Table 2 and Appendix 2 of this report

2. Background

- 2.1 The Council is required to have CSOs under the Local Government (Scotland) Act 1973. CSOs provide the powers to control and regulate purchasing throughout the Council, and place requirements on service areas to effectively plan and contract manage the resulting contracts.
- 2.2 The purpose of the revised CSOs and the Appointment of Consultants is to improve purchasing controls to ensure Best Value is delivered, and the Council's statutory obligations are observed.
- 2.3 Since the CSOs were reviewed in February 2015 the Procurement Reform (Scotland) Act 2014 came into force on 18 April 2016 along with the Public Contracts (Scotland) Regulations 2015 and the Procurement (Scotland) Regulations 2016. These new pieces of legislation require a number of changes to the CSOs as detailed in this report.
- 2.4 Review of the operation of the current CSOs since February 2015 has also recognised that there is a need to:
 - 2.4.1 to improve the rules on Waivers
 - 2.4.2 standardise the requirement for Co-production in purchasing community services
 - 2.4.3 make changes required for continuous improvement

- 2.5 The revisions seek to implement the changes to the legislation, and further improvement the controls on purchasing. This will allow a balance against the need for sufficient flexibility to allow Council officers to achieve Best Value in delivering Council services.

3. Main report

Summary of proposed changes to the CSOs

- 3.1 The proposed CSOs changes will address legislative changes, practical issues encountered, clarify the rules, and improve purchasing controls. Minor changes have also been made for stylistic reasons. The proposed revised CSOs and Appointment of Consultants are set out in Appendices 1 and 2 to this report and the significant amendments are explained in Tables 1 and 2 below.

3.2 Table 1

Standing Order No.	Change	Explanation for the Change
1.1 Extent and Interpretation	<p>Extent: exclusion of purchase of heritable property</p> <p>appointed guardians or legal services designated by a court of tribunal</p> <p>contracts with statutory or public bodies on the basis of an exclusive right enjoyed by law</p> <p>Certain contracts are excluded under the new Regulations e.g. Arbitration or conciliation services or commissioning a unique work of art</p>	<p>Waivers were required for such instances as they were not previously excluded from CSOs.</p> <p>The procurement legislation does not require these instances to be procured in accordance with any set process and in the absence of discretion in most cases the waiver process is not adding a necessary procurement control.</p> <p>For example specific guardians may be appointed by court or court orders and construction works may necessitate contracts with statutory bodies such as SQA, Network Rail or Scottish Water where they hold the exclusive statutory rights.</p>
1.2 Definitions and Interpretation	<p>Co-production (see also 2.3)</p> <p>EU Thresholds - New definition of "Social and other Specific Services"</p>	<p>Definitions have been added for the purposes of clarification.</p> <p>The term 'Co-production' has been</p>

	<p>Definition of Director 2015 Regulations 2016 Regulations</p>	<p>defined to help with a consistent understanding. More detailed guidance is being produced for the Procurement Handbook with the input of EVOC.</p> <p>To reflect changes in structure.</p> <p>The new 2015 Regulations implementing the EU procurement directives introduce a requirement to openly and transparently advertise the opportunity for "Social and other Specific Services" over the current threshold of 750,000 Euros</p> <p>The 2015 Regulations which implement the new Procurement Directive and the 2016 Regulations which implement the Scottish Procurement Reform (Scotland) Act 2014 are defined and referred to throughout the CSOs.</p>
<p>1.3 General Principles</p>	<p>Co-production required where any material changes impacting upon service users and throughout contract management process.</p> <p>Requirement to comply with principles of equal treatment, non discrimination, transparency and proportionality.</p> <p>Fair working practices and Living wage to be encouraged.</p>	<p>Reflects Council commitment to Co-production and Compact values.</p> <p>A general legal requirement now which applies below EU thresholds to contracts over £50,000 (£2M works)</p> <p>In recognition of the Council's commitment to encourage payment of the Living wage and improved workforce conditions for employees of contractors and recent statutory guidance.</p>

	<p>Process for allocating grants will be in consultation with Chief Procurement Officer and adhere to Compact values.</p>	<p>In recognition of transfer of grants process from Payment to Third Parties to Commercial Excellence programme.</p>
<p>2.4 Procedures</p>	<p>Advice must be sought from the Head of Legal and Risk or CPS before following procedures other than competitive tendering.</p>	<p>While the procurement legislation allows for other procedures such as direct award i.e. negotiated procedure without advertisement, it is permitted within tightly defined instances so procurement or legal advice is required to ensure this is permissible and the legal challenge avoided.</p>
<p>2.5 Procedures</p>	<p>Health, social care and community services require to be procured in accordance with the Act, the 2015 and 2016 Regulations and any statutory guidance i.e. open and transparent advertising of contract opportunities.</p>	<p>The new EU procurement directive (implemented by 2015 Regulations) requires open and transparent advertising of contract opportunities for "social and other specific services" where the total value over the duration of the contract exceeds 750,000Euros.</p> <p>The procedure for awarding the contract may be determined by the Council provided it is fair, transparent and non discriminatory.</p> <p>For contracts below 750,000 Euros the Scottish Government have produced statutory guidance. Subject to Best Value obligations there is no strict requirement to advertise the opportunity in the EU Journal unless there may be cross border interest in the contract i.e. from out with the UK.</p>
<p>2.6 and 2.7 Procedures</p>	<p>Introduction of the sustainability duty. Requirement to consider how procurement can improve social,</p>	<p>The sustainability duty is a requirement of the Procurement Reform (S) Act 2014.</p>

	<p>environmental and economic wellbeing</p> <p>Requirement to consider how can make entry for SMEs, third sector and supported businesses easier and how innovation can be promoted.</p>	
2.8 Procedures	<p>Ring fenced contracts permitted for supported businesses now includes workers that are 'disadvantaged' in addition to disabled and threshold reduced from 50% to 30% of workers.</p>	<p>A change introduced by the Procurement Directive/2015 Regulations</p>
2.17 Procedures	<p>Introduction of provision addressing expenditure of PTA monies and requirement for Council consent.</p>	<p>While PTA monies will generally not be bound by procurement rules if spent by the Council through a Council contract they may be. Further there may be health and safety implications such as playground construction which requires contractors to be approved and insurances checked. There may also be ongoing maintenance costs which need to be budgeted for so where this applies Council consent will be required. More detailed guidance will be contained in the Procurement Handbook.</p>
3 The Role of Directors	<p>Conflict of interest measures</p> <p>Evaluation Panel suitably qualified</p> <p>Updating the contract register within 5 days</p> <p>Equality and Impact Rights Assessment</p>	<p>General requirements for the purposes of continuous improvement and to address changes in structure/</p>
5.1 Evaluation of	<p>Tenders to be evaluated on most economically</p>	<p>Changes introduced by the 2014 Act mean that 'lowest price' now only</p>

Tenders and Quotes	advantageous only and not lowest cost unless below EU thresholds or for call off contracts	permitted for procurements below EU thresholds or call offs
7.1.2 Eligibility to Tender	Prior poor performance is now included in grounds for excluding contractors from bidding for a tender	Now permitted by the 2015 Regulations along with other grounds
9.1 Waiver of CSOs	<p>Considerations justifying a waiver in the best interests of the Council to include risk of successful challenge, impact on service users and best value</p> <p>Simplified table referring only to waivers for best interests</p> <p>The reason for retrospective waivers must be provided</p> <p>A waiver is not a contract so a contract must also be put in place</p> <p>Waivers are not required for procedures permitted by the Regulations e.g. contracts with another public body with the aim of providing public services or negotiated procedure permitted for reason of exclusive rights</p>	<p>General requirements for the purposes of continuous improvement.</p> <p>Clarity that waivers are not required for those procedures that legislation doesn't require to be tendered e.g. negotiated procedure without advertisement</p> <p>The perception of waivers is negative yet many waivers are sought for grounds fully permitted by the Procurement Regulations. Waivers were required originally to provide an audit trail but to address the issue of perception it is considered advisable to exclude procedures and instances permitted by the Regulations</p>
10.1 Contract Extensions or Variations	To increase the variation level which may be approved by a Director to not more than EU thresholds (£1million for works) and less than 10% (15% for works) of the contract value	<p>The cost of works contracts will often increase due to ground conditions being an unknown at the outset of the contract. The requirement for committee consent can introduce delays to the programme</p> <p>For service contracts there may be the need for additional services</p>

		<p>inextricably linked to the original services.</p> <p>The suggested caps reflect what is permitted under the new Regulations with the exception of works which is £4.3million.</p>
11 National Frameworks	Suggestion that a national framework may be used for call offs without delay due to reporting cycles. Framework would not be adopted without Committee approval.	Several instances recently where large Scotland Excel contracts are about to expire e.g. Groceries and while Scotland Excel have put a contract in place to replace these, our reporting lead in times results in a gap in service provision.
Schedule	<p>Committee approval for works contracts increased from £1.5M to £2M</p> <p>New provision £50,000 to EU Threshold for Social and other Specific Services for Health or Social Care Services</p>	<p>The Regulated procedure applies for works contracts above the £2M threshold. The approval threshold has been increased in line with this to avoid confusion over the different thresholds.</p> <p>To follow statutory guidance</p>

3.4 Proposed changes to the Appointment of Consultants

Table 2

Provision No	Change	Explanation for the Change
4 Committee Approval	Consultants involved in the delivery of a works project which is below Committee approval levels shall not require Committee consent	Minor amendment to this provision to assist clarity.

4. Measures of success

- 4.1 The measure of success of the revised CSOs will be compliance with new procurement legislation, improved controls, increased compliance against Procure to Pay targets, delivery of better value contracts and a reduction in non contracted and retrospective spend and waivers.

5. Financial impact

- 5.1 The changes to CSOs are expected to support the delivery of planned savings through the Commercial Excellence programme and in line with budget commitments.
- 5.2 Approval of these revised financial controls will enhance the management of purchasing across all service areas.

6. Risk, policy, compliance and governance impact

- 6.1 The revisions will improve controls, increase compliance and improve the governance of contracts.
- 6.2 They will also assist with achieving best value, adherence to mandatory legislative and regulatory practices, and reduce the risk of legal challenge.

7. Equalities impact

- 7.1 There are no equalities impacts as a result of this report.

8. Sustainability impact

- 8.1 The requirement to consider how procurement can improve social, environmental and economic wellbeing and make entry for SMEs, third sector and supported businesses easier and promote innovation will have significant benefits for the City of Edinburgh.

9. Consultation and engagement

- 9.1 The CSOs were prepared in consultation with the Convenor and Vice Convenor of the Finance and Resources Committee, EVOG as representatives of the third sector in Edinburgh and a wide range of officers involved in procuring and commissioning across all service areas of the Council, as well as Senior Management Teams. The revisions have been prepared in response to review by CPS and feedback as to improvements that could be made, to streamline processes and practical difficulties experienced following implementation.

10. Background reading/external references

[City of Edinburgh Council's Contract Standing Orders](#)

[Operational Governance: Review of Contract Standing Orders and Guidance on the Appointment of Consultants - Report to City of Edinburgh Council of 5 February 2015](#)

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11. Links

Coalition Pledges	P27 and 30
Council Priorities	CP 13
Single Outcome Agreement	SO1
Appendices	Appendix 1 –Contract Standing Orders Appendix 2 – Guidance on the Appointment of Consultants



CONTRACT STANDING ORDERS

2 June 2016

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Introduction

These Contract Standing Orders of the City of Edinburgh Council (“Council”) apply from 2 June 2016 and apply (with certain exceptions) to all contracts made by or on behalf of the Council for the procurement of the execution of works, the supply of goods and materials to the Council, and/or for the provision of services.

1 Preliminary

1.1 Extent and interpretation

- 1.1.1 The Council makes these Standing Orders in terms of section 81 of the Local Government (Scotland) Act 1973.
- 1.1.2 These Standing Orders must be interpreted in accordance with the key principles of transparency, equal treatment, non-discrimination and proportionality.
- 1.1.3 These Standing Orders apply from 2 June 2016 and apply, subject to the provisions of Standing Order 1.1.5, to all contracts made by or on behalf of the Council for the procurement of the execution of works, the supply of goods and materials to the Council, and/or for the provision of services (including consultancy services).
- 1.1.4 The Standing Orders are subject to the over-riding provisions of European Union, United Kingdom, or Scottish legislation. They are also subject to any EU Commission, UK government or Scottish Executive guidance on public procurement that may be issued from time to time.
- 1.1.5 The Standing Orders do not apply to any of the following:
 - 1.1.5.1 contracts of employment;
 - 1.1.5.2 contracts solely relating to the lease, purchase or disposal of heritable property;
 - 1.1.5.3 the allocation of direct payments or personal budgets under options 1, 2 or 4 of the Social Care (Self Directed Support) (Scotland) Act 2013
 - 1.1.5.4 appointed guardians or legal services designated by a court of tribunal, any persons appointed under The Curators ad Litem and Reporting Officers (Panels) Scotland Regulations 2001 and the appointment of board members required by statute
 - 1.1.5.5 contracts with statutory or public bodies on the basis of an exclusive right enjoyed by law
 - 1.1.5.6 those contracts excluded by the 2015 or 2016 Regulations for example arbitration or conciliation services

- 1.1.6 The Standing Orders must be read in conjunction with, and all Council staff must comply with, the Scheme of Delegation to Officers, the Council's Financial Regulations, the Procurement Handbook and the Council's guidance on the Appointment of Consultants. Where there is any discrepancy, the Standing Orders shall take precedence.
- 1.1.7 Failure to comply with these Standing Orders when making purchases or seeking offers may result in disciplinary action.
- 1.1.8 Any query regarding the application or interpretation of these Standing Orders should be made in the first instance to the Director of Resources.

1.2 Definitions and interpretation

- 1.2.1 "Act" means the Procurement Reform (Scotland) Act 2014;
- 1.2.2 "Best Value" means the legal duty to secure continuous improvement in the performance of the Council's functions as set out in section 1 of the Local Government in Scotland Act 2003 as follows:-

"1 Local authorities' duty to secure best value

(1) It is the duty of a local authority to make arrangements which secure best value.

(2) Best value is continuous improvement in the performance of the authority's functions.

(3) In securing best value, the local authority shall maintain an appropriate balance among—

(a) the quality of its performance of its functions;

(b) the cost to the authority of that performance; and

(c) the cost to persons of any service provided by it for them on a wholly or partly rechargeable basis.

(4) In maintaining that balance, the local authority shall have regard to—

(a) efficiency;

(b) effectiveness;

(c) economy; and

(d) the need to meet the equal opportunity requirements.

(5) The local authority shall discharge its duties under this section in a way which contributes to the achievement of sustainable development.

(6) In measuring the improvement of the performance of a local authority's functions for the purposes of this section, regard shall be had to the extent to which the outcomes of that performance have improved.

(7) In this section, "*equal opportunity requirements*" has the same meaning as in Section L2 of Part II of Schedule 5 to the Scotland Act 1998 (c.46)";

- 1.2.3 "Contract Manager" means the nominated Contract Manager for a specific contract who is responsible for dealing with supplier performance and contractual matters of a day to day basis;
- 1.2.4 "Convener" means the Convener of the Council, a committee or sub-committee of the Council;
- 1.2.5 Co-production – means the real and meaningful involvement of the citizens of Edinburgh including future recipients of the services and key stakeholders and suppliers (both current and potential) in how and what community services and related

goods and works are delivered with regard to the National Standards for Community Engagement.

- 1.2.6 “Director” means the relevant Director (or the Head of Safer and Stronger Communities) of the procuring service area or for the purpose of exercising any powers set out in these Standing Orders the Chief Executive of the Council or, in the case of cross-directorate purchasing or absence of the relevant Director (or Head of Safer and Stronger Communities), such Head of Service as that Director has nominated in accordance the Scheme of Delegation, the Director of Resources or such director as the Chief Executive may nominate.
- 1.2.7 “EU Thresholds” means the prescribed threshold values set by the EU Commission for supply, services, works, Social and other Specific Services or concession contracts as they may be amended from time to time;
- 1.2.8 “Legislative Exemptions” means an exemption from the application of procurement rules under EU law and principles developed through case law and other means
- 1.2.9 “Procurement Handbook” means the procurement handbook issued by the Director of Resources, setting out the detailed requirements for the conduct of procurement activity within the Council (as amended from time to time);
- 1.2.10 “Procurement Requirement” means a document setting out as a minimum:-
- 1.2.10.1 what is the Council's requirement for the goods, works or services and why do we need it?
 - 1.2.10.2 what are all the available options, including internal provision, which is the best and why?
 - 1.2.10.3 can and should the Council afford it?
 - 1.2.10.4 what are the proposed supplier management arrangements and who is the nominated Contract Manager as required by Contract Standing Orders?
 - 1.2.10.5 how do we track, measure and account for the benefits?
- 1.2.11 “2015 Regulations” means the Public Contracts (Scotland) Regulations 2015 or successor legislation (as amended from time to time);

- 1.2.12 “2016 Regulations” means the Procurement (Scotland) Regulations 2016 or successor legislation (as amended from time to time);
- 1.2.13 “Regulated procurement” means a procedure to award a regulated contract being a public contract which is equal to or greater than £50,000 (other than works or health or social care contracts) or £2million for works contracts;
- 1.2.14 “Schedule” means the schedule to these Standing Orders;
- 1.2.15 “Social and other Specific Services means a public contract or framework for social and other specific services as defined by the 2015 Regulations including:-
- 1.2.14.1 Health, social and related services
 - 1.2.14.2 Administrative social, educational, healthcare and cultural services
 - 1.2.14.3 Other community, social and personal services
 - 1.2.14.4 Legal services
 - 1.2.14.5 Investigation and security services
 - 1.2.14.6 Postal services
- 1.2.16 “Standing Orders” means these standing orders including the Schedule and “Standing Order” shall be interpreted accordingly.

1.3 General Principles

- 1.3.1 The relevant officer with responsibility for commissioning and/or procuring shall, prior to commencing any procurement process, ensure that an appropriate Procurement Requirement that meets the strategic and service objectives of the Council is completed in order to ensure that Best Value is achieved, that it complies with relevant sustainable development and equality requirements required by law and Co-production with key stakeholders is planned,
- 1.3.2 The Procurement Requirement shall include consulting with other Council service areas to ensure that where there is a need for the same or similar services that they are jointly procured where appropriate. Where the approximate value of any proposed procurement is likely to exceed £1 million (or £25,000 in the case of consultancy spend) the relevant Procurement Requirement shall require the approval of the relevant Director prior to proceeding to procurement.

- 1.3.3 All potential contracts above the EU thresholds and Regulated procurements must comply with the general principles of equal treatment, non discrimination, transparency and proportionality. Procurements must not be designed with the intention of unduly favouring or disadvantaging any potential tenderer.
- 1.3.4 Throughout the life of a contract the contract should:-
- a. comply with the minimum standards set out in the Procurement Handbook and
 - b. be managed by the Contract Manager in respect of
 - i. performance;
 - ii. compliance with the specification and other terms of the contract;
 - iii. cost and benefits;
 - iv. Best Value requirements;
 - v. equality requirements;
 - vi. delivery and risk management; and
 - vii. continuous improvement and Co-production principles.
- 1.3.5 All procedures for initiating procurement, developing procurement plans, inviting and receiving tenders, approval of contracts, and all contractual arrangements entered into shall comply with the Council's equality and sustainability requirements and policies, shall encourage fair working practices and payment of the Living Wage and, where appropriate, contractual or procurement arrangements shall include the use of community benefit clauses.
- 1.3.6 All expenditure must comply with the Council's Financial Regulations.
- 1.3.7 Grants while not subject to the full application of the procurement regulations should be allocated in consultation with the Chief Procurement Officer and are subject to the requirement to
- c. secure Best Value
 - d. comply with the Council's Finance Rules
 - e. adhere to the Compact values in particular fairness, transparency, equality of treatment and mutual respect; and
 - f. comply with any guidance on grants in the Procurement Handbook

2 Procedures

- 2.1 In addition to the obligations in Standing Order 1.3, before commencing a tendering procedure or making a purchase where no contract exists the relevant Director must consult with the Chief Procurement Officer to establish whether:
 - 2.1.1 any existing contracts or framework contracts accessible to the Council may fulfill their requirements and provide best value; or
 - 2.1.2 there is any existing internal provision or other resources which could be used.
- 2.2 The procedure for the award of any contract shall depend upon the estimated aggregated value of that contract. The EU rules on aggregation of contracts shall apply and the artificial splitting of purchase orders or requirements to avoid the application of these Standing Orders is not permitted.
- 2.3 Subject to Standing Order 9, or where otherwise legally permitted in respect of proposed contracts which exceed the Regulated procurement thresholds provided by the Act or the EU Thresholds, the minimum associated tendering procedures that must be applied are detailed in the Schedule.
- 2.4 For a procedure other than competitive tendering e.g. the negotiated procedure without prior advertisement, advice must be sought from the Head of Legal and Risk and/or Commercial and Procurement Services.
- 2.5 Health, social care and community services shall be procured in accordance with the Act, the 2015 Regulations, the 2016 Regulations, the Procurement of Care and Support Services 2016 (Best Practice) any statutory guidance issued under the Act and the principles of Co-production. For all purchases in excess of 750,000Euros the procedure shall be sufficient to comply with the principles of transparency and equal treatment of economic operators.
- 2.6 For all purchases in excess of £50,000 for goods and services and £2million for works the sustainable procurement duty introduced by the Act requires that before buying anything the Council must think about how it can improve the social, environmental and economic wellbeing of the area it operates with a particular focus on inequality and then act in a way that secures these improvements.
- 2.7 In accordance with its sustainable procurement duty the Council must consider how its procurement processes can facilitate the involvement of SMEs, third sector bodies and supported businesses and how innovation can be promoted. For contracts over the EU thresholds a contract may be awarded in the form of separate lots and where the decision is not to award in the form of separate lots this should be explained in the procurement documents.
- 2.8 The Council may reserve the right to participate in a tendering procedure to providers operating supported businesses, supported employment programmes or supported factories where more than 30% of the workers are disabled or disadvantaged persons in accordance with the 2015 Regulations. Where this right is exercised by the Council the contract award procedures

provided by the Regulations and Act shall be followed.

- 2.9 Where legally permissible the Council shall seek to ensure that for purchases or contracts of an estimated value of £50,000 or less that at least one Small or Medium Enterprise (SME) from the City of Edinburgh or an SME who is a significant employer within the City of Edinburgh is invited to tender in any process. For future repeat procurements for similar goods, services or works the Council shall seek to ensure that at least one new SME from the City of Edinburgh or a new significant employer within the City of Edinburgh is invited to tender in any process.
- 2.10 Direct purchasing below £3,000 where the purchase cannot be secured from an existing contracted supplier without competitive tendering is permissible subject to the Council's duty to secure Best Value. Best Value will normally be secured by obtaining 3 quotes and/or evidence of firm fixed prices.
- 2.11 Direct purchasing above £3,000 without seeking quotes is permissible only in those circumstances that would be permitted by the Act, the 2015 Regulations, the 2016 Regulations or in accordance with Standing Order 9.
- 2.12 The Chief Procurement Officer shall be consulted as appropriate in respect of tendering arrangements for any proposed contracts with an estimated value of less than £25,000.
- 2.13 The Chief Procurement Officer shall advise on and make all tendering arrangements for any proposed contracts with an estimated value in excess of £25,000.
- 2.14 If an unsuccessful tenderer brings a written or formal challenge against the Council in relation to a tender exercise or questions the integrity of the tender process, the recipient of the notice of challenge or query must inform the Chief Procurement Officer. The Chief Procurement Officer must inform the Head of Legal and Risk as to potential legal challenges.
- 2.15 Parent Teacher Association monies may be subject to the application of the procurement regulations where the contract is entered into by the Council. The prior consent of the Council must be obtained where the expenditure of Parent Teacher Association monies will result in alterations to Council land or buildings require equipment to be fixed to Council land or buildings, have health or safety implications or maintenance obligations.

3 The Role and Responsibilities of Directors

- 3.1 Each Director retains responsibility for selecting and appointing contractors, providers or suppliers for their directorate, but shall seek guidance as appropriate from the Chief Procurement Officer. The Chief Procurement Officer shall be consulted at the earliest opportunity to ensure that all purchasing arrangements are made in compliance with these Standing Orders.
- 3.2 Each Director has responsibility for all contracts tendered and let by their Directorate and is accountable to the Council for the performance of their duties in relation to contract letting and management, which are:

- 3.2.1 to ensure compliance with these Standing Orders and the Procurement Handbook;
- 3.2.2 to ensure no contract is entered into by the Council without seeking advice where appropriate from the Chief Procurement Officer and Head of Legal and Risk and having proper regard to such advice;
- 3.2.3 to ensure that appropriate contract security (for example guarantees or performance bonds) is obtained where required or considered prudent;
- 3.2.4 to prepare and approve where required by these Standing Orders an appropriate Procurement Requirement for each proposed purchase or contract;
- 3.2.5 to prepare, in consultation with the Commercial and Procurement Manager, appropriate contract and tender documents which clearly specify the scope, quality and quantity of the works, goods or services;
- 3.2.6 to check whether there is any existing Council or other collaborative framework that can appropriately be used to achieve Best Value for the Council before undergoing a further competitive tender process;
- 3.2.7 to keep all bids confidential subject to any legal requirements;
- 3.2.8 to take appropriate measures to prevent, identify and remedy conflicts of interest arising in the conduct of procurement procedures so as to avoid distortion of competition and to ensure equal treatment of tenderers;
- 3.2.9 to ensure that any evaluation panel is suitably qualified and trained to assess tenders;
- 3.2.10 to ensure no supplier is requested by the Council to provide goods, services or works without first having a valid purchase order in place;
- 3.2.11 to enter all purchase order information onto the relevant Council financial system prior to the service or goods being delivered;
- 3.2.12 to ensure that for contracts of a value greater than £3,000 for goods and services and £10,000 for works the contract register record is updated within 5 working days following issue of contract award and in any event prior to start date of contract
- 3.2.13 to ensure all relevant staff putting in place a contract have read and understood the Council's CSOs are familiar with these Standing Orders and the Procurement Handbook or other guidance issued in respect of these Standing Orders;
- 3.2.14 to conduct a timely Equality and Impact Rights Assessment
- 3.2.15 to ensure contracts are awarded and any appropriate contract security documents are signed before work, services or supply provision commences;

- 3.2.16 to put in place arrangements for efficient contract and supplier management including the identification of a Contract Manager and management of benefits and performance, for the entire duration of the contract;
- 3.2.17 to retain a copy of the contract and keep proper records of all contracts and tenders, including minutes of tender evaluation panels and other meetings;
- 3.2.18 to take immediate action in the event of a breach of these Standing Orders or non compliance with the Procurement Handbook within his/her directorate;
- 3.2.19 to consult with Elected Members on matters reasonably considered politically, reputationally or financially sensitive in relation to proposed procurement activity; and
- 3.2.20 to make appropriate arrangements for the opening of tenders and their secure retention so as to protect the integrity of the procurement process and where tenders are received in paper form to ensure they are opened in the presence of an officer nominated by the Commercial and Procurement Manager together with a witness.

4 Tender Documents

- 4.1 The tender documents shall clearly set out the proposed method of evaluation as well as the scope, timing, quality and quantity of the works, services and supplies required by the Council.
- 4.2 The Head of Legal and Risk will be consulted on conditions of contract for particularly significant or complex projects or contracts.

5 Evaluation of Tenders and Quotes

- 5.1 Tenders and quotes shall be evaluated on the basis of most economically advantageous and the best price-quality ratio. Lowest cost will only be permitted for contracts below EU thresholds or contracts placed under frameworks where best value has already been established.
- 5.2 Tenders and quotes received after the closing date and time stipulated for return of tenders, or tenders which are incomplete or in an incorrect format will not be opened or considered unless the Council, acting proportionately, decides that there are circumstances which allow it to exercise discretion in allowing consideration of the tender. The Chief Procurement Officer must be consulted if tenders which are submitted late, incomplete or in an incorrect format are to be evaluated.
- 5.3 Tenders shall be evaluated by a tender evaluation panel which should comprise officers having sufficient knowledge and technical ability to enable them to evaluate detailed tenders appropriately. The evaluation process shall follow any guidance issued by the Chief Procurement Officer and be fully and appropriately documented.

- 5.4 Where a proposed purchase or tender involves the use, adoption or purchase of an Information Communication Technology (ICT) or digital service, software or hardware the advice of the Council's ICT services must be sought at the Procurement Requirement stage and any purchase must be undertaken in collaboration with the Council's ICT Solutions service The Council's ICT contract should be used for any Council requirements unless it is unsuitable or will not provide best value..

6 Acceptance and Award of Contracts

- 6.1 Following the conclusion of the procedure for awarding contracts set out in these Standing Orders and, where applicable, the expiry of the mandatory standstill period, the resulting contract between the Council and successful tenderer shall follow the approval process detailed in the Schedule. The signing of the contract document or letter of acceptance shall be in accordance with the Scheme of Delegation.

7 Eligibility to tender and termination, variation or suspension of a contract

- 7.1 The relevant Director, having due regard to legal advice from the Head of Legal and Risk , may treat a potential tenderer as ineligible to tender where there are reasonable grounds to conclude that the contractor or potential tenderer:

7.1.1 has committed an act of grave misconduct in the course of their business or profession; or

7.1.2 has shown significant or persistent deficiencies in the performance of a substantive requirement under a prior public contract which led to early termination of that prior contract, damages or other comparable sanctions, subject to consideration by the Council of any measures taken to demonstrate reliability; or

7.1.3 falls within one or more of the other grounds set out in the 2015 Regulations or

7.1.4 has compiled, used, sold or supplied a prohibited list which:

i. contained details of persons who are or have been members of trade unions or persons who are taking part or have taken part in the activities of trade unions, and

ii. was compiled with a view to being used by employers or employment agencies for the purposes of discrimination in relation to recruitment or in relation to the treatment of workers, within the meaning of the Employment Relations Act of 1999 (Blacklists) Regulations 2010.

- 7.2 The relevant Director may terminate, suspend or vary a contract, in accordance with the express or implied terms of the contract and may also take such further action with regard to any contract as the Council is legally entitled to take.

- 7.3 The relevant Director will where appropriate report any actions taken in accordance with Standing Order 7.1 to 7.3 to the next meeting of the Finance and Resources Committee and notify the Chief Procurement Officer without

delay.

8 Electronic Procurement

- 8.1 Requests for quotations and invitations to tender should be issued and/or received by electronic means.

9 Waiver of Contract Standing Orders and Legislative Exemptions

- 9.1 The requirement to comply with any provision of these Standing Orders may be waived in accordance with the table in 9.2 below if on considering a written report by an appropriate officer the waiver is considered to be in the Council's best interests having regard to

9.1.1 best value

9.1.2 any potential risk of successful legal challenge

9.1.3 the principles of transparency, equal treatment, non discrimination and proportionality and

9.1.4 any impact upon services users

- 9.2 Table setting out the relevant values and waiver approval requirements:

Value	Approval Procedure
£3,000-£25,000 (excluding consultancy spend)	The relevant Head of Service or the relevant Director and the Chief Procurement Officer
£25,000-£250,000 (0-£25,000 in the case of consultancy spend)	The relevant Director and the Director of Resources (or any other Director where the relevant Director is the Director of Resources)
Above £250,000 (above £25,000 in the case of consultancy spend)	The Council or Finance and Resources Committee

- 9.3 A record of the decision approving a waiver must be kept by the relevant Director and a copy of such signed waiver or Committee approval provided to the Chief Procurement Officer who shall where appropriate make an entry in the contract register and any other appropriate register.

- 9.4 Where prior approval for a waiver of these Standing Orders has not been obtained in advance the reason for this must be contained in the waiver or Committee report.

- 9.5 Where a waiver, committee approval or procedure permitted by this Standing order 9 allows the direct award of a contract which exceeds £50,000 then a contract award notice must be recorded on the Public Contracts Scotland portal and the relevant Director must notify Commercial and Procurement Services of the details to allow entry on the contract register and any other appropriate register,

- 9.6 Where these Standing Orders have been waived in accordance with this Standing order 9 the relevant Director shall put in place a written contract for

that requirement without delay, inform the Chief Procurement Officer and ensure appropriate plans are made for tendering the requirement where appropriate.

9.7 The requirement to waive these Standing Orders is not required where:-

9.7.1 a procedure or specific situation other than the open or restricted procedure is permitted by the 2015 Regulations, 2016 Regulations, the Act, EU law or relevant case law. In deciding whether the use of another procedure or specific situation is permitted the relevant Head of Service or Director shall seek advice from the Chief Procurement Officer and/or Head of Legal and Risk.

9.7.2 the circumstances of the proposed contract are covered by legislative exemptions, for example certain research and development services

9.7.3 contracts with another public body for the purposes of ensuring co-operation with the aim of providing public services or

9.7.4 a tender process or contract negotiations are currently in progress and contact award and contract commencement is anticipated within four months.

10 Contract extensions or variations

10.1 Subject to 10.2, a Director (or where the value or consequent change in price does not exceed £25,000, the relevant Head of Service) may authorise an extension to a contract, or any other variation including a consequent change in price, provided such extension or variation has been provided for in the initial procurement documents which may include price revision clauses or options, is not contrary to the Act, the 2015 or 2016 Regulations or the Council's EU obligations and is the lower of

Services	Current EU threshold or	10% of the initial contract value
Supplies	Current EU threshold or	10% of the initial contract value
Works	£1 M or	15% of the initial contract value

without first obtaining the approval of Council or the Finance and Resources Committee.

10.2 A Director or Head of Service shall not extend or vary a contract if such extension or variation is not expressly permitted by the contract without seeking advice from the Head of Legal and Risk .

10.3 The EU rules on aggregation of contracts shall apply.

11 National Frameworks

11.1 In order to purchase from National Frameworks such as those put in place by

Scotland Excel or Scottish Procurement without delay the Council may make use of the framework and make purchases under that framework subject to seeking approval to continue to use the framework at the next meeting of the Finance and Resources Committee and subject to any conditions the Committee may make.

12 Review of Standing Orders

12.1 These Standing Orders will be reviewed annually.

RELEVANT VALUES AND ASSOCIATED TENDERING PROCEDURE

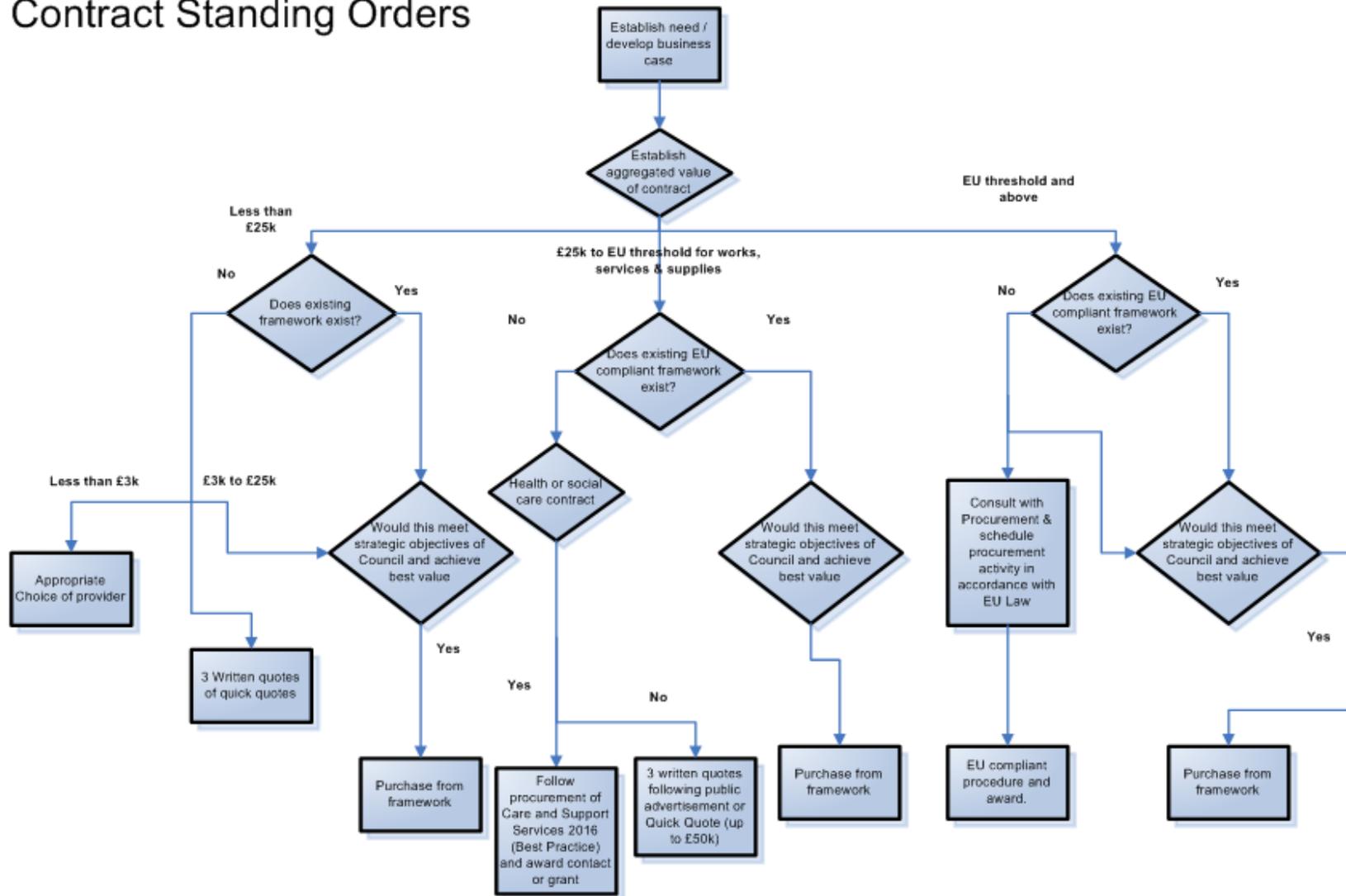
Total value for duration of contract or purchase (aggregation rules apply)*	Procedure	Approval of contractual obligation	Committee Approval
Up to £3,000	<p>Use existing local, national, Council framework or call- off contracts or</p> <p>Appropriate choice of provider documenting reasoning and quote <i>or</i> <i>or</i> Public Contracts Quick Quote facility.</p> <p>Best Value must be delivered and this will usually be demonstrated by more than one quote.</p>	Director, Head of Service or such other officer to whom the relevant Director or Head of Service has appropriately delegated their powers to in consultation with Chief Procurement Officer as appropriate	Not required
£3,000 to £25,000 (excluding health or social care services)	<p>Use existing local, national, Council framework or call- off contracts or</p> <p>Obtain minimum of 3 quotes using Public Contracts Scotland "Quick Quote" facility or</p> <p>written/formal quotations –written description of requirements followed by written / electronic submission of quotes</p>	Director, Head of Service or such other officer to whom the relevant Director or Head of Service has appropriately delegated their powers to in consultation with Chief Procurement Officer as appropriate, and Head of Legal and Risk as appropriate	Not required
£25,000 to	Use existing local, national, Council framework or call- off	Director or Head of Service (where delegated authority has	Not required with the exception of appointment of

<p>EU Thresholds for services and supplies (excluding health or social care services)</p>	<p>contracts, or-</p> <p>Invitation to tender following public advertisement - Public Contracts Scotland portal and where these are Regulated Procurements comply with the provisions for Regulated procurements required by the Act and the 2016 Regulations</p> <p>or</p> <p>Public Contracts Quick Quote facility up to a value of £50,000.</p>	<p>been given) in consultation with Chief Procurement Officer (and Head of Legal and Risk as appropriate) or up to £25,000 in the case of services of a consultant as set out in the guidance on the appointment of consultants.</p>	<p>consultants where the value exceeds £25,000 as set out in the guidance on the appointment of consultants.</p>
<p>£25,000 to EU Thresholds for works</p>	<p>Use existing local, national, Council framework or call-off contracts, or</p> <p>Invitation to tender following public advertisement - Public Contracts Scotland portal and where these are Regulated Procurements comply with the provisions for Regulated procurements as set out in the Act and the 2016 Regulations</p>	<p>Director or Head of Service (where delegated authority has been given) in consultation with Commercial and Procurement Manager (and Head of Legal and Risk as appropriate) up to £500,000</p> <p>Director approval between £500,000 and £2million.</p>	<p>Approval to award sought from Finance and Resources Committee **or Council where value exceeds £2million</p>
<p>£25,000 to EU Threshold for Social and other Specific Services for Health or Social Care Services</p>	<p>Use existing local, national, Council framework or call-off contracts or</p> <p>Contracts to be awarded in accordance with the Procurement of Care and Support Services 2016 (Best Practice) and any statutory guidance issued under the Act</p>		
<p>Above EU Threshold for services, Social and other Specific Services and</p>	<p>Use existing local, national, Council framework or call-off contracts, or</p>	<p>Director approval in consultation with Commercial and Procurement Manager (and</p>	<p>Approval to award sought from Finance and Resources Committee **or</p>

supplies	Invitation to tender following advertisement in OJEU - Public Contracts Scotland portal <i>or</i> or negotiated procedure without prior publication, competitive procedure with negotiation, competitive dialogue or innovative partnerships where permitted by the 2015 Regulations	Head of Legal and Risk as appropriate), up to £1million or £25,000 in the case of services of a consultant as set out in the guidance on the appointment of consultants.	Council where value exceeds £1million or £25,000 in the case of services of a consultant as set out in the guidance on the appointment of consultants.
Above EU Threshold for works	Use existing local, national, Council framework or call- off contracts, or Invitation to tender following advertisement in OJEU - Public Contracts Scotland portal or negotiated procedure without prior publication, competitive procedure with negotiation, competitive dialogue or innovative partnerships where permitted by the 2015 Regulations	Director approval in consultation with the Commercial and Procurement Manager, Head of Legal and Risk to be consulted as appropriate	Approval to award sought from Finance and Resources Committee** or Council
Above EU Threshold for concession contracts	Publication of a Concession Notice in OJEU and compliance with the requirements of the Concession Contracts (Scotland) Regulations 2016	Director approval in consultation with the Commercial and Procurement Manager, Head of Legal and Risk to be consulted as appropriate	Approval to award sought from Finance and Resources Committee** or Council

the estimated value of the contract is the value of the total consideration (not including VAT) which the Council expects to be payable under or by virtue of the contract. Contracts must not be artificially disaggregated. **Pensions contracts may seek the approval of the Pensions Committee.

Contract Standing Orders



CITY OF EDINBURGH COUNCIL

**GUIDANCE ON THE APPOINTMENT OF
CONSULTANTS**

2 June 2016

Guidance on the Appointment of Consultants

This guidance of the City of Edinburgh Council (“**Council**”) applies from 2 June 2016 and has been produced to supplement the Council’s Contract Standing Orders and Procurement Handbook with principles that relate specifically to the appointment of consultants. This guidance is intended to ensure consultants are used only where necessary and in a way which achieves best value for the Council.

1. Preliminary

- 1.1. When appointing a consultant, Directors shall comply with the terms of the Council’s Contract Standing Orders and the Procurement Handbook.

2. Definition of “consultant”

- 2.1. For the purposes of this guidance, a consultant is a specialist who charges a fee for providing advice or services in a particular area of expertise such as business management, human resources, environment, communication, information technology, property and estates and financial services, but excluding agency and temporary workers and professional services provided by solicitors, counsel and actuaries.

3. Principles to be applied when appointing consultants

No alternative resource

- 3.1. Directors shall only appoint a consultant where the service in question cannot be provided internally due to a lack of expertise or capacity.

Within approved budget

- 3.2. The cost of appointing a consultant shall be contained within the budget of the service or project for which the consultant is to be appointed.

Monitoring of outcomes

- 3.3. Directors shall prepare a clear task definition and identify the required outcomes of the service prior to appointing a consultant.
- 3.4. Directors shall ensure that appropriate monitoring arrangements, such as gateway reviews, are in place prior to a consultant’s appointment in order that payments to the consultant are only made in accordance with the satisfactory achievement of measurable outcomes.

Knowledge transfer

- 3.5. Where consultants are appointed, Directors shall ensure that where appropriate, Council staff fill key project roles and work closely with consultants to maximise the potential for transfer of skills and knowledge to Council staff.

4. Reporting and approval

Reporting to committee

- 4.1. Directors shall maintain up-to-date records on the consultancy spend within their service area and shall include consultancy spend as a line in the detailed monitoring reports for months three, six, nine and twelve of each financial year to the Finance and Resources Committee and the relevant executive committee(s).

Committee approval and definition of Pre-Approved Council Project

- 4.2. Subject to 4.3 and 4.4 the appointment of a consultant where the services (or series of related services) are anticipated to be provided at an aggregate cost of £25,000 or more shall be approved by the relevant executive committee and reported to the Finance and Resources Committee,
- 4.3. Committee approval shall not be required for services that are essential to the completion of a Pre-Approved Council Project For the purposes of this guidance a Pre-Approved Council Project is a project for which there is:
 - 4.3.1 approved revenue or capital expenditure in accordance with the Council's Financial Regulations; and
 - 4.3.2 a Council or appropriate committee report seeking consent to commence the project which includes an explicit reference to the requirement for consultants in the delivery of that project.
- 4.4. In the event that the requirements of 4.3.2 are not met and the use of consultants is required as a matter of urgency the urgency provisions set out in provision 4 of the Council's Committee Terms of Reference and Delegated Functions and the Waiver provisions contained in Contract Standing Order 9 where appropriate should be followed.
- 4.5. Committee approval shall not be required for the appointment of a consultant employed in the design, evaluation and delivery of a works contract where the value is below the Committee reporting requirements as set out in the Contract Standing Orders for services or works. Any such appointment shall require the prior approval of the relevant Director and the Chief Procurement Officer and details of any such appointments shall be included in a regular update report to the Finance and Resources Committee for noting.

5. Re-engagement of former employees as consultants

- 5.1. A Director shall not appoint a former employee who has been granted early retirement or been given a redundancy or severance package ("former employee") as a consultant unless:

- 5.1.1. a minimum of 1 year has elapsed since the former employee ceased to be employed by the Council; or
- 5.1.2. subject to consultation with the Convener/Vice-Convener of the Finance and Resources Committee, the Director is satisfied that there is a clear and robust justification for the appointment of the former employee as a consultant.