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**SCOTTISH BORDERS COUNCIL
TUESDAY, 27 JUNE, 2017**

The following item of additional business will be considered at the MEETING of the SCOTTISH BORDERS COUNCIL to be held in the COUNCIL CHAMBER, COUNCIL HEADQUARTERS, NEWTOWN ST. BOSWELLS on TUESDAY, 27 JUNE 2017 at 10.00 am

J. J. WILKINSON,
Clerk to the Council,

20 June 2017

ADDITIONAL BUSINESS			
13.	Any Other Items Previously Circulated		
	(a)	New Procurement and Contract Standing Orders (Pages 1 - 22) Consider report by Chief Financial Officer. (Copy attached.)	10 mins

NOTES

1. **Timings given above are only indicative and not intended to inhibit Members' discussions.**
2. **Members are reminded that, if they have a pecuniary or non-pecuniary interest in any item of business coming before the meeting, that interest should be declared prior to commencement of discussion on that item. Such declaration will be recorded in the Minute of the meeting.**

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NEW PROCUREMENT & CONTRACT STANDING ORDERS

Chief Financial Officer

SCOTTISH BORDERS COUNCIL

27 June 2017

1 PURPOSE AND SUMMARY

1.1 The existing standing orders relating to Procurement activities require to be updated for following reasons;

- a)** To access a key benefit of BusinessWorld (BW) to manage spending across the organisation.
- b)** To fully effect the new public procurement legislation (Procurement Reform Act (Scotland)) and associated statutory requirements
- c)** To comply with best business practice by creating separate standalone Procurement Procedural Standing Orders

2 RECOMMENDATION

2.1 It is recommended that Council ;

- a) Approves the proposed change to existing Procedural Standing Orders by the removal of items 45-49.**
- b) Agrees the new standalone Procurement and Contract Standing Orders to be implemented from 1st July 2017.**

3 BACKGROUND

- 3.1 BW will deliver significant transactional efficiencies within P2P. Beyond this a further key benefit will be the opportunity to improve the efficiency of Council spending through maximising contract spend and minimising off contract spend. Leaving the existing standing order thresholds unchanged may result in these benefits not being fully realised.
- 3.2 New procurement legislation creates statutory obligations on the council when considering contracts where the value is estimated to be £50,000 or above. These revised standing order thresholds recognise this new figure.

4 PROCUREMENT & CONTRACT STANDING ORDERS – KEY CHANGES

- 4.1 Following a detailed review of the approach taken by other local authorities' standing orders, the proposed new Procurement and Contract Standing Orders have been created drawing on best identified practice.
- 4.2 The new standing orders will provide officers with comprehensive guidance to undertake procurement and contracting activities fully in accordance with relevant Council governance. The operational detail for procurement practice has historically been kept separate from the overarching governance and so this change will put all relevant information into a single set of instructions, which following the introduction of Business World, will make it far easier for managers to understand their responsibilities.
- 4.3 It is proposed to amend two of the existing value based procurement thresholds as detailed below.

Existing	Proposed	Reason
First level <i>(Officers will proceed in a manner they consider most efficient to their specific service and the Council)</i> £5,000	Reduce to £1,000	BW provides an opportunity to embed a controlled approach to managing spending across the organisation. To achieve this, there needs to be additional oversight to support driving compliance, particularly when general product codes are used to create a requisition. Reducing the threshold to £1,000 is seen as a key compliance mechanism to support the opportunities created through the introduction of BW.
Level 3 <i>(Minimum 3 Quotes via PCS Quick Quotes)</i> £35,000	Increase to £50,000	To dovetail with the new term 'regulated procurement' which is defined as any contract exceeding £50,000 to which the Council apply a number of statutory duties before reporting through other statutory requirements.

- 4.4 These new orders include the introduction of a Waiver option.. This is a formal approval procedure to replace the existing procurement route operated within the Council known as a “non-competitive action route.” The new proposal creates a managed mechanism to allow exceptions to the proposed standing orders to be applied for, and if approved, then any of the thresholds may be waived for that particular purpose, if the reasoning is justifiable. This new process will reduce the risk of challenge from suppliers.
- 4.5 This report will create a separate set of Standing Orders to the current Procedural Standing Orders that govern committees. On approval, Procedural Standing Orders Nos 45 to 49 will be removed and replaced with text to advise that all Procurement & Contract Management matters will be carried out in accordance with these new Procurement & Contract Management Standing Orders as approved by Council.

5 IMPLICATIONS

5.1 Financial

There are no direct financial implications to this report.

5.2 Risk and Mitigations

An Internal Audit report recommended that to comply with best business practice separate standalone Procurement Procedural Standing Orders should be developed.

5.3 Equalities

There are no equalities implications.

5.4 Acting Sustainably

There are no sustainability implications.

5.5 Carbon Management

There are no carbon management implications.

5.6 Rural Proofing

Not applicable

5.7 Changes to Scheme of Administration or Scheme of Delegation

No changes required

6 CONSULTATION

- 6.1 The Monitoring Officer, the Chief Legal Officer, the Service Director Strategy and Policy, the Chief Officer Audit and Risk, the Chief Officer HR and the Clerk to the Council have been consulted with comments received incorporated into the report.

Approved by

David Robertson
Chief Financial Officer

Signature

Author(s)

Name	Designation and Contact Number
Kathryn Dickson	Procurement & Payment Services Manager x 6646

Background Papers:

Previous Minute Reference:

Note – You can get this document on tape, in Braille, large print and various computer formats by contacting the address below. Kathryn Dickson can also give information on other language translations as well as providing additional copies.

Contact us at Kathryn Dickson, Scottish Borders Council, Council Headquarters, Newtown St Boswells, Melrose, TD6 0SA, email: Kathryn.dickson@scotborders.gov.uk

Procurement & Contract Standing Orders

**(including additional guidance on the
appointment of consultants)**

DRAFT



June 2017

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Procurement & Contract Standing Orders

These Procurement and Contract Standing Orders of Scottish Borders Council (“the Council”) apply from 1 July 2017 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 1 July 2017 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 (until such time as they are changed or revoked following a decision by the UK to leave the EU), United Kingdom, or Scottish legislation. They are also subject to any EU Commission, UK or Scottish Government 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 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 and
 - 1.1.5.4 Circumstances in which a waiver of the Standing Orders has been granted in accordance with Standing Order 9.
- 1.1.6 The Standing Orders must be read in conjunction with (and all Council staff must comply with) the Scheme of Delegation, the Council’s Financial Regulations and Purchasing Guidelines. 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 Procurement and Payments Services Manager.

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 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 Owner” means the nominated contract owner or manager for a specific contract. This means the responsibility for dealing with supplier performance and contractual matters on a day to day basis;

- 1.2.4 Co-production – means the real and meaningful involvement of the community of the Scottish Borders in how and what community services and related goods and works are delivered with regard to the National Standards for Community Engagement;
- 1.2.5 “Service Director” means the relevant Service Director 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 Service Director, such Head of Service as that Director has nominated in accordance the Scheme of Delegation, the Chief Financial Officer or such director as the Chief Executive may nominate.
- 1.2.6 “EU Thresholds” means the prescribed threshold values set by the EU Commission for supply, services or works contracts as they may be amended from time to time;
- 1.2.7 “Legislative Exemptions” means the exemption from the application of procurement rules under EU law and principles developed through case law and other means
- 1.2.8 “Purchasing Guidelines” means those guidelines issued by the Chief Financial Officer, setting out the detailed requirements for the conduct of purchasing and procurement activity within the Council (as amended from time to time);
- 1.2.9 “2015 Regulations” means the Public Contracts (Scotland) Regulations 2015 or successor legislation (as amended from time to time);
- 1.2.10 “2016 Regulations” means the Procurement (Scotland) Regulations 2016 or successor legislation (as amended from time to time);
- 1.2.11 “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 and social care contracts) or £2million for works contracts;
- 1.2.12 “Social and other Specific Services” means a public contract or framework for social and other specific services as defined by the 2015 regulations including:-
- 1.2.13.1 Health, Social and related Services
 - 1.2.13.2 Administrative social, educational, healthcare and cultural services
 - 1.2.13.3 Legal Services
 - 1.2.13.4 Postal Services
- 1.2.13 “Schedule” means the schedule to these Standing Orders; and
- 1.2.14 “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 procuring and/or commissioning shall, prior to commencing any procurement process, consult with the relevant Procurement Business Partner to ensure that Best Value is achieved and that the relevant sustainable procurement, fair work practices and equality requirements are considered.
- 1.3.2 Throughout the life of a contract the contract should be monitored by the Contract Owner in respect of performance; compliance with the specification and other terms of the contract; cost and benefits; Best Value requirements; equality requirements, delivery and risk management.
- 1.3.3 All procedures for initiating procurement, developing procurement strategies, 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 and, where appropriate, contractual or procurement arrangements shall include the use of community benefit clauses.
- 1.3.4 All expenditure must comply with the Council's Financial Regulations.

2. Procedures

- 2.1 In addition to the obligations in Standing Order 1.3.3, before commencing a tendering procedure or making a purchase where no contract exists, the relevant Officer must consult with the Procurement and Payment Services Manager to establish whether:
 - 2.1.1 Any existing contracts or framework contracts accessible to the Council may fulfil their requirements; or
 - 2.1.2 There is any existing internal provision (including the Council's significant trading operations) or any other SBC Family resource which could be used such as SB Cares or Live Borders.
- 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 EU Thresholds, the minimum associated tendering procedures that must be applied are detailed in the Schedule. For supported persons services the Procurement of Care and Support Services Guidance issued by the Scottish Government and COSLA and any guidance published under the Act or subsequent Regulations should be followed.

- 2.4 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 €750,000 the procedure shall be sufficient to comply with the principles of transparency and equal treatment of economic operators.
- 2.5 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 in which it operates with a particular focus on inequality and then act in a way that secures these improvements.
- 2.6 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.
- 2.7 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.
- 2.8 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 Scottish Borders or an SME who is a significant employer within the Scottish Borders 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 Scottish Borders or a new significant employer within the Scottish Borders is invited to tender in any process.
- 2.9 Direct purchasing below £1,000 where the purchase cannot be secured from an existing contracted supplier, or no contract exists, is permissible subject to the Council's duty to secure Best Value. If the requirement cannot be sourced from a contracted supplier then the Head of Service is responsible for ensuring best value. This will normally be evidenced by obtaining more than one quote and/or evidence of firm fixed prices. The Councils interest shall be further protected by ensuring the selected supplier or contractor is reputable and competent and holds the minimum insurance requirements along with any other specific Health and Safety policy requirements.
- 2.10 The Procurement and Payments Service shall be consulted as appropriate in respect of tendering arrangements for any proposed goods or services contract with

estimated value of less than £50,000. Details are provided of the minimum procedural requirements are contained in the attached schedule. For those arrangements where the value is estimated to be less than £25,000 then less formal written quotations can be used. These documents should be attached to the Purchase Order when raising the requisition in BusinessWorld.

- 2.11 The Procurement and Payment Services Manager shall advise on and make all tendering arrangements for any proposed contracts with an estimated value in excess of £50,000 (for goods and services) or £500,000 for works.
- 2.12 Direct purchasing above £1000 without seeking a competitive procedure is permissible only in those circumstances that would be permitted by the Regulations or in accordance with Standing Order 9.
- 2.13 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 Procurement and Payment Services Manager. The Procurement and Payment Services Manager must inform the Chief Financial Officer as to potential legal challenges.
- 2.14 Any type of purchase transaction for any value where personal data is involved (or might be involved) must be brought to the attention of the Procurement Service before seeking contact with any possible external provider.

3. The Role and Responsibilities of Service Directors

- 3.1 Each Service 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 as follows:
 - 3.1.1 To ensure compliance with these Standing Orders and the Purchasing Guidelines (as appropriate);
 - 3.1.2 To ensure no contract is entered into by the Council without seeking advice where appropriate from the Procurement and Payment Services Manager and Head of Legal Services and having proper regard to such advice;
 - 3.1.3 To ensure that appropriate contract security (for example guarantees or performance bonds) is obtained where required or considered prudent;
 - 3.1.4 To approve where required by these Standing Orders an appropriate Contract Strategy for each proposed purchase or contract;
 - 3.1.5 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;

- 3.1.6 To prepare, in consultation with the Procurement and Payment Services Manager, appropriate contract and tender documents which clearly specify the scope, quality and quantity of the works, goods or services;
- 3.1.7 To keep all procurement materials/bids confidential subject to any legal requirements;
- 3.1.8 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;
- 3.1.9 To ensure that any technical evaluation panel is suitably qualified and trained to assess tenders;
- 3.1.10 To ensure no supplier is requested by the Council to provide goods, services or works without first having a valid purchase order in place;
- 3.1.11 To ensure that all necessary contract information for contracts of a value in excess of £50,000 for goods and services and £2million for works or more is provided within one month of entering into a contract to the Procurement and Payment Services Manager for the purposes of maintaining an up-to-date contract register;
- 3.1.12 To ensure all relevant staff are familiar with these Standing Orders and Purchasing Guidelines or other guidance issued in respect of these Standing Orders;
- 3.1.13 To ensure contracts and any appropriate contract security documents are signed before work, services or supply provision commences;
- 3.1.14 To put in place arrangements for efficient contract and supplier management including the identification of a Contract Owner and the management of benefits and performance, for the entire duration of the contract;
- 3.1.15 To retain a copy of the contract and keep proper records of all contracts and tenders, including minutes of contract management and other meetings;
- 3.1.16 To take immediate action in the event of a breach of these Standing Orders or Purchasing Guidelines within his/her directorate;
- 3.1.17 To consult with Elected Members on matters reasonably considered politically, reputationally or financially sensitive in relation to proposed procurement activity; and
- 3.1.18 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 Procurement and Payment Services 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 Services will be consulted on conditions of contract for particularly significant or complex projects or contracts. The definition of significant being one or more of the following criteria;
- An estimated value in excess of the EU Directive thresholds;
 - Any contract where data will be shared;
 - Any contract/procurement activity requiring approval by the Executive Committee/Full Council.

5. Evaluation of Tenders and Quotes

- 5.1 Tenders and quotes for contracts in excess of £50,000 shall be evaluated on the basis of the most economically advantageous tender. It is not legally possible to use price or cost as the sole award criteria.
- Lowest cost should generally only be the basis of evaluation for simple procurements of short-term, low-level services or goods of a standard specification where the cost is less than £50,000.
- 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 Procurement and Payment Services Manager must be consulted if tenders are submitted late, incomplete or in an incorrect format.
- 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 Procurement and Payment Services Manager and be fully and appropriately documented. Where a tender involves the use, adoption or purchase of an Information Communication Technology (ICT) or digital service, software or hardware this must be undertaken in collaboration with the Council's ICT Service.

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 be entered into following the approval process detailed in the Schedule. The Chief Executive or Directors or Heads of Service will sign all goods and services and works contracts, provided the procurement was carried out solely by the Council for the Council. Awards of national and regional public contracts and framework agreements are made by the governing boards of the respective central buying bodies and in such cases, the Council will simply utilise those public contracts and frameworks (Standing Order 2.1.1).

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

7.1 Having due regard to the appropriate legislation and supporting advice from the Head of Legal Services, the Procurement Service 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 Officer of the Council 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.

8. Online/Electronic Procurement

- 8.1 Requests for quotations and invitations to tender should where practicable be issued and/or received by online/electronic means using Public contracts Scotland advertising portal/Public Contracts Scotland – Tender.

9. Waiver of Contract Standing Orders

- 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 it is considered that the waiver is justified because:-

9.1.1 The circumstances of the proposed contract are covered by legislative exemptions including the nature of the market for the works to be carried out or the goods or services to be provided has been investigated and is demonstrated to be such that a departure from the requirement of Standing Orders is justifiable in accordance with EU law and principles (for example when for artistic or technical reasons, or for reasons connected with the protection of exclusive rights, the contract may only be awarded to a particular provider) or the contract is for works, goods or services that are required in circumstances of extreme urgency that could not have been foreseen; or

9.1.2 It is in the Council's best interests considering factors such as best value, the risk of a successful legal challenge, any impact on service users along with the principles of transparency, equal treatment, non-discrimination and proportionality.

- 9.2 The table below sets out the relevant values and waiver approval requirements:

Value	Approval Procedure
£1000 - £250,000	The relevant Head of Service and the Procurement and Payment Manager
Over £250,000	The relevant Director and the Chief Financial Officer

- 9.3 A record of the decision approving a waiver of standing orders must be kept by the Procurement and Payment Services Manager who shall where appropriate make an entry in the appropriate register. A local copy must be kept by the relevant Service Director.
- 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 report.
- 9.5 Where a waiver 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 the Procurement and Payment Services Manager of the details to allow entry on the contract 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 Procurement and Payments Service Manager 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 Procurement and Payment Services Manager and/or Head of Legal Services.
- 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.

10. Contract extensions or variations

- 10.1 Subject to 10.2, the Procurement and Payment Services Manager may authorise an extension to a contract, or any other variation including a consequent change in price, provided such extension or variation is not contrary to the Regulations or the Council's EU obligations.
- 10.2 A Service 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 Procurement and Payment Services Manager.
- 10.3 The EU rules on aggregation of contracts shall apply

11. Review of Standing Orders

- 11.1 These Procurement and Contract Standing Orders will be reviewed annually by officers, with any material change or additions being presented to the appropriate committee for approval.

12. Guidance on the Appointment of Consultants

This section has been produced to supplement these Procurement and Contract Standing Orders 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.

12.1 Preliminary

When appointing a consultant, all budget holders shall comply with the terms of the Council's Procurement and Contract Standing Orders.

12.2 Definition of "consultant"

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. Examples include project and/or business management, human resources, environment, communication, information technology, property and estates and financial services. Agency and temporary workers and professional services provided by solicitors, counsel and actuaries are excluded.

12.3 Principles to be applied when appointing consultants

1. No alternative resource - budget holders shall only appoint a consultant where the service in question cannot be provided internally due to a lack of expertise or capacity.
2. Within approved budget - 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.
3. Definition of outcomes - budget holders shall prepare a clear task definition and identify the required outcomes of the service prior to appointing a consultant.
4. Monitoring of outcomes - budget holders shall ensure that appropriate monitoring arrangements, 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.
5. Knowledge transfer - where consultants are appointed Budget holders 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.

12.4 Approval of engagement

The appointment of a consultant for a service (or series of related services) for any value must be approved by the Corporate Management Team (CMT) before any engagement process is commenced. The template form (provided at Appendix 1) should be used to make the request.

CMT 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 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.

12.5 Re-engagement of former employees as consultants

Without the express consent of CMT, a Budget holder shall not appoint a former employee who has been granted early retirement or been given a voluntary redundancy or severance package (“former employee”).

If the proposed consultant is a former employee then that must be disclosed as part of the information provided to CMT.

12.6 IR35/Employment Status Assessment

Any proposed engagement of a consultant must include the appropriate assessment as per HRMC requirements. Further information relating to this assessment is available via the Council intranet.

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SCHEDULE

RELEVANT VALUES AND ASSOCIATED TENDERING PROCEDURES

Goods & Services		
Value Bands	Procurement Route	Estimated Timescale
Up to £1,000 Officers should proceed in a manner they consider most efficient to the Council	Use existing local, national, Council framework or call- off contracts or Appropriate choice of supplier documenting reasoning and quote - Best Value must be delivered and this will usually be demonstrated by more than one quote.	N/A
£1,000 to £25,000	Use existing local, national, Council framework or call- off contracts Or Written/formal quotations – written description of requirements followed by written / electronic submission of quotes Or Public Contracts Quick Quote facility.	Recommend 2 weeks
£25,000 to £50,000	Use existing local, national, Council framework or call- off contracts Or A minimum of 3 formal quotations using Quick Quote via Public Contracts Scotland portal and/or equivalent should be used	Recommend 2 weeks minimum
£50,000 to EU Threshold	Use existing local, national, Council framework or call- off contracts Or Invitation to tender following public advertisement using Public Contracts Scotland portal/PCS-T	3 – 8 weeks
Above EU Threshold	Use existing local, national, Council framework or call- off contracts Or Invitation to tender following OJEU advertisement using Public Contracts Scotland portal/PCS-T	6 – 24 weeks depending on complexity

Works Contracts		
Value Bands	Procurement Route	Estimated Timescale
Up to £250,000	Use existing local, national, Council framework or call- off contracts or Minimum of 3 hard copy quotations Or PCS Quick Quote Facility	N/A
£250,000 - £500,000	Use existing local, national, Council framework or call- off contracts or Minimum of 5 quotes via PCS Quick Quote Facility	Minimum of 2 weeks up to 8 weeks
£500,000 to EU Threshold	Use existing local, national, Council framework or call- off contracts Or Invitation to tender following public advertisement using Public Contracts Scotland portal/PCS-T	2 – 4 months
Above EU Threshold	Use existing local, national, Council framework or call- off contracts Or Invitation to tender following OJEU advertisement using Public Contracts Scotland portal/PCS-T	4 – 6 months

Appendix 1 - Consultant Approval Request Form

Submitted by (Officer Name):	
Service Department:	
Date:	
Authorised by (Budget Holder):	
It is a requirement for approval requests to have completed all relevant IR35/Employment Status assessment requirements	Outcome of assessment documents attached <input type="checkbox"/>

Value/Budget Code/Project Details	
Estimated Value	
Cost Centre	
Sub Centre	
Account Code	
Analysis Code	
Project Code	

Please provide details relating to the requirement for the consultancy services

Proposed Consultant Details	
Name/Organisation	
Postal Address	
Town	
Postcode	

CMT Approval confirmed	
Meeting Date	

Please email this completed form to procurement@scotborders.gov.uk noting **Consultant Approval Request** in the Subject Field and attaching any appropriate documents. The request will be presented at the next available CMT meeting.