SHETLAND ISLANDS COUNCIL

CONSTITUTION

PART E

CONTRACT STANDING ORDERS

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Contract Standing Orders

These Contract Standing Orders (CSO's) of Shetland Islands Council ("the Council") 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.

The Executive Manager – Governance and Law or their nominee MUST be consulted prior to entering into any negotiations on any non-procurement agreements. Examples of such documents include, but are not restricted to, confidentiality agreements, non-disclosure agreements or settlement agreements. The Executive Manager – Governance and Law or their nominee is authorised to sign such documents.

1. Introduction

1.1 Extent and interpretation

1.1.1 The Council makes these CSO's in terms of section 81 of the Local Government (Scotland) Act 1973.

1.1.2 These CSO's must be interpreted in accordance with the key principles of transparency, equal treatment, non-discrimination and proportionality.

1.1.3 These CSO's apply, subject to the provisions of CSO's 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 CSO's are subject to the provisions of Scottish and/or United Kingdom Legislation (the "Appropriate Legislation"). They are also subject to any UK or Scottish Government guidance on public procurement that may be issued from time to time.

1.1.5 **Exemptions:** The CSO's 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, acquisition 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 Any arrangement in which the Council shall fund an external operator to provide services on a non-contractual basis (for example grant funded activities). In such circumstances the principles of the Following the Public Pound Code shall apply;

Note: Exceptions to these CSO's are dealt with separately under CSO's Order 9.

1.1.6 The CSO's must be read in conjunction with, and all Council staff must comply with, the Constitution Part C Scheme of Administration and Delegation Section 3, the Council's Part D Financial Regulations particularly Section 4 Financial Controls and Accounting.

1.1.7 Failure to comply with these CSO's when making purchases or seeking offers may result in disciplinary action.

1.1.8 Any query regarding the application or interpretation of these CSO's should be made in the first instance to the Executive Manager – Assets, Commissioning & Procurement.

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:-

"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 Standing Orders (CSO's)" means these CSO's including the Schedule and "Contract Standing Order" shall be interpreted accordingly.

1.2.4 "Commissioning Officer" means the nominated Commissioning Officer or manager for a specific contract. This means the responsibility for progressing the proposed procurement, dealing with supplier performance and contractual matters on a day to day basis;

1.2.5 "Data Protection Officer" means the Council's Chief Legal Officer and Executive Manager of Governance & Law appointed as the Data Protection Officer (DPO).

1.2.6 "Executive Manager – Assets, Commissioning and Procurement" means the Council's Executive Manager – Assets, Commissioning and Procurement and in the context of the publishing, arrangement and management of competitive tendering

and quotation exercises and award of contracts includes the Procurement Manager or designated Officers within the Assets, Commissioning and Procurement service;

1.2.7 "Financial Regulations" means those instructions issued by the Executive Manager Finance setting out the detailed requirements for the conduct of purchasing and procurement activity within the Council (as amended from time to time);

1.2.8 "Legislative Exemptions" means the exemption from the application of procurement rules under Appropriate Legislation and principles developed through case law and other means;

1.2.9 "Most economically advantageous tender" (MEAT) means that tender giving optimum value for money over the lifetime of the contract for the goods, services or works delivered thereby, taking into account all material matters on the basis of the best price-quality ratio. It is the only acceptable contract award criteria in terms of the Public Procurement Regulations and, in accordance with Scottish Government guidance, should also apply to Regulated Contracts. (Section 5.1)

1.2.10 "Prescribed Thresholds" means the prescribed threshold values set by the Appropriate Legislation for supply, services or works contracts as they may be amended from time to time;

1.2.11 "Procurement Contact" means the nominated officer of officers within a service;

1.2.12 "Procurement Manager" means the Council officer holding that post or their nominee;

1.2.13 "Procurement Network" means the group of staff within the Council, nominated as Procurement contacts in each Directorate for conducting procurement activity and for disseminating and collecting related information, guidance and data;

1.2.14 "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 utilities contracts) or £2 million for works contracts in accordance with the Procurement (Scotland) Regulations 2016 or successor legislation (as amended from time to time);

1.2.15 "Relevant Director" means the Director of the commissioning service area, unless; in the case of cross-directorate procurement or absence of the relevant Director where the Chief Executive of the Council, or their nominee, will assume the role.

1.2.16 "Schedule" means the schedule to these CSO's;

1.2.17 "Social and other Specific Services" means a public contract or framework for social and other specific services as defined by the 2015 regulations including:

1.2.17.1 Health, Social and related Services
1.2.17.2 Administrative social, educational, healthcare and cultural services
1.2.17.3 Legal Services
1.2.17.4 Postal Services

1.2.18 "Sponsor" means the owner of and budget holder for the requirement as distinct from the Commissioning Officer carrying out commercial action on their behalf. The Sponsor is the client side representative who acts as a single point of contact with

the Commissioning Officer / Project Manager for the day-to-day management of the Council's interests.

1.2.19 "Utilities Regulations" means the Utilities Contracts (Scotland) Regulations 2016;

1.2.20 "2015 Regulations" means the Public Contracts (Scotland) Regulations 2015 or successor legislation (as amended from time to time);

1.3. General Principles

1.3.1 The Commissioning Officer with responsibility for procuring and/or commissioning shall, prior to commencing any procurement process, consult with their departmental Procurement Contact and thereafter the Central Procurement team to ensure that these CSO's are complied with and that the relevant sustainable procurement, fair work practices and equality requirements are considered.

1.3.2 Subject to 10.1, throughout the life of a contract the contract must be managed by the Commissioning Officer or Manager or as appropriate the Project Manager 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; and
- continuous improvement.

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 incorporate and promote equality, sustainability, fair work first practices and, where appropriate, contractual or procurement arrangements that include the use of community benefit clauses.

1.3.4 All expenditure must comply with the Council's Financial Regulations.

1.3.5 All procurement must take cognisance of all relevant impact assessments. This includes, but is not limited to:

- Data Protection Impact Assessment;
- Environment Impact Assessment;
- Island Communities Impact Assessment;
- Integrated Impact Assessment;
- Carbon Management / Climate Change / Net Zero considerations;
- Subsidy Act Assessment

2. Procedures

2.1 In addition to the obligations in CSO 1.3.3, before commencing a tendering procedure or making a purchase where no contract exists, the Commissioning Officer must consult with the Executive Manager – Assets, Commissioning and Procurement or their nominee to establish whether:

2.1.1 Any existing contracts or framework contracts accessible to the Council may fulfil their requirements; or

2.1.2 The Council's Commissioning and Procurement Framework 2016-2020 sets out the matters to be considered prior to beginning any procurement process.

2.2 The procedure for the award of any contract shall depend upon the estimated aggregated value of that contract. The appropriate legislation on the aggregation of contracts shall apply and the artificial splitting of purchase orders or requirements to avoid the application of these CSO's or any procurement legislation is not permitted.

2.3 Subject to CSO 9, or where otherwise legally permitted in respect of proposed contracts which exceed the Prescribed Thresholds, the minimum associated tendering procedures that must be applied are detailed in the Schedule. For Self Directed Support 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) and any statutory guidance issued under the Act. For all services estimated to be in excess of the Prescribed Thresholds the procedure shall be sufficient to comply with the principles of transparency and equal treatment of economic operators.

2.5 For all purchases estimated to be in excess of £50,000 for goods and services and £2 million 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 Prescribed Thresholds a contract may be awarded in the form of separate lots.

2.7 Direct purchasing below £5,000 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 Commissioning Officer is responsible for ensuring Best Value. This will normally be evidenced by seeking at least three quotes where possible and 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.

2.8 The Procurement Network (see 1.2.13) should be consulted as appropriate in respect of tendering arrangements for any proposed goods or services contract with estimated value between £5,000 and £50,000. Where ambiguity remains the Central Procurement Team should be consulted. Details of the minimum procedural requirements are provided in the attached Schedule.

2.9 The Executive Manager – Assets, Commissioning and Procurement or their nominee shall advise on and make all tendering arrangements for any proposed contracts with an estimated value in excess of £50,000 for goods, works and services.

2.10 Direct purchasing above £5,000 without seeking a competitive procedure is permissible only in those circumstances that would be permitted by the Regulations or in accordance with CSO 9.

2.11 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 Executive Manager – Assets, Commissioning and Procurement. Who must inform the Director of Corporate Services, or their nominee, as to potential legal challenges.

2.12 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 DPO before seeking contact with any possible external provider.

3. The Role and Responsibilities of Directors

3.1 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 award and management, which are as follows:

3.1.1 To ensure compliance with these CSO's and the Financial Regulations (as appropriate);

3.1.2 To ensure that staff with responsibility for procuring and purchasing goods, works and services can access the Council guidance materials/on line training that is available regarding Procurement and Purchasing to ensure they are aware of the processes and procedures when procuring goods, works and services;

3.1.3 To ensure no contract is entered into by the Council without seeking advice where appropriate from the Executive Manager Assets, Commissioning & Procurement and Executive Manager Governance & Law and having proper regard to such advice;

3.1.4 To ensure that appropriate contract security (for example guarantees or performance bonds) is obtained where required or considered prudent;

3.1.5 To be responsible for an appropriate Procurement Strategy for each proposed purchase or contract;

3.1.6 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;

3.1.7 To prepare, in consultation with the Executive Manager Assets, Commissioning & Procurement or their nominee, appropriate contract and tender documents which clearly specify the scope, quality and quantity of the works, goods or services;

3.1.8 To retain all procurement materials/bids confidential subject to any legal requirements;

3.1.9 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;

3.1.10 To ensure that any technical evaluation panel is suitably qualified and trained to assess tenders;

3.1.11 To ensure no supplier is requested by the Council to provide goods, services or works without first having a valid purchase order or contract in place;

3.1.12 To ensure that all necessary contract information for contracts of a value in excess of £50,000 for goods, works and services is provided within one month of entering into a contract to the Procurement Manager for the purposes of maintaining an up-to-date contract register;

3.1.13 To ensure all relevant staff are familiar with these CSO's and Financial Regulations or other guidance issued in respect of these CSO's;

3.1.14 To ensure contracts are awarded, any necessary checks such as IR35 or Disclosure Scotland checks are carried out and any appropriate contract security documents are signed before work, services or supply provision commences;

3.1.15 To put in place appropriate arrangements for efficient contract and supplier management including the identification of a Contract Manager or Project Manager and the management of benefits and performance, for the entire duration of the contract, framework or dynamic purchasing system;

3.1.16 To retain a copy of the contract and keep proper records of all contracts and tenders, including minutes of contract management and other meetings;

3.1.17 To inform the Executive Manager Assets, Commissioning & Procurement immediately in the event of a breach of these CSO's within his/her directorate; and

3.1.18 To make appropriate arrangements with the Executive Manager Assets, Commissioning & Procurement for the opening of tenders and their secure retention so as to protect the integrity of the procurement process.

3.1.19 To consult with the Executive Manager Governance & Law or their nominee at an early stage 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 Prescribed Thresholds for Regulated Contracts or Utilities Contracts of a similar estimated value;
- Any contract where personal data will be shared, processed or stored;
- Any contract where commercially sensitive business data is affected;
- Any contract where the proposed jurisdiction is not Scotland;

3.1.20 To ensure that all necessary advice has been obtained from relevant central services including Governance and Law, Assets Commissioning & Procurement, ICT, Finance and Human Resources. A record of advice received must be retained.

3.1.21 To ensure that, unless prior approval has been obtained from Executive Manager – Governance and Law that a different legal jurisdiction can apply, all contracts are governed by the laws of Scotland and subject to the jurisdiction of the Scottish courts.

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.

5. Evaluation of Tenders and Quotes

5.1 Tenders and quotes for contracts in excess of the Prescribed Thresholds for Regulated Contracts or Utilities Contracts shall be evaluated on the basis of the most economically advantageous tender (MEAT). It is not legally possible to use price or cost as the sole award criteria. Lowest cost can only be the basis of evaluation for procurements where the estimated value is below these thresholds.

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 may not be considered. The Executive Manager Assets, Commissioning & Procurement or their nominee 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 and must have completed a Conflict of Interest form . The evaluation process shall follow any guidance issued by the Executive Manager Assets, Commissioning & Procurement and be fully and appropriately documented in a Tender Evaluation Report.

5.4 Where a proposed purchase or tender involves the use, addition or purchase of any form of Information and Communications Technology (ICT) digital service, software or hardware then the approval of the Executive Manager ICT must be sought at the earliest opportunity and any purchase undertaken in collaboration and with the approval of the ICT Service.

6. Acceptance and Award of Contracts

6.1 Following the conclusion of the procedure for awarding contracts set out in these CSO's 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 Applicable Route/Procedure detailed in the Schedule. The Executive Manager Governance & Law, or their nominee, 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 may utilise those public contracts and frameworks, however contracts

entered into by the Council under these frameworks must be approved by the Executive Manager Governance & Law, or their nominee.

6.2 Electronic signatures (eSignatures) are becoming increasingly prevalent in business transactions, allowing documents to be signed and executed digitally. While utilising digital technologies offers a multitude of benefits, such as convenience and speed, it can also create issues where documents have not passed final checks before being presented to authorised signatories. It is the responsibility of the Commissioning Officer to ensure all documents are checked by legal and cleared through Central Procurement before being presented for eSignatures.

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 Executive Manager Governance & Law, the Central Procurement Team may treat a potential tenderer as ineligible to tender. Some economic operators may be excluded from participation in a particular procurement procedure by virtue of their previous conduct, criminal convictions or economic standing. Exclusion grounds can be both mandatory and discretionary. Care must be taken to ensure that economic operators are not excluded where passage of time or evidence of subsequent compliance ("self-cleansing") is provided.

7.2 Some examples of mandatory exclusion criteria are:

- Criminal convictions such as bribery or corruption or money laundering;
- Blacklisting;
- Breach of tax and social security obligations.

7.3 Some examples of discretionary exclusion criteria are:

- Bankruptcy or insolvency;
- The economic operator has shown significant and persistent deficiencies in the performance of a substantive requirement under a prior public contract;
- The economic operator has withheld or seriously misrepresented information or is not able to provide information required for verification of the absence of grounds for exclusion or the fulfilment of selection criteria.

7.4 The Commissioning Officer must consult with Legal and Central Procurement Team prior to considering whether to 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 the Public Contracts Scotland web portal.

9. Exceptions from Contract Standing Orders

9.1 The Council expects and demands its officers to abide by these CSO's and the applicable legislation. In some limited circumstances, the requirement to comply with any provision of these CSO's may be waived as an exception when approved using the Non-Competitive Action (NCA) form. These are as follows:

9.1.1 Where the Sponsor / Commissioning Officer has satisfied the relevant Director:

a) That the requirement is not readily obtainable from more than one supplier, service provider, or contractor, and it can be demonstrated that no equivalent is available or otherwise for technical reasons or due to time restraints; or that
b) The prices of the goods, materials or specialist services are wholly controlled by trade organisations or government order and it can be demonstrated that no equivalent is available or otherwise for technical reasons or due to time restraints; or that
c) The requirements are subject to intellectual property rights and it can be shown that either no suitable alternative is available, or that exposure to competition of an item covered by copyright, patent, or trademark would breach such rights.

9.1.2 Where there is an existing contract for the supply of any class of goods, works or services. Such contracts may only be extended without fresh competition within reason, and in accordance with any limitations set out either in the Contract itself or the Contract Notice. At least one of the following shall apply:

- the extension is justified on the basis of best value and/or operational necessity in which case it may not exceed the allowance for extension as set out within the terms and conditions of the contract or by more than 50% over the original scope or value of the contract, whichever is the lesser;
- the extension may be necessary in order to allow for the proper conduct of a competitive process,
- the requirement for extension has been brought about by an unforeseeable circumstance not within the control of the Council.

9.1.2.1 In all cases the original contract must have been won via a competitive process and must be reasonable in all the circumstances.

9.1.2.2 Any extension which constitutes a deliberate material variation of the original contract by nature or extent must be the subject of fresh competition.

9.1.3 Where the demand is for the execution of works or the supply of goods, materials or services, identified by the Sponsor/Commissioning Officer and authorised by the Relevant Director as being required as an emergency measure so as not to permit the invitation of tenders. "Emergency" means only an event which could not reasonably have been foreseen. The Sponsor / Commissioning Officer must seek approval from the Relevant Director using the NCA process.

9.1.4 Where the work to be executed or the goods, supplies or services to be provided consist of repairs to or the supply of parts for existing proprietary machinery or plant and/or the Council is bound by the terms of an agreement, by insurance requirements or by the terms of a warranty to use a specified contractor, supplier or provider.

9.1.5 If the contract is for the supply of used or second hand goods or materials, and the relevant Director, where he or she is satisfied that it is in the interests of the Council to purchase such goods or materials and that they are fit for the purpose for which they are being purchased, may submit or accept an offer for the purchase of such goods or materials, provided that all contracts for the supply of such goods or materials shall be in writing and subject to the Law of Scotland.

9.1.6 Where a compliant tendering exercise has been completed but where no Tenders have been received that can be accepted, either on technical grounds, in terms of value for money or any other competent reason.

9.2 All exceptions from CSO's must be authorised and recorded using the NCA form. It needs to be clear that the exceptions are not from the whole of CSO's but only part of them. e.g. An IR35 Check Employment Status for Tax (CEST) Assessment will still apply as would GDPR etc. but the actual procurement by competitive tender would not apply. All other legislation and Council policies still applies.

9.3 All NCA forms must be checked by Procurement/Legal for accuracy before submitting to the Director for approval. A record of the decision approving a waiver of CSOs (as at 9.2) must be kept by the Executive Manager Assets, Commissioning and Procurement or their nominee, who shall where appropriate make an entry in the appropriate register. A local copy must be kept by the relevant Director.

9.4 Where an approved exception allows the direct award of a contract which exceeds £50,000 then a contract award notice must be recorded by the Central Procurement Team on the Public Contracts Scotland portal and the relevant Director must notify the Executive Manager Assets, Commissioning & Procurement or their nominee of the details to allow entry on the contract register as soon as possible, but no later than 14 days from the decision to apply the exception. All exceptions over £50,000 must be reported to the relevant Service Committee no later than 6 months from the date of the decision.

9.5 Where an exception to these CSO's has been approved by the relevant Director, a written contract shall be put in place for that requirement without delay and copy of the contract/Purchase Order sent to Procurement for inclusion in the Contract Register.

9.6 The requirement to waive these CSO's is not required where:-

9.6.1 A procedure or specific situation other than the open or restricted procedure is permitted by the 2015 Regulations, 2016 Regulations, the Act, or the Appropriate Legislation. In deciding whether the use of another procedure or specific situation is permitted, the relevant Commissioning Officer shall seek advice from the Executive Manager Assets, Commissioning and Procurement or their nominee and/or the Executive Manager Governance & Law or their nominee.

9.6.2 Contracts with another public body for the purposes of ensuring co-operation with the aim of providing public services, unless those services are capable of being tendered competitively.

10. Contract Management, Monitoring and Evaluation

10.1 During the life of the contract, the Commissioning Officer must ensure that the supplier performance is monitored in accordance with the conditions of contract, to ensure the

desired outcome is met and best value obtained. A Contract Review Form is to be used and a copy sent to Procurement. Reports by exception will be presented to CMT biannually.

11. Contract extensions or variations

11.1 The Executive Manager Governance & Law may authorise an extension to a contract, or any other significant variation including a consequent change in price, provided such extension or variation is not contrary to the Council's Financial Regulations or legislative obligations.

11.2 A Commissioning Officer shall not extend or vary a contract if such extension or variation is not expressly permitted by the contract without seeking advice from the Executive Manager Assets, Commissioning and Procurement or their nominee.

11.3 Aggregation must be taken into account when considering a variation or extension of contract. The contract spend to date, together with estimated contract value must be taken into account. Disaggregation for the purpose of avoiding the application of these CSO's or the procurement legislation is strictly prohibited. The following link refers The Public Contracts Regulations 2015 (legislation.gov.uk).

12. Review of Contract Standing Orders

12.1 These CSO's will be reviewed regularly by the Executive Manager Assets, Commissioning and Procurement, with any material change or additions being presented to the appropriate committee for approval. Where the Prescribed Thresholds are amended, these CSO's shall be deemed to be updated without the requirement for Committee approval.

12.2 The Director of Corporate Services may authorise changes to these CSO's where changes are brought about by statute, regulation or case law or where any non-material change or addition is required to give effect to or clarify any procedural or operational matter.

13. Guidance on the Appointment of Consultants

This section has been produced to supplement these CSO's 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.

13.1 Preliminary

When appointing a consultant, all budget holders shall comply with the terms of the Council's CSO's. In addition, the principles set out in the Scottish Governments Consultancy Procedures Version 1.7 should be considered. **Note:** The procurement thresholds and approval procedures set out in that guidance may be ignored, however the principles and general procedures should be followed as far as possible. All requests for consultancy are to be made using the Request to Engage Consultants form.

13.2 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.

13.3 Principles to be applied when appointing consultants

It should be understood that Commissioning Officers can only consider engaging a consultant when all other employment and agency options have been exhausted and formal approval gained in line with Contract and Financial Regulations.

1. No alternative resource - budget holders shall only consider a consultant where the service in question cannot be provided internally due to a lack of expertise or capacity. Any appointment should be approved by the Relevant Director.

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, end point and duration of the service prior to appointing a consultant. Budget holders must consider whether there is the possibility that the scope or duration of the commission is likely to be extended. The procurement process that is followed must reflect the maximum possible scope or duration. **Note:** where the scope or duration cannot be estimated with any certainty, a duration of 48 months should be assumed as per the regulations. Any extensions must be approved using a new Request to Engage Consultants form.

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.

13.4 Approval of engagement

The appointment of a consultant for a service (or series of related services) for any value must be approved by the relevant Director before any engagement process is commenced.

Director 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.

13.5 IR35/Employment Status Assessment

Prior to being formally engaged, the service must undertake an IR35 Check Employment Status for Tax (CEST) assessment of the Consultant in accordance with HRMC requirements. Further information relating to this assessment is available via the Council Interact.

Schedule - Relevant Values and Associated Tendering Procedures

Prescribed Sums / Estimated Contract Value	**Type of Procurement**	**Regulated / Higher Value Threshold**	**Applicable Route / Procedure** (tendering for goods, works and services must be carried out by electronic means wherever possible)	
Under £5k	Goods, works & services (except Health and Social Care Services – see below)	No	Limit for contracts without competitive tendering	Best value to be demonstrated. Competitive tendering not mandatory but three quotes to be requested where possible.
£5k - £50k	Goods, works & services (except Health and Social Care Services – see below)	No	Limit for contracts requiring competitive tendering or quotations requested from at least three Economic operators for goods, works or services.	Minimum of three quotations to be requested or wider competitive tendering. Preferred route Public Contract Scotland - Quick Quote
All procurement estimated at £50k and over must only be progressed by Commissioning Officers with the advice and support of Procurement (and Legal if required). Ensure that VAT implications are considered when estimating costs.				
£50k - £207,720 (inc VAT)	Goods and Services	Regulated	Procurement Reform (Scotland) Act 2014 Procurement (Scotland) Regulations 2016	Competitive tendering (see Section 2 Procedures).
> £207,720	Goods and Services	Higher Value Threshold	Public Contracts (Scotland) Regulations 2015	Published in the Find a Tender Service (FTS) first, together with appropriate level of publication in other media.
£50k - £2m (Ex VAT)	Works			Competitive tendering (see Section 2 Procedures).
£2m - £5,193,000 (inc VAT)	Works	Regulated	Procurement Reform (Scotland) Act 2014 Procurement (Scotland) Regulations 2016	Competitive tendering (see Section 2 Procedures).
> £5,193,000 (Inc VAT)	Works	Higher Value Threshold	Public Contracts (Scotland) Regulations 2015	Published in the Find a Tender Service (FTS) first, together with appropriate level of publication in other media.
£50k - £415,440 (Inc VAT)	Utilities - Goods and Services			Competitive tendering (see Section 2 Procedures).

> £415,440 (inc VAT)		Higher Value Threshold	Utilities Contracts (Scotland) Regulations 2016	Published in the Find a Tender Service (FTS) first, together with appropriate level of publication in other media.
£50k - £5,193,000 (Inc VAT)	Utilities - Works			Competitive tendering (see Section 2 Procedures).
> £5,193,000 (Inc VAT)		Higher Value Threshold	Utilities Contracts (Scotland) Regulations 2016	Published in the Find a Tender Service (FTS) first, together with appropriate level of publication in other media.
< £50k	Health / Social Care Services / Social and Other Specific Services	No	Limit for contracts without competitive tendering	Competitive tendering not always required – consult Procurement Team.
£50k - £663,540 (Inc VAT)		Regulated	Procurement Reform (Scotland) Act 2014 Procurement (Scotland) Regulations 2016	Competitive tendering not always required – consult Procurement Team.
> £663,540 (inc VAT)		Higher Value Threshold	Public Contracts (Scotland) Regulations 2015	Published in the Find a Tender Service (FTS) first, together with appropriate level of publication in other media. The 'light touch' regime applies – must consult Procurement Team and Legal Services.
Non-Competitive Action (NCA)	Goods, works and services (including Utilities contracts and Health and Social Care Services)		Commissioning Officer to make the case that an Exception to the Contract Standing Orders and the relevant Procurement Regulations can be considered for approval by the Relevant Director. **All NCA forms to be checked by Procurement/Legal before being submitted for approval by the Director**.	

< £50,000	Exemption limit for financial vetting
£10,000,000	Employers Liability insurance minimum indemnity limit (applies irrespective of contract estimate)
£5,000,000	Public Liability insurance minimum indemnity limit (applies irrespective of contract estimate)
Varies – seek advice from Insurance Section, Procurement and Legal Services	Professional Indemnity insurance (e.g. professional services and consultancy)