



To: Council

On: 25 February 2016

Report by: Director of Finance and Resources

Heading: The Procurement Reform (Scotland) Act 2014 and the Review of Standing Orders Relating to Contracts

1. Summary

1.1 The purpose of this report is to inform Council there will be a need to review the Standing Orders Relating to Contracts in light of the Public Contracts (Scotland) Regulations 2015, the Procurement (Scotland) Regulations 2016, the Concession Contracts (Scotland) Regulations 2016 and statutory guidance made under and in terms of the Procurement Reform (Scotland) Act 2014.

1.2 Although the requirements under the regulations and guidance will largely come into effect on 18 April 2016, some of these have not yet been published. Consequently, this report recommends that authority be delegated to the Procurement Sub-Committee to approve the changes required to the Standing Orders Relating to Contracts as a result of the review.

2. Recommendations

2.1 Council is recommended to:

a) Note the need to review the Standing Orders Relating to Contracts in light of the Public Contracts (Scotland) Regulations 2015, the Procurement (Scotland) Regulations 2016, the Concession Contracts

(Scotland) Regulations 2016 and statutory guidance made under and in terms of the Procurement Reform (Scotland) Act 2014; and

- b) Delegate authority to the Procurement Sub-Committee to approve the changes required to the Standing Orders Relating to Contracts as a result of the review.

3. **Background**

3.1 The Council is required to have Standing Orders Relating to Contracts in terms of section 81 of the Local Government (Scotland) Act 1973.

3.2 The Standing Orders were last reviewed in 2013 with the current version being approved by Council at its meeting on 28 February 2013. Since then, amendments have been made to reflect changes in job titles and the Council's structure, and to update the EU procurement thresholds which change on 1 January of every second year.

3.3 The Public Contracts (Scotland) Regulations 2015, which implement the new EU public procurement directive (EU Directive 2014/24/EU), were laid before the Scottish Parliament on 18 December and come into force on 18 April 2016. Some of the key changes introduced by these Regulations are:-

- Reduced minimum time limits for procurement exercises, meaning that contracts can be put in place more quickly;
- The new Innovation Partnership procedure for the development and purchase of new and innovative goods, services or works;
- Greater clarity on the scope to use pre-market consultation to inform the approach to a procurement exercise;
- New "light touch" rules for contracts for care and support, and some other services, where the value of these contracts exceeds 750,000 Euro;
- Additional grounds for exclusion of tenderers, including businesses who have admitted, or who have been found to have committed, an act prohibited under the Employment Relations Act 1999 (Blacklists) Regulations 2010.

3.4 The draft Procurement (Scotland) Regulations 2016 have been laid before the Scottish Parliament and, subject to approval, will come into force on 18 April 2016. These will ensure that the rules applying to lower value contracts regulated by the Procurement Reform (Scotland) Act 2014 are comparable with the equivalent rules for higher value contracts regulated by the Public Contracts (Scotland) Regulations 2015. This is intended to ensure consistency and clarity. The regulations will also include provisions on:

- how the estimated value of a contract is to be determined;
- what is a health or social care service for the purposes of the Act;
- the circumstances in which a contract may be awarded under the Act without competition;
- publication of contract opportunity notices, prior information notices and contract award notices on the Public Contracts Scotland website;
- exclusion of tenderers; and
- the rules for drafting technical specifications for contract documents.

3.5 The Concession Contracts (Scotland) Regulations 2016 will implement the EU directive on concession contracts (EU Directive 2014/23/EU) and will apply to services and works concession contracts valued at 5.186 million Euros and more.

3.6 The Procurement Reform (Scotland) Act 2014 provides for the Scottish Ministers to publish statutory guidance on:

- the selection of tenderers and award of contracts;
- the sustainable procurement duty;
- the carrying out of regulated procurements relating to contracts for health and social care services;
- the preparation and publication of procurement strategies and annual procurement reports; and
- the use of community benefit requirements.

3.7 A report on the implications of the statutory guidance on the selection of tenderers and award of contracts – Addressing Fair Working Practices, including the Living Wage, in Procurement which was published in October 2015 and applies to regulated procurements commenced on or after 1 November 2015, was considered by the Procurement Sub-Committee at its meeting on 27 January 2016.

3.8 The Scottish Government has indicated that the remainder of the statutory guidance will be published in early 2016.

Implications of the Report

1. **Financial – None**
2. **HR & Organisational Development – None**
3. **Community Planning - None**
4. **Legal –** The Standing Orders Relating to Contracts will need to be reviewed in light of the Public Contracts (Scotland) Regulations 2015, the Procurement (Scotland) Regulations 2016, the Concession Contracts (Scotland) Regulations 2016 and statutory guidance made under and in terms of the Procurement Reform (Scotland) Act 2014.
5. **Property/Assets – None**
6. **Information Technology - None**
7. **Equality & Human Rights -** The Recommendations contained within this report have been assessed in relation to their impact on equalities and human rights. No negative impacts on equality groups or potential for infringement of individuals' human rights have been identified arising from the recommendations contained in the report. If required following implementation, the actual impact of the recommendations and the mitigating actions will be reviewed and monitored, and the results of the assessment will be published on the Council's website.
8. **Health & Safety – None**
9. **Procurement –** The review of the Standing Orders Relating to Contracts will ensure they reflect current best procurement practice as well as meeting the requirements of the legislation and guidance.
10. **Risk – None**
11. **Privacy Impact - None.**

List of Background Papers

- (a) Report to Council on 28 February 2013 on Review of Standing Orders Relating to Contracts

- (b) Report to the Procurement Sub-Committee on 27 January 2016 on Statutory Guidance on the Selection of Tenderers and Award of Contracts – Addressing Fair Working Practices, including the Living Wage, in Procurement

The background papers will be retained within Finance and Resources for inspection by the public for the prescribed period of four years from the date of the meeting. The contact officer within the service is: Lynn Mitchell, Managing Solicitor Tel: 0141618 7163; lynn.mitchell@renfrewshire.gcsx.gov.uk

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