

PERTH AND KINROSS COUNCIL

Housing and Health Committee – 31 October 2012
Lifelong Learning Committee – 31 October 2012

CONTRACT RULES FOR THE PROCUREMENT OF SOCIAL WORK SERVICES

**Joint Report by Executive Director (Housing and Community Care) and
 Executive Director (Education and Children's Services)**

ABSTRACT

This report seeks approval for updated Contract Rules for the Procurement of Social Work services.

1. RECOMMENDATIONS

It is recommended that the:

- 1.1 Housing and Health Committee approves the updated Contract Rules related to the procurement of adult care social work services as set out in appendix 1.
- 1.2 Lifelong Learning Committee approves the updated Contract Rules related to the procurement of child care social work services as set out in appendix 1.

2. BACKGROUND

- 2.1 Perth and Kinross Council spends approximately £140 million per annum on goods and services of which approximately 28% comprises social care services commissioned by Housing and Community Care and Education and Children's Services. In order to comply with Public Procurement legislation, written and approved policies outlining the procedures for the procurement of goods and services are required.
- 2.2 Under European Union legislation social care services are defined as "Part B' services which acknowledges that there are different considerations for these type of services in terms of procurement. For 'Part B' services the guiding principles of openness and transparency in procurement processes must apply, but there is greater discretion and flexibility available to commissioning bodies, thus ensuring that services can be commissioned to meet the distinctive and complex needs of vulnerable individuals.
- 2.3 The Contract Rules and the Perth and Kinross Contract and Procurement Guidance provide the general framework for the procurement process. However, for social care contracts, these must be applied in conjunction with the Contract Rules for the Procurement of Social Work Services, which define the special rules which are relevant to the provision of these services within the responsibilities of the Social Work (Scotland) Act 1968.

- 2.4 The necessary Social Work Contract Rules were developed to ensure that the Council was meeting its responsibilities and duties under the 'Following the Public Pound' following a national study by Audit Scotland in 2005. In 2006 an officer working group developed the current rules as part of a wider response to the Audit Scotland report and these were approved by the respective Service's Senior Management Teams. This was reported to the Strategic Policy and Resources Committee on 21 March 2007 (report 07/248).
- 2.5 It is timely to review these and to obtain the approval of the Housing and Health Committee and Lifelong Learning Committee for the following reasons:
- To update the titles of senior officers for accuracy and to reflect the current organisational structures in Housing and Community Care and Education and Children's Services.
 - To incorporate reference to the Scottish Governments Guidance on the Procurement of Care and Support Services issued in September 2010.
 - To meet a recommendation of the Internal Audit Report for Housing and Community Care (titled Commissioning Services – Temporary Accommodation 11-12, dated June 2012).

3. PROPOSALS

- 3.1 It is proposed that Housing and Health Committee approves the updated Contract Rules related to the procurement of adult care social work services as set out in appendix 1.
- 3.2 It is proposed that Lifelong Learning Committee approves the updated Contract Rules related to the procurement of child care social work services as set out in appendix 1.
- 3.3 The purpose of these rules is to provide specific direction on the procedures for the procurement of care and support services given the particular legal responsibilities placed on local authorities to promote social welfare under the term of the Social Work (Scotland) Act 1968. In particular it should be noted that the Social Work Contract Rules have been updated to:
- Reflect changes in the job titles of senior managers.
 - Comply with approved levels of financial authority.
 - Refer to the National Care Home Contract where appropriate.
 - Refer to the forthcoming introduction of the self-directed support legislation.
 - Be compliant with the Guidance on the Procurement of Care and Support Services.

- 3.4 The recent Scottish Government's Guidance on the Procurement of Care and Support Services was introduced to support good practice, in order to give direction on the range of ways in which local authorities and other public bodies should ensure social work clients have their needs and aspirations met, while ensuring compliance with procurement rules and legislation.
- 3.5 To comply with legislation there is clearly the need for openness and transparency in procurement. In this respect, the decision making process at the point when public bodies decide the appropriate method for procuring care and support is critical. This means that there is a general presumption in favour of open competition. This is qualified when there are special circumstances in relation to care and support. The Guidance directs that local authorities and other public bodies must consider the following circumstances when deciding the appropriate route for procurement and the level of advertising and competition to undertake:
- Timing, cost and nature of the requirement.
 - Geographic location and/or rurality.
 - Whether relevant expertise exists within the public body or another public body.
 - Whether there is a market of capable service providers.
 - Views of service users and carers.
 - Views of service providers, their staff and trade unions.
 - Benefit and risks to service users and service delivery.
 - Urgency of need.
- 3.6 The Scottish Government Guidance (Para 8.4) indicates "Public bodies should decide on a case by case basis, whether or not to advertise the requirement and award the contract or framework agreement by competition." Accordingly, the updated Perth and Kinross Contract Rules for the Procurement of Social Work Services gives explicit authority to the Executive Director (Housing and Community Care) and Executive Director (Education and Children's Services) to enable services to be procured without competition, but applied within the wider framework now provided by Scottish Government Guidance.
- 3.7 In accordance with the Government Guidance, in each case where services are being commissioned where the considerations, in paragraph 3.4 above have been applied, a procurement plan should outline the nature of the procurement, and the method of procurement to be undertaken.
- 3.8 Education and Children's Services are working towards the introduction of authorised providers lists/preferred users lists for Residential and Foster Care. This will be in line with Housing and Community Care and Perth and Kinross Council standards for organisations to meet.
- 3.9 A National Contract is already in place for Secure Care, managed by Scotland Excel on behalf of the Scottish Government. A similar contract for Foster Care has just been put out to tender by Scotland Excel, with an anticipated National Contract framework in place by 2013.

- 3.10 The Chief Social Work Officer has a role in authorising Secure Care placement for children and young people.

4. CONSULTATION

The Heads of Democratic Services, Legal Services and Finance have been consulted in the preparation of this report.

5. RESOURCE IMPLICATIONS

There are no direct resource implications arising from this report.

6. COUNCIL CORPORATE PLAN OBJECTIVES 2009-2012

The Council's Corporate Plan 2009-2012 lays out five Objectives which provide clear strategic direction, inform decisions at a corporate and service level and shape resources allocation. The following objectives are relevant to this report:

- (i) A Safe, Secure and Welcoming Environment
- (ii) Healthy, Caring Communities
- (iii) A Prosperous, Sustainable and Inclusive Economy
- (iv) Educated, Responsible and Informed Citizens
- (v) Confident, Active and Inclusive Communities

7. EQUALITIES IMPACT ASSESSMENT (EqIA)

- 7.1 The Council's Corporate Equalities Assessment Framework requires an assessment of functions, policies, procedures or strategies in relation to race, gender and disability and other relevant equality categories. This supports the Council's legal requirement to comply with the duty to assess and consult on relevant new policies to ensure there is no adverse impact on any community group or employees.

- 7.2 The function, policy, procedure or strategy presented in this report was considered under the Corporate Equalities Assessment Framework and assessed in relation to the Race/Disability/Gender Equalities Assessment. Consequently the following points were identified and actions

- Services that are the focus of this report provide positive outcomes through care, support and assistance to a range of client groups.

8. STRATEGIC ENVIRONMENTAL ASSESSMENT

- 8.1 Strategic Environmental Assessment (SEA) is a legal requirement under the Environmental Assessment (Scotland) Act 2005 that applies to all qualifying plans, programmes and strategies, including policies (PPS).

- 8.2 The matters presented in this report were considered under the Environmental Assessment (Scotland) Act 2005 and no further action is

required as it does not qualify as a PPS as defined by the Act and is therefore exempt.

9. CONCLUSION

This report seeks approval for updated Contract Rules for the Procurement of Social Work services.

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Note: No background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) were relied on to any material extent in preparing the above report.

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Date: 22 October 2012

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PERTH AND KINROSS COUNCIL

**CONTRACT RULES FOR PROCUREMENT OF
SOCIAL WORK SERVICES**

October 2012

These rules relate to the procurement of services by the Council in its capacity as a Social Work authority under the terms of the Social Work (Scotland) Act 1968 and are to be applied with reference to the Scottish Government Guidance on the Procurement of Care and Support Services (September 2010).

Except as provided for in these rules, the provisions of the Council's Contract Rules shall apply to contracts for the procurement of social work services.

Except where these rules indicate otherwise, the Executive Director (Housing and Community Care), or the Executive Director (Education and Children's Services) may further delegate any of the powers set out in these rules.

Where services are commissioned under the terms of these Social Work Contract Rules a procurement plan should be produced to outline the nature of the procurement exercise and the method of procurement to be used, taking into consideration the guidance in this document.

1. Authorised Lists

The Executive Director (Housing and Community Care) or the Executive Director (Education and Children's Services) may prepare a list of authorised providers of particular social work services.

Where the Executive Director (Housing and Community Care), or the Executive Director (Education and Children's Services) prepares a list of authorised providers for a particular service or services, contracts may only be entered into for such services with providers who are on the list.

Each list shall:

- (1) be compiled and maintained by the Executive Director Housing and Community Care, or the Executive Director (Education and Children's Services).
- (2) contain the names of all tenderers who have already been approved by the Executive Director (Housing and Community Care), or the Executive Director (Education and Children's Services).
- (3) indicate whether a tenderer whose name is included on the list is approved for all contracts or only for contracts of specified categories, values or amounts.

The Executive Director (Housing and Community Care), or the Executive Director (Education and Children's Services) shall ensure that no Provider is included on any such list unless he is fit to provide the service. For the purposes of determining the fitness of Providers, the Executive Director (Housing and Community Care), or the Executive Director (Education and Children's Services) shall prepare Standards for each relevant service that Providers must meet before they can be considered fit to provide the service.

2. Packages of Care for Individuals

The Executive Director (Housing and Community Care), or the Executive Director (Education and Children's Services) may negotiate and enter into contracts for the provision of social work services for an individual without seeking competitive tenders or quotations where such services are required as part of an agreed package of care. Where possible a quotation will be sought to enable affordability/budget management decisions to be made. That authority may be further delegated as follows:

2.1 For Community Care:

- (1) agreements up to £25,000 – Team Leader or Home Care Manager (or equivalent) responsible for individual care package.
- (2) agreements between £25,000 and £70,000 – Service Manager (or equivalent) responsible for individual care packages.
- (3) agreements over £70,000 up to the value of £250,000 –Executive Director (Housing and Community Care), or Head of Service, Community Care (or appropriate Head of Service).

2.2 For Children and Families' Services:

- (1) agreements up to £25,000 – Improvement Officer responsible for individual care package.
- (2) agreements between £25,000 and £70,000 – Service Manager responsible for individual care packages.
- (3) agreements over £70,000 up to the value of £250,000 –Executive Director (Education and Children's Services), or Head of Children and Families' Services.

Decisions relating to the extent of competition which is appropriate will be made, having regard to the Scottish Government Guidance on the Procurement of Care and Support Services, on a case by case basis. The following circumstances will be taken into consideration:

- Timing, cost and nature of the requirement;
- Geographic location and/or rurality;
- Whether relevant expertise exists within the public body or another public body;
- Whether there is a market of capable service provider;
- Views of service users and carer;
- Views of service providers, their staff and trade union;
- Benefit and risks to service users and service deliver; and
- Urgency of need.

Also please refer to Section 5 in these Contract Rules.

3. Additional Rules – Care Home and Nursing Home Placements

The following additional rules apply for specific types of service being procured:

3.1 Care Home Placements

(a) Care Home placements within Perth and Kinross

The Executive Director (Housing and Community Care), may enter into standard National Care Home Contracts with providers of residential or nursing care.

The Executive Director (Housing and Community Care), shall, in consultation with the Head of Legal Services, produce a standard form of individual service contract for the purposes of entering into contracts for individual residential or nursing care home placements. The Executive Director (Housing and Community Care) may enter into contracts for individual residential or nursing care home placements using the standard individual service contract. The Executive Director (Housing and Community Care) may enter into individual service contracts with providers for the provision of individual residential or nursing care home placements only if the provider has entered into the standard National Care Home Contract or other pre-placement contract agreed by the Head of Legal Services.

(b) Residential Care placements outwith Perth and Kinross

The Executive Director (Housing and Community Care), may enter into contracts directly with providers in Scotland, England and Wales for any residential care home placement using the standard Perth and Kinross residential care contract.

The Executive Director (Housing and Community Care) may enter into contracts for individual residential care home placements using the standard individual service contract. The Executive Director (Housing and Community Care) may enter into individual service contracts with providers for the provision of individual residential care home placements only if:

- (1) in Scotland, the provider has entered into the standard National Care Home Contract or other pre-placement contract with the host authority.
- (2) in England and Wales, the provider has entered into a pre placement contract agreed by the Head of Legal Services.

(c) Nursing Care placements elsewhere in Scotland

The Executive Director (Housing and Community Care) may enter into contracts directly with any Scottish Nursing Home provider using the National Care Home Contract or other pre placement contract agreed by the Head of Legal Services

The Executive Director (Housing and Community Care) may enter into contracts for individual nursing care home placements using the standard individual service contract.

The Executive Director (Housing and Community Care) may enter into individual service contracts with providers for the provision of individual nursing care home placements only if the provider has entered into standard National Care Home Contract or other pre placement contract as agreed by the Head of Legal Services.

(d) Nursing care placements outwith Scotland

The Executive Director (Housing and Community Care) may enter into contracts with the local authority in which the provider is situated whereby that local authority has agreed to undertake the contracting for the placement using that local authority's Nursing Home Care contract.

(e) Residential childcare placements

The Executive Director (Education and Children's Services) may enter into contracts directly with providers in Scotland, England and Wales for any residential child care placements using the standard Pre Placement Agreement Contract.

3.2 The Executive Director (Housing and Community Care), is authorised to agree rates in excess of the standard rate for placements in independent care homes agreed under the terms of the National Care Home Contract, in circumstances where:

- (1) the placement is in an establishment managed directly by another local authority; or
- (2) the placement is in an establishment whose fee levels are set by the host local authority in terms of the COSLA agreement or equivalent; or
- (3) the level of need of the individual concerned is such that the specialist establishment is the most appropriate placement possible.

4. Service Level Agreements with Voluntary Organisations

The Executive Director (Housing and Community Care), or the Executive Director (Education and Children's Services) are authorised to negotiate, approve and enter into Service Level Agreements for the payment of grants or loans to voluntary organisations. Subject to the following requirements:

- (1) all such agreements must be contained within the respective services' budget; and
- (2) all such agreements must be authorised by the respective Senior Management Team; and
- (3) the terms of each agreement should be approved by the Head of Legal Services.

5. Circumstances to be Taken into Consideration on Case by Case Basis when Open Competition is not Required

The Executive Director (Housing and Community Care), or the Executive Director (Education and Children's Services) may enter into negotiations with one or more providers where the proposed value of the services is no greater than £250,000 to develop social work services in one or more of the following circumstances:

- (1) in the opinion of the Executive Director (Housing and Community Care), or the Executive Director (Education and Children's Services) the needs of the individual(s) concerned would be best met by a particular provider;
- (2) in the opinion of the Executive Director (Housing and Community Care), or the Executive Director (Education and Children's Services) there is only one provider capable of delivering the service to meet the needs of the individual(s) concerned;
- (3) the nature of the service is such that it should not or cannot be adequately specified in advance because of the nature of the need of the individual(s) concerned;
- (4) there are special circumstances such as ownership of land or property, geographic locations or particular skills or experience of providers of care which limit the choice to one provider.

6. Others

In the case of those services negotiated under clause 5 above, the Executive Director (Housing and Community Care) or Executive Director Education & Children's Services shall make the decision based on a submission from the relevant officer outlining the reasons why that particular service is required.

In the case of those services negotiated under clause 5 above, the Executive Director (Housing and Community Care), or the Executive Director (Education and Children's Services) shall be authorised to enter into appropriate contracts provided the terms of any such contract have been approved by the Head of Legal Services.

All contracts entered into for the delivery of Social Work services will be subject to respective service's approved Contract Monitoring Framework. Within Education and Children's Services work is underway to finalise a monitoring framework in line with the Perth and Kinross Contract Monitoring Framework and Guidance which has still to be finalised.