

# Ethical Standards Commissioner

## INVITATION TO TENDER FOR THE PROVISION OF INTERNAL AUDIT SERVICES

December 2021

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## Introduction

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### Ethical Standards Commissioner

The Commissioner for Ethical Standards in Public Life in Scotland is also known as the Ethical Standards Commissioner (the Commissioner). The Commissioner's office is described here as the ESC.

The Commissioner's primary functions are:

1. to investigate complaints about the conduct of Members of the Scottish Parliament (MSPs), local authority councillors and board members of public bodies.
2. to regulate and monitor how people are appointed to the boards of public bodies in Scotland, and to promote diversity in that process.
3. to investigate complaints about lobbyists who fail to accurately register with the Scottish Parliament.

The key items of legislation setting out the Commissioner's functions and responsibilities are as follows:

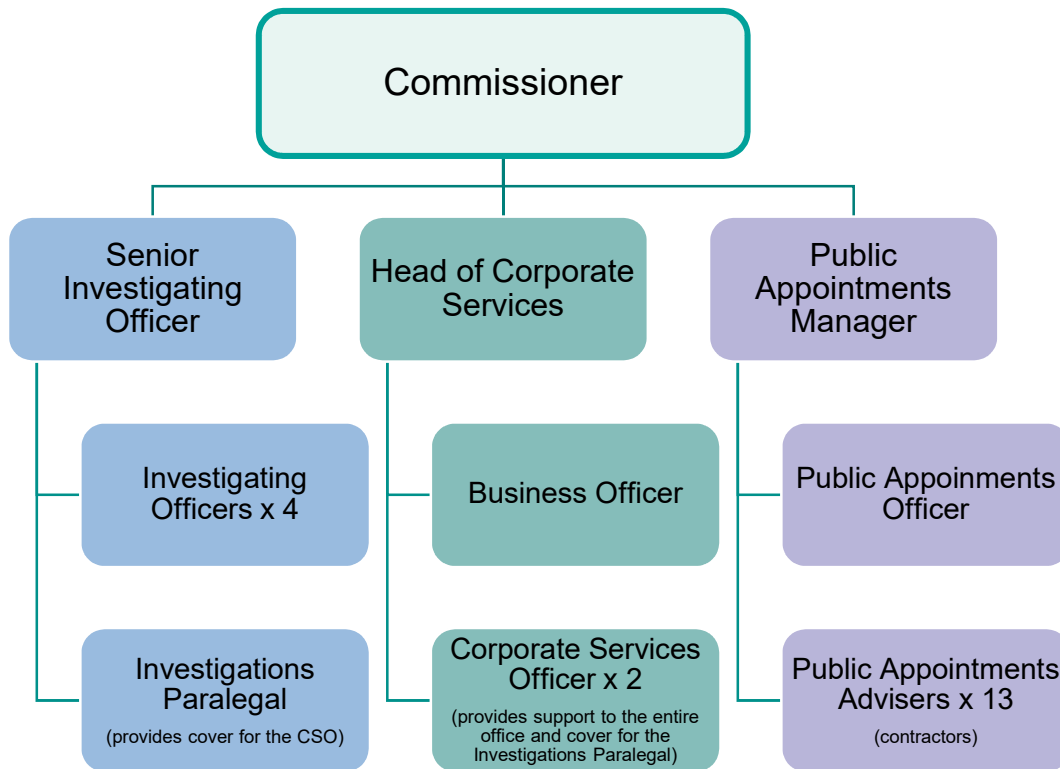
- [The Ethical Standards in Public Life etc. \(Scotland\) Act 2000](#) (the Ethical Standards Act)
- [The Scottish Parliamentary Standards Commissioner Act 2002](#) (the SPSC Act)
- [The Public Appointments and Public Bodies etc. \(Scotland\) Act 2003](#) (the Public Appointments Act)
- [The Scottish Parliamentary Commissions and Commissioners etc. Act 2010](#)
- [The Public Services Reform \(Commissioner for Ethical Standards in Public Life in Scotland etc.\) Order 2013](#) and
- [The Lobbying \(Scotland\) Act 2016](#).

The Commissioner's most recent Annual Report is available at:

<https://www.ethicalstandards.org.uk/publication/esc-annual-report-2020-21>

The audit of the accounts for the financial year 2020/21 has now been completed by our external auditors, Deloitte LLP. Under section 22 of the Public Finance and Accountability (Scotland) Act 2000, the auditors have sent the accounts and their report to the Auditor General for Scotland. In due course, the Auditor General will make the audited annual report and accounts, and any additional report that the Auditor General may wish to make, available for laying in the Scottish Parliament.

## ESC's structure



The Commissioner is currently on an extended period of leave. The Scottish Parliamentary Corporate Body appointed Ian Bruce, the Public Appointments Manager, as Acting Commissioner and Karen Elder, the Head of Corporate Services as Acting Accountable Officer as of 20 April 2021.

## Service being procured: internal audit

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### Project Specification

The Commissioner is inviting tenders for the provision of internal audit services for the Ethical Standards Commissioner (ESC), Thistle House, 91 Haymarket Terrace, Edinburgh, EH12 5HE. The successful contract from this invitation to tender will:

- commence on Monday, 28 February 2022 for an initial period of three years, with the option to renew for a further two years
- be provided by a single supplier
- meet the Living Wage standard
- hold Cyber Essentials or similar accreditation.

The Commissioner is subject to data protection legislation with associated duties to protect personal data. Bidders must be aware of, and take account of, the confidentiality requirements set out in [section 12 of the Ethical Standards Act](#) and [section 16 of the SPSC Act](#). A copy of section 12 is attached at Annex 1 and section 19 is provided at Annex 2.

Tenders should be submitted electronically to [business@ethicalstandards.org.uk](mailto:business@ethicalstandards.org.uk) by noon, on Monday, 17 January 2022.

Requests for more information about the work of the office or clarification about the tendering process should be made to Jenni Green, Business Officer at [business@ethicalstandards.org.uk](mailto:business@ethicalstandards.org.uk).

### Terms of Reference

The bidder will provide an independent appraisal activity as a service to the Commissioner by examining and evaluating the adequacy and effectiveness of key internal and other controls.

The objective of internal auditing is to assist the Commissioner in the effective discharge of their responsibilities. To this end, the bidder will provide the Commissioner with analyses, appraisals, recommendations, counsel and information concerning the activities reviewed as an aid to improving performance. Its objectives include promoting effective control at reasonable cost.

The internal auditor has direct access to the Commissioner and to all other staff members. In any instances where the Commissioner or members of the Senior Management Team are personally involved in an internal audit finding of a fraudulent or governance failure nature, the internal auditor has a duty to report to the ESC's Advisory Audit Board and/or external auditor.

## Scope

The Commissioner will agree a three-year plan and an annual programme for internal audit, based on priority areas identified through assessment of risk. The contract will cover activity from reporting year 2021/22 onwards. A full review of governance arrangements will be required in year one.

The audit plan, annual programme, audit reports and annual assurance will be submitted to the ESC's Advisory Audit Board. The Internal Auditor is responsible for monitoring and reporting the extent of implementation of recommendations made.

The scope of internal auditing encompasses the examination and evaluation of the adequacy and effectiveness of the ESC's governance arrangements and system of internal control and the quality of performance in carrying out assigned responsibilities. The scope of work includes reviewing, appraising and reporting on:

- operations or plans to ascertain whether results are consistent with established objectives and goals and statutory obligations, and whether the operations or plans are being carried out in line with generally accepted good practice
- the economy and efficiency with which resources are employed
- the systems established to ensure compliance with those policies, plans, targets, procedures, laws and regulations which could have a significant impact on operations, and whether the Commissioner and ESC as a whole is complying
- the soundness, adequacy and application of governance arrangements
- the soundness, adequacy and application of financial and other management controls
- the reliability, integrity and usefulness of financial and operating information and the means used to identify, measure, classify and report such information
- the means of safeguarding the ESC's assets from losses of all kinds arising from:-
  - fraud and other offences
  - waste, extravagance and inefficient administration, and other causes.

## Responsibilities

The Internal Auditor will ensure that investigations are carried out on instances of fraud or suspected fraud, and will carry out other special audit investigations at the request of the Commissioner.

The Internal Auditor will agree with the ESC audit plans to meet the coverage requirements specified by the Commissioner, in particular all high and medium risk areas will be audited at least once per audit cycle (three years). The assessment of audit risk will be re-evaluated at least annually.

Initial draft audit reports will be discussed with appropriate levels of management and will be issued within two weeks of completion of audit field-work.

Management will formally document their comments within three weeks of receipt of the draft report. Final audit reports will incorporate these comments on the recommendations and the likely implementation timetable. Final audit reports will be submitted to the Commissioner and to the Advisory Audit Board.

The independent role of the internal auditor will not exclude a close working relationship with the ESC, through contact at the appropriate managerial levels before, during and after the conclusion of an audit assignment. There should be co-operation between the internal audit team and the ESC's external auditors, including the exchange of relevant information, in order to maximise the benefit to management of the combined resource.

## Terms and Conditions

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### Contracted confidentiality

Bidders must be aware of, and take account of, the confidentiality requirements of section 12 of the Ethical Standards Act and section 16 of the SPSC Act. Copies of these sections are attached as annexes.

All records, working papers, reports and other information held by the internal auditor in fulfilling this contract will remain the property of the ESC. At the end of the contract all applicable paperwork must reside with the ESC.

The internal auditor must undertake not to publish or communicate the results or content of any of their work to anyone other than to the ESC, its AAB or external auditor. This undertaking continues beyond the life of the contract.

ESC is subject to both data protection legislation and access to information (ATI) legislation, such as the Freedom of Information (Scotland) Act 2002 and Environmental Information (Scotland) Regulations 2004. These apply to all the paper and electronic data, and information, the internal auditor receives and creates as part of their contract with the ESC. The internal auditor must comply with the contract, the ESC's [Records Management Policy](#) and procedures and any other specific reasonable instructions or directions from the ESC to ensure that the ESC meets its duties under:

- data protection legislation,
- ATI legislation and
- the confidentiality provisions of the Ethical Standards Act and the SPSC Act.

Any breach of confidentiality of contract or restricted information will constitute a material breach and enable the Commissioner to terminate the contract. Further details are available in our [Confidentiality Policy](#) and [Data Protection Policy](#).

### Length of contract

The contract will be for a three-year term, commencing 28 February 2022 with the option to extend by up to two years, dependant on funding availability and satisfactory performance. The Commissioner will review performance annually.

### Tender confidentiality

The bidder will not issue any public statements or otherwise disclose any information concerning this Invitation to Tender (ITT), the process and its participation in the process without the prior written approval of the ESC.



## Legal Disclaimer

This ITT is an invitation to propose and does not in any manner create an offer or other obligation on the part of the ESC to enter into any contract.

All expenses and costs incurred by the bidder in completing, submitting and delivering the bids, together with any costs incurred during the post tender stage, will be to the bidder's account. The ESC is not bound to accept the lowest or any bid.

## Use of Information

This ITT and any other information furnished hereunder shall be used solely for the purpose of responding to this ITT. Reproduction of any part of this ITT is authorised only to the extent necessary for the preparation of the bidder's response. All bidders shall ensure that all such copies are destroyed when no longer required in connection with this ITT.

## Tender Submissions

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### Your tender submission **must** include:

1. Experience (weighting 30%)

Details of your experience relating to similar work. Summaries of relevant work carried out for two clients (with contact details), who would be willing to provide a reference.

2. Sample report (weighting 30%)

A de-personalised sample report which you have produced for previous clients. This is so that we can get an insight in to the likely format of the reports that you will produce for us.

3. Quality Assurance procedures (weighting 10%)

Details of what quality assurance procedures you have in place to ensure that you deliver a consistent, high quality service.

4. Information security processes and procedures (weighting 10%)

Describe the systems and processes you have in place to ensure that information you process on behalf of the ESC is kept secure, confidential and is protected from loss or unauthorised access and exploitation taking into account data protection and ATI legislation.

5. Resourcing arrangements (weighting 10%)

Describe the personnel / level of resources that will be applied to this contract. Our expectation is that we will be dealing with a dedicated resource throughout the duration of the contract.

6. Costs (weighting 10%)

All pricing should be submitted in GBP, and include all charges, add-ons and indicate different levels of service. Rates should be fixed for the duration of the contract. Please show the cost of the contract for each year, and the total cost over three full years. VAT (if applicable) should be listed separately. It is anticipated that the work will be conducted remotely, at our offices in Edinburgh or at the internal auditor's own premises. Expenses, including overheads, will not be applicable for this work. ESC has anticipated an average of three to four audits per year, with associated planning and presentation days, but would welcome tenderers own proposals in this area.

7. Living Wage (weighting yes/no)

ESC is an accredited Living Wage Employer, and is committed to encouraging suppliers to pay the Living Wage. Provide evidence or details of your Living Wage Employer status, or equivalent pay policy in respect of the Living wage, and whether those engaged in delivering this service will be paid the Living Wage.

8. Cyber Essentials or similar accreditation (weighting yes/no)

ESC wishes to ensure that all data exchanged under this contract is handled securely. Provide evidence or details of your Cyber Essentials or equivalent accreditation.

9. Confirmation of the Professional Indemnity Insurance and Public Liability Insurance cover that your company has in place (weighting yes/no)

10. The identification of any conflict of interest in providing services to ESC (weighting yes/no)

11. Requirement in terms of payment e.g. monthly invoice/payment periods (weighting yes/no)

12. The standard terms of the contract regarding termination (weighting yes/no)

## Assessment of tenders

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The assessment of tenders will be undertaken by an evaluation panel which will include representatives from ESC's Senior Management Team. The panel will consider all tenders against the requirements set out in this invitation and will make a decision on the basis of how closely tenders meet the requirements. If a tender does not substantially conform to the tender requirements it will not be considered further.

Each item in the tender submission will be given a score as follows:

Score	Description
5 – Excellent	Meets exactly the specified standard
4 – Good	Meets the standard well but not completely
3 – Fair	Mostly meets the standard but fails in parts
2 – Doubtful	Mostly fails the standard but meets in some
1 – Poor	Significantly fails to meet standard
0 – Reject	Reject as completely fails to meet standard

The scores will then be multiplied to give them the weighted percentage score out of 100% as follows:

1	Experience of similar work including two references	30%	X6
2	Sample report	30%	X6
3	Quality assurance procedures	10%	X2
4	Information security processes and procedures	10%	X2
5	Resourcing arrangements	10%	X2
6	Breakdown of costs with VAT	10%	X2
7	Evidence of Living Wage accreditation, or equivalent	0%	Yes/No
8	Evidence of Cyber Essentials accreditation, or equivalent	0%	Yes/No
9	Conflicts of interest	0%	Yes/No
10	Professional indemnity / liability	0%	Yes/No
11	Payment requirements	0%	Yes/No
12	Terms of contract regarding termination	0%	Yes/No

Item 6 - Full cost details must be provided as requested, otherwise the submission will score zero here. Scores will be awarded by ranking all submissions in order of total cost over three years. The supplier with the lowest total cost will receive 10%, second will receive 8%, third, 6% and so on.

Items 7-11 – This information is required for the submission to be considered but will not form part of the weighted score.

Representatives from the panel may undertake, if deemed appropriate, communications with bidders to clarify / verify their tender submissions. This may be in writing, by phone or video call or a discussion at the ESC's office. These meetings would not form part of the evaluation process and therefore would not be marked separately but they will be used to validate the scores allocated to your response. In the event of clarification or verification being required, bidders would be contacted week commencing Monday, 17 January 2022.

## Tender conditions

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1. Suppliers are invited to submit a tender, including all expenses, for providing the services as described in this document. If the costs are not fixed for the duration of the contract, the review points and basis of the review should be clearly detailed.
2. Potential suppliers must meet their own costs of responding to this tender and any costs they incur in responding to this tender.
3. Prices quoted must be held firm for at least 45 days from the closing date for tenders
4. The supplier must be willing for the response to this invitation to tender to form part of the contractual relationship with the Ethical Standards Commissioner.

## Timetable

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The timetable for this tender process is as follows:

Invitation to tender issued	Monday, 6 December 2021
Deadline for submission of tenders	Noon, Monday 17 January 2022
Evaluate tenders	w/c Monday, 17 January 2022
Interview with short-listed contractors	Monday, 31 January and Tuesday, 1 February 2022
Appoint supplier (subject to any clarification or verification required by the Commissioner)	w/c Monday, 31 January 2022
Contract Commencement	Monday, 28 February 2022

If clarification of the tender submission is required, bidders will be contacted during week commencing Monday, 17 January 2022.

## Making a tender

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The closing time and date for tender responses is **noon on Monday, 17 January 2022**. Any response received after that date will not be considered further. Your submission should be electronic and emailed to [business@ethicalstandards.org.uk](mailto:business@ethicalstandards.org.uk). Paper copies are not required.

A full response to this tender must be clearly marked 'RESPONSE to Internal Audit Services Tender' in order to ensure the contents are not opened before the deadline.

Interested parties may contact the Commissioner's office for clarification or further information about the tender or its work in general. A telephone or video call (via Teams) can also be arranged. Please email any enquiries or requests for a telephone or video calls to Jenni Green, Business Officer in good time to meet the submission deadline. Your email must be clearly titled 'ENQUIRY about Internal Audit Services Tender'.

Your submission and enquiries can be emailed to [business@ethicalstandards.org.uk](mailto:business@ethicalstandards.org.uk).

## Administration of tender

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### Release of information provided

Under ATI legislation, ESC may be required, on request, to release information that it holds. Tenderers should note that information in relation to any tender may be disclosed by ESC unless it is sensitive in nature and therefore exempt from release (for example because commercial interests may be harmed, or its disclosure would constitute an actionable breach of confidence). Tenderers should identify any information in the tender considered to be 'confidential' or 'commercially sensitive' and explain why and how long it is likely to remain so. Information which is not properly identified may be released by ESC in response to a request for information. Please note that the final decision on the release or withholding of information rests with the Commissioner.

ESC will consult with a tenderer if it receives a request for any information related to this tender that has been highlighted as being confidential or commercially sensitive. Tenderers should note that successful tenders will be retained for 7 years from the date the contract ends. Unsuccessful tenders are retained for 7 years from date the tender is submitted.

### Equality, diversity and inclusion

The provider shall at all times comply with the requirements of the Equality Act 2010 and shall not treat any person or group of people less favourably than another on the grounds of race (this includes the different elements of colour, nationality, and ethnic or national origin), religion and belief, sex, age, disability, marital and civil partnership status, pregnancy and maternity or sexual orientation. Further details are available in ESC's [Equality, Diversity and Inclusion Policy](#).

## Fair work and other policies

The Commissioner will take into the consideration the requirements of the [Scottish Government's Fair Work First guidance](#) when assessing this tender.

Tenderers are expected to operate in line with the Commissioner's policies, including those mentioned above and its [Code of Conduct](#) and [Anti-Fraud Policy](#).

## ANNEX 1: Section 12 of the Ethical Standards in Public Life etc (Scotland) Act 2000

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### 12 Conduct of Commissioner's investigations

- (1) Subject to section 10 above and subsection (2) below, it is for the Commissioner to decide whether, when and how to carry out any investigation.
- (2) Investigations shall, so far as possible, be conducted confidentially.
- (3) An investigation may take place notwithstanding that the person whose conduct is to be investigated is no longer a councillor or, as the case may be, a member of a devolved public body.
- (4) Omitted by virtue of subsequent legislation.
- (5) If it appears to the Commissioner that an investigation being carried out under this section will not be completed within three months of the date on which it began, the Commissioner shall, in writing, inform—
  - (a) the Commission;
  - (b) the councillor or member whose contravention, or possible or alleged contravention, of the councillors' or, as the case may be, members' code is the subject of the investigation; and
  - (c) the council or devolved public body, of that fact.
- (6) Investigations shall, so far as is possible, only be undertaken in response to allegations of misconduct which are made in writing and signed by the complainant.



## ANNEX 2: Section 16 of the Scottish Parliamentary Standards Commissioner Act 2002

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### 16 Restriction upon disclosure of information

- (1) Except as permitted by subsection (2), the Commissioner or the staff of, or any other person appointed by, the Commissioner shall not disclose any information contained in the complaint or any information which is furnished to or obtained by them in the course of, or for the purposes of, an investigation into that complaint.
- (2) Such information may be disclosed for the purpose of—
  - (a) enabling or assisting the Commissioner to discharge any functions imposed or conferred upon the Commissioner by virtue of any provision in this Act or in any other enactment or in the standing orders, including, in particular, the making of any report to the Parliament; or
  - (b) the investigation or prosecution of any offence or suspected offence.