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**To:** Council

**On:** 30 April 2015

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**Report by:** Director of Finance and Resources

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**Heading:** Consultation on Changes to the Public Procurement Rules in Scotland

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**1. Summary**

- 1.1 On 9 February 2015, the Scottish Government issued a consultation on changes to the public procurement rules in Scotland. The proposed response on behalf of the Council is attached as an appendix to this report.
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**2. Recommendations**

- 2.1 Council is asked to approve the response included as an appendix to this report.
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**3. Background**

- 3.1 The proposed changes largely arise from three new EU Directives concerned with Public Procurement, Concessions and Utilities contracts which must be implemented into new Scottish Regulations by 18 April 2016. The consultation also considers elements of the Procurement Reform (Scotland) Act 2014. The Scottish Government is adopting a co-ordinated approach to the implementation of the Directives and the Act and this will result in one consolidated set of regulations.
- 3.2 Some of the changes introduced by the Directives are mandatory and the Scottish Government has no choice but to implement these by the 18 April 2016 deadline but there are also some elements where the

Scottish Government has a choice about whether to, or how best to, implement further change. These discretionary elements, and the Scottish Government's plans to implement these, are the main focus of the consultation document. The consultation paper also discusses elements of the Procurement Reform (Scotland) Act 2014 that have yet to be implemented or further described in the Scottish regulations and guidance.

3.3 Some of the key issues the regulations and guidance will cover are:-

- the requirement for the Council to have a Procurement Strategy that sets out how it intends to carry out procurements regulated by the Act. The Strategy must also contain information on the Council's approach to a range of issues including how it engages with those affected by its procurements; its approach to promoting health and safety and the procurement of fair and ethically traded goods and service;
- rules on the award of contracts for care and support services;
- workforce matters guidance which will deal with issues such as the payment of a living wage and ending blacklisting.
- the new sustainable procurement duty which will require the Council to consider how each procurement process might improve the economic, social and environmental wellbeing of the Renfrewshire area; promote innovation; and facilitate the involvement of SMEs, third sector bodies and supported businesses.
- the requirement to include community benefits in contracts valued at £4 million and above.

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### **Implications of the Report**

1. **Financial** - None

2. **HR & Organisational Development** – None

3. **Community Planning** –

**Jobs and the Economy** - The Scottish Government's intention is that regulations will complement the Scottish Model of Procurement through simplifying, standardising and streamlining procedures for both businesses and public bodies. Statutory Guidance on workforce matters; the sustainable procurement duty; and community benefits will also be issued.

4. **Legal** – The new regulations must be implemented by the Scottish Government by 18 April 2016. These will require significant changes to the Council's standing orders relating to contracts.

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 new regulations and guidance will require significant changes to existing procurement policy and procedures.
10. **Risk – None**
11. **Privacy Impact - None**

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### **List of Background Papers**

Background Paper 1 – Scottish Government Consultation Document: Public Procurement: A consultation on changes to the public procurement rules in Scotland.

The foregoing 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; 0141 618 7163: email: [lynn.mitchell@renfrewshire.gcsx.gov.uk](mailto:lynn.mitchell@renfrewshire.gcsx.gov.uk)

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## **Appendix**

## Annex B – Respondent Information Form



### Public Procurement: A Consultation on Changes to the Public Procurement Rules in Scotland

#### RESPONDENT INFORMATION FORM

**Please Note** this form **must** be returned with your response to ensure that we handle your response appropriately

#### 1. Name/Organisation

##### Organisation Name

**Title** Mr ☐ Ms ☐ Mrs ☐ Miss ☐ Dr ☐ **Please tick as appropriate**

##### Surname

##### Forename

#### 2. Postal Address

#### 3. Type of Respondent

**Please tick as appropriate**

Executive Agencies and NDPBs

☐

Local authority

☒

NHS

☐

Other statutory organisation

☐

Representative body for private sector organisations

☐

Representative body for third sector/equality organisations

☐

Representative body for community organisations

☐

Representative body for professionals

☐

Private sector organisation

☐

Third sector/equality organisation

☐

Community group

☐

Academic

☐

Individual

☐

#### 4. Permissions - I am responding as...

Individual

/

Group/Organisation

☐

Please tick as appropriate

☒

- (a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate

☐ Yes ☐ No

- (b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick **ONE** of the following boxes

Yes, make my response, name and address all available ☐

or

Yes, make my response available, but not my name and address ☐

or

Yes, make my response and name available, but not my address ☐

- (c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate

☒ Yes ☐ No

- (d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate

☒ Yes

☐ No

## Questions

Q1 What are your views about what should be included in this Statutory Guidance? Please explain your answer.

All guidance must be available well in advance of the Regulations coming into force. It must be clear and unambiguous but not overly prescriptive and must build on existing good practice. It must be recognised that these duties, coupled with the increased scope for challenges under the Act, may have considerable resource implications so the requirements must not be onerous and the processes must be as streamlined as possible. This guidance should provide a clear explanation of the regulations, in particular in relation to matters such as the living wage and community benefits. It should detail the steps to be taken to produce the strategy; the procedures and requirements for any in-year amendments; the elements that must be included; and the level of detail required. A standard format would be helpful and this should include an Action Plan, as an appendix, which should be reviewed annually. For local authorities, there should be links to the AR15 Assessment.

Q2 What are your views about what should be included in this Statutory Guidance? Please explain your answer.

As this is a new duty, it should be clearly explained in the guidance as should the obligations on public bodies. Tools would be welcome and guidance should be provided on the appropriate use of these.

Q3 What are your views about what should be included in this Statutory Guidance? Please explain your answer.

Guidance should be developed through consultation with those who have experience of dealing with community benefits. It should include information on how to deal with community benefits in frameworks or collaborative procurements and the issue of proportionality in relation to lower value contracts.

Q4 We believe that a statutory obligation on public bodies to include relevant clauses in their contracts is the best way to ensure that contractors comply with all relevant laws and collective agreements. This should also ensure that public bodies are able to end contracts where a contractor does not meet these requirements. Do you agree or disagree with this position? Please explain your answer.

Agree ☒ Disagree ☐

Guidance should include model clauses but authorities should have the ability to refine these.

Q5 Is there still a case for reserving contracts for supported businesses in Scotland?

Yes x No ☐

This option should be included in the regulations.

Q6 Do you think that the definition of a “disadvantaged person” in this context should be “the unemployed, members of disadvantaged minorities or otherwise socially marginalised groups”?

Yes ☐ No x

If not, what do you think the definition should be and why?

We are in favour of using procurement activity to tackle disadvantage but believe the definition given is too wide and lacks clarity. There is a concern that such a loose description would be difficult for authorities to manage and apply and it could be open to abuse by suppliers. The definition needs to identify clearer target groups. For example, there are widely recognised definitions for the unemployed (such as that provided by International Labour Organisation and used by the Office for National Statistics) which could be adopted to provide this type of clarity.

Q7 Our view is that we are not aware of any arguments that currently support reserving contracts for mutual and other non-public sector bodies in Scotland, and we believe this is less of an issue in Scotland. Do you think there are any advantages or disadvantages to applying this provision to the procurement activities of public bodies in Scotland? Please explain your answer.

Advantages X Disadvantages ☐

Agree this is less of an issue in Scotland but we do not see any disadvantage in applying this provision. The financial and demand challenges faced by the public sector in Scotland will require innovation in approaches to service delivery that may bring forward currently unforeseen models which this provision could facilitate..

Q8 Should the rules about labels which apply to contracts that are EU regulated procurements also apply to lower value regulated procurement contracts covered by the Act? Please explain your answer.

Yes x No ☐

For consistency, especially where the value of a regulated procurement is close to EU threshold. Labels can help evidence that supplies are responsibly sourced.

Q9 Do you think we should align the rules on technical specifications for all regulated procurements, including those lower value procurements regulated by the Act? Please explain your answer.



Yes x No ☐

Lifecycle costs are equally important in lower value contracts.

Q10 We believe that contracts should not be awarded on the basis of price or cost alone? Do you agree or disagree? Please explain why.

Agree x Disagree ☐

However it is recognised that there may be very limited circumstances where price alone would be appropriate such as the purchase of software licences; where there are clear technical specs; or the commodity is regulated.

Q11 We believe that public bodies should retain discretion to split requirements into smaller lots and to award more than one lot to the same bidder. Do you agree or disagree with this? Please explain your answer.

Agree X Disagree ☐

Authorities should have this discretion as they are best placed to assess whether this would widen opportunities and that should be decided on a case by case basis.

Q12 To avoid creating unnecessary confusion, we believe that public bodies should have the discretion to decide whether to request additional information about sub-contractors. What are your views about this?

Agree authorities should have this discretion.

Q13 The Directives also make clear that public bodies are responsible for obtaining any information about sub-contractors from the main contractor. There is an option to transfer this obligation (to deliver the information) to the main contractor. We do not plan to transfer that obligation to the main contractor. What are your views about this?

We would query whether there would be any practical benefit in doing so. Instead, contract conditions should be included obliging the contractor to facilitate obtaining the information.

Q14 We believe that we should not apply similar provisions on sub-contracting to contracts covered by the Act, as we do not think this would be proportionate. Do you agree or disagree with this?

Agree x Disagree ☐

Although there may be circumstances where this would help demonstrate

compliance with the sustainable procurement duty.

Q15 We believe that similar payment terms for sub-contractors, as for main contractors, is a good thing and there are some measures underway, or in place, to address this. We also believe that direct payments to sub-contractors could be complicated and could mean public bodies assuming some responsibilities that should arguably remain with the main contractor. In light of this, we believe that public bodies should be able to make direct payments to sub-contractors only where the contract allows this to happen and parties agree. Do you agree or disagree?

Agree X Disagree ☐

This should be determined by the contract.

Q16 Do you think that the same rules on selection criteria should apply to lower value regulated contracts as to higher value EU regulated public contracts? In particular, should the same rules apply on:

- The use of turnover as a selection criterion?
- The right of a public body to assume that a business does not have the professional ability needed for the performance of a specific contract, if that business has a conflict of interest which might mean that it is less able to deliver the contract?

Please explain your answer.

Yes XNo ☐

For consistency with higher value procurements Adopting different criteria for lower and higher value procurements introduces complexity in procurement processes with the potential to increase the time taken to complete, the associated cost and, the risk of error. Standardisation of process reduces these factors.

Q17 Do you agree or disagree that public bodies should retain the flexibility to decide for themselves the basis upon which groups of businesses will be able to meet tests of economic and financial standing and technical and professional ability that will be necessary to perform a particular contract or should there be national standards? Please explain your answer.

Agree x Disagree ☐

This would depend on the commodity being purchased, market conditions etc. so authorities should have discretion to decide.

Q18 Should the list of criminal convictions which may result in exclusion from bidding be the same for all regulated contracts, regardless of value? Please explain your answer.

Yes X No ☐

Q19 Should public bodies be required to exclude a business from bidding for lower value regulated contracts if it, or someone who holds a senior position in it, has been convicted of any of the offences on the list?

Yes ☐ No X

Should not be required but should have the discretion to do so.

Q20 Should public bodies retain the discretion to decide whether or not to exclude a business from bidding for a contract where the body can demonstrate by appropriate means, short of a court, tribunal or administrative decision, that the business has breached its obligations to do with paying tax or social security contributions?

Yes x No ☐

Q21 Should public bodies be given the discretion not to exclude a business which has breached its obligations to do with paying tax or social security contributions, and where this has been established by a court, tribunal or administrative decision, if it would be disproportionate to do so?

Yes x No ☐

Q22 Should public bodies also have the discretion to exclude a business from bidding for lower value regulated contracts if it has breached its obligations in relation to the payment of tax?

Yes x No ☐

Q23 Should public bodies retain the discretion to decide whether or not to exclude a business which is bankrupt, or is in insolvency proceedings from bidding? Please explain your answer – in particular, if you think that public bodies should have discretion in these situations, do you think that discretion should apply in every circumstance?

Yes x No ☐

This should be decided on a case by case basis.

Q24 Should the same rules apply to EU regulated contracts and to lower value regulated contracts? Please explain your answer.

Yes XNo ☐

For consistency. Adopting different criteria for lower and higher value procurements introduces complexity in procurement processes with the potential to increase the time taken to complete, the associated cost and, the risk of error. Standardisation of process reduces these factors.

Q25 Should a public body be allowed not to exclude a business with disqualifying criminal convictions, or which has breached its obligations to pay tax or social security, in exceptional circumstances? Please explain your answer.

Yes XNo ☐

Whether there are exceptional circumstances should be decided on a case by case basis.

Q26 Should the same rules apply to EU regulated contracts and to lower value regulated contracts? Please explain your answer.

Yes XNo ☐

For consistency. In all cases, but particularly lower value contracts, proportionality would require to be considered. Adopting different criteria for lower and higher value procurements introduces complexity in procurement processes with the potential to increase the time taken to complete, the associated cost and, the risk of error. Standardisation of process reduces these factors.

Q27 Should the law allow public bodies the discretion to decide whether or not to exclude bidders in situations where there is evidence of a breach of environmental, social and labour law obligations, grave professional misconduct, distortion of competition, a conflict of interest, a significant failure to perform in an earlier contract, or a security risk (in the case of defence and security concessions)? Please explain your answer.

Yes XNo ☐

There may be exceptional circumstances.

Q28 Should the same rules apply to EU regulated contracts and to lower value regulated contracts? Please explain your answer.

Yes X No ☐

For consistency. Adopting different criteria for lower and higher value procurements introduces complexity in procurement processes with the potential to increase the time taken to complete, the associated cost and, the risk of error. Standardisation of process reduces these factors.

Q29 Do you agree or disagree with our proposed maximum periods of exclusion? Please explain your answer.

Agree X Disagree ☐

Q30 Should the same rules apply to EU regulated contracts and to lower value regulated contracts? Please explain your answer.

Yes X No ☐

For consistency. Adopting different criteria for lower and higher value procurements introduces complexity in procurement processes with the potential to increase the time taken to complete, the associated cost and, the risk of error. Standardisation of process reduces these factors.

Q31 Should public bodies be required to check that sub-contractors do not fail any of the exclusion criteria?

Yes ☐ No X

They should not be required to do so but should have the option. They should be free to develop their own policies on this matter, always bearing in mind that public money is being spent.

Q32 What are your views about what should be included in this Statutory Guidance? Please explain your answer.

Guidance must be clear and unambiguous, bearing in mind the consequences of a bidder being excluded. Guidance on assessing self-cleansing measures is needed. The guidance should provide a definition of what would constitute "grave professional misconduct" and would enable public bodies to exclude tenderers who have engaged in blacklisting of workers, unless they have taken suitable and proportionate remedial action. Further, the guidance must permit public bodies to require contractors to have a positive approach to their workforce and to be able to take account of that in the selection of tenderers and the award of contracts. The guidance should enable public bodies to oblige contractors to pay the Living Wage and to prohibit the use of zero hours contracts. Additional measures to support and extend the Living Wage should also be investigated.

Renfrewshire Council has resolved to the extent permitted by law to utilise its public procurement activities to benefit the community of Renfrewshire. This includes but is not restricted to: the promotion of the living wage, the use of community benefit clauses to encourage the creation and retention of employment, including the hiring of apprentices; where appropriate the use of Regulation 23 of the Public Contract (Scotland) Regulations 2012 to exclude contractors that are found to have committed an act of grave misconduct in the course of their business activities, such as tax evasion or the illegal use of blacklists, from being selected to tender for Council contracts (either as a main contractor or sub-contractor). Council will require, where appropriate, a statement from those applying for contracts on what community and other benefits, including fair-trade and family-friendly employment practices such as childcare vouchers, will apply to their employees, those working on their behalf and to the wider community.

Post- tender negotiations will be held with preferred suppliers for contracts where the living wage is not paid and closer working with all suppliers is now taking place to ensure that markets regard the preference for the payment of a living wage as a normal aspect of doing business with Renfrewshire Council.

Q33 We expect to apply only limited rules to contracts for social and other specific services to the person. These will require compliance with the basic Treaty Principles and publication of contract opportunity and award notices as described in this section. Do you agree or disagree that these rules will be sufficient for an effective light-touch regime? Please explain your answer.

Agree x Disagree ☐

We would need to see the draft rules but proposals appear appropriate in principle. There should be obligation to fulfil the requirements of current Regulation 8 (21). It should be noted that some contracts/frameworks for these services can be well in excess of 750,000Euros.

Q34 We believe that contracts should not be awarded on the basis of price or cost alone? Do you agree or disagree with this position? Please explain why.

Agree X Disagree ☐

For services to the person, quality must always be a significant factor.

Q35 What are your views about what should be included in this Statutory Guidance? Please explain your answer

Given the light touch regime that will apply, the 2010 guidance is a useful starting point but it should be developed in light of experience over the last 5 years. The new guidance must be capable of being read and understood by those who will be required to make decisions on these matters. Bearing in mind the legislation that underpins the provision of these types of services, the guidance should include provisions on issues such as service user involvement, consultation and equalities.

Q36 Should provision be made for the use of a Prior Information Notice by non-central authorities (where they choose) as the call for competition in restricted procedures and competitive procedure with negotiation? Please explain your answer.

Agree x Disagree ☐

The current contract notice is quite onerous so this would be welcomed. However, it is recognised that there is a need to give fair notice to the market of the contract opportunity and clarity is needed on the level of detail that would require to be included in this type of PIN. For example would much of the detail currently included in a contract notice require to be provided? Further, suppliers would need to be made aware that this would be the only call for competition that will be issued. There should also be requirements to consider best value and the Treaty principles and whether market conditions have changed since PIN was published.

Q37 Do you agree or disagree that this provision should also apply to lower value regulated contracts, that is, those that are below European regulated thresholds and are regulated by the Act? Please explain your answer.

Agree x Disagree ☐

Authorities should be should be given this option for regulated procurements.

Q38 Do you agree or disagree that public bodies should be permitted to award a contract without competition in the circumstances permitted by the Directives? Please explain why.

Agree X Disagree ☐

It is recognised that there may be exceptional circumstances where a contract requires to be awarded without competition so authorities should be given this option.

Q39 Do you agree or disagree that public bodies should also be permitted to award lower value regulated contracts in similar situations? Please explain why.

Agree X      Disagree ☐

Further flexibility for the use of this procedure should be considered for lower value contracts.

Q40 Do you agree or disagree that all non-central authorities using the restricted procedure should be able to set the time limit for the receipt of tenders by agreement with candidates? Please explain why.

Agree X      Disagree ☐

Authorities should have the option to do this in appropriate circumstances, bearing in mind the Treaty principles. Care would need to be taken to ensure this does not advantage SMEs.

Q41 When using the open procedure, should public bodies retain the flexibility to determine whether to evaluate bids before evaluating qualification and exclusion criteria? Please explain your answer.

Yes XNo ☐

This flexibility would be welcome as it would help streamline the procurement process.

Q42 Should public bodies be allowed to ask for supplementary or missing information and to ask a company to provide clarification of their bid?

Yes XNo ☐

Where bidders are less resourced, there may be more likelihood of administrative mistakes in their bids so this option should be made available. It must only be used for the purposes of clarifying or correcting obvious, minor errors and not to give bidders an opportunity to revisit their tenders.

Q43 Do you agree or disagree that the rules in the Directives about modifying contracts should not apply to contracts under the Act? Please explain why.

Agree X      Disagree ☐

These rules are too restrictive for lower value contracts and greater flexibility should be available.

Q44 We believe we should continue to progress the work plan from the Construction Review report, rather than requiring the use of BIM or similar in works contracts and design contests. Do you agree or disagree? Please explain your answer.



Agree X      Disagree ☐

This decision should be kept under review but such a requirement should only be introduced when market conditions are mature enough and there is no disadvantage to groups of bidders such as SMEs.

Q45 Do you agree or disagree that we should establish an overall confidentiality and security framework which individual public bodies would use to inform their own approach to the security handling of electronic communication? Please explain your answer.

Agree X      Disagree ☐

It would be helpful to have a defined standard which should be built using existing models. Authorities should also have the ability to tailor the framework to suit their needs.

Q46 Do you agree or disagree that we should maximise the time available to implement fully electronic procurement processes and defer the requirement for full electronic communication for the maximum permissible time?

Agree X      Disagree ☐

To ensure there is a mature market and no disadvantage to groups such as SMEs.

Q47 Do you agree or disagree that all communications about concession contracts in a procurement exercise should be by electronic means?

Agree X      Disagree ☐

However, a financial threshold should be considered for this requirement as it may not be appropriate for lower value concession contracts.

Q48 Do you think that public bodies should retain the flexibility to decide when the use of electronic catalogues is appropriate? Please explain your answer.

Yes X No ☐

This should be a case by case decision based on best value.

Q49 Do you agree or disagree that we should defer the requirement to provide the European Single Procurement Document in electronic form only until 18 April 2018? Please explain your answer.

Agree X      Disagree ☐

We need to see the detailed proposals for the ESPD and make sure we have appropriate processes and procedures in place to support its use.

Q50 Do you agree or disagree that we should defer until 18 October 2018 the provision that says businesses should not have to submit supporting documents where the public body awarding the contract holds these? Please explain your answer.

Agree X Disagree ☐

Systems would need to be developed to support this. The onus should be on suppliers to ensure records are current and up to date. Records should be centrally managed, perhaps through Public Contracts Scotland.

Q51 Do you agree or disagree that we should defer the obligation on public bodies to use e-Certis until October 2018?

Agree X Disagree ☐

This obligation needs to be planned for properly.

Q52 Do you agree or disagree that we adopt this option for utilities contracts? Please explain your answer.

Agree X Disagree ☐

For transparency and consistency with public contracts.

Q53 Do you think that dynamic purchasing systems should be available as a tool for purchasers in respect of regulated procurements?

Yes X No ☐

It should be available an option as there may be circumstances where it would be a useful tool provided its use does not disadvantage SMEs.

Q54 Do you think that the same rules which apply in Article 34 of the Public Procurement Directive should be extended to lower value regulated procurements under the Act?

Yes X No ☐

Q55 Do you agree or disagree that we should continue to allow public bodies in Scotland to use central purchasing bodies as described in this section?

Agree X Disagree ☐

Collaborative procurement has many positive benefits.

Q56 Do you agree or disagree that we should not require the use of central purchasing bodies for particular types of procurement, thereby allowing public bodies to exercise discretion as to when, and which, central purchasing body to use?

Agree X Disagree ☐

This should be a case by case decision based on best value.

Q57 Do you agree or disagree that we should not restrict access by Scottish public bodies to European centralised purchasing activities? Please explain your answer.

Agree X Disagree ☐

Such access could widen choice for public bodies and may help keep competitive pressures on suppliers. It may encourage suppliers on Scottish frameworks to expand into wider European markets. There may also be an opportunity for Scottish Enterprise to actively promote Scottish frameworks to other European countries provided they are eligible to use them.

Q58 Do you agree or disagree that the monitoring and enforcement body for Scotland should be the Scottish Ministers, acting through the existing Single Point of Enquiry? Please explain your answer.

Agree ☐ Disagree X

The SPOE was established for other purposes and there needs to be a clear separation of responsibilities between handling of complaints and monitoring and enforcement.

Q59 Do you agree or disagree that we should simply copy the provisions on applications to the court from the existing 2012 Regulations? Please explain your answer.

Agree ☐ Disagree X

There is an apparent disconnect between the court rules and the regulations. In the Court of Session, lengthy adjustment periods often lead to new lines of argument being introduced which conflict with time limited requirement under the current regulation 47 to provide grounds of proceedings in the letter before action. We would also query whether proceedings in the Sheriff Court are appropriate especially if tribunals are introduced.

Q60 Do you think there is a need for a review body which sits beneath the national courts?

Yes XNo ☐

This could eliminate need to allow proceedings in the sheriff court. It could operate like a case management system and direct cases to an appropriate forum e.g. court or tribunal.

Q61 If so, do you think the review body should be established as a tribunal within the Scottish tribunals system?

Yes ☒ No ☐

This could be a quicker and more efficient way of dealing with procurement disputes but there would need to be further debate on powers/proceedings of tribunal and how this would link to the courts e.g. whether the use of tribunals would be mandated for certain types of proceedings etc.

Q62 Or do you think it should take some other form, for example, a Scottish Procurement Ombudsman?

Yes ☐ No ☒

bidders can already complain to the Scottish Public Services Ombudsman or seek judicial review if a public law issue arises,

Q63 What is your view of the Scottish Government's position to broadly endorse the principles of open contracting and commitment to work with civil society and wider stakeholder groups to improve transparency in its procurement practices as part of its continuing programme of procurement reform?

We agree with the approach as it will help improve transparency for public spend.