

Scotland Excel

To: Joint Committee

On: 17 June 2016

Report by The Clerk to Scotland Excel

The Review of Standing Orders Relating to Contracts

1. Summary

- 1.1 The purpose of this report is to inform the Joint Committee of the need to review the Standing Orders Relating to Contracts in light of recent legislation and guidance including 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 As the review will take some time to complete, this report recommends that authority be delegated to the Executive Sub Committee to approve the changes required to the Standing Orders Relating to Contracts.

2. Recommendations

- 2.1 The Joint Committee is recommended to:
- a) Note the need to review the Standing Orders Relating to Contracts in light of recent legislation and guidance including 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 Executive Sub Committee to approve the changes required to the Standing Orders Relating to Contracts as a result of this review.
 - c) Agree that the delegation under 2.1 b) above shall be temporary and only for the purposes of this review
 - d) Agree that a report by the Clerk on the approved changes shall be brought to the next meeting of the Joint Committee for noting.

3. Background

3.1 Scotland Excel 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 the Joint Committee at its meeting on 21 June 2013.

3.3 The Standing Orders require to be reviewed in light of recent legislation and guidance.

3.3 The Public Contracts (Scotland) Regulations 2015, which implement the new EU public procurement directive (EU Directive 2014/24/EU), came 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 Procurement (Scotland) Regulations 2016 also came into force on 18 April 2016. These introduce rules for the award of lower value contracts (regulated by the Procurement Reform (Scotland) Act 2014) that are comparable with the equivalent rules for higher value contracts (regulated by the Public Contracts (Scotland) Regulations 2015). The 2016 regulations 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 implement the EU directive on concession contracts (EU Directive 2014/23/EU) and these regulations apply to services and works concession contracts valued at 5.186 million Euros and more.

3.6 The Scottish Ministers have published statutory guidance under the Procurement Reform (Scotland) Act 2014 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.