

**Scotland Excel**

**To: Executive Sub Committee**

**On: 18 November 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 seek approval for the existing Standing Orders Relating to Contracts to be revoked and replaced by the revised Standing Orders Relating to Contracts forming the Appendix to this report.

1.2 The revised Standing Orders have been developed following a detailed review 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.

1.3 Some of the key changes to the Standing Orders Relating to Contracts are:

- The standing orders have been changed to reflect the requirements of the new legislation and have been updated to reflect best practice.
- The full range of procedures available under the new legislation has been included.
- Rules applying to contracts for social care (and certain other specific services) have been developed.
- Some re-ordering and clarifications have been made.

**2. Recommendations**

2.1 The Executive Sub Committee is recommended to:

- a) Revoke the existing Standing Orders Relating to Contracts;
- b) Approve the revised Standing Orders Relating to Contracts attached as the Appendix to this report.
- c) Agree that the revocation of the existing Standing Orders and approval of the revised Standing Orders shall take effect on the first working day following this meeting of the Executive Sub Committee

### 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 At the meeting of the Joint Committee on 17 June 2016, it was noted that there was a 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. The Joint Committee agreed that authority be delegated to the Executive Sub Committee to approve the changes required to the Standing Orders Relating to Contracts as a result of this review.

## **Scotland Excel**

# **Standing Orders Relating to Contracts**

**2016**



## Standing Orders Relating to Contracts - 2016

### Contents:

1	Introduction.....	4
2	Interpretation.....	4
3	Suspension, Variation and Revocation of Standing Orders .....	7
4	Financial Provision.....	7
5	Equalities and Prevention of Discrimination.....	7
6	Form of Contract.....	8
7	Valuing the Contract.....	8
8	General Powers and Duties of the Director .....	9
9	Exemptions .....	9
10	Publicity for Tenders and Contracts .....	11
11	Procedures.....	11
12	Open Procedure.....	12
13	Restricted Procedure .....	12
14	Negotiated Procedure without Prior Publication of a Notice .....	13
15	Competitive Procedure with Negotiation.....	14
16	Competitive Dialogue Procedure .....	15
17	Innovation Partnerships.....	16
18	Extensions to Existing Contracts.....	16
19	E-Procurement.....	17
20	Opening of Tenders.....	19
21	Electronic Auctions .....	19
22	Technical and Financial Checks.....	20
23	Checking of Tenders & Post Tender Negotiations .....	22
24	Acceptance and Giving Reasons for Decisions.....	23
25	Content of Reports on Contracts .....	25
26	Nomination of Sub-Contractor .....	25
27	Framework Agreements .....	26
28	Dynamic Purchasing Systems.....	28
29	Concessions .....	28

<b>30</b>	<b>Design Contests .....</b>	<b>29</b>
<b>31</b>	<b>Specification of Standards.....</b>	<b>30</b>
<b>32</b>	<b>Assignment, Sub-Contracting, Termination and Modification .....</b>	<b>30</b>
<b>33</b>	<b>Liquidated and Ascertained Damages.....</b>	<b>30</b>
<b>34</b>	<b>Prevention of Collusion and Corrupt or Illegal Practices .....</b>	<b>31</b>
<b>35</b>	<b>Health and Safety.....</b>	<b>31</b>
<b>36</b>	<b>Schedule of Rates Contract.....</b>	<b>31</b>
<b>37</b>	<b>Sustainable Procurement .....</b>	<b>31</b>
<b>38</b>	<b>Consultants .....</b>	<b>32</b>
<b>39</b>	<b>Records and Registers.....</b>	<b>32</b>
<b>40</b>	<b>Procurement Strategy and Annual Report .....</b>	<b>32</b>

## 1 Introduction

1.1 These Standing Orders are made under Section 81 of the Local Government (Scotland) Act, 1973 and shall apply to the making of all contracts by or on behalf of Scotland Excel. For the avoidance of doubt, the term “contract” includes any form of agreement, written or unwritten, to which Scotland Excel is a party which creates rights and/or responsibilities for any of the parties involved.

1.2 The Standing Orders are subject to any overriding requirements of:-

- a) EU Directive 2014/24/EU on public procurement; EU Directive 2014/23/EU on the award of concession contracts; and any Scottish legislation implementing these Directives (the “EU Procurement Rules”);
- b) the Procurement Reform (Scotland) Act 2014 and all regulations and guidance made under and in terms of that Act (the “Procurement Reform Rules”); and
- c) the relevant provisions of the Treaty on the Functioning of the European Union particularly the principles of equal treatment, non discrimination and transparency (“the Treaty Principles”).

1.3 All contracts let by or on behalf of Scotland Excel, regardless of whether any such contracts are otherwise exempt from the application of these Standing Orders, shall be subject to an obligation to seek best value and to be able to demonstrate fairness, non-discrimination, equal treatment and transparency in the contract procedure chosen to all parties having an interest in that procedure.

## 2 Interpretation

2.1 For the purposes of these Standing Orders the following words and expressions shall have the meanings given to them in this Standing Order:

- (a) any reference to “a signature” or “signed” includes reference to a signature or being signed using electronic means;
- (b) “electronic means” means electronic equipment for the processing (including digital compression) and storage of data which is transmitted, conveyed and received by radio, by wire, by optical means or by other electromagnetic means;

- (c) “written” or “in writing” means any expression consisting of words or figures which can be read, reproduced and subsequently communicated. It may include information which is transmitted and stored by electronic means;
- (d) “the Chief Executive Officers Management Group” means the group of that name established under the Terms and Conditions of Scotland Excel and having responsibility for the overall supervision and monitoring of the performance of the Director and the Scotland Excel staff in delivering Scotland Excel’s annual business plan objectives;
- (e) “the Clerk” means the Head of Corporate Governance of Renfrewshire Council or his nominee;
- (f) “Contract Documents” means the documents to be used in any tendering procedure and where different those intended to form part of any contract following on from a tendering procedure. It includes, but is not restricted to, the ESPD, the invitation to tender for or to negotiate a contract, the proposed conditions of contract, the specification or the description of the goods, services or works required by Scotland Excel and any Bills of Quantities and includes any such documents or their equivalents issued using electronic means;
- (g) “the Director” means the officer appointed by the Joint Committee to have overall responsibility for the operational performance of Scotland Excel or her nominee;
- (h) “ESPD” means the European Single Procurement Document;
- (i) “the EU Procurement Rules” is defined in Standing Order 1.2 a);
- (j) “the Threshold” for the purpose of these Standing Orders refers to the threshold under Article 4 (c) of Directive 2014/24/EU (the threshold for public supply and service contracts awarded by sub-central contracting authorities). The sterling equivalent is currently £164,176, but is recalculated every second year on 1 January of that year. The next change is due on 1 January 2018;
- (k) “Executive Sub-Committee” means the sub-committee of that name appointed by the Joint Committee in accordance with the Terms and Conditions of Scotland Excel and having such role and functions as determined by the Joint Committee. Any references to the Executive Sub-Committee shall be treated as references to the Joint Committee;
- (l) “the Functions” means the general purchasing functions that the Member Authorities wish to carry out jointly all as more particularly described in the Terms and Conditions of Scotland Excel;



- (m) “Health or Social Care Services” means any of the services listed in the Schedule to the Procurement (Scotland) Regulations 2016;
- (n) “Member Authority” means any local authority which is a member of the Joint Committee;
- (o) “the Policy Review Group” means the group of that name established within Scotland Excel to periodically review, and identify areas for improvement within, Scotland Excel’s strategic procurement policies, procedures and guidance;
- (p) “Regulated Contract” means a public contract (other than a public works contract) with an estimated value equal to or greater than £50,000; or a public works contract with an estimated value equal to or greater than £2,000,000 unless the public contract or public works contract is an excluded contract under the Procurement Reform Rules;
- (q) “Regulated Procurement” means (i) any procedure carried out by the Scotland Excel in relation to the award of a Regulated Contract including, in particular, the seeking of offers in relation to the contract and the selection of suppliers; and (ii) the award of a Regulated Contract by Scotland Excel;
- (r) “Scotland Excel” and “Joint Committee” mean the Joint Committee constituted under Section 57 of the Local Government (Scotland) Act 1973 and established for the purpose of regulating the joint discharge of the Functions by the Member Authorities. References to Scotland Excel are to be treated as references to the Joint Committee and vice versa;
- (s) “Social and Other Specific Services” means the services listed in Schedule 3 of the Public Contracts (Scotland) Regulations 2015;
- (t) “Sustainable Procurement Duty” means the duty of that name under the Procurement Reform Rules; and,
- (u) “the Terms and Conditions of Scotland Excel” means those terms and conditions agreed among the Member Authorities to govern their individual memberships and the operation of Scotland Excel and its Functions;
- (v) Any reference to a statute, other legislation or EU Directive shall include reference to any statute, legislation or Directive amending or replacing it;
- (w) Any reference to a contract shall include, where the context allows, reference to a framework agreement or a sub-contract.

### **3 Suspension, Variation and Revocation of Standing Orders**

- 3.1 These Standing Orders may be varied or revoked by the Joint Committee. Any variation to or revocation of the Standing Orders will be effective on the first working day after the conclusion of the meeting of the Joint Committee at which it was approved.
- 3.2 These Standing Orders or any part of them may be suspended by the Executive Sub-Committee in respect of any procurement exercise or contract on receiving a joint recommendation from the Director and the Clerk that there are special circumstances justifying such suspension and that it is in the interests and within the powers of Scotland Excel to do so.
- 3.3 The Clerk shall have power to vary these Standing Orders but only in the following circumstances:-
- (a) to reflect changes in job titles, reorganisations of departments and vacancies in posts; or
  - (b) to change references to any legislation where the legislation is repealed or amended and to insert references to new legislation where the new legislation largely re-enacts the provisions of the repealed or amended legislation; or
  - (c) to change the financial values of the EU Thresholds where referred to in these Standing Orders to implement any changes in these thresholds.

### **4 Financial Provision**

- 4.1 Where the Director considers it appropriate to do so, prior to inviting offers or recommending the acceptance of offers, the Director will ensure she is satisfied that:-
- (a) in the case of periodic call off contracts of a general nature, suitable general financial provision has been made or will be made in the budgets of Member Authorities; or
  - (b) in the case of specific one off contracts for individual authorities or bodies, specific financial provision has been approved.
- 4.2 In the case of Standing Order 4.1(b) above, confirmation of such approval will be required to be obtained by the Director in advance from the individual authority.

### **5 Equalities and Prevention of Discrimination**

- 5.1 Before entering into a contract, the Director shall obtain from the contractor an assurance in writing that, to the best of the contractor's knowledge and belief, the contractor has complied with all statutory

requirements under the Equality Act 2010 and all previous legislation, regulations and statutory guidance relating to equality matters.

5.2 All contracts entered into by or on behalf of Scotland Excel shall contain a condition obliging the contractor to comply with all duties arising from the Equality Act 2010.

## **6 Form of Contract**

6.1 Except in circumstances where the Director and the Clerk agree otherwise, every contract shall be:-

(a) in the name of Renfrewshire Council as servicing and contracting authority for Scotland Excel;

(b) in writing;

(c) signed by the Director or the Clerk or other officer authorised to sign contracts; and

(d) subject to the Laws of Scotland.

6.2 The Contract Documents in respect of all contracts shall be prepared by the Director. The Director may also make use of Contract Documents prepared by the Scottish Government; the Crown Commercial Service, or any other agency of the UK government; other Scottish Centres of Procurement Expertise; local authorities; and other collaborative bodies where Scotland Excel is eligible to use these Contract Documents and is permitted by those bodies to do so. It is the Director's responsibility to ensure that Scotland Excel is eligible to use the Contract Documents and that these are suitable for the contract.

6.3 All tender documents must clearly state that the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004 apply to all contracts arranged by or on behalf of Scotland Excel. This is to ensure that contractors are aware that Scotland Excel or any of the Member Authorities may be required, as a matter of law, to release information to third parties that the contract or may wish to be treated as confidential.

## **7 Valuing the Contract**

7.1 The values stated in these Standing Orders are the total estimated value of the contract concerned and not the estimated annual value of the contract. Where it is likely that a supply of goods or services will be required on a continuing basis over a number of years, for example with maintenance contracts, the Director shall take into account the anticipated duration of the continuing supply when estimating the value of the contract for the purposes of these Standing Orders.

- 7.2 It is not permitted to deliberately divide any procurement exercise or disposal into two or more contracts if the intention in doing so is to avoid the application of any financial thresholds in these Standing Orders, the EU Procurement Rules or the Procurement Reform Rules.
- 7.3 For the avoidance of doubt, the values stated are exclusive of any Value Added Tax that may be levied.

## **8 General Powers and Duties of the Director**

- 8.1 The Director may transfer any power or duty under the Standing Orders to a Head of Service. The Director may also delegate, in writing, any power or duty under these Standing Orders to an appropriate officer nominated by the Director.
- 8.2 The Director, taking advice from the Policy Review Group as appropriate, may approve guidance notes on tendering procedures for any contract or type of contract let by or on behalf of Scotland Excel. Any such guidance notes once approved shall form part of these Standing Orders and shall be complied with.
- 8.3 Where a contract is subject to the EU Procurement Rules, the Director shall ensure that consideration is given to whether the contract should be divided into lots. Where it is decided not to divide the contract into lots, the main reasons for that decision shall be indicated in the Contract Documents.
- 8.4 For every contract, the Director shall ensure that consideration is given to whether community benefit requirements should be included in accordance with the Procurement Reform Rules and current Scotland Excel policy.

## **9 Exemptions**

- 9.1 Subject to Standing Order 1, there shall be exempted from the provisions of these Standing Orders any contract where:-
- (a) The Executive Sub-Committee is satisfied that there are special circumstances justifying exempting the contract from these Standing Orders or any part of them.
  - (b) The total estimated value of the proposed contract is less than £50,000 but the contract shall be let in accordance with any guidance on such contracts published under Standing Order 8.2.
  - (c) In the opinion of the Director, action is urgently required to prevent danger to life, serious risk to health or damage to property. In such circumstances a report will be submitted to the Executive Sub-Committee or the Management Group at the first available subsequent meeting detailing both the circumstances justifying use of this exemption and the action taken. For the avoidance of doubt,

when using this exemption the Director shall ensure that any relevant requirements of the Treaty Principles, the EU Procurement Rules and the Procurement Reform Rules are complied with.

- (d) Tenders are to be invited on behalf of any consortium, or similar body, of which Scotland Excel is a member, in accordance with any method adopted by such a body, except where specific provision has been made for the application of these Standing Orders or any part of them to a particular consortium. However, in the event that the financial contribution by Scotland Excel to a consortium or similar body in respect of any one contract is in excess of the exemption limit in Standing Order 9.1 (b) and the contract is not being let by any local authority in terms of its own Standing Orders relating to contracts, the use of this exemption requires the prior approval of the Executive Sub-Committee.
- (e) Notwithstanding Standing Order 18 , the contract is for the execution of works or the supply of goods, materials or other services being an extension to an existing contract and identified by the Director as necessary and being so urgent as not to permit the invitation of tenders; such matters to be reported to the next meeting of the Executive Sub-Committee.
- (f) It is a contract of employment. However, this exemption does not apply to contracts with employment agencies for the supply of staff.
- (g) The contract relates to the transfer, acquisition or disposal of an interest in heritable property including a licence to occupy or use heritable property.
- (h) The contract relates to the appointment of legal counsel and solicitors to act as Scotland Excel's Edinburgh agents. However, any such contract must be let in accordance with any relevant requirements of the Procurement Reform Rules.
- (i) In the Director's opinion it is essential that the contract is entered into for the settlement of any claim or litigation raised by or against Scotland Excel; such matter to be reported in the next meeting of the Executive Sub-Committee.
- (j) The contract is being funded by money provided by the government or a public body (including funds from the National Lottery) and the award of that money to Scotland Excel is subject to such conditions that make it impractical for Scotland Excel to comply with these Standing Orders in letting the contract. However, in such circumstances, any relevant requirements of the Treaty Principles, the EU Procurement Rules and the Procurement Reform Rules shall be complied with and the Director shall submit a report to the Executive Sub-Committee explaining the procedure used and why these Standing Orders could not be complied with.

- (k) The contract is for the commissioning of theatrical, musical, dramatic or other artistic performances.
- (l) The contract is for the disposal by Scotland Excel of surplus or scrap materials and equipment previously used by Scotland Excel or any Member Authority.

9.2 These Standing Orders apply to contracts for Social and other Specific Services and contracts for Health or Social Care Services unless varied by the special arrangements set out in Schedule 1.

## **10 Publicity for Tenders and Contracts**

10.1 Scotland Excel is under a duty to ensure that, contracts it intends to award are given a degree of advertising which is sufficient to enable open competition and to meet the requirements of the principles of equal treatment, non-discrimination and transparency. Contracts that are subject to the EU Procurement Rules must comply with the provisions relating to advertising of contracts in these Rules. For all other contracts Scotland Excel must put in place procedures to meet its obligations with regard to advertising those contracts. Accordingly the following procedures shall apply:-

- (a) The obligation to advertise tendering opportunities for contracts in terms of this Standing Order applies only to contracts for supplies or services with a value of £50,000 or more and to contracts for works with a value of £2,000,000 or more.
- (b) Contracts to which Standing Order 10.1(a) applies shall be advertised using the Public Contracts Scotland website.
- (c) In addition to advertising on the website referred to in Standing Order 10.1(b) the Director may choose to advertise the contract in any other way.
- (d) The Director shall ensure that Scotland Excel's own website contains links to the Public Contracts Scotland website.

10.2 This Standing Order does not apply where an exemption under contract Standing Order 9 applies; or use can be made of the Negotiated Procedure without Prior Publication of a Notice under Standing Order 14 ; or the contract is for Social and Other Specific Services or for Health or Social Care Services and one to which Schedule 1 applies.

## **11 Procedures**

11.1 Where the estimated value of any contract is likely to equal or exceed the thresholds for the application of the EU Procurement Rules, the Director shall be responsible for determining whether or not those Rules apply and may refer the matter to the Clerk who will

provide assistance and guidance to the Director in determining whether the EU Procurement Rules apply to the contract and ensuring that the various requirements of the EU Procurement Rules and Treaty Principles are followed.

- 11.2 Where it is established that the EU Procurement Rules apply to any contract, the Director will be responsible for determining the appropriate procedure to be followed in terms of those Rules and shall ensure that the contract is advertised, tendered evaluated and awarded in compliance with those Rules. The tendering procedures under the Rules are not set out in these Standing Orders. The procedures in Standing Orders 12 to 17 inclusive may only be used where Scotland Excel is not required to use the equivalent procedures in the EU Procurement Rules.
- 11.3 Any contract that is not required to follow a procedure set out in the EU Procurement Rules must be let in accordance with one of the procedures set out in these Standing Orders.
- 11.4 The procedure to be used and the reasons for selecting that procedure shall be recorded in the contract strategy document.
- 11.5 The ESPD shall be used in all procedures.

## **12 Open Procedure**

- 12.1 The Director may approve the use of the open procedure which shall be conducted in accordance with this Standing Order.
- 12.2 Where the Director approves the use of the open procedure, the Director shall issue a notice on the Public Contracts Scotland website. In addition, the Director may choose to publicise the contract more widely.
- 12.3 The notice must contain the same information as would be required under the EU Procurement Rules. The date and time stated in the notice by which tenders must be received must be no sooner than 10 working days from the date the notice is published.
- 12.4 At the same time as the notice is issued in terms of Standing Order 12.2, the Director shall make the relevant Contract Documents available electronically and it shall be the responsibility of the contractor to access the invitation to tender through the e-procurement system.

## **13 Restricted Procedure**

- 13.1 The Director may approve the use of the restricted procedure which shall be conducted in accordance with this Standing Order.

- 13.2 Where the Director approves the use of the restricted procedure, a notice shall be issued on the Public Contracts Scotland website. In addition the Director may choose to publicise the contract more widely.
- 13.3 The notice must contain the same information as would be required under the EU Procurement Rules.
- 13.4 All applicants responding to the notice issued in terms of Standing Order 13.2 shall be required to provide a completed ESPD by the date and time specified in the notice. This date and time must be no sooner than 10 working days from the date the notice is published.
- 13.5 At the same time as a notice is issued in terms of Standing Order 13.2, the Director shall make the relevant Contract Documents available electronically.
- 13.6 No contractor may be invited to tender unless they have successfully complied with the technical and financial checks in Standing Order 22 and have met the criteria to be invited to tender set out in the notice and Contract Documents.
- 13.7 The Director must select a sufficient number of applicants to be invited to tender. To ensure genuine competition, the number of applicants selected shall not be fewer than five. However, in any circumstances where fewer than five applicants express an interest, all those applicants meeting the minimum selection criteria, must be invited to tender.
- 13.8 The Director shall send invitations to tender simultaneously to each applicant selected to tender for a contract and the invitation to tender shall be accompanied by a link to the Contract Documents which shall have been made available under Standing Order 13.5.
- 13.9 The invitation to tender shall also include the final date and time for the receipt of tenders by Scotland Excel and the criteria to be used in evaluating the tenders.

## **14 Negotiated Procedure without Prior Publication of a Notice**

- 14.1 The negotiated procedure without prior publication of a notice is only available in very limited circumstances. It may only be used with the prior written approval of the Director and a record including a full explanation as to why the Director considered it appropriate to use the procedure shall be retained.
- 14.2 Where the EU Procurement Rules do not apply, the negotiated procedure without prior publication of a notice may only be used in the circumstances stated in the Procurement Reform Rules.



- 14.3 Where the EU Procurement Rules apply, the negotiated procedure without prior publication of a notice may only be used on any ground specified in those Rules.
- 14.4 For the purposes of these Standing Orders the negotiated procedure without prior publication of a notice means direct negotiations with a single contractor, or all suitable contractors, without competition, or further competition, with a view to awarding the contract to a single contractor or to extending an existing contract.
- 14.5 Where the negotiated procedure without prior publication of a notice has been used and the estimated value of the proposed contract is £50,000 or more but does not exceed the Threshold, the contract shall be awarded by the Director.
- 14.6 Where the negotiated procedure without prior publication of a notice has been used and the estimated value of the proposed contract exceeds the Threshold, the contract shall be awarded by or on the instruction of the Director on the prior authority of the Executive Sub Committee.
- 14.7 In all cases where the negotiated procedure without prior publication of a notice is used, a full written record of all contacts, discussions and communications with prospective contractors shall be kept by the Director.
- 14.8 A minimum of two officers, one of whom to be at least of Senior Procurement Specialist grade, must be present at all times during any discussions with prospective contractors.
- 14.9 The Director must ensure that records of all discussions with prospective contractors are signed as such by all participants.
- 14.10 The Treaty Principles will be observed at all times during the negotiations.
- 14.11 For the avoidance of doubt, where the negotiated procedure is used for any contract in terms of this Standing Order 14, there is no requirement to publish prior information relating to that contract on the Public Contracts Scotland website.

## **15 Competitive Procedure with Negotiation**

- 15.1 The Director may choose to use the competitive procedure with negotiation where, in the Director's view, the restricted and open procedures in these Standing Orders are not appropriate for a contract.
- 15.2 The competitive procedure with negotiation may only be used on one of the following grounds:

- (a) Where the needs of the Scotland Excel cannot be met without adaptation of readily available solutions;
  - (b) Where the contract includes design or innovative solutions;
  - (c) Where the requirement is complex in nature, in its legal and financial make-up or because of its risks;
  - (d) Where the technical specifications cannot be established with sufficient precision; or
  - (e) Where unacceptable or irregular tenders have been received following a restricted or open procedure.
- 15.3 The Director shall ensure that the justification for use of the competitive procedure with negotiation is recorded.
- 15.4 Where the Director elects to use the competitive procedure with negotiation, the rules for such a procedure set out in the EU Procurement Rules shall be followed. However, where the EU Procurement Rules would not otherwise apply to the contract, the Director shall determine the timescales that are to apply to the procedure taking into account factors such as the complexity of the subject matter of the contract.
- 15.5 In all cases where the competitive procedure with negotiation is used, a full written record of all contacts, discussions and communications with tenderers shall be kept by the Director.
- 15.6 A minimum of two officers, one of whom to be of at least Senior Procurement Specialist grade, must be present at all times during any discussions with tenderers.
- 15.7 The Director must ensure that records of all discussions with tenderers are signed as such by all participants.
- 15.8 The Treaty Principles will be observed at all times during the negotiations.

## **16 Competitive Dialogue Procedure**

- 16.1 The Director may choose to use the competitive dialogue procedure where, in the Director's view, the restricted and open procedures in these Standing Orders are not appropriate for a contract.
- 16.2 The competitive dialogue procedure may only be used on one of the grounds set out in Standing Order 15.2.
- 16.3 The Director shall ensure that the justification for use of the competitive dialogue is recorded.

- 16.4 Where the Director elects to use the competitive dialogue procedure the rules for such a procedure set out in the EU Procurement Rules shall be followed. However, where the EU Procurement Rules would not otherwise apply to the contract, the Director shall determine the timescales that are to apply to the procedure taking into account factors such as the complexity of the subject matter of the contract.
- 16.5 In all cases where the competitive dialogue procedure is used, a full written record of all contacts, discussions and communications with tenderers shall be kept by the Director.
- 16.6 A minimum of two officers, one of whom to be of at least Senior Procurement Specialist grade, must be present at all times during any discussions with tenderers.
- 16.7 The Director must ensure that records of all discussions with tenderers are kept and these must be signed as such by all participants.
- 16.8 The Treaty Principles will be observed at all times during the competitive dialogue.

## **17 Innovation Partnerships**

- 17.1 The Director may choose to use the innovation partnership procedure where, in the Director's view, there is a need for innovative works, products or service which cannot be met by solutions already available on the market.
- 17.2 The aim of the innovation partnership will be the development of the required innovative works, products, or services and the subsequent purchase of the resulting works, supplies, or services.
- 17.3 The estimated value of the works, supplies or services must not be disproportionate in relation to the investment required for their development.
- 17.4 Where the Director elects to use the innovation partnership procedure, the rules for such a procedure set out in the EU Procurement Rules shall be followed. However, where the EU Procurement Rules would not otherwise apply to the contract, the Director shall determine the timescales that are to apply to the procedure taking into account factors such as the complexity of the subject matter of the contract.

## **18 Extensions to Existing Contracts**

- 18.1 Where the Director considers that an existing contract should be extended and the option to extend is given to Scotland Excel in terms of the contract, the Director may authorise the exercise of

that option on behalf of Scotland Excel. For the avoidance of doubt, where the contract does not make provision for the extension of the contract, the Director shall not extend that contract. However, a new contract may be entered into if the use of the negotiated procedure without publication of a notice can be justified in terms of these Standing Orders in which case the procedure in Standing Order 15 shall be followed.

- 18.2 For the purposes of Standing Order 18.1 an extension of a contract includes the option to increase the amount of supplies, services or works acquired under the contract as well as the option to increase the duration of the contract.
- 18.3 Where in terms of Standing Order 18.1, the contract does not make provision for the extension of the contract and the initial contract was not let in accordance with the EU Procurement Rules, the total value of the contract including the value of any extension shall not exceed the Threshold.

## **19 E-Procurement**

- 19.1 This Standing Order shall apply to any tendering procedure or contract entered using electronic means.
- 19.2 Unless in exceptional circumstances the Director has agreed otherwise, all tendering exercises or negotiated procedures shall be conducted using electronic means (“e-procurement”).
- 19.3 The Director must consider whether it is appropriate to impose any specific requirements regarding verification and authentication of the tender submission and the signature of the person making that submission.
- 19.4 Any tender document issued using electronic means must state whether Scotland Excel has any specific requirements relating to authentication or verification of the tender submission or of the signature of the person making the submission.
- 19.5 Any invitation to tender shall provide information as to the internet address which offers unrestricted and full direct access by electronic means to the Contract Documents.
- 19.6 No tender submitted using electronic means will be considered unless it is received in the format requested by Scotland Excel in the Contract Documents and at the electronic address specified by Scotland Excel and unless it is received prior to the deadline for the receipt of tenders, as stated in the Contract Documents.
- 19.7 The Director shall ensure that each tender is kept unopened in a single secure electronic mailbox that cannot be opened before the deadline for the receipt of tenders.

- 19.8 Prior to the tenders being opened after the deadline for the receipt the Director shall implement such internal controls as are necessary to ensure that the identity of none of the contractors who have applied for an invitation to tender or has submitted a tender shall be revealed to any person other than those members of Scotland Excel staff authorised by the Director to administer the e-procurement system for that tender.
- 19.9 The Director shall ensure that for each procurement project the system used shall keep and, if required, produce a record showing the time and date of receipt of all tenders received in respect of each e-procurement exercise.
- 19.10 This Standing Order shall also apply to the receipt and custody of tenders for sub-contracts let using electronic means to be performed by nominated sub-contractors.
- 19.11 The system used must not allow any tenders sent to the wrong address to be received.
- 19.12 Late tenders must be clearly identified as such by the system and shall be recorded as rejected on the tender record sheet with the tenderer being notified to this effect.
- 19.13 The Director may extend the deadline for the submission of bids by notifying all potential tenderers of the extension in the following circumstances:-
- (a) prior to any bids being received by Scotland Excel; or
  - (b) where following bids being received but before Scotland Excel has opened those bids due to the functionality of the e-procurement system.
- 19.14 The Director shall extend the deadline for submission of tenders:
- (a) where additional relevant information, although requested by a tenderer in good time, is not supplied to a tenderer at least six days before the deadline; or
  - (b) where significant changes are made to the Contract Documents.
- 19.15 The Director may also elect to extend the deadline for submission of tenders where it is considered appropriate to do so.
- 19.16 Where the deadline for submission of tenders is extended by the Director in terms of Standing Orders 19.14 or 19.15 above, the Director shall notify all potential tenderers of the extension and any tenderers who have already submitted tenders shall be given the opportunity to re-submit their tenders.

## 20 Opening of Tenders

- 20.1 All tenders shall be opened in the presence a member of staff of Senior Procurement Specialist grade or over and at least one other member of staff, neither of whom is, at the time, directly involved in the contract to which the tenders relate.
- 20.2 A record shall be prepared to show who opened the tenders and who witnessed the process and the record shall be signed by the relevant officers.

## 21 Electronic Auctions

- 21.1 The following provisions apply to the undertaking of electronic auctions by or on behalf of Scotland Excel:-
- (a) For the purpose of these Standing Orders, the expression “electronic auction” means a repetitive process involving an electronic device for the presentation of new prices, revised downwards, and/or new values concerning certain elements of tenders, which occurs after an initial full evaluation of tenders, enabling them to be ranked using automatic evaluation methods.
  - (b) The Director may authorise the carrying out of an electronic auction where satisfied that it is in the interests of Scotland Excel or any of the Member Authorities to do so and that the electronic auction is in accordance with the EU Procurement Rules.
  - (c) The Director may only authorise the carrying out of an electronic auction where she is satisfied that the likely benefit of an electronic auction will outweigh the costs of undertaking the electronic auction.
  - (d) An electronic auction may only be carried out where the possibility of the use of an electronic auction has been stated in the Contract Documents issued to contractors and, where the EU Procurement Rules apply, in the contract notice published in OJEU.
  - (e) For the avoidance of doubt, an electronic auction may be used where previous stages of a tendering procedure have not been undertaken using electronic means.
  - (f) Before proceeding with an electronic auction, the Director shall make a full initial evaluation of the tenders in accordance with the award criteria set and with the weighting fixed for them. All tenderers who have submitted admissible tenders shall be invited simultaneously by electronic means to submit new prices and/or new values.

- (g) At least two working days must elapse between the date on which the invitations referred to in Standing Order 21.1(f) are sent and the date of the electronic auction.
- (h) Throughout each phase of an electronic auction Scotland Excel shall instantaneously communicate to all tenderers involved at least sufficient information to enable them to ascertain their relative rankings at any moment. Scotland Excel may also, at any time, announce the number of participants in that electronic auction. In no case, however, may Scotland Excel disclose the identities of the tenderers during any phase of an electronic auction.
- (i) Prior to the commencement of any electronic auction, Scotland Excel shall intimate to all tenderers involved:-
  - (i) All relevant information concerning individual connection to the electronic system to be used in the electronic auction.
  - (ii) The date and time fixed for the start of the electronic auction.
  - (iii) The number of phases in the electronic auction.
  - (iv) The mathematical formula to be used in the electronic auction to determine automatic re-ranking of tenders on the basis of the new values or new prices submitted and incorporating the weighting of all the criteria set to determine the most economically advantageous tender.
  - (v) Where variant bids are authorised, a separate mathematical formula for each variation.
  - (vi) Proposed duration of the electronic auction together with any proposals for the extension of the duration of the electronic auction.
- (j) Any electronic auction will be subject to such additional procedural requirements as the Director considers necessary.

## **22 Technical and Financial Checks**

22.1 No tenderer may be awarded a contract for the supply of goods, materials or services or the execution of works unless, following a review of the proposed contractor, the Director is satisfied as to:-

- (a) the technical capability of the proposed contractor; and
- (b) the financial standing of the proposed contractor.

22.2 Where the Director considers it appropriate to do so, advice may be obtained from the Director of Finance and Resources of

Renfrewshire Council or his nominee on the financial standing of the proposed contractor.

- 22.3 It shall not be necessary to review the financial standing of proposed contractors where, for example:-
- (a) the estimated value of the contract is £100,000 or below; or
  - (b) it has been reviewed in the preceding 12 months from the date of invitation to tender; or
  - (c) the Director considers the contract to be of low financial and operational risk.
- 22.4 Assessment of a tenderer's technical capacity shall include a determination by the Director as to whether:
- (a) the tenderer meets the selection criteria; and
  - (b) any exclusion grounds under the Procurement Reform Rules, or where appropriate the EU Procurement Rules, apply to the tenderer.
- 22.5 The assessment under Standing Order 22.5 shall be based initially on the ESPD submitted by the tenderer but, at any moment during the procedure, the Director may require the tenderer to submit all or any of the supporting documents where the Director considers this is necessary to ensure the proper conduct of the procedure.
- 22.6 Where a procedure requires a shortlist of participants to be prepared, before a participant may be included on the shortlist the Director shall:-
- (a) verify that the participant whom he/she intends to shortlist meets all relevant criteria; and
  - (b) require the participant to submit such means of proof and supporting documents that the Director considers to be necessary.
- 22.7 Before preparing any report to seek approval to award a contract, except a contract which is a direct award under a framework, the Director shall:-
- (a) verify that the participant who is the proposed contractor meets all relevant criteria; and
  - (b) require the participant who is the proposed contractor to submit such means of proof and supporting documents that the Director considers to be necessary.
- 22.8 Where the Director is unable to verify that a participant meets all the relevant criteria, or where a participant fails to submit such means



of proof as required by the Director in terms of this Standing Order, the participant shall be excluded from the procedure.

- 22.9 The Director shall keep a record showing the results of each check of the technical capacity and financial standing of proposed contractors.

## **23 Checking of Tenders & Post Tender Negotiations**

- 23.1 All tenders shall be subject to checking by the Director who shall, if required by Standing Order 24.3, prepare and submit a written report in respect of all the tenders received in a form that complies with Standing Order 25 and containing a specific recommendation as to the acceptance of the successful tender or tenders and the reasons therefor.
- 23.2 Where the Director considers that a tender may be abnormally low, the procedures in the EU Procurement Rules shall be followed.
- 23.3 Between the last date and time for the receipt of tenders and the date on which a decision is taken as to which, if any, tender is to be accepted the Director may instruct members of staff or consultants to enter into post tender negotiations. Post tender negotiations shall only be used in circumstances where the Director has identified a tenderer who has submitted the best price of the most economically advantageous tender to Scotland Excel for a contract or part of a contract and where the Director is satisfied that there is scope for improvement in the offer received and that such negotiations will be in the best interests of securing value for money or improved terms and conditions for Scotland Excel. Post tender negotiations may only be used with that tenderer so identified. Post tender negotiations shall not be used to put other tenderers at a disadvantage or to distort competition.
- 23.4 Where it is considered possible that post tender negotiations might apply, a clear indication will be given to prospective contractors in the tender documents that post tender negotiations might be considered.
- 23.5 Between the last date and time for the receipt of tenders and the date on which a decision is taken as to which, if any, tender is to be accepted, the Director may instruct members of the Director's staff or consultants to contact a tenderer in respect of any contract in cases where such contact may be necessary to validate or clarify the terms of the tender or to effect any necessary adjustments but for no other purpose.
- 23.6 Notwithstanding the other terms of this Standing Order 23, where examination of the tenders reveals obvious errors or discrepancies

which would affect the tender figures, these errors will be dealt with in the following manner:-

- (a) Any obvious arithmetical errors will be rectified by the appropriate officer checking the tenders and the amount of tender shall be held to be the amount so rectified and the tenderer informed in writing of the corrected amount.
- (b) Where there is an obvious and genuine error in rates occurring, the tenderer will be given the opportunity of either confirming that they agree to their tender being considered with the error remaining or withdrawing their tender. This procedure must be undertaken in writing. Should the tenderer decide to withdraw their tender, it will not be considered for acceptance. The tenderer must not be given the opportunity to submit an amended tender.

23.7 A full written record shall be kept by the Director of all contracts where post tender negotiations have been used and the written record will be retained with the original tender. The written record will include the justification for authorising post tender negotiations, the nature of the negotiations undertaken, the outcome of such negotiations and shall detail any additional terms agreed by Scotland Excel.

## **24 Acceptance and Giving Reasons for Decisions**

24.1 Where a contract is to be awarded following the evaluation of tenders against criteria set out in the Contract Documents, the Director shall keep a written record showing the assessment of each valid tender against those criteria and demonstrating why the successful tenders were accepted.

24.2 In cases where the value of the contract exceeds £50,000 but does not exceed the Threshold, the contract shall be accepted by the Director. Where a contract is accepted in the aforementioned circumstances the Director shall report the award of the contract to the Executive Sub-Committee as soon as reasonably practicable thereafter.

24.3 In cases where the value of the contract exceeds the Threshold, the contract shall be accepted by the Director or, on her instructions, by the Clerk on the authority of the Executive Sub-Committee. However, in circumstances where Scotland Excel has undertaken work on behalf of a third party who is not a member of Scotland Excel for contracts where the value exceeds the Threshold the Director may accept the contract, providing that she has obtained clear instruction and the necessary authority from the third party to do so and shall report the award of the contract to the Executive Sub Committee as soon as reasonably practicable thereafter.

- 24.4 In cases where the value of the contract exceeds the Threshold and in the opinion of the Management Group, urgency precludes obtaining the approval of the Executive Sub-Committee, the contract may be accepted by the Director or the Clerk on the authority of the Management Group, provided always that the acceptance of a contract in such circumstances is subject of a report to the next meeting of the Executive Sub-Committee.
- 24.5 Member Authorities may request Scotland Excel to undertake a tendering procedure on their behalf but may specifically request that the acceptance of the contract following on from that procedure is dealt with by the Member Authority in accordance with that Member Authority's Standing Orders relating to contracts. In such circumstances paragraph 22.1 to 22.5 do not apply to the award of that contract.
- 24.6 The Director may terminate any tendering or negotiated procedure at any time up to the award of the contract where she believes that justification exists for that course of action. Where the Director does decide to terminate a tendering or negotiated procedure the Director shall write to all tenderers involved in that procedure informing them of her decision and the reasons for that.
- 24.7 In accordance with the Procurement Reform Rules, where a participant is excluded from a procedure at any stage before submitting a tender, the Director shall notify the participant in writing and provide reasons as soon as reasonably practicable.
- 24.8 Where, after submission of tenders, a decision is taken to eliminate a tenderer from a tendering procedure, for example where a tender is incomplete or fails to meet the minimum criteria, the relevant tenderer shall be notified as soon as is reasonably practicable by the Director.
- 24.9 All tenderers shall be informed in writing of the success or otherwise of their tender as soon as is reasonably practicable after the approval of the successful tender.
- 24.10 Except in the case of letters issued to successful tenderers by the Clerk in terms of Standing Orders 24.3 and 24.4, the Director shall be responsible for writing to tenderers but may request the Clerk to issue the letters on her behalf.
- 24.11 Communication with tenderers may be undertaken using Scotland Excel's e-procurement system.
- 24.12 Where the EU Procurement Rules apply, no tender shall be accepted until the date when the mandatory standstill period in terms of those Rules has expired and the Director is satisfied that no valid challenge has been received to the contract award decision.

- 24.13 The mandatory standstill period is a period of at least 10 calendar days between the date of dispatch of the letters issued under Standing Order 24.8 and the date when it is proposed to enter into the contract.
- 24.14 Where a mandatory standstill period is not required, the Director may elect to follow a voluntary standstill period if she considers it appropriate to do so.
- 24.15 Where a valid challenge is made to the contract award decision before the award of a contract is made, the Director shall provide a report (which at the Director's discretion may be written or verbal) to the next meeting of the Executive Sub-Committee setting out the nature of the challenge made; an explanation as to why the challenge is valid; and a recommendation on the further procedures to be followed.
- 24.16 The Director shall keep and maintain a register of all contracts that are not exempt from these Standing Orders and, in respect of each contract shall enter into that register, the following information:-
- the name and address of the contractor;
  - a description of the purpose of the contract;
  - the duration of the contract; and
  - any other information relating to the contract which the Director considers to be material.

## **25 Content of Reports on Contracts**

- 25.1 For all contracts requiring the approval of the Joint Committee or the Executive Sub-Committee, a report will be submitted detailing the following:-
- (a) The nature of the requirements of the contract.
  - (b) The tendering procedures adopted.
  - (c) The selection and/or invitation of contractors and their responses to the invitation.
  - (d) A comparative digest of offers received.
  - (e) The recommendation on the award of the contract or contracts.

## **26 Nomination of Sub-Contractor**

- 26.1 Where a contract provides for the nomination of a sub-contractor, the appointment of a nominated sub-contractor shall comply with these Standing Orders.

## 27 Framework Agreements

27.1 Where the Director wishes to establish a Framework Arrangement (“the Framework”) to provide for agreement on the terms for future contracts between Scotland Excel and the contractors for the purchase of goods, services or works, the following requirements shall be complied with:-

(a) Where the EU Procurement Rules apply, the Director shall establish the Framework in accordance with those Rules.

(b) In all other circumstances:-

- i. The contractors to participate in the Framework will be selected from those who have responded to a notice.
- ii. The notice shall be published on the Public Contracts Scotland website and in addition the Framework may be advertised in any other way the Director considers appropriate (including publication in the Official Journal of the European Union), taking into account the estimated value of the contracts to be let under the Framework and the importance of the subject matter of the Framework to Scotland Excel.
- iii. The notice shall mention:-
  - A. that Scotland Excel wishes to establish a Framework;
  - B. a description of the goods, service or works which are to be purchased under the Framework;
  - C. a description of the procedure which is to be followed to establish the Framework;
  - D. where the procedure to be followed is similar to the open procedure:-
    1. a period, being not less than 14 days from the date of publication of the Notice within which prospective participants may apply for the tender documents; and
    2. a closing date for tenders to participate in the Framework to be submitted to Scotland Excel;
  - E. where the procedure to be followed is similar to the restricted procedure:-
    1. a period being not less than 14 days from the date of publication of the Notice, within which contractors may apply for the pre qualifying questionnaire; and

2. a closing date for completed pre qualifying questionnaires to be submitted to Scotland Excel; and
  3. The number of applicants that Scotland Excel intends to invite to tender which shall not be fewer than five. However, if fewer than five pre qualification questionnaires are received, all of those applicants meeting the minimum selection criteria shall be invited to tender.
- (c) The Contract Documents must contain the procedures to be used for the award of contracts.
- (d) The establishment of the Framework shall comply with Standing Order 24.
- 27.2 Where a Framework has been established in accordance with Standing Order 27.1, a contract may be awarded under the Framework without the requirement to seek further competition amongst the contractors on the Framework. However the contract must be awarded in accordance with the terms and procedures for award of contracts laid down in the Framework and, where the contract is to be awarded by Scotland Excel, in compliance with Standing Order 24.
- 27.3 Where a Framework has been established but it does not lay down all of the terms of a proposed contract including, for example, where a new item can legitimately be added to the Framework, a mini competition procedure shall be held under the Framework and in accordance with Standing Order 27.4 below.
- 27.4 Any mini-competition procedure in terms of Standing Order 27.3 shall be conducted in accordance with the procedures laid down in the Framework and the following:-
- (a) every contractor on the Framework capable of performing the contract shall be issued with an invitation to take part in the mini competition. All invitations shall be issued at the same time.
  - (b) the invitations shall specify the closing date and time for submission of tenders under the mini competition procedure. The time limit fixed for the return of the tenders shall take into account factors such as the complexity of the subject matter of the contract and the time needed to submit tenders, but in any event shall not be less than 10 working days from the date the invitation to take part is issued.
  - (c) each tender shall be kept confidential until the expiry of the time limit for the receipt of tenders;
  - (d) the award of contract shall be made to the contractor or contractors who have submitted the best tender or tenders on the basis of the

award criteria specified in the Contract Documents based on the Framework documents; and

- (e) where following a mini competition procedure any award of contract is to be made by Scotland Excel, the contract shall be awarded in compliance with Standing Order 24.

27.5 The Director may elect to enter into contracts under an existing Framework that has been properly constituted by the Scottish Government; the Crown Commercial Service, or any other agency of the UK government; other Scottish Centres of Procurement Expertise; local authorities; and other collaborative bodies. Any such contracts must be entered into in accordance with the conditions applicable to the relevant Framework.

## **28 Dynamic Purchasing Systems**

28.1 The Director may elect to establish and use a Dynamic Purchasing System (“DPS”) if satisfied that:

- (a) it is in the interests of Scotland Excel to do so;
- (b) the DPS will only be used for commonly used purchases the characteristics of which, as generally available on the open market, meet Scotland Excel’s requirements; and
- (c) the costs of the DPS will not outweigh the likely benefits of using the DPS.

28.2 Any DPS established under this Standing Order shall be operated as a completely electronic process and, throughout its period of validity, shall be open for the admission of any suppliers who meet the selection criteria set by the Director.

28.3 Where the Director elects to establish and use a DPS, the rules for such a procedure set out in the EU Procurement Rules shall be followed.

## **29 Concessions**

29.1 Where Scotland Excel intends to grant a services concession contract or a works concession contract (“concession”), the Director shall be responsible for determining a best estimate of the financial value of the concession which shall be in accordance with the EU Procurement Rules, if applicable.

29.2 Based on the best estimate of the financial value of the concession, the Director shall determine the procedures that require to be followed in terms of these Standing Orders and, where applicable, the EU Procurement Rules.

## 30 Design Contests

- 30.1 Where the Director considers it appropriate to do so she may hold a design contest, which shall be a competitive procedure in which the Director invites the entry of plans and designs under predetermined rules under which the successful entry selected in terms of those rules is awarded a contract.
- 30.2 Where a design contest is to be held, a notice shall be placed on the Public Contracts Scotland website and the design contest may be advertised in any other way that the Director may consider necessary. The notice shall state:-
- (a) that a design contest is being held;
  - (b) a description of the project;
  - (c) the place where a prospective competitor may obtain a copy of the rules; and
  - (d) the date not less than 14 days from the date of the publication of the notice by which the prospective competitor must initiate, in writing, their interest in being involved in the contest.
- 30.3 After the expiry of the period specified in the notice, invitations to tender shall be sent to at least three persons selected by the Director. If fewer than three persons have applied and are considered suitable by the Director, then invitations to tender shall be sent to all suitable persons. Where only one suitable applicant has applied the Director shall decide either to abandon the contest or to negotiate with the sole suitable applicant for the award of the contract using the Negotiated Procedure without Prior Publication of a Notice in Contract Standing Order 14.
- 30.4 The prior approval of the Joint Committee or the Executive Sub-Committee is required before a design contest in terms of this Standing Order is commenced.
- 30.5 For the purposes of these Standing Orders a design contest means a competition in which Scotland Excel:-
- (a) invites the entry of plans and designs;
  - (b) establishes rules for the competition under which the plans or designs will be judged by a jury;
  - (c) may award prizes; and
  - (d) is enabled to acquire the use or ownership of plans or designs selected by the jury.



## **31 Specification of Standards**

- 31.1 Where there is a recognised British, European or International Standard applicable to any contract which is current at the date of tender, the Contract Documents shall require that the goods, materials or services to be used or supplied and all workmanship shall at least meet the requirement of that standard.

## **32 Assignment, Sub-Contracting, Termination and Modification**

- 32.1 In every contract, there shall be a provision whereby the contractor shall be prohibited from transferring or assigning to any person or persons whatever, any portion of the contract without the prior written consent of Scotland Excel. The Director shall have the power to consent on behalf of Scotland Excel to the assignment of a contract.
- 32.2 The sub-contracting of any part of a contract except to the extent permitted in writing by the Director shall be prohibited.
- 32.3 The Director may exercise any power on behalf of Scotland Excel to terminate any contract or part of a contract or to terminate Scotland Excel's participation in a Framework Agreement or to agree to vary or amend the terms of any contract but only following consultation with the Clerk and subject to the Director and the Clerk being satisfied that it is reasonable and in the interest of Scotland Excel to exercise that power.
- 32.4 Where it is proposed to modify a contract or framework, the Director shall determine whether the proposed modification would require a new procurement procedure. For the avoidance of doubt, modification includes any changes to the scope; terms and conditions; value; or parties to the contract or framework.
- 32.5 Where the Director determines that a modification would not require a new procurement procedure, the procedures under Standing Order 36 shall be followed if the contract is a schedule of rates contract.

## **33 Liquidated and Ascertained Damages**

- 33.1 Where the Director deems it to be appropriate following consideration of the risks involved, the Director shall ensure that the contract provides for liquidated and ascertained damages. The amount to be specified in each such contract shall be determined by the Director.

## **34 Prevention of Collusion and Corrupt or Illegal Practices**

34.1 In every written contract a clause shall be inserted to secure that Scotland Excel shall be entitled to cancel the contract and to recover from the contractor the amount of any loss resulting from such cancellation if the contractor or the contractor's representative (whether with or without the knowledge of the contractor), shall have practised collusion in tendering for the contract or any other contract with Scotland Excel or any Member Authority or shall have employed any corrupt or illegal practices either in the obtaining or performance of the contract or any other contract with Scotland Excel or any Member Authority.

## **35 Health and Safety**

35.1 No contract to which these Standing Orders apply will be accepted unless the contractor satisfies Scotland Excel that the contractor is operating health and safety policies which conform with current legislation.

## **36 Schedule of Rates Contract**

36.1 In every works contract which is a schedule of rates contract, the Director shall, prior to invitations to tender being issued, fix an indicative total value for the contract. The indicative total value shall be set out in any report to the Executive Sub-Committee.

36.2 Where it becomes apparent to the Director that the indicative total value is likely to be exceeded, the Director shall ensure that a report on the matter is submitted to the next meeting of the Executive Sub-Committee. Where a contract has not been advertised under the EU Procurement Rules and the increase in the value of the contract is such that the EU Threshold is likely to be exceeded, no further orders shall be made under the contract.

36.3 The Director shall ensure that a condition is inserted in any such contract to the effect that the indicative total value of the contract cannot be exceeded without the approval of Scotland Excel.

## **37 Sustainable Procurement**

37.1 The Director shall be responsible for ensuring that the Scotland Excel fulfils its Sustainable Procurement Duty.

37.2 The Director shall ensure that the Sustainable Procurement Duty is considered in the development of every Regulated Procurement and shall take into account how the Regulated Procurement can

- (a) improve the economic, social and environmental wellbeing of Scotland Excel's geographic area of operation;
- (b) facilitate the involvement of small and medium enterprises, third sector bodies and supported businesses in the Regulated Procurement; and
- (c) promote innovation.

37.3 Where improvements in terms of Standing Order 37.2 (a) have been identified, the Director shall ensure that the Regulated Procurement is carried out with a view to securing such improvements.

## **38 Consultants**

38.1 It shall be a condition of the engagement of the services of any consultant that:-

- (a) they shall comply with these Contract Standing Orders as though they were officers of Scotland Excel; and,
- (b) at any time during the performance of the contract, the consultant shall, on a request by the Director produce all records maintained by them in relation to the contract and on completion of the contract transmit all such records to the Director, if so required.

38.2 All contracts for consultancy services must set out clear output targets for performance by the consultant under the contract.

## **39 Records and Registers**

39.1 The Director shall maintain a contracts register in accordance with the Procurement Reform Rules.

39.2 Where these Standing Orders require that records or registers are kept, the Director shall obtain the approval of the Executive Sub-Committee prior to making arrangements for the disposal of any such records or registers.

39.3 The contracts register kept in accordance with Standing Order 39.1 is to be regarded as a permanent record of Scotland Excel and is not to be destroyed or disposed of.

## **40 Procurement Strategy and Annual Report**

40.1 In accordance with the Procurement Reform Rules, the Director shall prepare and publish a procurement strategy setting out how Scotland Excel intends to carry out Regulated Procurements in the next financial year.

- 40.2 Where Scotland Excel's procurement strategy for the current financial year requires to be reviewed, the Director shall make such revisions as are considered appropriate and publish the revised strategy.
- 40.3 The Director shall prepare and publish an annual procurement report on Scotland Excel's Regulated Procurement activities in relation any financial year as soon as reasonably practicable after the end of that financial year.

## Schedule 1

### **Special Arrangements for Contracts for Social and Other Specific Services and for Health or Social Care Services**

Unless varied by the special arrangements set out in this Schedule 1, the foregoing standing orders apply to contracts for Social and Other Specific Services and contracts for Health or Social Care Services. The special arrangements are as follows:

#### A. Procedures for the Award of Contracts for Social and Other Specific Services

A.1 Where a contract is for Social and Other Specific Services and the estimated value of the contract is equal to or greater than the threshold for Social and Other Specific Services, the Director shall follow the relevant procedures for such services set out in the EU Procurement Rules and the Procurement Reform Rules.

#### B. Procedures for the Award of Contracts for Health or Social Care Services

B.1 Where a contract is for Health or Social Care Services and the estimated value of the contract is less than the threshold for Social and Other Specific Services, instead of using the procedures set out in the foregoing Standing Orders, the Director may elect to follow the procedures set out in the Procurement Reform Rules. In such circumstances, the Director may decide, that offers shall not be sought for example where:

- (a) it can be demonstrated that the contract is of no interest to service providers in other EU member states; and/or
- (b) the total sum to be paid under the contract is so low that service providers located in other EU member states would not be interested in bidding for the contract; and/or
- (c) the service is of such a specialised nature that no cross-border market of suitable service providers exists; and/or
- (d) advertising the contract would result in the loss of a linked service; and/or
- (e) the services are required by a service user and can best be provided by the service user's existing service provider.

B.2 Where a decision is taken under paragraph B.1 above that offers shall not be sought, the Director shall decide if and how the contract shall be advertised.

B.3 Where a decision is taken under paragraph B.2 above not to advertise the contract, the Negotiated Procedure without Prior Publication of a Notice set out in Standing Order 14 shall be followed.

C. Guidance from the Scottish Government

C.1 Subject to Standing Order 9.2, contracts for Health or Social Care Services shall be procured in accordance with the Scottish Government's Guidance on the Procurement Reform (Scotland) Act 2014 and Guidance on the Procurement of Care and Support Services 2016 (Best-Practice) issued under Scottish Procurement Policy Note SPPN 7/2016 (as such may be amended or replaced).

C.2 In the event of any conflict between these standing orders and the Guidance referred to in paragraph C.1 above, the Guidance shall prevail.

D. SCSWIS and other Mandatory Registration

D.1 All Contractors providing Health or Social Care services must be registered with Social Care and Social Work Improvement Scotland (SCSWIS) (commonly known as the Care Inspectorate) and/or any other regulatory bodies relevant to the service provided.

E. Review of Decisions

E.1 Any decision taken under paragraph B.1 or B.2 shall be reviewed at regular intervals by the Director.