

## **Scotland Excel**

**To: Joint Committee**

**On: 9 December 2016**

**Report  
by  
Director Scotland Excel**

### **Implications for Scotland Excel of a UK exit from the European Union**

#### **1. Introduction**

This report gives an overview of the implications from a procurement perspective for Scotland Excel and its' member councils, as a result of a UK exit from the European Union (EU).

#### **2. Summary**

##### **Public Procurement**

Much of UK public procurement is regulated by EU rules, which are set out in the core EU Treaties, in EU directives and in Scottish (and UK, for England, Wales and Northern Ireland) regulations that implement the directives.

The Procurement Reform (Scotland) Act 2014 was designed to dovetail with the EU Directives and Treaty.

There is significant uncertainty surrounding the implications of a UK exit from the EU and this is compounded by the strongly divergent and subjective views arising from both sides of the debate.

This general uncertainty applies to the future of public procurement as the UK exits from the EU.

##### **Possible Outcomes**

If the UK government negotiates a deal with the EU which retains single market access, continued compliance with EU procurement law, in part or in full, is expected to form part of that deal.

It is not yet clear whether Scotland will be able to secure a separate deal regarding access to the single market. As in the case of a UK deal, continued compliance with EU public procurement law would be likely to form part of any such agreement for Scotland to remain in the single market.

Triggering Article 50 simply commences a process which will take around 2 years and possibly longer. The Great Repeal Bill proposed by the UK Government as the means of delivering Brexit will not change Scotland's procurement laws. Our law will only change as and when the Scottish Parliament and Government decide to make a change. The Scottish Government's position is that Scotland's interests are best served by retaining our position and status in the EU, including membership of the Single Market. So at this point, there can be no assumption that anything at all will change and in any event there can't be any changes in relation to our compliance with EU law until Brexit actually becomes a reality.

### **Economic Interests/Impacts on Businesses**

There is emerging evidence of worsening exchange rates leading to pressure on contract pricing. Also, in the event that public procurement market access is reduced post-Brexit, Scotland's businesses may suffer as they may be denied access to contract opportunities and/or rights to protection against discrimination.

A recent House of Commons briefing paper, 'Brexit: impact across policy areas' suggests that the extent of UK cross-border public procurement is limited, 'An estimated 1.3% of the value of the larger UK public sector contracts were awarded directly abroad in 2009 – 2011. Some 0.8% of the value of larger public contracts secured by UK companies was directly from abroad.'

### **3. Scotland Excel Perspective**

To date, the impact on pricing across the contract portfolio has been inconsistent, with some areas impacted more than others.

In groceries, discussions are ongoing, but price increase requests have been received that could incur additional costs of between 1% and 2% over the contract value. This is outside the agreed price variation process, and as such this will not be supported without agreement from member councils.

In construction materials, price variation requests averaging between 7-12% have been received. Such requests were not blanket across all products but limited to specific brands. The final variations, where accepted, were around 1-2% with a number of additional reductions, and all were within defined price review periods.

Looking forward, a number of suppliers across several categories have indicated that ongoing review of their supply contracts is underway, which will almost certainly result in price increase requests being submitted early in 2017.

Scotland Excel will continue to follow the pricing review requirements agreed with all participating suppliers at the award stage as a condition of contract. This clearly defines the relevant timescales that price change requests can be issued, and the supporting evidence required.

### **4. Recommendation**

It is recommended that Joint Committee members note the content of this report.