

MG ALBA

**PROCUREMENT POLICY AND
SCHEME OF TENDERING**

PROCUREMENT POLICY

1 Purpose and Compliance

- 1.1 The purpose of this Procurement Policy and Scheme of Tendering is to set clear rules for the procurement of goods, works and services for MG ALBA.
- 1.2 This policy does not apply to MG ALBA's expenditure on audio-visual and audio media content for broadcast or online media services. As such, the greater part of MG ALBA's expenditure is exempt and is governed by content commissioning principles.
- 1.3 The rules should ensure that MG ALBA complies with its legal obligations and is fair and accountable in its dealings with contractors and suppliers, as well as regulating the carrying out of its functions and achieving its purposes.
- 1.4 This Procurement Policy and Scheme of Tendering is also intended to ensure that MG ALBA obtains best value for money and that it is making best use of public monies.
- 1.5 MG ALBA will aim to achieve the Government's wider aims and objectives by acting in a consistent manner and having regard to the wider social, economic and environmental aims of the Procurement Reform (Scotland) Act 2014 and the Public Contracts (Scotland) Regulations 2015.
- 1.6 In general MG ALBA does not expect to have to comply with the provisions that apply to relevant bodies undertaking "significant procurement expenditure" in terms of Section 15 of Procurement Reform (Scotland) Act 2014, as the sum of the estimated values of the contracts to which MG ALBA's regulated procurements in any one year relate is not likely to be equal to or greater than £5,000,000. However, provision is made for such an eventuality in the policy.

2 Compliance

- 2.1 The Chief Executive may approve guidance notes on procurement procedures for any contract or type of contract let by or on behalf of MG ALBA. Any such guidance notes once approved shall form part of this Procurement Policy and Scheme of Tendering and shall be complied with.
- 2.2 Every procurement on MG ALBA's behalf must comply with MG ALBA's Procurement Policy, Scheme of Tendering and Financial Regulations and all applicable legislation.
- 2.3 In the event of conflict arising, EU, UK and Scottish legislation overrides this Procurement Policy and Scheme of Tendering.
- 2.4 MG ALBA has and will undertake relevant and proportionate consultation when necessary.
- 2.5 MG ALBA will take note of available good practice and principles of consultation and engagement. It will consider each procurement, the community affected by the resultant contract, and ensure any affected organisations or persons are consulted.

Such consultation will always be on a scale and approach relevant to the procurement in question and will be embedded in the MG ALBA's procurement practice.

- 2.6 MG ALBA will ensure that its regulated procurements will be carried out in compliance with the sustainable procurement duty. In relation to procurement contracts above the threshold of £4 million, considering community benefits will be an important factor. All contracts that fall within this category place an obligation on the contractor to deliver to MG ALBA a Development Plan indicating how the contract will contribute to addressing skill gaps within the community and providing meaningful training opportunities, as well as always ensuring that these companies are living wage employers.

3 **Variation and Revocation**

This Procurement Policy and Scheme of Tendering may be varied or revoked by the Board. Any variation to or revocation of the Procurement Policy and Scheme of Tendering will be effective on the first working day after the conclusion of the Board meeting at which it was approved.

4 **Publication**

- 4.1 MG ALBA will, prior to year in question, prepare a procurement strategy for any year in which it expects to "significant procurement expenditure" in terms of Section 15 of Procurement Reform (Scotland) Act 2014.

- 4.2 For any year in which a procurement strategy is required, MG ALBA will prepare an annual procurement report on its procurement activities as soon as reasonably practicable after the end of the financial year. This will meet the criteria set out in Section 18(2) of Procurement Reform (Scotland) Act 2014.

- 4.3 MG ALBA will ensure it publishes the procurement strategy, any revised strategy and the annual procurement report on the internet. Scottish Ministers will also be notified.

5 **Exemptions**

- 5.1 There shall be exempted from the provisions of the Procurement Policy and Scheme of Tendering all contracts for the supply of goods or materials for the provision of services or for the execution of works of the types specified in Section 4 of the Procurement Reform (Scotland) Act 2014 and in Regulations 8 to 13 of Public Contracts (Scotland) Regulations 2015 (including a specific Regulation 11(1)(b) exclusion for "acquisition, development production or co-production of programme material intended for audio-visual media services or radio media services") and without prejudice to that generality where: -

- 5.1.1 In the opinion of the Chief Executive or the Director of Finance urgent action is required to prevent danger to life, serious risk to health or damage to property. In such circumstances a report will be submitted to the Board at the first available subsequent meeting detailing both the circumstances justifying use of this exemption and the action taken.

- 5.1.2 The goods materials or services required are subject to copyright or patent and are only sold/provided by one supplier in the European Union.
- 5.1.3 When, for technical or artistic reasons, the Contract may only be awarded to a particular operator.
- 5.1.4 Any contract of employment.
- 5.1.5 Any contract relating to the disposal or lease of land or buildings.
- 5.2 Where consideration is being given to purchasing under a contract or framework agreement put in place by another public sector body legal advice must be taken to ensure that the contract is one to which MG ALBA can be party and that no further compliance procedures on the part of MG ALBA are necessary.

6 **Financial Provision**

No tender shall be invited or offer made or accepted unless appropriate financial provision has been made and approved by MG ALBA in terms of MG ALBA's Financial Regulations or funding is being provided by a third party which has been approved by MG ALBA.

7 **Basis for Award**

7.1 Below Threshold

All procurement of goods works and services above a value or estimated value of £50,000 but below the EU threshold should be based on the principles set out in the Procurement Reform (Scotland) Act 2014 and in compliance with the provisions of that legislation and The Public Contracts (Scotland) Regulations 2015. All procurement of goods works and services with a value of less than £50,000 should be based on "Best Value". "Best value", in this context, is defined as the optimum combination of whole life cost and quality (or fitness for purpose) to meet MG ALBA's requirements.

7.2 Above Threshold

All procurements which are subject to the EU procurement directives should be awarded on the basis of the "most economically advantageous tender", in line with The Public Contracts (Scotland) Act 2015, regulation 67. Failure to advise bidders in advance, either in the Contract Notice, the Official Journal of the European Union or in the tender documents, of the criteria against which tenders will be evaluated means that legally the decision may only be based on best price quality

8 **Existing Contracts**

Where there is an existing contract for the provision of goods, works or services which has been competitively tendered and awarded, this contract must be used for all procurements covered by that contract.

9 **Value of Contract**

The value of a contract is the value of the total consideration (excluding VAT) which the contracting authority expects to be payable under or by virtue of the contract.

10 **Form of Contract**

All contracts shall be in writing. All contracts must be authorised in accordance with the Financial Regulations.

SCHEME OF TENDERING

1 **Value of proposed procurement below £2000**

- 1.1 In the case of a proposed procurement value being less than £2000, a minimum of two telephone quotations shall be sought and the details of each quote shall be kept on file.
- 1.2 Contracts in this category should be awarded on the basis of the "Best Value" tender who can meet MG ALBA's delivery and quality specifications.

2 **Value of proposed procurement £2001 - £20,000**

- 2.1 For all goods, services and works, written/faxed quotes should be received from a minimum of three suppliers who can meet the required delivery and quality specifications.
- 2.2 Contracts in this category should be awarded on the basis of the "Best Value" tender who can meet the MG ALBA's delivery and quality specifications.

3 **Value of proposed procurement £20,001 - £49,999**

- 3.1 For all goods, services or works: -
- an advert should be placed on the Public Contracts Scotland portal <http://www.publiccontractsscotland.gov.uk/> and on the MG ALBA website inviting quotes
 - letters should be written to a minimum of five suppliers/contractors who are capable of supplying the goods/services to the required quality, inviting them to quote. Where there are fewer than 5 respondents to the advertisement placed letters should be written to all those responding to the advertisement inviting them to quote.
- 3.2 Contracts in this category should be awarded on the basis of the "Best Value" tender who can meet MG ALBA's delivery and quality specifications.

4 **Value of proposed procurement over £50,000 for goods and services and £2,000,000 for works (but below EU procurement thresholds)**

- 4.1 All procurements within this category shall be strictly in conformity with the provisions of the Procurement Reform (Scotland) Act 2014, the Public Contracts (Scotland) Regulations 2015, and any associated guidelines issued by the Scottish Ministers in consequence of that legislation.
- 4.2 Formal sealed tender bids are required for procurements in this category.
- 4.2.1 For all contracts for goods, works or services, where the estimated value of the contract lies within this category, Officers must use whichever of the following methods will achieve best value for money and ensure adequate competition for their procurement: -

1. Selection of contractors/providers under the Open Tendering Procedure
 2. Selection of contractors/providers under the Restricted Tendering Procedure
- 4.2.2 The choice of procedure will depend on, amongst other things, the type and complexity of the goods, services or works being procured; the likely level of market interest; whether the open procedure would generate such interest that the cost of evaluating the number of tenders would be disproportionate to what is being purchased. MG ALBA will undertake to give contractors an explanation as to why an Open Tendering Procedure or a Restricted Tendering Procedure has been the preferred procedure.
- 4.3 **Open Tendering Procedure**
- 4.3.1 This is a procedure where the contract is publicly advertised and all interested parties are able to tender.
- 4.3.2 Under this procedure the contract must be advertised on:
- MG ALBA's website (this must appear a minimum of one day before any advertisement in a newspaper).
 - Public Contracts Scotland portal <http://www.publiccontractsscotland.gov.uk/>
 - Where appropriate and cost effective a national newspaper and/or one or more local newspapers.
 - Where appropriate and cost effective a trade/professional journal.
- 4.3.3 Once the web site advertisement has appeared, letters or emails can also be written to providers who might be interested in tendering, drawing their attention to the advertisement.
- 4.3.4 Contract advertisements under this procedure must include:
- Details of the proposed contract.
 - Details of any restrictions as to who can participate e.g. the minimum qualifications (technical/financial/professional) required.
 - Details as to where contractors might apply for the tender documents.
 - Clear instructions as to where tender documents should be sent.
 - A deadline for the receipt of applications with a statement that applications received after the deadline may not be considered. The deadline must be at least 14 calendar days from the date of publication on the advertisement. 2pm is the preferred time of day for the tender deadline.
 - The name, address, phone number and email address of an Officer who can be contacted in the event of any queries.

4.3.5 Invitations to Tender must contain:

- Details of the proposed contract requirements.
- An Invitation to Tender.
- Clear instructions for the receipt of tenders.
- A deadline for delivery of tenders together with a statement that tenders received after the deadline may not be considered. The deadline must be at least 21 calendar days from the date of publication of the advertisement. 2pm is the preferred time of day for the tender deadline.
- A statement that the tenders shall remain open for acceptance for a period specified in the tender documents.
- A statement that MG ALBA reserves the right to reject all tenders and not award the contract.
- Details of the number of unsigned copies of the tender to be submitted together with one signed tender.
- Details of the criteria that will be used to assess the winning bid including the relevant duties contained within the Procurement Reform (Scotland) Act 2014 once operational.

4.3.6 Tenders must be assessed against criteria that have been determined and, where appropriate, in compliance with the provisions of the Procurement Reform (Scotland) Act 2014 and that have been made known to contractors before they are invited to tender. The assessment of tenders against pre-determined criteria must be recorded in writing.

4.4 **Restricted Tendering Procedure**

4.4.1 Under this procedure the contract is publicly advertised to invite potential providers to express an interest in tendering.

4.4.2 Under this procedure the contract must be advertised:

- On MG ALBA's website (this must appear a minimum of one day before any advertisement in any newspaper).
- Public Contracts Scotland portal <http://www.publiccontractsscotland.gov.uk/>.

4.4.3 Once the website advertisements have appeared, letters or emails can also be written to providers who might be interested in applying, drawing their attention to the advertisement.

4.4.4 Contract advertisements under this procedure must include:

- Details of the proposed contract.

- An invitation to contractors to apply for permission to tender for the contract within a specified period.
 - Details as to where contractors might apply for an application form.
 - Clear instructions for the receipt of applications.
 - A deadline for the receipt of applications (date and time) with a statement that applications received after the deadline will not be considered. The deadline must be at least 14 days from the date of the publication of the advertisement. 2pm is the preferred time of day for the application deadline.
 - The name, address, phone number and email address of an Officer who can be contacted in the event of any queries.
- 4.4.5 The selection takes place by asking all who ask to be considered to complete and return a pre-qualification questionnaire. The pre-qualification questionnaire is then assessed to ensure that the provider meets pre-determined minimum criteria in terms of, amongst other things, financial and economic standing, the appropriate level of insurance, health and safety policies (where appropriate), technical capacity and ability and relevant experience.
- 4.4.6 From those who return the questionnaire, the minimum number that should be selected is 5 and the maximum number that should be selected is 20. [DELETE However, where less than 5 providers meet the minimum pre-qualification criteria, all who do not meet the criteria must be asked to tender.]
- 4.4.7 Invitations to tender must contain:
- Details of the proposed contract requirements.
 - An invitation to tender.
 - Clear instructions for the delivery and receipt of tenders.
 - A deadline for delivery of tenders (date and time) together with a statement that tenders received after the deadline will not be considered. The deadline must be a minimum of 21 days after the despatch of the invitation to tender documents to all selected to tender. 2pm is the preferred time of day for the tender deadline.
 - A statement that the tenders shall remain open for acceptance for a period specified in the tender documents.
 - A statement that MG ALBA reserves the right to reject all tenders and not award a contract.
 - Details of the number of unsigned copies of the tender to be submitted together with the one signed tender.

- Details of the criteria that will be used to assess the winning bid including the relevant duties contained within the Procurement Reform (Scotland) Act 2014 once operational.

4.4.8 Tenders must be assessed against objective criteria that have been determined and where appropriate, in compliance with the provisions of the Procurement Reform (Scotland) Act 2014 and that have been made known to contractors before they are invited to tender. The assessment of tenders against pre-determined criteria must be recorded in writing.

4.4.9 The assessment of tenders against pre-determined criteria must be recorded in writing.

5 Procurement above EU thresholds

5.1 All procurement which falls within this category must be carried out in accordance with EU procedures and in conformity with the provisions of the Public Contracts (Scotland) Regulations 2015.

5.2 Any procurement which falls or is likely to fall within this category must be notified to the Director of Finance, who will decide whether to obtain legal advice.

5.3 Thresholds from 18th April 2016 (net of VAT) are as follows: -

Goods and Services	£164,176
Works	£4,104,394

These figures shall be revised from time to time to comply with EU requirements. See <http://www.scotland.gov.uk/Topics/Government/Procurement/policy/10613>

6 Framework Agreements

Where there is likely to be a repeated need for a particular supply, service or works, this can be procured by way of a Framework Agreement. No Framework Agreement shall last longer than 4 years. Legal advice must be obtained when setting up a Framework Agreement above EU thresholds.

7 Receipt and Custody

7.1 Where tenders are invited, a tender may be rejected where it is not received by the time fixed on the tender document (unless that time has been altered by the appropriate Officer for all tenderers) and unless it is contained in a plain envelope securely sealed and bearing the word "Tender" followed by the subject to which the tender relates. The envelope must not bear any distinguishing mark intending to indicate the identity of the sender. Prospective tenderers must be notified of these requirements. Any tender failing to meet these requirements may be considered only with the express consent of the Director of Finance.

7.2 The envelope containing the tender shall be addressed to the postal address specified on the tender document concerned in whose custody it shall remain until the time arranged for its opening.

- 7.3 A record shall be kept showing the time and date of receipt of tenders.
- 7.4 Prior to the award of a contract, tender documents should be kept in a secure place.
- 7.5 Tender documentation shall be kept for a minimum of 12 months after the closing date for receipt of tenders, after which time the unsuccessful tenders should be destroyed.

8 **Late Tenders**

Tenders received after the closing date and time specified in the tender documents, or at a place other than the place specified therein, will be rejected. If late tenders are rejected, such late tenders will be returned to the tenderer with a covering letter explaining why the tender is not being considered. Such late tenders may be opened to identify the name of the tenderer but no details of such a tender shall be disclosed.

9 **Opening of Tenders**

- 9.1 All tenders for the same contract shall be opened at the one time.
- 9.2 The particulars of each tender opened will be recorded in a Tender's Register on opening and a record will be kept by the Officer responsible for the contract.
- 9.3 All tenders properly received must be opened no later than the next working date after the date set for the return of the tender documents.
- 9.4 All tenders must be opened by no less than two MG ALBA Officers who have the authority to open tenders.
- 9.5 The tenders opened shall be recorded on the Tender database.

10 **Validation, Clarification and Correction of Tenders**

- 10.1 All tenders shall be subject to checking by the appropriate Officer.
- 10.2 Between the closing time and date 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 appropriate Officer may contact a tenderer where such contact is necessary to validate or clarify the terms of the tender, including the withdrawal of any qualification to the tender or to effect any necessary adjustments. A full written record shall be kept of all such contacts and shall be retained with the original tender.
- 10.3 Where examination of the tenders reveals arithmetical errors, or obvious errors in the rates tendered or discrepancies, the tenderer will be given the opportunity of confirming, amending or withdrawing his tender. All correspondence relating to such matters must be in writing and shall be retained with the original tender.

11 **Post-Tender Negotiations**

No post-tender negotiations shall be entered into without the prior express approval of the Director of Finance who must obtain legal advice before giving such approval.

12 **Tender Database**

- 12.1 The Director of Finance shall keep and maintain a database of tenders received and opened in respect of each contract of £50,000 and over and shall include thereon the name of each tenderer, the value or amount of the tender.
- 12.2 The tender database register shall also list any tenderers who were issued with contract documents but who failed or declined to submit a tender.

13 **Notification of Award**

- 13.1 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. The Officer responsible for inviting the tenders shall be responsible for advising tenderers.
- 13.2 Where the tenders are subject to EU procurement procedures, legal advice should be sought on the wording of these letters.

14 **Mandatory Standstill Period**

Where tenders are for a contract subject to the full scope of the EU procurement rules, a period of not less 10 calendar days must elapse between the written communication of the decision to award the contract to all tenderers and the award of that contract. Legal advice must be taken on the process and content of letters to tenderers.

15 **Technical and Financial Checks**

- 15.1 No contractor may be awarded a contract for the supply of goods, materials or services or the execution of works unless a satisfactory review of the proposed contractor has been carried out as to: -
- the technical capability of the tenderer; and
 - the financial standing and good character of the tenderer.
- 15.2 It shall not be necessary to review the financial standing of proposed contractors where: -
- the estimated value of the contract is £50,000 or below; or
 - it has been reviewed in the preceding 12 months from the date of the tender.

16 **Health and Safety**

- 16.1 No contract shall be awarded to a contractor unless the contractor satisfies MG ALBA that they are operating health and safety policies which conform to the current legislation.
- 16.2 MG ALBA is committed to contracting only with suppliers that comply with all appropriate and relevant legislation, including Health and Safety at work etc. 1974 Act. Where appropriate, and on a contract by contract basis, MG ALBA will assess the legislation applicable to a procurement and take steps to ensure bidders comply

with such legislation. Where proportionate, MG ALBA also seek to assess the compliance of subcontractors.

17 **Equal Opportunity in Employment**

- 17.1 Before any contract is awarded, MG ALBA 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 in respect of ensuring equal opportunity in employment.
- 17.2 MG ALBA recognises the value of a well-motivated and dedicated workforce both in its own organisation and in those of its suppliers. MG ALBA is a Living Wage Employer for all directly employed staff. In years when compliance with Section 15(5)(b)(iii) of Procurement Reform (Scotland) Act 2014 is required, and for other appropriate contracts, MG ALBA will consider, before undertaking a procurement, whether it is relevant and proportionate to include a question on fair work practices along with other relevant criteria, whilst ensuring the appropriate balance between quality and cost of the contract, paying regard to the statutory guidance including the application of the living wage
- 17.3 MG ALBA supports the sourcing of goods that are fairly and ethically traded. Where directly relevant it shall make use of appropriate standards and labels in its procurements to take account of fair and ethical trading considerations, as well as considering equivalent offerings from suppliers that can demonstrate they can meet the specified criteria without necessarily having the specific certification.

18 **Contracts Register**

Within 14 days of the commencement of a contract, the Officer responsible for the contract, shall forward the name and address of the supplier, the nature of the supply, the duration of the contract, the price pertaining to the supply together with any other material information on the contract to the finance department who will maintain a Contracts Register.

19 **Extension of Contract Duration**

- 19.1 Where appropriate, provision can be made in a contract for a period of extension but such extension must not be for more than 50% of the original duration of the contract. For contracts above the EU threshold legal advice must be taken before any extension is granted.
- 19.2 The Director of Finance may extend the duration of a contract where provision for this has been included in the original agreement and value for money can be demonstrated. A contract may only be extended once.

20 **Assignment and Sub-contracting**

- 20.1 In every contract for the supply of supplies, services or the execution of work, there shall be included a provision whereby the contractor shall be prohibited from transferring or assigning to any firm or company or person whomsoever, the contract or any portion of the contract, without the prior written consent of the appropriate Officer.
- 20.2 Payments due to from MG ALBA to a contractor, by a contractor to a sub-contractor or by a sub-contractor to a sub-contractor will be made no later than 30 days after the invoice relating to the payment is presented.

21 **Liquidated and Ascertained Damages**

All procurement contractors for the supply of goods, services or execution of works by a particular date or dates shall provide, where appropriate, for liquidated and ascertained damages, with the amount thereof to be specified in each contract.

22 **Building or Civil Engineering Contracts**

22.1 The Chief Executive can authorise additional work of any emergency nature on a building or civil engineering contract up to 5% of the contract value. Such extensions must be reported to the Director of Finance prior to authorisation and retrospectively to the Board.

22.2 Except as provided for in 22.1 above, contract variations for building/civil engineering works which exceed the provision for contingencies in the project estimate may not be instructed without prior Board approval after legal advice is sought.

23 **Commencement Date**

This Procurement Policy and Scheme of Tendering shall come into effect on the first working day after the Board meeting at which they are approved.