

## Procurement Policy and Scheme Of Tendering

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## A. INTRODUCTION

This Procurement Policy and Scheme of Tendering details the procedures to be followed to ensure best practice when procuring goods, works and services for MG ALBA. This is in order to:

- (a) obtain best value for money (and make best use of public monies);
- (b) comply with our principles, demonstrate fairness and good practice;
- (c) comply with regulatory, equality and other legal requirements (for example that apply to public procurement activities, where relevant).

MG ALBA wishes to ensure that all of its procurement activities take place in accordance with this policy.

### 1. What is procurement (and tendering)?

1.1 Procurement is the process of buying goods and services, and choosing suppliers (or spending money). Tendering and contracting are other words used to describe procurement. When something is “put out to tender”, it means that persons are asked to make offers to do or supply that thing. Some consider this process as being similar to a silent auction, and those who wish to submit a bid have until a certain deadline to submit their best offer.

1.2 Certain organisations, such as MG ALBA, have extra duties and legislative requirements to comply with when carrying out procurement. Some of these duties are listed under section 4 (**MG ALBA’s Procurement Principles**). Extra, more stringent and time sensitive legislative requirements in relation to *public procurement* are triggered if the proposed contract is above a certain value (and the contract is not excluded). Please see below for an overview of the governance structure on when a procurement is regulated, and section 3 below (**What is public procurement?**) for further details. For more information on contract values and how they are calculated, please see section 5 (**Calculating the value of a procurement**).

#### Overview of legislative/governance structure for MG ALBA spending\*

Goods/services <£50k ex VAT Works <£2m ex VAT	Goods/services £50k to £179,086.99 (£214,903.99 inc VAT) Works £2m to £4.477,173.99 ex VAT	Goods/services >£179,087 (>£214,904 inc VAT) Works > £4.477,174 ex VAT
<ul style="list-style-type: none"><li>• <i>Not regulated</i></li><li>• MG ALBA internal Procurement Policy applies</li></ul>	<ul style="list-style-type: none"><li>• <i>Regulated public procurement ("below threshold")</i></li><li>• Procurement Reform (Scotland) Act 2014</li><li>• Procurement (Scotland) Regulations 2016</li></ul>	<ul style="list-style-type: none"><li>• <i>Regulated public procurement ("above threshold")</i></li><li>• Public Contracts (Scotland) Regulations 2015</li></ul>

\*Thresholds valid from 1 January 2024 to 31 December 2025. Note that exact threshold values will vary every two years in accordance with thresholds set out in the World Trade Organisation’s Government Procurement Agreement, see section 5 below for more details. The thresholds detailed in this note are relevant for procurement exercises commenced on, or after 1 January 2024.

## 2. Procurement in relation to broadcasting and online media services

- 2.1 MG ALBA's main purpose is to provide opportunities to enjoy Gaelic media content and facilitate the broadcasting and online distribution of such content, working together with others such as the BBC.
- 2.2 Broadcasting, programme development, the production or co-production of programme material for audio-visual or radio media service providers are excluded from the public procurement regulations. This means that the majority of MG ALBA's spending in relation to broadcasting and programme production does not need to go through a public procurement exercise. Instead, spending in relation to broadcasting and media work is governed by the MG ALBA Commissioning Code.

## 3. What is *public* procurement?

- 3.1 Public procurement is the process of the acquisition, usually by means of a contractual arrangement after a public competition, of goods, services, works and other supplies by the public service or contracting authority (MG ALBA). Public procurement is a legally regulated process that covers the whole life of the contract in question, from the beginnings of the idea about the contract through to the end. This is more complex than regular procurement and specific legislation applies (depending on the value of the contract) with set timescales. The rules cover matters such as:
- (a) **Advertising of contracts.** The public and electronic advertisement of the procurement opportunity.
  - (b) **Different procedures for the contractual process and phases.** Regulated public procurement is split up into "below threshold" and "above threshold", depending on the value of the total contract. There are different procurement procedures to allow for effective competition and set stages in relation to the process, with minimum time limits applicable at each stage.
  - (c) **Evaluation of bidders and bids.** Separate rules apply in relation to (1) the evaluation of candidates who have expressed an interest in tendering for the contract (and of the selection criteria used to evaluate) and also (2) when evaluating the bid. Issues in relation to selection should not be relevant to evaluation of the bid and vice versa.
  - (d) **Feedback to bidders and award of contracts.** Strict rules apply in relation to how feedback is provided to bidders and the award of contracts. Under current legislation, contracts must be awarded on the basis of the most economically advantageous tender (or MEAT), though there are proposals to move this to most advantageous tender or MAT for certain public procurements. Price or costs cannot be the sole factor. A standstill period (set period of time) must be observed before a contract can be formally awarded and a notice publicised of the award.
  - (e) **Consequences for breaching the regulations.** The rules provide detail on when litigation can take place for breach of the regulations (and potential criminal charges).
- 3.2 As detailed above and below, a public procurement procedure is only required where the contract is above a certain value (and the contract is not excluded). As a rough rule of thumb, if an exclusion doesn't apply and contract is for over £50,000 – a public procurement procedure is likely to be needed.
- 3.3 Various legislation applies to public procurement (including the Procurement Reform (Scotland) Act 2014, the Public Contracts (Scotland) Regulations 2015 and the Procurement (Scotland) Regulations 2016)).
- 3.4 Please see the Scheme of Tendering for further detail on when the public procurement process is to be used and below at section 8 below (**Exclusions and exemptions from the public procurement regime**).

## B. HOW MG ALBA PROCURES

### 4. MG ALBA's Procurement Principles

4.1 All procurement duties stem from the foundational values of proportionality, transparency, mutual recognition, non-discrimination and equal treatment. MG ALBA takes into the account the following aspects when carrying out any purchasing, to ensure that an ethical supply process takes place, and that equality of opportunity and sustainable development is embedded into our processes:

- (a) **Best value and competition.** MG ALBA is committed to obtaining “best value” when purchasing, which is the optimum combination of whole life cost and quality (or fitness for purpose) to meet MG ALBA's requirements and make the best use of public money. It does not necessarily mean the lowest price and also takes into account social, economic and environmental factors. When public procurement procedures are required, contracts will be awarded on the basis of objective criteria detailed in the tender documentation and in accordance with the relevant current legislation. Depending on the type and value of the contract, MG ALBA may use a competitive procedure to assess which contract presents best value. For contracts which are not subject to the public procurement regime this could involve quotes by email or holding content commissioning rounds. For contracts within the public procurement regime, the opportunity will be advertised on Public Contracts Scotland and a variety of competitive procedures are possible (please see the Scheme of Tendering for further detail on the different types of procedure).
- (b) **Sustainability: social, economic and environmental aims.** MG ALBA aims to achieve the Government's wider aims and objectives by acting in a consistent manner and having regard to wider social, economic and environmental aims, sustainability and climate change legislation. MG ALBA's Environmental Policy details our commitments to minimising the environmental impact of our operations and improving standards. Suppliers to MG ALBA shall comply with all relevant law in relation to the environment, operate in an environmentally responsible way and assist MG ALBA toward reducing our environmental impact. In particular where public procurement procedures are required, MG ALBA will comply with the duties under the Procurement Reform (Scotland) Act 2014, the Public Contracts (Scotland) Regulations 2015 and the Procurement (Scotland) Regulations 2016. This will include, before carrying out a regulated procurement, consideration as to how the procurement process can improve economic, social and environmental wellbeing, with a particular focus on reducing inequality.
- (c) **Ethical purchasing.** MG ALBA requires suppliers to demonstrate that people are dealt with ethically and lawfully. Suppliers must be able to demonstrate that proper procedures are in place to deal with all labour related issues and working conditions, in particular:
  - (i) health, safety and hygiene legislation;
  - (ii) appropriate discipline;
  - (iii) working terms and conditions and remuneration.

MG ALBA is seeking to detect and remove modern slavery in its operations and supply chain, in all and any form which involves the deprivation of a person's liberty in order to exploit them for personal or commercial gain. Accordingly, MG ALBA requires the same guarantees and transparency from its suppliers in relation to their approach.

- (d) **Equality and transparency.** MG ALBA is committed to:
- (i) eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct;
  - (ii) advance equality of opportunity between people who share a relevant protected characteristic and those who do not;
  - (iii) to foster good relations between people who share a protected characteristic and those who do not; and
  - (iv) MG ALBA aims to ensure open, fair and transparent procedures and expects the same from its suppliers.
- (e) **Good decision making.** MG ALBA has procedures in place to ensure that:
- (i) **Conflicts of interest are identified and avoided.** A conflict can be actual, potential or perceived; it can be financial or non-financial. All MG ALBA staff must comply with the Conflict of Interest policy and MG ALBA suppliers are expected to similarly be responsible for identifying situations in which they have a conflict of interest or where there is a potential for a conflict of interest to arise, and notifying MG ALBA of any such conflict.
  - (ii) **Enough money exists to pay for the procurement.** MG ALBA is funded by the Scottish Government and has finite resources. Occasionally funding is provided from third parties (usually in conjunction with a multi-party project). This means that before a procurement can begin or be accepted, appropriate financial provision needs to be in place. MG ALBA requires to approve spending in accordance with MG ALBA's Financial Regulations or to approve funding provided by a third party.
  - (iii) **Only certain persons have authority to agree contracts.** MG ALBA seeks to create a culture and attitude of good governance. As such, only certain personnel are authorised to agree to any spending and the agreement of any contract requires to take place in accordance with this Procurement Policy, the Scheme of Tendering (where appropriate) and the Financial Regulations. MG ALBA has allocated separate duties to be observed by the Budget Holder and Authoriser in accordance with MG ALBA's Financial Regulations C.5.1.
  - (iv) **There is appropriate documentation and record keeping.** All contracts shall be in writing and records kept in accordance with our retention of records procedure.

## 5. Calculating the value of a procurement

5.1 **What is a threshold and why does it matter?** The levels of contract value are known as “thresholds”, please see below. When a procurement reaches a certain threshold that will dictate which public procurement legislation applies. The biggest example of this is in relation to “below threshold” and “above threshold” which are both regulated procurements and can have differing rules and procedures in accordance with the relevant threshold. The relevant thresholds are subject to amendment and are updated every two years (to remain aligned to those set by the World Trade Organisation’s Government Procurement Agreement).

Contractual amounts and thresholds as of 1 January 2024			
<i>Question</i>	<i>Does my total contract value fall within the regulated public procurement regime?</i>		
<i>Answer</i>	<i>Check below to see the type of contract and threshold value, and which regime (if any) applies.</i>		
Contractual amount** is not subject to procurement regime	Contract type	Value	Value (as of 1 January 2024) excluding 20% VAT
	<b>Goods and services</b>	<b>£0-£49,999.99**</b>	<b>Not applicable**</b>
	<b>Works*</b>	<b>£0-£1,999,999.99</b>	<b>Not applicable**</b>
	*Please see below at 5.2 for further detail. **Be careful of small lots and contracts extensions/variatioins (especially when subject to VAT) as new VAT rule could bring contracts into public procurement regime – see below at 5.3(a) and 5.6 – if in doubt, seek legal advice		
Contractual amount means the procurement is regulated by Scottish procurement regulations	The Procurement Reform (Scotland) Act 2014 (“ <b>below threshold</b> ”) and Procurement (Scotland) Regulations 2016		
		Threshold value (as of 1 January 2024)	Indicative threshold value (as of 1 January 2024) excluding 20% VAT
	<b>Public contract (other than works)</b>	<b>&gt; £50,000 ex VAT – £214,903.99 inc VAT</b>	<b>&gt;£50,000 - £179,086.99</b>
	<b>Public works contract threshold</b>	<b>&gt;£2,000,000 ex VAT - £5,372,608.99 inc VAT</b>	<b>&gt;£2,000,000- £4,477,173.99</b>
	The Public Contracts (Scotland) Regulations 2015 (“ <b>above threshold</b> ”)		
		Threshold value (as of 1 January 2024 inc VAT)	Indicative threshold value (as of 1 January 2024) excluding 20% VAT
	<b>Goods and services</b>	<b>&gt;£214,904</b>	<b>&gt;£179,087</b>
	<b>Subsidised service contracts</b>	<b>&gt;£214,904</b>	<b>&gt;£179,087</b>
	<b>Works (including subsidised work contracts)</b>	<b>&gt;£5,372,609</b>	<b>&gt;£4,477,174</b>
	<b>Light touch regime* for services</b>	<b>&gt;£663,540</b>	<b>&gt;£552,950</b>
<b>Small lots* – supplies and services</b>	<b>&gt;£70,778</b>	<b>&gt;£58,982</b>	
<b>Small lots* - works</b>	<b>&gt;£884,720</b>	<b>&gt;£737,267</b>	

## 5.2 Further detail on contract type (other than goods and services):

- (a) **Works.** This means a contract for building, construction or civil engineering works.
- (b) **Light touch regime.** This applies to health care, social care, cultural and certain other services detailed in the public procurement regulations by the common procurement vocabulary codes (CPV Codes).
- (c) **Small lots.** A lot, or a small lot is a part of a contract that is exempt from public procurement rules. For each procurement, there needs to be consideration as to whether or not a contract is standalone or part of a group of similar contracts. If the aggregated value for the group of contracts or the standalone contract is above the regulated threshold then they are subject to the public procurement regime. However under regulation 6(14) and 6(15) of the Public Contracts (Scotland) Act 2015 a buyer can award contracts without applying the rules under two conditions:
  - (i) The value of the lot must be below the small lot threshold; and
  - (ii) The value of the lot cannot exceed 25% of the aggregated value of the combined contracts.

## 5.3 The total value for the contract term (including potential extensions) is to be calculated.

*If there is any doubt as to the total value of a contract, please speak to the Head of Finance & Assurance.*

- (a) **Consider VAT in relation to the total contract value.** It is important to ascertain the total value of a contract in order to decide whether or not that contract requires to go through a public procurement exercise (and if so, under which set of regulations). Value added tax (VAT) will be relevant in these calculations to remove the risk of underestimating the contract value (and potentially the correct procurement route). Subsidised service contracts and contracts which are split up into lots have additional rules.
- (b) **Total term (includes contract extensions).** The estimated value of a contract must include the full lifetime of the contract (including any possible extension periods) plus VAT (if applicable). Framework contracts cannot be any longer than 4 years within the public procurement regime.
  - (i) If your contract is for 3 years plus a possible 1 year extension at an estimated value of £50k p.a. this is: 4 years (3 years + 1 year extension) x £50k = £200k estimated contract value. If subject to VAT, a 20% allowance (at current rates) would mean £200k + £40k = £240k. The advertised value should still be £200k (and would be subject to the above threshold public procurement regime – unless an exemption applies).
  - (ii) Another way of calculating the value, where the contract is less than 4 years, is to multiply each month's spend by the number of months.
  - (iii) For a single purchase, total spend is calculated as the total amount payable to the supplier for this purchase.
  - (iv) If there are a multiple number of contracts placed to make up a single large purchase, the spend value should include the combined total of all such contracts placed.

(c) **Calculation method cannot be used to avoid application of the public procurement regime.**

Legislation prohibits:

- (i) Sub dividing a contract in order to exclude it from the public procurement regime (unless there are objective reasons to justify this); and/or
- (ii) Selecting a method to calculate the estimated value of a contract in order to exclude the procurement from the public procurement regime.

If you are in any doubt as to the value of the contract (or the type of contract) please refer to the Head of Finance & Assurance.

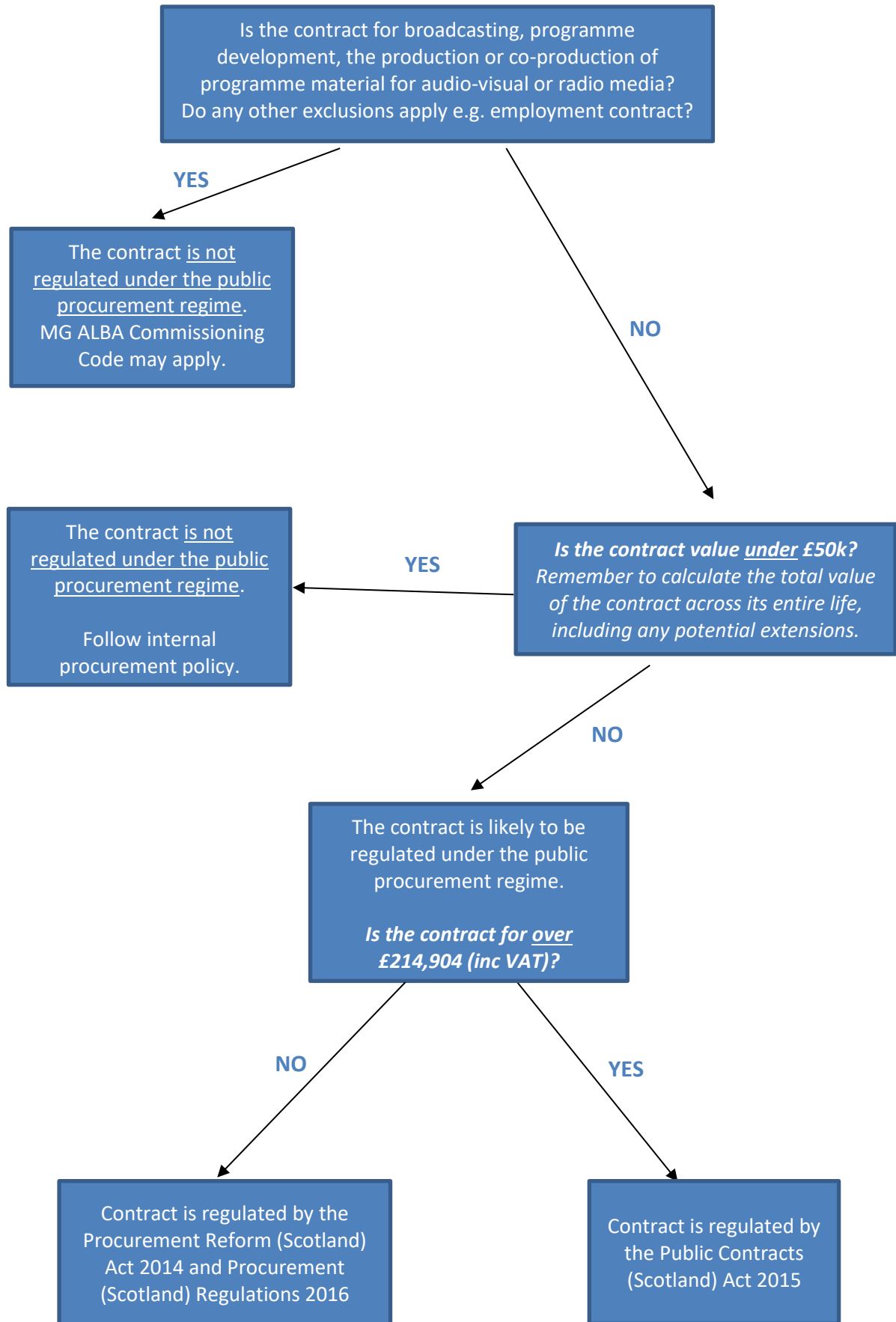
5.4 **Under £50,000?** As a rule of thumb, if a contract is for £49,999.99 or less (excluding VAT), then this will not be subject to the public procurement procedures and instead governed solely by MG ALBA internal policy. However if a contract is for £50,000 (excluding VAT) or more then it will be subject to the public procurement procedures.

5.5 **Unable to estimate value of a procurement = regulated.** If you are unable to estimate the value of a contract that contract will be explicitly made subject to the public procurement regime rules.

5.6 **New VAT rule (and existing contracts/contract extensions).** The rules on public procurement thresholds in Scotland changed from 1st January 2022 to align with those of the World Trade Organisation's Government Procurement Agreement. An impact of this change is that VAT must be included when estimating contract value; under previous EU rules procurement thresholds were net of VAT. This means that if any existing contracts (agreed prior to the VAT rule change) are proposed to be extended or varied, this will need to be considered carefully. If in doubt, please consult with the Finance team who may seek legal advice.



**Flowchart for goods and services: does my contract need to be regulated?**



## 6. Where total public procurement spend is over £5 million

6.1 If MG ALBA is expected to, or estimates, that the value of its public procurements in one year will amount to £5 million or more, this will be classed as “significant procurement expenditure”. This means that additional reports will require to be prepared, including:

- (a) a procurement strategy (to be prepared prior to the year in question, unless the discovery is made during that year, in which case as soon as practicable, in accordance with regulation 15 of the Procurement Reform (Scotland) Act 2014); and
- (b) an annual procurement report (to be prepared as soon as reasonably practicable after the end of the financial year, in accordance with regulation 18(2) of the Procurement Reform (Scotland) Act 2014).
- (c) 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.

6.2 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.

## 7. Changes to this Procurement Policy and Scheme of Tendering

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.

## 8. Exclusions and exemptions from the public procurement regime

8.1 **Exclusion (no public procurement) vs exemption (not all public procurement rules apply).** Depending on the subject matter and circumstance, some contracts are excluded from the public procurement regime (for example broadcasting or co-production for MG ALBA). Occasionally other contracts may be subject to an exemption, this can mean some requirements of the procurement regime do not apply (for example, awarding a contract without using a competitive procedure – see below), but other provisions still apply. This a complicated area and any reliance on an exclusion or exemption should be considered carefully alongside the relevant legislation. The authorisation procedures set out at part C.5 of the MG ALBA Financial Regulations are also required to occur prior to the agreement of any such new contract (or contract variation or extension), if the contract value would ordinarily mean the public procurement regime applies (in full or part).

8.2 **Exclusions.** The following is a summary of certain exclusions (in relation to specific services contracts[, framework agreements or dynamic purchasing systems]):

- (a) **Broadcasting and production contracts.** By an audio-visual or radio media service provider - the acquisition, development, production or co-production of programme material for audio-visual media services or radio media services. To an audio-visual or radio media service provider, for broadcasting time or programme provision.
- (b) **Employment contracts.**
- (c) **Certain property contracts.** Contracts for the acquisition or rental of land, buildings or property.
- (d) **Some alternative dispute resolution contracts.** For arbitration or conciliation services.

- (e) **Certain legal services.** This includes legal representation and advice given in relation to judicial proceedings and notary public services.
- (f) **Certain financial and central bank services.** Contracts in relation to the issue, sale or purchase of securities or other financial instruments.
- (g) **Some public contracts awarded between/to other public bodies.** Certain contracts awarded to another contracting authority due to an exclusive right to do so, or where subsidised by contracting authorities.
- (h) **Selected research and development contracts.** Certain research contracts may be excluded but only if they fall within a predefined subject matter, the benefits do not solely accrue to the public body and the service is not wholly financed by the contracting authority.
- (i) **Utilities.** An entirely separate public procurement utilities regime (and separate legislation) applies where a contracting authority qualifies as a “utility” and carries out “utility” activities. This regime is unlikely to apply to MG ALBA. Please see 8.5 below for further detail.

8.3 **Legislative exclusions.** MG ALBA may consider and rely on applicable legislative provisions which now or in the future exclude a contract from the public procurement regime. This includes the matters detailed in:

- (a) Section 4 of the Procurement Reform (Scotland) Act 2014; and
- (b) Regulations 7 to 18 of Public Contracts (Scotland) Regulations 2015.

8.4 **Awarding a contract without competition.** Occasionally, even if a contract falls within the procurement regime, MG ALBA can consider awarding a contract without seeking offers. This process takes place under the “Negotiated procedure without prior publication”, please see section 6 of the Scheme of Tendering for further detail. If the contract is still within the public procurement regime, various rules still apply to these contracts. Therefore, the Head of Finance & Assurance should approve any proposed action under this procedure, and specialist legal advice should be sought on this topic.

8.5 **Utilities procurement.** A separate public procurement utilities regime applies to certain contracting authorities and organisations (that are defined, where they qualify, as utilities) that carry out so-called “utility” activities. The Utilities regime in Scotland is governed by the Utilities Contracts (Scotland) Regulations 2016. Utilities activities include: gas and heat, electricity, water, transport services, ports and airports (including for inland waterways), postal services and the extraction of oil and gas exploration for, or extraction of, coal and other solid fuels.

## 9. MG ALBA Procurement Threshold Rules

General sum	Further detail on sum	Public Procurement?	Advertised on PCS portal?	Regulated By	Relevant procedure	Award basis
Below £50,000	Below £2,000	No	Not required	MG ALBA Procurement Policy & Scheme of Tendering	Seek quotes.	Best value
	Between £2,000 and £19,999.99	No	Not required	MG ALBA Procurement Policy & Scheme of Tendering	Seek quotes from suppliers capable of supply to required quality.	Best value
	Between £20,000 and £49,999.99	No	Recommended	MG ALBA Procurement Policy & Scheme of Tendering	Seek (or invite) quotes from suppliers capable of supply to required quality (ideally a minimum of five suppliers).  Advertise the opportunity to provide quotations, such as within Public Contracts Scotland portal (Quick Quotes) and on MG ALBA website).	Best value
Above £50,000	Between £50,000 to £214,903.99 (inc VAT) or £179,086.99 (ex VAT)	Yes	Yes	Procurement Reform (Scotland) Act 2014; Procurement (Scotland) Regulations 2016	See Scheme of Tendering (and legislation).  Appropriate public procurement procedure to be selected (usually open or restricted).	Most Economically Advantageous Tender (MEAT)
	Anything ≥£214,904 (inc VAT) or ≥£179,087 (ex VAT)	Yes	Yes	Public Contracts Scotland (Regulations) 2015		

9.1



## 9.2 Value of proposed procurement below £2,000

- (a) In the case of a proposed procurement value being less than £2,000, ideally a minimum of two quotations shall be sought (unless circumstances make this impractical or impossible) and the details of each quote shall be kept on file.
- (b) 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.

## 9.3 Value of proposed procurement £2,000 - £19,999.99

- (a) For all goods, services and works, written quotes should be sought, ideally from a minimum of three suppliers who can meet the required delivery and quality specifications (unless circumstances make this impractical or impossible).
- (b) 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.

## 9.4 Value of proposed procurement £20,000 - £49,999.99

- (a) For all goods, services or works: -
  - (i) the opportunity to provide quotations should be advertised (for example on the Public Contracts Scotland portal <http://www.publiccontractsscotland.gov.uk/> and on the MG ALBA website inviting quotes); and
  - (ii) written requests should be sent to ideally 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 five respondents to the advertisement, written requests should be sent to all those responding to the advertisement inviting them to quote.
- (b) 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.

## 9.5 Value of proposed procurement over £50,000 for goods and services (£2,000,000 for works)

- (a) Any contract over £50,000 is regulated. Please see the Scheme of Tendering. All procurements within this category shall be carried out in accordance with the Scheme of Tendering and public procurement regime legislation.
- (b) Formal sealed tender bids are required for procurements in this category.
  - (i) 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, through either:
    1. The Open Tendering Procedure
    2. The Restricted Tendering Procedure

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.

## C. MG ALBA PROCESSES FOR TENDERS

### 10. Record keeping

- 10.1 A record shall be kept showing the time and date of receipt of tenders.
- 10.2 Prior to the award of a contract, tender documents should be kept in a secure place.
- 10.3 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.

### 11. Late Tenders

Tenders received after the closing date and time specified in the tender documents will be rejected. If late tenders are rejected, such late tenders will be returned to the tenderer with an explanation as to 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.

### 12. Opening of Tenders

- 12.1 All tenders for the same contract shall be opened at the one time.
- 12.2 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.
- 12.3 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.
- 12.4 All tenders must be opened by MG ALBA Officers who have the authority to open tenders.
- 12.5 The tenders opened shall be recorded on the Tender database.

### 13. Validation, Clarification and Correction of Tenders

- 13.1 All tenders shall be subject to checking by the appropriate Officer.
- 13.2 In general, tender submissions cannot be amended after submission either at the request of MG ALBA or at the request of the tenderers. Variations of a regulated contract under the procurement regime require to be approved by the Head of Finance & Assurance.
- 13.3 If in any doubt, please see the Scheme of Tendering sections 7 and 8, and consult with the Finance team who may seek legal advice.

### 14. Post-Tender Negotiations

No post-tender negotiations shall be entered into without the prior express approval from the Chief Executive who must obtain legal advice before giving such approval.

## 15. Tender Database

- 15.1 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.
- 15.2 The tender database register shall also list any tenderers who were issued with contract documents but who failed or declined to submit a tender.

## 16. Notification of Award

- 16.1 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.
- 16.2 Where the tenders are subject to the public procurement regime, legal advice should be sought on the wording of these letters.

## 17. Mandatory Standstill Period

Where relevant tenders are for a contract subject to the “above threshold” public procurement regime, 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.

## 18. Feedback

*Disclaimer: this document is for general purpose internal use only by MG ALBA and does not constitute legal or professional advice. Any queries in relation to remedies should be directed to the Head of Finance & Assurance and/or to the legal department.*

*Regulated procurements (below and above threshold) have specified requirements in relation to communication with economic operators. Please see the Scheme of Tendering sections 10 for further detail.*

### Overview of feedback to tenderers

Unregulated contracts	Below threshold (regulated procurement)	Above threshold (regulated procurement)
<ul style="list-style-type: none"><li>• Notification of decision in accordance with good practice</li><li>• No requirement/deadline for feedback</li></ul>	<ul style="list-style-type: none"><li>• Decision to award/exclude ASAP after decision made** **See SoT</li><li>• Feedback to be provided within 30 days of request</li></ul>	<ul style="list-style-type: none"><li>• Standstill letter ASAP after decision to award (including specified requirements)** **See SoT</li><li>• Feedback within 15 days of request</li></ul>



## 19. Technical and Financial Checks

19.1 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: -

- (a) the technical capability of the tenderer; and
- (b) the financial standing and good character of the tenderer.

19.2 It shall not be necessary to review the financial standing of proposed contractors where: -

- (a) the estimated value of the contract is £50,000 or below; or
- (b) it has been reviewed in the preceding 12 months from the date of the tender.

## 20. Contracts Register

20.1 **Non-regulated procurement.** 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.

20.2 **Regulated procurement.** A Contracts Register is to be maintained for all regulated contracts, i.e. contracts which are valued at £50,000 or above (excluding VAT) for goods and services.

- (a) Public Contracts Scotland (PCS) provides an optional facility to automatically create a private register of all contracts in place (however this needs to be selected). If selected, when a PCS award notice is published, an entry is automatically made in the contracts register. The PCS contracts register will pull through the contract value from the Contract Award Notice.
- (b) If PCS is not used to produce a contracts register, a publicly available one must be produced.
- (c) A Contracts Register, for each contract awarded, should contain:
  - (i) the date the contract was awarded;
  - (ii) the name of the contractor(s) the contract has been awarded to;
  - (iii) the subject matter of the contract;
  - (iv) the estimated value of the contract;
  - (v) the start date of the contract;
  - (vi) the end date of the contract (excluding contract extensions). If the date is not provided, a description of the circumstances when the contract will end;
  - (vii) the duration of any contract extension periods.

## **21. Extension of Contract Duration**

- 21.1 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 which are subject to the public procurement regime, legal advice must be taken before any extension is granted (see section 8 of the Scheme of Tendering).
- 21.2 For non-regulated procurements, the Finance department may extend the duration of a contract where value for money can be demonstrated and provided this complies with legislation (eg. the extension must not cause the total contract value to fall within regulated procurement).

## **22. 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.

## **23. Liquidated and Ascertained Damages**

Where goods, services or the execution of works are to be supplied by a particular date (or dates) by a contractor, where appropriate, the contract shall contain provision for liquidated damages payable by the contractor (as damages for breach of contract and/or failure to meet that date or dates). The amount of liquidated damages is to be specified in each contract.

## **24. 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.

# **SCHEME OF TENDERING CONTRACTS WITHIN THE PUBLIC PROCUREMENT REGIME**

## **Contents:**

- 1. Types of public procurement contracting**
- 2. Key stages in public procurement**
- 3. Other arrangements (framework, dynamic purchasing and electronic auctions)**
- 4. Procurement procedures**
- 5. Commonly used procedures (open and restricted)**
- 6. Awarding a contract without competition**
- 7. Clarifications**
- 8. Variations**
- 9. Contract Notices and procurement documents**
- 10. Feedback to tenderers (and candidates)**
- 11. Standstill Period - contract cannot be entered into until this time has passed**
- 12. Contract Award Notices**

## 1. Types of public procurement contracting.

When a contract falls within the public procurement regime (over £50,000), and is not excluded from the regime, there are different types of public contracts process which MG ALBA must consider.

- 1.1. **Can a framework agreement or dynamic purchasing system be used?** The Public Contracts (Scotland) Regulations 2015 detail rules in relation to the set up and use of framework agreements, dynamic purchasing systems (DPS) and electronic auctions.
- 1.2. **If no, a public procurement procedure is required.** Where a pre-procured framework agreement or DPS is not able to be used, MG ALBA will need to select the appropriate procurement procedure (see below 2 - 5 for further details).
- 1.3. **Differing requirements apply at each stage.** Various stages and legal requirements which apply at each stage of the procurement, and that can vary (including in relation to timing) in accordance with the type of public procurement procedure which has been chosen.

## 2. Key stages in public procurement:

- 2.1. **Advertisement.** All Contract Notices for regulated procurement (other than certain care contracts) must be published on the Public Contracts Scotland portal <http://www.publiccontractsscotland.gov.uk/>
- 2.2. **Pre-qualification** (other than in the case of the open procedure).
- 2.3. **Evaluation of PQQ and unsuitable candidates** e.g. those who submitted non-compliant PQQs, don't satisfy minimum requirements re financial standing / experience, can be excluded for other reasons.
- 2.4. **Invitation to tender/participate** in a dialogue/negotiate.
- 2.5. **Submission of tenders** (in the case of the competitive dialogue and negotiated procedure, this may be "final" tenders/solutions; other bidding rounds may have preceded this one)
- 2.6. **Evaluation of bids** (most economically advantageous tender or MEAT)
- 2.7. **Award Decision.**
- 2.8. **Standstill.** Period of time before contract can legally be awarded.
- 2.9. **Completion of contract.**

## 3. Other arrangements (framework, dynamic purchasing and electronic auctions).

- 3.1. **Framework Agreements.** These are different to conventional contracts (where one supplier is appointed to provide a good/service). Instead a framework agreement is an agreement between one or more contracting authorities that allows for "call off" contracts or orders to be put through it. The purpose of a framework is to have pre-agreed terms governing those "call off" contracts (e.g. in relation to price and quantity where appropriate) and a pre-qualification of the suppliers listed (to ensure they have the correct capabilities). Once a framework agreement is concluded, it is closed to new suppliers. Where under the Public Contracts (Scotland) 2015 regime, framework contracts can last no longer than 4 years unless there are exceptional circumstances.

- 3.2. **Dynamic Purchasing Systems.** These are electronic purchasing systems usually used for common purchases (e.g. office supplies). Whilst the system is active, the system must be open to any economic operator that meets the selection criteria (in contrast to framework agreements which are closed once concluded). Further rules exist in relation to DPS's carried out under the Public Contracts (Scotland) 2015 regime, for example that the restricted procedure (see below at 5.3) must be followed.
- 3.3. **Electronic auctions.** Under the Public Contracts (Scotland) 2015 regime, an electronic auction phase could be used after an initial full evaluation of the tenders. This asks for bidders to revise downwards their prices or confirm new values concerning certain elements of the tenders. The rules state various requirements to be included within the procurement documents where an electronic document has been decided upon.

## 4. Procurement Procedures.

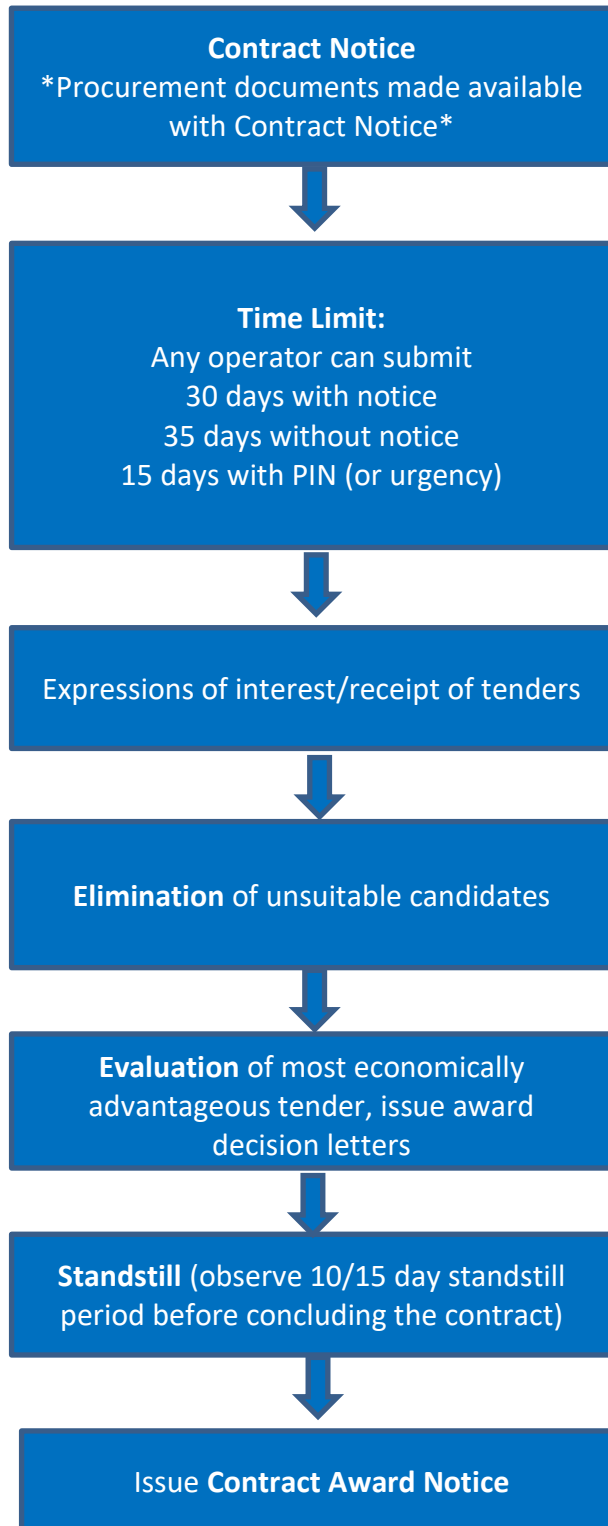
Where the Public Contracts (Scotland) 2015 regime applies and a framework agreement or DPS is not being used, MG ALBA will need to select the appropriate procurement procedure.

- 4.1. **Types of public procurement procedures.** All procedures (except the open procedure and the negotiated procedure without prior publication) require a two stage process which allows the contracting authority to shortlist the bidders against specified criteria before inviting the shortlist bidders to submit tenders to be evaluated against the award criteria:
- (a) Open Procedure
  - (b) Restricted Procedure
  - (c) Competitive Procedure with Negotiation (CPN) Procedure
  - (d) Competitive Dialogue (CD) Procedure
  - (e) Innovation Partnership Procedure; and
  - (f) Negotiated procedure without prior publication (see 6 below).

## 5. Commonly used procedures (open and restricted)

- 5.1. The two most common procedures are the Open Procedure and the Restricted Procedure, which are outlined below.

## OPEN PROCEDURE



## 5.2. Open Tendering Procedure

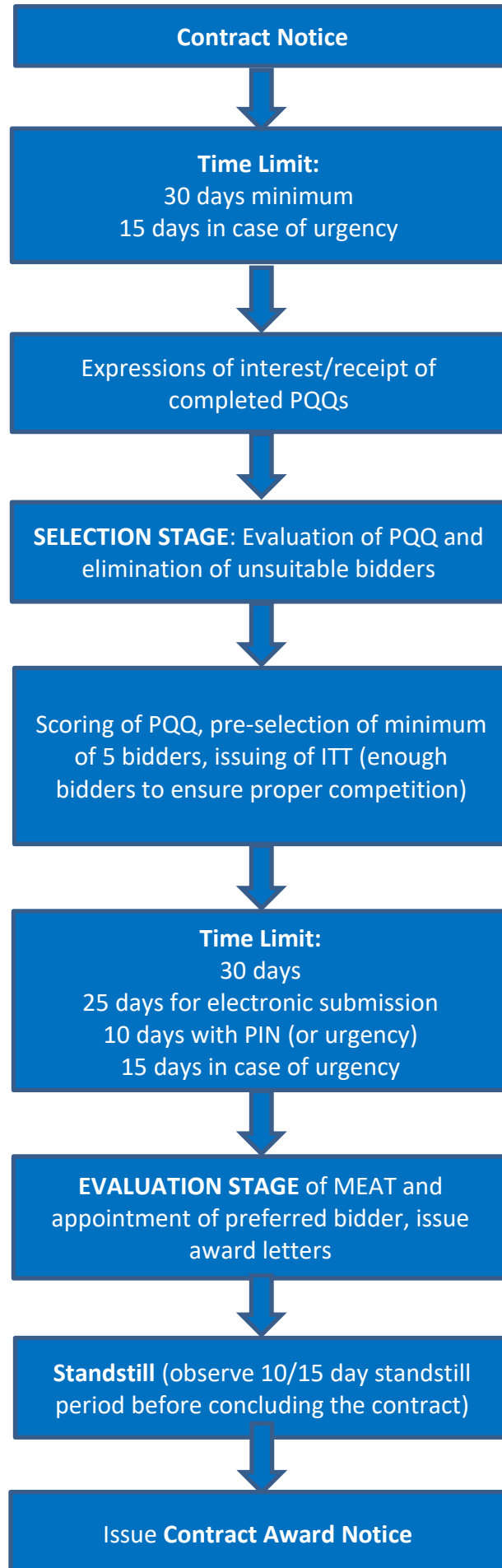
*Note: this procedure is suitable for straightforward procurements, where no negotiation with bidders is required. It is useful when there is likely to be limited interest in an activity (or else it can be more onerous if there are surplus bidders to be evaluated). All relevant documents must be available when the Contract Notice is released.*

- (a) **Open to all.** This is a procedure where the contract is publicly advertised and any interested parties are able to submit a tender.
- (b) **Contract Notice.**
  - (i) Under this procedure the Contract Notice must be advertised on:
    1. Public Contracts Scotland portal <http://www.publiccontractsscotland.gov.uk/>
    2. MG ALBA's website (this must appear a minimum of one day before any advertisement in a newspaper).
    3. Where appropriate and cost effective a national newspaper, one or more local newspapers and/or a trade/professional journal.
  - (ii) Once the notice is publicised on public contracts Scotland, letters or emails can also be written to providers who might be interested in tendering, drawing their attention to the advertisement.
  - (iii) Contract Notices under this procedure must include:
    1. Details of the proposed contract.
    2. Details of any restrictions as to who can participate e.g. the minimum qualifications (technical/financial/professional) required.
    3. Details as to where contractors might apply for the tender documents.
    4. Clear instructions as to where tender documents should be sent.
    5. 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 35 calendar days from the date of publication of the Contract Notice. However:
      - If in the Contract Notice it states that electronic submissions are required from bidders, the deadline can be set at 30 days.
      - If a Prior Information Notice (PIN) has been used, the submission deadline can be dropped to 15 days from the Contract Notice, if the PIN was released in advance and it contains all the relevant information what would have appeared in the Contract Notice.
      - 2pm is the preferred time of day for the tender deadline.
    6. The name, address, phone number and email address of an Officer who can be contacted in the event of any queries.

- (c) **Invitation to Tender.** Invitations to Tender must contain:
- (i) Details of the proposed contract requirements.
  - (ii) Clear instructions for the receipt of tenders.
  - (iii) 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 35 calendar days from the date of publication of the Contract Notice. However:
    - 1. If in the Contract Notice it states that electronic submissions are required from bidders, the deadline can be set at 30 days.
    - 2. If a Prior Information Notice (PIN) has been used, the submission deadline can be dropped to 15 days from the Contract Notice, if the PIN was released in advance and it contains all the relevant information what would have appeared in the Contract Notice.
    - 3. 2pm is the preferred time of day for the tender deadline.
  - (iv) A statement that the tenders shall remain open for acceptance for a period specified in the tender documents.
  - (v) A statement that MG ALBA reserves the right to reject all tenders and not award the contract.
  - (vi) Details of the number of unsigned copies of the tender to be submitted together with one signed tender.
  - (vii) 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, Procurement Reform (Scotland) Act 2016, Public Contracts (Scotland) 2015 or other legislation (as applicable) once operational.
- (d) Tenders must be assessed against criteria that have been determined in compliance with current legislation 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.



## RESTRICTED PROCEDURE



### 5.3. **Restricted Tendering Procedure.**

*Note: This procedure allows for the adoption of selection and exclusion criteria to limit the number of bidders that will be invited to tender to a minimum of five. This can be useful where time needs to be saved from evaluating unsuitable bidders.*

- (a) **Bidders are pre-selected before bidding takes place.** Under this procedure the contract is publicly advertised to invite potential providers to express an interest in tendering.
- (b) **Contract Notice.**
  - (i) Under this procedure the Contract Notice must be advertised:
    1. Public Contracts Scotland portal <http://www.publiccontractsscotland.gov.uk/>.
    2. On MG ALBA's website (this must appear a minimum of one day before any advertisement in any newspaper).
  - (i) Once the website Contract Notices have appeared, letters or emails can also be written to providers who might be interested in applying, drawing their attention to the advertisement.
  - (ii) Contract Notices under this procedure must include:
    1. Details of the proposed contract.
    2. The "Call for Competition". An invitation to contractors to make an application to request to participate in the tender for the contract within a specified period. The objective and non-discriminatory criteria should be included in the Contract Notice (or in the invitation to supply) that MG ALBA intends to apply.
    3. Details as to where contractors might apply for an application form.
    4. Clear instructions for the receipt of applications.
    5. 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 30 days from the date of the publication of the notice of where a PIN was sent. 2pm is the preferred time of day for the application deadline.
    6. The name, address, phone number and email address of an Officer who can be contacted in the event of any queries.
- (c) **Selection stage:**
  - (i) The selection stage 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. The PQQ does not relate as to how bidders would fulfil the requirement.

- (ii) From those who return the questionnaire, the minimum number that should be selected is 5 and the maximum number (where applicable). Where the number of bidders meeting the selection criteria and the minimum levels of ability is below the minimum number, MG ALBA may continue the procedure by inviting the candidates with the required capabilities.

(d) **Award stage:**

- (i) Bidders who are selected (at (c) above) will be invited to tender for the procurement.
- (ii) Invitations to tender must contain:
  1. Details of the proposed contract requirements.
  2. Clear instructions for the delivery and receipt of tenders.
  3. 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.
  4. A statement that the tenders shall remain open for acceptance for a period specified in the tender documents.
  5. A statement that MG ALBA reserves the right to reject all tenders and not award a contract.
  6. Details of the number of unsigned copies of the tender to be submitted together with the one signed tender.
  7. 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.
- (iii) 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.
- (iv) The assessment of tenders against pre-determined criteria must be recorded in writing.

## 6. Awarding a contract without competition.

*This section details summarised examples of occasions when MG ALBA can consider awarding a contract without seeking offers in relation to the proposed contract, when the contract falls within the public procurement regime. It is also known as “use of the negotiated procedure without prior publication”. Various other public procurement regime rules still apply in certain circumstances, therefore the Head of Finance & Assurance should approve any award made under these grounds and specialist legal advice should be sought on this topic.*

### 6.1. Grounds on which the negotiated procedure (without prior publication) may be available:

- (a) **No tenders or no suitable tenders.** This is where no tenders or suitable tenders, requests to participate or suitable requests to participate have been submitted in response to the publication of a Contract Notice. This can only apply where the initial conditions are not substantially altered.
- (b) **Only one supplier due to: (1) artistic reasons; (2) competitions is absent for technical reasons; or (3) the protection of exclusive rights (such as intellectual property rights).** This ground is only available for (2) and (3) where there is no reasonable alternative or substitute and the procurement has not been artificially narrowed.
- (c) **Extreme urgency.** This includes where urgent action is required to prevent danger to life, serious risk to health or damage to property (but only where such extreme urgency was not caused by MG ALBA).
- (d) **Repetition of similar works and services.** Where the possibility of repetition was flagged in the original procurement, the estimated value included these subsequent works/services and not more than 3 years have elapsed since the original contract.
- (e) **Certain research contracts.** Where products are manufactured purely for research, experimentation, study or development (but not including quantity production to establish commercial viability or recover research costs).
- (f) **Partial replacement or extension of existing supplies or installations.** This is only possible where a change of supplier would result in incompatibility or disproportionate technical difficulties in operation and maintenance.
- (g) **Supplies quoted and purchased on a commodity market.**
- (h) **An insolvency purchase.** If MG ALBA can purchase supplies on particularly advantageous terms, from someone that is winding up their business activities, or the liquidator in an insolvency procedure, an arrangement with creditors or a similar procedure under national laws/regulations.
- (i) **Certain design contracts.** If a design contract in accordance with regulation 33(6) of the Public Contracts (Scotland) Regulations 2015 is followed and the contract is to be awarded under the rules in the design contest to the winner(s) of said content.

## 7. Clarifications

Queries in relation to the amendment or clarification of tenders or their submission should be directed to the Head of Finance & Assurance and legal advice sought where necessary.

## 8. Variations.

Under the public procurement regime, any variation to a contract is tightly controlled and these rules apply both during the procurement procedure and after the award of contract. Any proposed variation of a regulated contract that falls within the procurement regime must be approved by the Head of Finance & Assurance and legal advice sought where necessary.

## 9. Contract Notices and procurement documents.

### 9.1. **All regulated procurements must be advertised on PCS by using a “Contract Notice” (except for use of the negotiated procedure without prior publication).**

- (a) All Contract Notices must be published on the Public Contracts Scotland (PCS) portal <http://www.publiccontractsscotland.gov.uk/>. PCS is the national advertising portal which provides suppliers with free access to contract opportunities. It also provides guidance on the process of creating a Contract Notice.
- (b) It is important to ensure the correct total value of the contract has been calculated as this will dictate which type of notice is created through PCS. Different forms of Contract Notice apply in accordance with the value of the procurement.
- (c) PCS automatically creates a Contract Notice on the Find a Tender Services (FTS) where a contract is above threshold.

### 9.2. **Make procurement documents available in the Contract Notice.** Regulation 54 of the Public Contracts (Scotland) Regulations 2015 requires that all procurement documents must be freely available on the internet with the link in the Contract Notice. If any items are considered confidential, they must be labelled as such in the Contract Notice and accompanied with instructions as to how to access them.

### 9.3. **Electronic access (if none extend time by 5 days).** If unrestricted electronic access cannot be provided to the procurement documents due to confidentiality or some other reason (in accordance with Regulation 54(3) and 23(3)), the time limit for the submission of tenders is to be extended by 5 days (except in cases of extreme urgency).

### 9.4. **Procurement documents on Public Contracts Scotland have size restrictions.** If uploading documents to PCS file size restrictions apply. These are:

- (a) 10Mb per document with a maximum of 40 Mb for the MG ALBA;
- (b) 110 Mb per document with a maximum of 30 Mb for the supplier,

If PCS-Tender is being used, attachments cannot be added to the Contract Notice on PCS. You must add your documents to PCS-Tender.

## 10. Feedback to tenderers (and candidates)

*The level of detail and timescales in which feedback is to be provided varies in accordance with the value of the contract. For higher threshold contracts, “candidates” means an economic operator that has sought an invitation to or has been invited to take part in any of the following: a restricted procedure; a competitive procedure with negotiation; a competitive dialogue procedure or an innovation partnership. “Tenderer” means an economic operator that has submitted a tender.*

### 10.1. Communication in relation to higher threshold contracts (under the Public Contract (Scotland) Regulations 2015):

- (a) **Decision to award a contract (or conclude a framework agreement).** As soon as possible after the decision has been made, a notice in writing is to be made to inform all tenderers and candidates concerned of its decision to award the contract. This notification of the decision to award is often called the “**standstill letter**” or award decision notice, but note that a “Contract Award Notice” is a separate legal notice (see below at 12). The standstill letter/notice must include:
- (i) The criteria for the award;
  - (ii) The score obtained by economic operator receiving the notice;
  - (iii) The score obtained by economic operator who is awarded the contract;
  - (iv) A precise statement of the effect of regulation 86 (i.e. the standstill period) on the economic operator which is to receive the notice;
- And also in the case of
- (v) **Unsuccessful tenderers:**
    - 1) A summary of reasons as to why the tenderer was unsuccessful;
    - 2) The characteristics and advantages of the successful tenderer.
  - (vi) **Unsuccessful candidates:**
    - 1) A summary of the reasons as to why the candidate was unsuccessful.
- (b) **Additional Feedback.** Any economic operator can request additional feedback (in writing), this should be provided within 15 days of the request being made. This feedback should include:
- (i) If the economic operator was unsuccessful, the reasons as to why they were unsuccessful (including any reason as to why the economic operator did not meet the technical specifications in an equivalent manner or because compliance with a specification does not address the performance or functional requirements laid down by the contracting authority);
  - (ii) If a tenderer was unsuccessful (other than a tenderer informed by notice under regulation 85(1) of the Public Contract (Scotland) Regulations 2015), inform that tenderer of the characteristics and relative advantages of the successful tenderer and the name of the economic operator to be awarded the contract, together with (where relevant) the parties to the framework agreement or the economic operators admitted to the dynamic purchasing system;

- (iii) If a tenderer was successful, a description of any improvements the contracting authority considers the tenderer could have made to its tender.

10.2. **Communication in relation to lower threshold contracts (under the Procurement Reform (Scotland) Act 2014):**

- (a) **Decision to award a contract (or conclude a framework agreement).** As soon as reasonably practicable after the decision has been made, unsuccessful bidders should be informed of the name of the successful bidder, the award criteria and the scores of the successful and unsuccessful bidder (against those criteria).
- (b) **Decision to exclude from participation in the procurement process (before a tender has been submitted).** As soon as reasonably practicable after the decision has been made, notify in writing its decision to the economic operator. A notice should include the names of the economic operators who have not been so excluded, the criteria used to exclude the economic operator in question and the scores (if any) against those criteria of the economic operator.
- (c) **Additional feedback.** Qualifying requests for further information are to be provided within 30 days. This is to include a written summary of the reasons their tender was unsuccessful (or they were excluded from participation in the tender process) along with characteristics and relative advantages of successful tender. In the case of successful tenderers, a description of any improvements MG ALBA considers the tenderer could have made to its tender.

10.3. **Withholding information.** Information can be withheld if the disclosure is considered to impede law enforcement or otherwise be contrary to public interest, prejudice the commercial interests of any person or prejudice fair competition between economic operators.

## 11. Standstill Period - contract cannot be entered into until this time has passed

11.1. The standstill letter (or award decision notice) will trigger a standstill period that must be at least ten calendar days long (if the communication of the letter is by electronic means). This timescale is extended by five days when the notification is not sent electronically.

11.2. Where there is only one bidder (or in certain other circumstances, for example where the contract is exempt from the requirement for prior publication of a contract notice or a notice is not required to be given in accordance with regulation 86 the Public Contract (Scotland) Regulations 2015), no standstill period is legally required.

## 12. Contract Award Notices

12.1 MG ALBA will publish the appropriate Contract Award Notice with Public Contracts Scotland within 30 days of the contract award. This notice will correlate to the value of the tender and contain details of the contract that has been awarded and the successful tenderer, unless and to the extent that an exemption under the Public Contract (Scotland) Regulations 2015 applies. For example under regulation 85 of the Public Contract (Scotland) Regulations 2015, information may be withheld where publication would impede law enforcement, be against the public interest, affect the commercial interests of certain tenderers or impact fair competition between tenderers .