



SCOTTISH
FIRE AND RESCUE SERVICE

Working together for a safer Scotland

FINANCE & CONTRACTUAL SERVICES

FINANCE & PROCUREMENT

STANDING ORDERS for the REGULATION OF CONTRACTS

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Date of Risk Assessment (if applicable)	N/A
Date of Equality Impact Assessment	N/A
Date of Impact Assessment (commenced)	N/A
Date of Impact Assessment (concluded)	N/A
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Date for Review	1 April 2021

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1. OVERVIEW

1.1 The purpose of these Standing Orders is: -

- to ensure that consistent contracting procedures of the highest standard are laid down for use throughout the Scottish Fire and Rescue Service,
- to secure competition and compliance with the law in respect of all contracts,
- to ensure the Scottish Fire and Rescue Service obtains best value in its procurement activity and all resultant contracts,
- to provide a framework for detailed Procurement Procedures which can be made by Senior Officers under delegated powers, and
- to afford protection to the Scottish Fire and Rescue Service and its staff.

This will ensure a system of openness, integrity and accountability where the probity and transparency of the process will be beyond reproach. In turn this will lead to better value for money and give confidence to all concerned that the Board is fulfilling its fiduciary responsibilities.

1.2 Legislation regulates how contracts can be made by or on behalf of the Scottish Fire and Rescue Service. In this context, “contract” means any agreement: -

- with an individual, company or other organisation,
- for the execution of building and civil engineering works or for the supply of goods, materials or services, and
- which is authorised to be entered into by the Scottish Fire and Rescue Service or its Board, usually in writing, or
- which is entered into, either in writing or verbally, by an officer of the Scottish Fire and Rescue Service, acting under their delegated powers to do so, and
- which commits the Scottish Fire and Rescue Service to the outcome of the agreement and, therefore, is legally enforceable by either the Scottish Fire and Rescue Service or the other party or parties to the agreement.

1.3 The Police and Fire Reform (Scotland) Act 2012 requires the Scottish Fire and Rescue Service: -

- to secure best value in the performance of its functions,
- to balance the quality and cost of the performance of its functions and the cost of Scottish Fire and Rescue Service services to service users,
- to have regard to economy, efficiency, effectiveness, and the need to meet equal opportunity requirements in maintaining that balance, and
- to discharge its duty to secure best value in a way which contributes to the achievement of sustainable development.

1.4 All procurement activity will be undertaken in observance of the requirements of the Scottish Public Finance Manual (SPFM) and all relevant guidance issued by the Scottish Government’s Procurement and Commercial Directorate.

1.5 European and Scottish legislation regulates the award of contracts by the Scottish Fire and Rescue Service. The Public Contracts (Scotland) Regulations 2015 give effect in Scotland to the Public Contracts Directive [Directive 2014/24/EU]. This European Directive seeks to ensure that public sector bodies such as the Scottish Fire and Rescue Service award contracts in an efficient and non-discriminatory manner. The Regulations set out the procedures to be followed at each stage of the procurement process leading to the award of contracts above certain financial thresholds for works, supplies and services by the Scottish Fire and Rescue Service and other public bodies. They take account of modern techniques such as e-procurement and the provision of

framework agreements, as well as the extent to which social and environmental issues can be considered during the procurement process and place reporting requirements on public bodies.

- 1.6 The Procurement (Scotland) Regulations 2016 give effect to the Procurement Reform (Scotland) Act 2014 which introduces cross-over provisions which apply in the EU regime and Reform Act regime. In general terms the Act introduces a Sustainable Procurement Duty and an obligation on Scottish public sector contracting authorities to consider how they can, throughout the procurement process, "improve the economic, social, and environmental wellbeing of the authority's area, facilitate the involvement of small and medium enterprises, third sector bodies and supported businesses in the process, and promote innovation". The Act also places a duty to publish an annual procurement strategy and other additional reporting duties.
- 1.7 The Scottish Fire and Rescue Service's Scheme of Delegations sets out the powers which have been delegated by the Scottish Fire and Rescue Service to senior officers. Subject to certain general conditions set out in this Scheme, such as the requirement to follow Scottish Fire and Rescue Service policies, the day-to-day running of Scottish Fire and Rescue Service is delegated to the Chief Officer, Deputy Chief Officer and Directors in the Strategic Leadership Team. Under this Scheme of Delegation, the authority to contract on behalf of the Service lies with the Chief Officer and Director of Finance and Contractual Services. These senior officers are also authorised to delegate any of their authority to other officers under their direction and who are appropriately qualified and experienced. This means that, in the context of the making of contracts on behalf of the Scottish Fire and Rescue Service, the Chief Officer and Director of Finance and Contractual Services will ensure that those officers whom they authorise to perform procurement functions and tasks on their behalf have sufficient training, knowledge, capability and experience to determine relevant procurement issues and are aware of the extent and limitation of their delegated authority. Regardless of any delegations by them, the final responsibility for ensuring compliance with these Standing Orders rests with those who are described in these Standing Orders as "Responsible Officers".
- 1.8 All employees of the Scottish Fire and Rescue Service exercising delegated powers in relation to procurement and contracting functions must comply with these Standing Orders, and with the relevant Procurement Practice Notes as approved by the Director of Finance and Contractual Services. A failure to do so may amount to gross misconduct under the Scottish Fire and Rescue Service's disciplinary procedures and may result in disciplinary action.
- 1.9 The Scottish Fire and Rescue Service's Corporate Procurement Strategy and annual procurement statements will set out the framework by which the Scottish Fire and Rescue Service will ensure it maximises effective service delivery and the provision of best value for money through a corporate and strategic approach to procurement. The Strategy and annual statements will be aligned to ensure compliance with legislative requirements, particularly those duties stated in the Reform Act and the pursuit of the Scottish Government's objectives of promoting collaborative procurement opportunities and the implementation of leading practice whilst promoting economic wellbeing and sustainable development. For the Scottish Fire and Rescue Service this will require all procurement activity to be undertaken in accordance with the Procurement Practice Notes and associated documentation as issued by the Director of Finance and Contractual Services.

1.10 Amendment or replacement of these Standing Orders requires a decision of the Scottish Fire and Rescue Service Board, except that:-

- The Director of Finance and Contractual Services, in consultation with the Chief Officer may make minor administrative changes required from time to time to any part of this document without reference to the Board (arising from, for example, minor changes in legislation or changes in management structures).

2. DEFINITIONS AND INTERPRETATIONS

- 2.1 **2015 Regulations** means The Public Contracts (Scotland) Regulations 2015 (SSI 2015/446).
- 2.2 **2016 Regulations** means The Procurement (Scotland) Regulations 2016.
- 2.3 **The Board** means the Board of the Scottish Fire and Rescue Service.
- 2.4 **Collaborative Contracts** means all contracts (including Framework Agreements) placed in conjunction with other public bodies, by the Scottish Fire and Rescue Service.
- 2.5 **Commodity Strategy Template** means the template and related guidance approved by the Director of Finance and Contractual Services to be used by officers in carrying out procurement exercises, as detailed in the relevant Procurement Practice Note.
- 2.6 **Contract Value** means the estimated aggregate purchase value (total estimated value), excluding VAT, over the entire term of the Contract and use across the whole Scottish Fire and Rescue Service, including all options, permitted extensions and variations. Where a Contract does not include an aggregate purchase value, the estimated aggregate purchase value will be the amount of the consideration payable each month multiplied by 48 or annual value multiplied by 4.
- 2.7 **Corporate Procurement Steering Group** is the group of officers chaired by the Director of Finance and Contractual Services responsible for the oversight and control of the corporate procurement activity of the Scottish Fire and Rescue Service and enhancing procurement capability whilst ensuring compliance with the legal framework applicable to SFRS's procurement activity.
- 2.8 **Delegated Procurement Authority (DPA)** means the authority that permits an individual to enter into a contracts for goods / services / works on behalf of the SFRS and /or oversee the process leading up to and including the award of a contract and any subsequent contract changes / variations.
- 2.9 **Directive** means the Public Contracts Directive 2014/24/EU
- 2.10 Treaty **principles** means generally applicable principles of equal treatment, proportionality, non-discrimination and transparency.
- 2.11 **Framework Agreement** means an agreement or other arrangement between one or more contracting authorities and one or more economic operators which establishes the terms (in particular the terms as to price and, where appropriate, quantity) under which the economic operator will enter into one or more contracts with a contracting authority in the period during which the framework agreement applies.
- 2.12 **Non-Competitive Action (NCA)** means the process whereby competition is not deemed appropriate and a direct award of a contract is made without advertisement. The Director of Finance and Contractual Services has the authority to award such process up to a value of £25,000. Contracts above this value require to be submitted to Scottish Government for consideration before they can be approved.. NCA is granted only in exceptional circumstances.

- 2.13 **OJEU** means the Official Journal of the European Union.
- 2.14 **Open Procedure** means the procedure leading to the award of a contract whereby all interested economic operators may tender for the contract (Regulation 28 of the 2015 Regulations)
- 2.15 **Restricted Procedure** means the procedure leading to the award of a contract whereby only economic operators selected by the Scottish Fire and Rescue Service following the submission and assessment of an ESPD (European Single Procurement Document), may submit tenders for the contract (Regulation 29 of the 2015 Regulations).
- 2.16 **Competitive Procedure with Negotiation** means the procedure leading to the award of a contract whereby only economic operators selected by the Scottish Fire and Rescue Service are invited to participate in negotiations on specific aspects and is typically used for requirements that are not readily available on the market and / or where the contract cannot be awarded without negotiation due to the nature or complexity of the works, supplies, services, legal or financial arrangements, or the level of risk.
- 2.17 **Competitive Dialogue** means the procedure for use in awarding complex contracts where the contracting authority is unable to specify the technical, financial or contractual solution to its requirements. SFRS is required to select the participants from candidates who meet its minimum qualification requirements and conduct a dialogue with them to develop one or more solutions. Formal tenders are invited and awarded on the basis of Most Economically Advantageous Tender (MEAT).
- 2.18 **Innovation Partnerships** are a new approach to EU research and innovation aimed at the development of innovative works, products or services and the subsequent purchase of the resulting supplies, services or works.
- 2.19 **Negotiated Procedure without Prior Publication** allows a contracting authority to award a public contract following the negotiated procedure without prior publication where specific criteria have been met. This procedure is utilised only in exceptional circumstances.
- 2.20 **European Single Procurement Document (ESPD)** replaces the previous standard pre-qualification questionnaire (PQQ), and covers all selection criteria and grounds for exclusion.
- 2.21 **Reform Act** means The Procurement Reform (Scotland) Act 2014.
- 2.22 **Regulations / Scottish Regulations** means The Public Contracts (Scotland) Regulations 2015 and The Procurement (Scotland) Regulations 2016.
- 2.23 **Responsible Officers** are those individuals to whom the Director of Finance and Contractual Services has assigned Delegated Procurement Authority (DPA).
- 2.24 **Scheme of Delegations** means the record maintained of all powers delegated to Scottish Fire and Rescue Service employees by the Board.

- 2.25 **Services (and Services Contracts)** means the provision of services by a person engaged by the Scottish Fire and Rescue Service to do so, but not including works or supplies (defined as a “public service contract” for the purpose of the 2015 Regulations).
- 2.26 **Supplies (and Supplies Contracts)** means the purchase, lease, rental or hire of goods (with or without an option to buy), or their siting or installation (defined as a “public supply contract” for the purpose of the 2015 Regulations).
- 2.27 **Works (and Works Contracts)** means the carrying out of a work or works for the Scottish Fire and Rescue Service, or under an arrangement whereby the Scottish Fire and Rescue Service engages a person to procure by any means the carrying out for the Scottish Fire and Rescue Service of a work corresponding to specified requirements, as set out for a “public works contract” in Regulation 2(1) of the 2015 Regulations.

3. GOVERNANCE

3.1 Roles and Responsibilities

- 3.1.1 The Director of Finance and Contractual Services is responsible for all procurement and tendering arrangements for goods, services and works.
- 3.1.2 Any queries regarding these Standing Orders or their interpretation should be made in the first instance to the Director of Finance and Contractual Services.
- 3.1.3 All Directors (including the Deputy Chief Officer) are responsible for ensuring that all staff within their Directorate understand and comply with these Standing Orders.
- 3.1.4 The Director of Finance and Contractual Services will authorise, by means of Delegated Procurement Authority, sufficient numbers of professionally qualified and competent staff (Responsible Officers) to undertake the procurement activity of the Scottish Fire and Rescue Service. The Procurement Manager must maintain a register of such individuals who have delegated procurement authority.
- 3.1.5 It is the duty of each Responsible Officer to ensure that staff engaged in the procurement and contracting process for goods, services and works are properly authorised to act, are properly trained and supervised, understand these Standing Orders and related Procurement Practice Notes, and that they comply with them.
- 3.1.6 All SFRS staff who require to procure goods, works or services in order to carry out their functions must have regard to the need to take procurement and legal advice, and must ensure that such advice is timeously taken where required, and must record and retain a record of the advice requested and provided.
- 3.1.7 External specialist legal advice must only be procured or obtained with prior written approval of the Head of Finance & Procurement, in conjunction with the Procurement Manager and Legal Services Manager.
- 3.1.8 All staff engaged in the procurement and contracting process must act in accordance with these Standing Orders, and with the relevant Procurement Practice Notes as issued from time to time by the Director of Finance and Contractual Services.
- 3.1.9 All staff engaged in the procurement and contracting process must ensure that all information in relation to a contract or proposed contract is entered as required in the Corporate Contracts Register.
- 3.1.10 The Corporate Procurement Steering Group, chaired by the Director of Finance and Contractual Services, will play a key role in implementing the SFRS Corporate Procurement Strategy, enhancing procurement capability throughout SFRS and ensuring compliance with the legal framework applicable to SFRS's procurement activity. The Group will support the SFRS in achieving its corporate objectives by promoting excellence in procurement. All Directorates will be represented on the Group and are required to nominate a representative and a nominated deputy. The Group will meet on a monthly basis.

3.2. Application and Exceptions

3.2.1. There are exempted from the provisions of these Standing Orders the following:-

- i. Any contract of employment.
- ii Any contract for the acquisition or disposal of heritable property held by or vested in the Board which must be the subject of an individual report to the Board where not otherwise covered by the Scheme of Delegated Functions.
- iii. Any contract for the purchase of second hand goods or materials, which will be subject to Procurement Practice Notes issued by the Director of Finance and Contractual Services.

3.2.2 These Standing Orders apply to the placing of any contract with the exception of the aforementioned exemptions. All such contracts, and extensions to contracts, must be made within the terms of the relevant legislative framework, these Standing Orders and the Scottish Fire and Rescue Service's Procurement Practice Notes as issued by the Director of Finance and Contractual Services. The Scottish Fire and Rescue Service's duty at all times is to achieve best value whilst complying with procurement legislation. For procurement exercises commenced prior to 18 April 2016, the relevant legislative framework is the Public Contracts (Scotland) Regulations 2012, the Public Procurement Directive 2004/18/EC, and the Reform Act. For all procurement exercises commenced after 18 April 2016, the relevant legislative framework is the Directive, the Regulations and the Reform Act.

3.2.3 Except where prohibited by legislation, the Director of Finance and Contractual Services may decide that these Standing Orders, or parts of them, will not apply to a specific contract or to a specific class or category of contract, if they are satisfied that there are circumstances to justify the exemption. The NCA process will require to be observed in all such instances, as outlined in paragraph 4.10.

3.2.4 Framework Agreements may only be used with the prior written approval of the Procurement Manager as requested by the Responsible Officer.

3.2.5 Pilot Schemes established in accordance with the Scottish Fire and Rescue Service's Procurement Procedures may only be used where approved by the Procurement Manager and where relevant, only when a business case has been prepared and the Pilot Scheme provider has been identified following a competitive tender exercise.

3.3. Financial Thresholds

3.3.1 All contracts with an estimated aggregated value of less than £50,000 (goods and services) / works (£250,000) will be exempt from the requirements outlined in paragraph 4 but not from the requirement to seek competition.

3.3.2 These contracts are governed by the relevant Procurement Practice Note Relating to Low Value Procurement. The process to be followed in such instances will be in accordance with this Procurement Practice Note.

3.3.3 Nominated staff within directorates will receive limited delegated procurement authority to undertake Low Value Procurement which must be undertaken utilising "quick quote" on Public Contracts Scotland and co-ordinated by the Procurement Policy and

Compliance Team. The ability to undertake Low Value Procurement will not extend to the awarding of contracts which must be undertaken in accordance with the published Scheme of Delegated Procurement Authority and the relevant Procurement Practice Note..

3.4. Contracts Subject to EU Public Procurement Rules

- 3.4.1 Where the estimated aggregated value of a contract exceeds the current EU threshold, then these contracts must be tendered in accordance with the Regulations:

The current thresholds are:-

Services	£106,047
Supplies (goods)	£106,047
Works	£4,104,394

The thresholds change every two years and are due to change again on 1st January 2018.

- 3.4.2 The aggregated value of the contract will be based on the estimated value over the term of the proposed contract as defined in paragraph 2.5 (Definitions and Interpretations).
- 3.4.3 Any such contract will be subject to the relevant Procurement Practice Note as issued by the Director of Finance and Contractual Services regarding the procedure for advertising and awarding such contracts in accordance with The Directive, The Regulations and the Reform Act.

3.5 Contracts Subject to Procurement Reform (Scotland) Act 2014

- 3.5.1 Where the estimated aggregated value of a contract is below the current EU threshold but above the thresholds stated in the Reform Act, then the contract must be tendered in accordance with the Reform Act:-

The current thresholds in the Reform Act are:-

Goods and Services	£50,000
Works	£2,000,000

- 3.5.2 The aggregated value of the contract will be based on the estimated value over the term of the proposed contract as defined in paragraph 2.5 (Definitions and Interpretations).
- 3.5.3 Any such contract will be subject to the relevant Procurement Practice Note as issued by the Director of Finance and Contractual Services regarding the procedure for advertising and awarding such contracts in accordance with the Reform Act.

3.6 Procurement Practice Notes

- 3.6.1 These Standing Orders will be supplemented by Procurement Practice Notes as issued from time to time by the Director of Finance and Contractual Services. These Procurement Practice Notes will be effective from date of issue and must be complied

with as if they formed part of the Standing Orders. They may be varied or revoked by the Director of Finance and Contractual Services from time to time as required.

3.7 Sustainable Procurement Duty

3.7.1 Before carrying out a procurement exercise with a value in excess of the Reform Act thresholds stated in paragraph 3.5, SFRS must consider how in conducting the procurement process it can act with a view to securing improvement in a way which will:

- i. secure improvement to the economic, social and environmental wellbeing (in particular reducing inequality) of Scotland,
- ii. facilitate the involvement of SME's, third sector bodies and supported businesses,
- iii. promote innovation.

3.7.2 In all procurement exercises which commence on or after 1 June 2016 and which have a value equal to or greater than £4,000,000, SFRS must consider whether to impose community benefit requirements as part of the procurement exercise. SFRS, will additionally aim to consider community benefit requirements in procurement exercises greater than £1,000,000, where deemed relevant.

3.7.3 For procurement exercises which are equal to or greater than £4,000,000, then the contract notice must include the following:

- i. A summary of the community benefit requirements that will be included in the contract

Or

- ii. Where SFRS does not intend to include any such requirement, a statement of its reasons for not including community benefit requirements in the procurement process.

3.7.4 Where SFRS includes a community benefits provision within the procurement process, then SFRS will include in the award notice a statement of the benefits it considers will be derived from those provisions.

3.7.5 In all relevant procurement exercises due cognisance must be taken with regard to the inclusion of sustainable procurement issues in accordance with the Directive, The Regulations, The Reform Act, Scottish Fire and Rescue Service's Procurement Strategy, Procurement Practice Notes and Environmental Strategy.

3.8 Procurement Strategy

3.8.1 SFRS must publish a procurement strategy which must, as a minimum be made publicly available on the internet and in any other such manner as it considers appropriate.

3.8.2 The Procurement Strategy will set out how SFRS's regulated procurement will:

- i. contribute to the carrying out of SFRS's functions,
- ii. deliver value for money,
- iii. be in compliance with the Reform Act's General Duty and Sustainable Procurement Duty.

3.8.3 The Procurement strategy will also include SFRS's general policy:

- i. on the use of community benefit requirements;
- ii. on consulting and engaging with those affected by its procurements;
- iii. on the payment of a living wage to persons involved in regulated procurements;
- iv. on promoting compliance with the Health and Safety at Work etc Act 1974;
- v. on the procurement of fairly and ethically traded goods and services;
- vi. in respect of contracts involving the provision of food:
 - how it will improve the health, wellbeing and education of communities in their area and
 - promote the highest standards of animal welfare
- vii. on ensuring prompt payment (within 30 days) of invoices for public contracts.

3.9 Annual Procurement Report

3.9.1 SFRS must publish an Annual Procurement Report, as a minimum on the internet and any other location it may choose.

3.9.2 The Annual Procurement Report will include:

- i. A look back on procurement activity undertaken in the financial year, including:
 - A summary of the regulated procurement in the year,
 - A review of how the regulated procurements complied with the procurement strategy,
 - Where procurement do not comply with the strategy, a statement of how SFRS will ensure compliance in future regulated procurements,
 - A summary of any community benefit requirements fulfilled during the year,
 - A summary of the steps taken to facilitate the involvement of supported businesses in regulated procurements during the year covered by the report.
- ii. A forward look including a summary of the regulated procurement that SFRS expects to commence in the forthcoming two financial years

3.10 Statutory Guidance

3.10.1 The Scottish Procurement and Commercial Directorate of the Scottish Government may from time to time issue Statutory Guidance relating to matters covered under the Reform Act.

3.10.2 SFRS must consider this guidance as issued and amend its procurement governance model as considered appropriate.

3.11 Joint Responsibility in Collaborative Procurement

- 3.11.1 Where SFRS agrees to undertake a joint procurement with other Scottish public bodies, which in its entirety, is carried out jointly and in the name of all the public bodies concerned, then all involved will be jointly responsible for ensuring that they comply with the requirements of the Scottish Regulations. Where it is agreed that one of the Scottish public bodies will act as a lead authority, consideration must be given to a collaboration agreement which deals with the matters outlined at 3.11.2 below in relation to cross-border joint procurement.
- 3.11.2 Where SFRS agrees to undertake a joint procurement cross border (i.e. England, Northern Ireland or other EU Member States), it will conclude a collaboration agreement with all parties prior to the commencement of the Procurement which meets the requirements of Regulation 40(7) of the 2015 Regulations by setting out the responsibilities of the parties and the relevant applicable national procurement law provisions; and the internal organisation of the procurement process, including the management of that process, the distribution of the services to be provided and the conclusion of Contracts.
- 3.11.3 This requirement will also apply in those instances where SFRS is participating in a joint procurement where one body manages the procedure, acting on its own behalf and on behalf of the other public bodies concerned.
- 3.11.4 Where the procurement procedure is not in its entirety carried out in the name and on behalf of the public bodies concerned, the bodies will only be jointly responsible for those parts carried out jointly.
- 3.11.5 In such circumstances SFRS will have sole responsibility for complying with the legislation in respect of the parts it conducts in its own name and on its own behalf

3.12 Non- Discrimination

- 3.12.1 Before entering into a Contract, the Scottish Fire and Rescue Service will obtain from the Contractor an undertaking in writing that to the best of their knowledge and belief, the contractor is not unlawfully discriminating within the meaning and scope of all relevant statutory requirements.

3.13 Breach of Standing Orders

- 3.13.1 Employees upon discovering a possible breach of these Standing Orders must report the matter immediately to the Director of Finance and Contractual Services and to their own Director.
- 3.13.2 The Director of Finance and Contractual Services will investigate any breach of the Standing Orders.
- 3.13.3 Failure by any employee to comply with these Standing Orders, or in the case of staff with appropriate supervisory responsibilities, failure to ensure compliance may give rise to disciplinary procedures.

3.14 Appropriate Contract Provision

- 3.14.1. Employees must place orders against appropriate contracts which have been entered into by the Scottish Fire and Rescue Service Board or to which the Scottish Fire and Rescue Service may utilise through approved Consortia arrangements, collaborative ventures or Central Government contracts.
- 3.14.2 The advice and approval of the Procurement Manager must be sought before any consortia, collaborative or central government contracts or frameworks are considered and/or used.

3.15 Governing Law

- 3.15.1 Except where otherwise agreed between the Director of Finance and Contractual Services and the Legal Services Manager, all contracts entered into by the Board must be in writing and must be subject to Scots Law and to the exclusive jurisdiction of the Scottish Courts.

3.16 Freedom of Information

- 3.16.1 No tender documentation or contract will prohibit the disclosure of information which would otherwise be disclosed in compliance with the Freedom of Information (Scotland) Act 2002. No tender documentation or contract may contain a condition that restricts unjustifiably the disclosure of information held by the Service in relation to the tender documentation or contract

3.17 Code of Conduct

- 3.17.1 The Scottish Fire and Rescue Service expects a high standard of conduct from all its employees. In all procurement exercises due cognisance must therefore be taken of the “Code of Conduct for Employees” and all relevant Procurement Practice Notes. All staff undertaking procurement activity on behalf of SFRS or having significant advisory or technical input into the procurement decision-making process must adhere to the SFRS Gifts, Hospitality and Interests Policy.

4. THE PROCUREMENT PROCESS

4.1 Before Commencing the Procurement Process

4.1.1 The Responsible Officer must determine: -

- The nature of the contract (wholly works, wholly supplies and services, or, where the contract must include both, the category into which it falls),
- Whether or not the Contract Value will be greater than £50,000 (goods and services) / £250,000 (works) but less than EU threshold,
- Whether or not the Contract Value will be greater than the relevant EU threshold,
- Whether there is a requirement for wider advertising despite the value of the contract being below the relevant EU threshold,
- Whether there are any existing, forthcoming or potential Collaborative Contracts or Framework Agreements, internal or external, which may be utilised.

4.1.2. Where the Responsible Officer identifies an existing Collaborative Contract or Framework Agreement which may be utilised then this must be considered as an option for service delivery in the development of the Commodity Strategy.

4.1.3 A Commodity Strategy must be developed, as outlined in the relevant Procurement Practice Note, by involving all key stakeholders at the outset and must be approved prior to the publication of any contract notice advertising the requirement.

4.1.4 The Procurement Peer Review process, as outlined in the relevant Procurement Practice Note, must be observed in all relevant procurement activity.

4.2 Board Approval

4.2.1 The Director of Finance and Contractual Services will be responsible for submitting to the Board for consideration and approval, a Report detailing the process to be undertaken for key strategic goods / services / works prior to the placement of any contract notice.

4.3. Issuing Documentation and Advertising

4.3.1 The Responsible Officer will issue contract documents and invitations to quote and to tender for all contracts in accordance with the Scottish Fire and Rescue Service's Procurement Practice Notes.

4.3.2 For any procurement process undertaken in compliance with the Scottish Regulations, then the Invitation to Tender and all other associated documentation must be uploaded to the electronic tender system for immediate download on the publication of the Notice. The Responsible Office will be required to account for this requirement in the drafting of the procurement timetable for the project.

4.3.3 Contract documentation will utilise the relevant set of the Scottish Fire and Rescue Service's standard Terms and Conditions of Contract, and any departure from them must be approved in writing by the Procurement Manager in consultation with the Legal Services Manager.

- 4.3.4 Electronic tendering will be utilised for all tender exercises where this is practically possible, subject to the provisions of paragraph 4.3.5.
- 4.3.5 The Head of Finance & Procurement may authorise the use of electronic auction processes where appropriate.
- 4.3.6 E-Tendering and/or E-auctions must only be undertaken using an e-tendering /e-auction system approved for use by the Head of Finance & Procurement. In approving such a system the Head of Finance & Procurement must have regard to security issues such as access control, data encryption, verification of supplier identity and measures to minimise risks from viruses and hacker attack. The Head of Finance & Procurement must take advice as necessary from the Head of ICT.
- 4.3.7 In undertaking an e-tendering and/or e-auction process, it must be ensured that the same level of control is applied as would normally be applied to a paper based process, in accordance with these Standing Order for Contracts and the Procurement Practice Notes as issued by the Director of Finance and Contractual Services

4.4 Receipt of Tenders

- 4.4.1 All tenders must be received and opened by the Responsible Officer in accordance with the relevant Procurement Procedure.
- 4.2 In the event where the E-tendering system has not been utilised, all tenders not received at the specified return address by the specified closing date and time will not be considered, and must be returned unopened.
- 4.3 In the case of unsatisfactory performance or conduct by any person submitting a tender before a decision is made as to which should be accepted, the Head of Finance and Procurement may, in consultation with the Director of Finance and Contractual Services, disqualify that person from further participation or reject the quotation or tender, after considering any representations made.

4.5 Evaluation

- 4.5.1 Tenders will be evaluated by a group of nominated individuals in accordance with the relevant Procurement Practice Note.
- 4.5.2 Tenders will be evaluated in accordance with the quotation or tender award criteria and the agreed strategy for the proposed procurement, and on the basis of establishing which offer is the most economically advantageous and provides Best Value to the Scottish Fire and Rescue Service.
- 4.5.3 Contracts awarded under the Regulations can only be awarded on the basis of the “most economically advantageous tender (best price quality ratio)”.
- 4.5.4 For contracts to be awarded under the Regulations, SFRS will require tenderers to explain the price or costs proposed in the tender where they appear to be abnormally low. This requirement will apply to all abnormally low bids received.

- 4.5.5 SFRS is required to reject a tender where it has established that the tender is abnormally low because a tenderer has not complied with the environmental, social and labour law listed in Annex X of the Directive.
- 4.5.6 A written record must be maintained outlining the evaluation process, recording the process followed and the criteria applied, and detailing the reasons for the decision.

4.6 Acceptance of Bids

- 4.6.1 A report detailing the outcome of the tender process must be submitted as follows:

Procurement Manager:	Goods and Service to a value of £50,000
Property Manager	Works to a value of £100,000
Director of Finance & Contractual Services	Goods / Services in excess of £50,000 / Works in excess of £100,000

- 4.6.2 Award letters and debrief letters must be prepared by the Responsible Officer once approval has been granted to the Tender Outcome Report. Debriefs where relevant must be undertaken in accordance with the Regulations, the Reform Act, and the relevant Procurement Procedure. In particular, the Responsible Officer must observe any standstill period required before the issue of a letter of award as required by legislation.
- 4.6.3 The Director of Finance and Contractual Services must in accordance with Paragraph 9 of these Standing Orders, submit a report on a quarterly basis to the Board for information purposes, noting the contracts awarded in the preceding quarter.

4.7 Reporting and Documentation Requirements - Public Contracts (Scotland) Regulations 2015

- 4.7.1 Regulations, SFRS will draft a written report which includes at least the following:
- i. The name and address of SFRS, the contract / framework agreement value and subject matter.
 - ii. Where applicable, the results of the qualitative selection and / or reduction of numbers, namely:
 - The names of those suppliers invited to participate in the procurement process and the reasons for their selection;
 - The names of those participants who were subsequently excluded from the bidding process or who bid but were not successful and the reasons for their rejection;
 - iii. The reasons for the rejection of any tender found to be abnormally low;
 - iv. The name of the successful tenderer and the reasons why its tender was selected.
 - v. Where known by SFRS, the share (if any) of the contract or framework agreement which the successful tenderer intends to subcontract to third parties and the names of the main subcontractors (if any);
 - vi. Where competitive procedures with negotiation and competitive dialogues are used, the circumstances which were stated to justify the use of those procedures;
 - vii. For negotiated procedures without prior publication, the circumstances which justify the use of this procedure;

- viii. Where applicable, the reasons why the contracting authority has decided not to award a contract or framework agreement;
- ix. Where applicable, the reasons why means of communication other than electronic means have been used for the submission of tender; and
- x. Where applicable, conflicts of interests detected and subsequent measures taken.

4.7.2 There is a practical exemption to the above where no reports are required for contracts based on framework agreement where the frameworks are either concluded with a single “economic operator” or where all the terms are fixed in a multi supplier framework agreement.

4.7.3 If SFRS has already provided all the information stated in paragraph 4.7.1 when completing a contract award notice, then there is no additional need to draw up a written report.

4.7.4 SFRS will document the progress of all procurement procedures and will retain sufficient documentation to justify decisions taken in all stages of the procurement process such as:

- i. Communications with suppliers
- ii. Internal deliberations
- iii. Preparation of the ITT documentation
- iv. Dialogue or negotiation (if any)
- v. Selection and award of the contract.

4.7.5 To ensure best practice, SFRS will observe similar procedures for procurement exercises with a value in excess of the Reform Act thresholds stated in paragraph 3.5.

4.8 Debrief

4.8.1 For every contract or framework agreement that SFRS establishes under the Public Contracts (Scotland) Regulations 2015, SFRS will inform tenderers of the of its award decision in accordance with the relevant Procurement Practice Note as issued by the Director of Finance and Contractual Services.

4.8.2 The Procurement Reform (Scotland) Act extends the provision of debriefing but not the standstill period and standstill letter requirements to contract below the EU regime and which are within its scope. For every contract or framework agreement which SFRS established under the Reform Act, SFRS will inform tenderers who participate in the process, of its award decision in accordance with the relevant Procurement Practice Note as issued by the Director of Finance and Contractual Services.

4.9 Contract Management

4.9.1 The Responsible Officer must ensure that the performance of the contract is monitored and reviewed in accordance with the relevant Procurement Practice Note, and must maintain a record of those processes which is proportionate in light of the value, duration, subject matter and complexity of the contract.

4.9.2 In a case of unsatisfactory performance or conduct by a contractor following the award of a contract, the Responsible Officer may, in consultation with the Director of Finance and Contractual Services and Legal Services Manager, take action in terms of the contract to terminate the contract.

4.10 Extensions and Renewals

4.10.1 Subject always to compliance with the Scottish Regulations, the Reform Act and the relevant Procurement Practice Note, the Responsible Officer may request to vary, alter, extend (but only where the contract allows the Scottish Fire and Rescue Service those options) or renegotiate any part of a contract to achieve best value for the Scottish Fire and Rescue Service.

4.10.2 A written business case justifying the reasons for this course of action must be prepared and submitted to the Head of Finance & Procurement for written approval before proceeding.

4.10.3 A detailed written record of all negotiations and discussions with the contractors must be maintained and retained.

4.11 Modification of Contracts during Their Term

4.11.1 The Scottish Regulations set out explicit requirements regarding the modification of contracts. The starting position is that modifications to contract will require a new competitive process to be undertaken, unless one of six exceptions can be applied. It should be noted that these provisions do not apply to contracts above the Reform Act regime thresholds and below EU advertising thresholds.

4.11.2 The exceptions are as follows:

- i. Where the modification is provided for in a clear, precise and unequivocal contract condition, which was included in the initial procurement documents,
- ii. For additional works, services or supplies where a change of contractor is not possible for economic or technical reasons and would result in significant inconvenience or substantial duplication of costs. However any increase in price must not exceed 50% of the value of the original contract,
- iii. Where the need for modification is brought about by circumstances which a diligent public authority could not foresee, which does not alter the overall nature of the contract and where any increase in price is not higher than 50% of the value of the original contract,
- iv. Replacement of the original contractor by another under a contract condition: universal or partial succession, perhaps due to a takeover, merger, acquisition or insolvency; or where the SFRS steps in and assigns some or all of the goods, works or services back to itself,
- iv. Where the modifications, irrespective of their value, are not substantial,
- vi. Where the modification does not change the overall nature of the contract and the modification is below:
 - The relevant threshold value for the type of contract, and
 - Is below 10% of the initial contract value, for service and supply contracts, or is below 15% of the initial contract value for a works contract.

4.11.3 A written business case justifying the reasons for any modification progressed on any of the grounds listed above must be prepared and submitted to the Head of Finance & Procurement for written approval before proceeding.

4.12 General Record Keeping and Reporting

4.12.1 The Responsible Officer must comply with the reporting procedures put in place by the Director of Finance and Contractual Services.

4.12.2 Unless an exception is made by the Scottish Fire and Rescue Service for any class or value of contracts, the Director of Finance and Contractual Services must ensure that reports are brought to the Board on a quarterly basis in each financial year on those matters specified in the Corporate Procurement Strategy and otherwise as required by the Board.

4.12.3 SFRS is required to keep copies of all concluded contracts, whether these are awarded under the Reform Act or the Scottish Regulations for at least the duration of the contracts.

4.13 Contracts Register

4.13.1 The Reform Act requires public bodies to keep and maintain a register of contracts which have been awarded as a result of regulated procurement.

4.13.2 For this purpose, the Procurement Manager will maintain a Contracts Register for all services, supplies and works contracts awarded by SFRS.

4.13.3 As a minimum the Contracts Register will include the following details on each contract awarded by SFRS:

- i. The date of the award
- ii. The name of the contractor
- iii. The subject matter
- iv. The estimated value of the contract
- v. The start date
- vi. The end date provided for in the contract or the circumstances in which the contract will end
- vii. The duration of any extension period

4.13.4 SFRS will make its Contracts Register publically available on the internet and by such other means as it considers appropriate

4.14 Register of Insurance

4.14.1 A Register of Insurance must be maintained by the Procurement Manager (goods and services) and the Property Services Manager (Works) so that renewal certificates are obtained where necessary.

4.15 Non- Competitive Action (NCA)

4.15.1 Non- Competitive Action (NCA) refers to the process whereby competition is not deemed appropriate and a direct award of a contract is made without advertisement.

4.15.2 It is the general policy of the SFRS that goods, services and works must be bought by genuine and effective competition. NCA is only granted in **exceptional** circumstances. It is strictly limited to situations where competition is not deemed appropriate and is dealt with on a case by case basis.

4.15.3 The Director of Finance and Contractual Services must approve a written business case by the Responsible Officer in such circumstances. The business case must set out the nature and scope of the contract, the period for which the contract is to last, and the factors which demonstrate best value for the Scottish Fire and Rescue Service, and thereafter the Responsible Officer must otherwise follow the Scottish Fire and Rescue Service's Procurement Procedures for such contracts. The Procurement Manager must ensure that a record is kept of all such requests and authorisations.

All instances of NCA must be undertaken in strict observance of the relevant Procurement Practice Note.

4.15.4 For NCA procurements up to £25,000 (excluding VAT), approval must be obtained in advance from the Director of Finance and Contractual Services (or their Designee). All requests to proceed with NCA for procurements over £25,000 must be approved in advance by Scottish Government.

4.16 Use of Consultants

4.16.1 SFRS will observe Scottish Government policy that robust procedures must be followed for the engagement of consultancy services to ensure that these resources are used sparingly, appropriately and effectively.

4.16.2 As such and before any procurement process takes place a business case must be prepared and approved based on the amount that the SFRS expects to pay for the requirement. The following table details the threshold approval amount:

:

Value	Approver
Up to £2,000	Head of Function
£2,000 - £100,000	Director of Finance and Contractual Services

Value	Approver
Over £100,000	Cabinet Secretary for Infrastructure, Investment and Cities and the Cabinet Secretary for Finance, Employment and Sustainable Growth

4.16.3 After approval has been granted, the procurement exercise to identify the most competitive provision of service must in all instances be progressed by the Procurement Section in accordance with this Procurement Practice Note.

4.17 Disposals

4.17.1 The Director of Finance and Contractual Services, in consultation with the Head of Asset Management and the Head of Finance and Procurement, will be responsible for disposing of all assets and materials (including land and buildings) which are not needed on behalf of all Scottish Fire and Rescue Service.

4.17.2 All disposals of assets and materials must be undertaken in accordance with

Addendum 1: Summary of Thresholds from 1st January 2018

SFRS are classified as a Central Government Body for the purposes of the Regulations. Therefore, the thresholds that will apply to SFRS are those listed in the first line of the table

Link to Scottish Government SPPN

<https://www.gov.scot/publications/eu-procurement-thresholds/>

Summary of thresholds from 1 January 2018 (net of VAT)

Public Contracts (Scotland) Regulations 2015

	Supplies	Services	Works
Entities listed in Schedule 1(a)	£118,133 (€144,000)	£118,133 (€144,000)	£4,551,413 (€5,548,000)
Other contracting authorities	£181,302 (€221,000)	£181,302 (€221,000)	£4,551,413 (€5,548,000)
Contracts subsidised by a contracting authority(b)	N/A	£181,302 (€221,000)	£4,551,413 (€5,548,000)
Small lots	£65,630 (€80,000)	£65,630 (€80,000)	£820,370 (€1,000,000)
Social and other specified	N/A	£615,278 (€750,000)	N/A

(1) Schedule 1 of the Public Contracts (Scotland) Regulations 2015 lists central government bodies. These thresholds will also apply to any successor bodies

(2) Regulation 14 of the Public Contracts (Scotland) Regulations 2015 specifies what constitutes a subsidised contract

Addendum 2: Summary of Thresholds from 1st January 2020

SFRS are classified as a Schedule 1 Body for the purposes of the Regulations. Therefore, the thresholds that will apply to SFRs are those listed under that heading in the table for Supplies and Services.

Link to Scottish Government SPPN

<https://www.gov.scot/publications/new-eu-procurement-thresholds-from-1-january-2020/>

The Public Contracts (Scotland) Regulations 2015

Supplies and services (except subsidised services contracts)

Schedule 1 bodies £122,976

Others £189,330

Subsidised services contracts

All bodies £189,330

Works (including subsidised works contracts)

All bodies £4,733,252

Light touch regime for services

All bodies £663,540

Small lots

Supplies and services £70,778

Works £884,720