



Agenda Item 4.1

Meeting	SPA Resources Committee
Date	07 February 2023
Location	Video Conference
Title of Paper	Procurement Standing Orders Review
Presented By	Iain McKie, Head of Strategic Procurement
Recommendation to Members	For Recommendation to the Authority for Approval
Appendix Attached	Yes Appendix A -Standing Orders Relating to Contracts

PURPOSE

This purpose of this report is to request that members make a recommendation to the Authority to approve the proposed changes to the Standing Orders Relating to Contracts in the following areas:

- Update to replace all EU References with relevant World Trade Organisation and Government Procurement Agreement (GPA) references.
- Administrative update to procurement thresholds in accordance with SPPN 8/2021 and inclusion of VAT in certain thresholds as required by GPA rules.
- Increase the threshold for adoption of Quick Quote as default procedure for works contracts from £150,000 excluding VAT to £500,000 excluding VAT.
- Update “Head of Procurement” to “Head of Strategic Procurement” to reflect changed job title.

Members are invited to make a recommendation to the Authority to approve the proposed changes included in this report and appendix to the Standing Orders Relating to Contracts.

1. BACKGROUND

- 1.1 The Standing Orders Relating to Contracts lay out roles and responsibilities for the carrying out of Procurement Activity on behalf of the Authority. The Standing Orders Relating to Contracts must be reviewed periodically and updated to reflect the current legislative framework and provide for efficient operation of the procurement service provided by Police Scotland. The responsibility for reviewing the Standing Orders annually is allocated to the Head of Strategic Procurement under Standing Order 24 therein. Having completed the review, a number of changes are therefore proposed. The proposed changes are described below and incorporated in Appendix A as a draft for approval. Substantive changes have been highlighted in green for ease of reference.

2. FURTHER INFORMATION RELATING TO TOPIC

Replacement of EU reference with GPA

- 2.1 The Standing Orders have been updated to remove all irrelevant references to the European Union membership and replaced with current terminology which correctly reflects the UK's membership of the World Trade Organisation (WTO) and the applicability of the WTO's Government Procurement Agreement ("GPA"). This is largely a technical change to references, Scottish national procurement legislation remains broadly unchanged in procedural terms and is still largely aligned to the previously applicable EU directives.

Procurement Threshold Changes

- 2.2 The Standing Orders Relating to Contracts require to have the thresholds at which various procedural requirements apply altered to incorporate updated threshold values and the inclusion of VAT within certain thresholds for the purpose of determining which regulated procurement procedure applies.

This change is required under Scottish Procurement Policy Note (SPPN) 8/2021. This change is required due to the regular re-setting of thresholds to match international legislation and also the technical change to including VAT in certain thresholds as a direct result of the UK leaving the EU and joining the WTO GPA.

- 2.3 This is largely a technical change as the thresholds have increased by an amount almost equal to the standard rate of VAT, so will only have a material effect on contracts with a value close to the threshold which are reduced or zero rated for VAT. This will impact a very small number of contracts.

A briefing guide and technical guidance has been provided to procurement staff who are responsible for applying the new VAT inclusive thresholds.

Quick Quotes procedure threshold for Works

- 2.4 The Scottish Government recommend considering the use of the Quick Quote procedure for unregulated works contracts i.e. those with a value less than £2,000,000 in Construction Policy Note 1/2020.

This was initially designed to ease the burden on bidding contractors during the Covid pandemic. Ordinarily, the Standing Orders Relating to Contracts require works contract above a certain threshold to be tendered as if they were regulated contracts, however, this is subject to the Head of Strategic Procurement approving an alternative procedure. It has now become common practice to utilise the Quick Quote procedure for works contracts up to £500,000 as the default procedure and has proven to generate better value than open procurements both during and subsequent to the effects of the Covid pandemic easing. This minimises unnecessary bureaucracy for tenderers and provides a reasonable chance of success for the significant investment required to bid for a works contract.

It is proposed that the threshold for default utilisation of this procedure for works contracts is increased from £150,000 excluding VAT to £500,000 excluding VAT, noting that flexibility still exists for the Head of Strategic Procurement to authorise the use of Quick Quote for works contracts not less than £500,000 excluding VAT and less than £2,000,000 excluding VAT on a case by case basis where that route will secure best value.

Job title update

- 2.5 The title of Head of Procurement has been updated to Head of Strategic Procurement to reflect a job title change following the conclusion of the procurement re-organisation.

Recommendation

- 2.6 It is recommended that the revised Standing Orders Relating to Contracts are approved. On approval they will be published internally and externally on the Police Scotland Procurement intranet and public internet sites alongside other key documents such as the Procurement Strategy and Annual Procurement Reports.

3. FINANCIAL IMPLICATIONS

3.1 There are no financial implications in this report.

4. PERSONNEL IMPLICATIONS

4.1 There are no personnel implications in this report.

5. LEGAL IMPLICATIONS

5.1 There are no legal implications in this report.

6. REPUTATIONAL IMPLICATIONS

6.1 There are no reputational implications in this report.

7. SOCIAL IMPLICATIONS

7.1 There are no social implications in this report.

8. COMMUNITY IMPACT

8.1 There are no community implications in this report.

9. EQUALITIES IMPLICATIONS

9.1 There are no equality implications in this report.

10. ENVIRONMENT IMPLICATIONS

10.1 There are no environmental implications in this report.

RECOMMENDATIONS

Members are invited to make a recommendation to the Authority to approve the proposed changes to the Standing Orders Relating to Contracts.



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Standing Orders Relating to Contracts

Draft for Approval

Date:	23/01/2023	Release:	3.3
Author:	Maureen McClair		
Owner:	Head of Strategic Procurement		
Client:	Chief Financial Officer		

Police Service of Scotland

Standing Orders Relating to Contracts

REVISION HISTORY

Revision Date	Version	Summary of Changes	Author
28/02/2013	1.4	Draft – SPSA Documents Updated for SPA	CH
11/04/2013	1.4	Published for internal use following noting by SPA at Members Meeting	
08/05/2014	1.5	Initial Draft - Minor updates to reflect transfer of Procurement activities to PsoS and addition of Code of Conduct	GD / CH
08/05/2014	1.5	Circulated to PsoS Legal and Estates functions for review and input	GD
14/05/2014	1.6	Updates following meetings, feedback and advice from Legal and Estates	GD
27/05/2014	1.6a	Circulated to the Ethics Review Group	GD
29/05/2014	1.6a-1.8	Further updates following review with Legal	GD
30/05/2014	1.9	Addition of Annex A & B. Further changes to Extent & Application and following review feedback from ICT	GD
02/06/2014	1.9	Review Draft circulated to the Directors for review.	GD
06/08/2014	1.9b	Minor amendments following review.	GD
18/09/2014	1.9c	Minor amendment following F&I pre agenda meeting	GD
15/10/2014	1.9D	Minor amendment following Finance & Investment Committee meeting	GD
21/10/2014	2a	Update following engagement with SPA CEO and SPA Legal Dept.	GD

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	2.02	Update for changes to procurement legislation since 2015	JS
27/08/2019	2.03	Update for changes recommended by PsoS Legal Services	JS
09/10/2019	2.04	Update for minor drafting changes recommended by SPA Legal Services	JS
06/12/2019	2.05	Update for minor drafting changes following SPA Resources Committee	JS
09/12/2019	3.00	Approved version	JS
16/12/2019	3.01	Update to OJEU thresholds	JS
19/1/2023	3.3	Update to replace EU References with new WTO GPA rules and certain VAT inclusive thresholds. Increase threshold for adoption of Quick Quote as default procedure for works contracts from £150,000 excluding VAT to £500,000 excluding VAT. Update "Head of Procurement" to "Head of Strategic Procurement" to reflect changed job title.	MM

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PART I: STANDING ORDERS RELATING TO CONTRACTS: GENERAL MATTERS

INTRODUCTION

1. The Police and Fire Reform (Scotland) Act 2012 established (i) a body corporate known as the Scottish Police Authority (“the Authority”) and (ii) a constabulary known as the Police Service of Scotland (“Police Scotland”) under the direction and control of the chief constable appointed by the Authority.
2. Included amongst the statutory functions of the Authority under the 2012 Act is the requirement to maintain Police Scotland and, in pursuance of this function, the Authority has the power to enter into contracts and to acquire and dispose of land and other property.
3. These Standing Orders Relating to Contracts are made under Part 10 of schedule 1 to the 2012 Act which empowers the Authority to regulate its own procedures and that of its committees and sub-committees.
4. Following the Authority’s decision that Procurement and Estates staff are to be appointed as police staff under the direction and control of the Chief Constable, there is agreement that Procurement and Estates police staff, with advice and support as required from police staff within Police Scotland’ Legal Services will provide Procurement, Estates and Property Services for the Authority.
5. Except where stated in these Standing Orders Relating to Contracts, all Procurement Activity carried out by police staff in the provision of such services for the Authority, and all contracts made by or on behalf of the Authority for the execution of works, the supply of goods, the provision of services or in relation to heritable property must comply with these Standing Orders Relating to Contracts.

INTERPRETATION

6. Throughout these Standing Orders Relating to Contracts, the following terms have the following meanings:

“2011 Regulations” means the Defence and Security Public Contracts Regulations 2011 (as amended from time to time).

“2012 Act” means the Police and Fire Reform (Scotland) Act 2012 (as amended from time to time).

“2014 Act” means the Procurement Reform (Scotland) Act 2014 (as amended from time to time).

“2015 Regulations” means the Public Contracts (Scotland) Regulations 2015 (as amended from time to time).

“2016 Regulations” means the Procurement Scotland Regulations 2016 (as amended from time to time).

“2016 Concession Regulations” means the Concession Contracts (Scotland) Regulations 2016 (as amended from time to time).

“2016 Utilities Regulations” means the Utilities Contracts (Scotland) Regulations 2016 (as amended from time to time).

“Agreement on Government Procurement (GPA)” the agreement of World Trade Organisation (WTO) members to mutually open up their markets for selling goods and services to governments, often including regional and local governments.

“Authority” means the body corporate known as the Scottish Police Authority, established under the Police and Fire Reform (Scotland) Act 2012.

“Best Value” has the meaning attributed in the Police and Fire Reform (Scotland) Act 2012.

“Board” means the Board of the SPA appointed by Scottish Ministers.

“Chief Executive” means the Chief Executive of the Authority.

“Designated Procurement Officer” means any member of police staff who is appointed or designated by the Head of Strategic Procurement as appropriate to undertake any Procurement Activity (or any part of a procurement activity) on behalf of the Authority.

“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. “Contracting authority” and “economic operator” shall have the meaning ascribed to them in the 2015 Regulations.

“Framework Document” means the Scottish Police Authority Governance and Accountability Framework Document Published by the Scottish Government in January 2014 as updated from time to time.

“GPA Principles” the relevant provisions of the GPA particularly the principles of equal treatment, non-discrimination and transparency.

“Head of Strategic Procurement” means the person within Police Scotland appointed as Head of Strategic Procurement to fulfil those functions.

“Procurement Activity” means all activity undertaken within Police Scotland to procure goods, services or works on behalf of the Authority and to promote and co-ordinate strategic procurement and develop of procurement staff, processes and systems on behalf of Police Scotland and the Authority.

“Procurement Journey” means Scottish Government’s published toolkit providing practical guidance on procurement procedures.

“Procurement Manual” means the mandatory procedure manual and policy, setting out the detailed requirements for the conduct of Procurement Activity within the Authority and Police Scotland (as amended from time to time) with which all police officers and staff are required to comply.

“Regulated Contract” has the meaning given in the 2014 Act

GENERAL

7. All Procurement Activity will be undertaken, contracts entered into and land and other property acquired and disposed of, in accordance with these Standing Orders relating to Contracts, except where specifically excluded.
8. The Standing Orders must be interpreted, and all Procurement Activity must be carried out, in accordance with the Treaty Principles.
9. These Standing Orders Relating to Contracts are subject to the over-riding provisions of International, United Kingdom, or Scottish legislation, including the duty to secure Best Value in terms of section 37 of the 2012 Act.

10. These Standing Orders Relating to Contracts are subject to any International, UK Government or Scottish Government guidance on public procurement that may be issued from time to time.
11. All Procurement Activity will be undertaken by the Head of Strategic Procurement and Designated Procurement Officers in a professional and diligent manner and in accordance with all applicable regulations and the Treaty Principles to ensure that the supplies, services and works procured on the Authority's behalf meet the needs of the Authority and Police Scotland having regard to the statutory obligations and functions incumbent upon each.
12. All personnel involved in Procurement Activity, contracts for supplies, services or works and contracts for the acquisition and disposal of heritable property (including Authority staff and Police Scotland staff and officers, any agents and consultants) shall comply with the terms of these Standing Orders.
13. These Standing Orders Relating to Contracts must be read in conjunction with
 - the Scottish Public Finance Manual,
 - the Framework Document,
 - the SPA Corporate Governance Framework,
 - the Financial Regulations of the Scottish Police Authority and Police Service of Scotland, and
 - the Police Scotland Scheme of Financial Delegation.
14. The Standing Orders Relating to Contracts must be read in conjunction with the Procurement Manual and guidance issued by the Head of Strategic Procurement. All personnel undertaking any Procurement Activity must comply with the Procurement Manual and guidance issued by the Head of Strategic Procurement.
15. If there is any conflict between these Standing Orders and the Procurement Manual or any guidance issued by the Head of Strategic Procurement, these Standing Orders shall take precedence.
16. For the avoidance of doubt, any Procurement Activity and contracts awarded by and in the name of the Authority (i) in furtherance of collaborative or partnership working (including contracts where the Authority acts as lead authority) and/or (ii) utilising funding from grants received from third parties must be awarded in accordance with these Standing Orders Relating to Contracts.
17. All Procurement Activity, contracts for supplies, services or works and contracts for the acquisition and disposal of heritable property will be in the name of the Authority and not Police Scotland, the Force, the Chief Constable or any other member of Police Scotland.
18. All contracts for supplies, services or works and contracts for the acquisition and disposal of heritable property will be in writing.
19. Any query regarding the application or interpretation of these Standing Orders should be made in the first instance to the Head of Strategic Procurement or the Legal Services Manager, Police Scotland, who may refer the matter to the Chief Executive of the Authority, as Accountable Officer for advice and guidance.
20. The Head of Strategic Procurement must be satisfied that funding exists for any purchase to be made prior to commencing any Procurement Activity.

EXCLUSIONS

21. Contracts of employment are excluded from the application of the Standing Orders, however, where agency staff are required the Standing Orders will apply to the appointment of the employment agency.
22. The procurement procedures detailed in these Standing Orders do not apply to:
- Any contracts urgently required for the prevention of risk to life or damage to property.
 - Any contract for supplies or services, except contracts awarded via a negotiated procurement procedure without a competition, where the total estimated value of the proposed contract is less than £50,000 excluding VAT. Such contracts shall be procured in accordance with the Procurement Manual and guidance issued by the Head of Strategic Procurement.
 - Any contract for works, except contracts awarded via a negotiated procurement procedure without a competition, where the total estimated value of the proposed contract is less than £500,000 excluding VAT. Such contracts shall be procured in accordance with the Procurement Manual and guidance issued by the Head of Strategic Procurement.
 - Any contract awarded via the negotiated procedure without a call for competition for supplies, services or works where the total estimated value is less than £25,000 excluding VAT. Such contracts shall be procured in accordance with the Procurement Manual and guidance issued by the Head of Strategic Procurement.
 - Any actions or arrangements required in furtherance of the Civil Contingencies Act 2004 and The Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005;
 - Partnership Arrangements entered into with third parties, so long as such arrangements are exempt from procurement legislation, but will apply to any goods, services or works that require to be procured by or on behalf of the Authority in furtherance of the partnership;
 - Grant Agreements detailing the terms and conditions subject to which third parties will make available grant funding to Police Scotland or the Authority in furtherance of a policing purpose, but will apply to any goods, services or works that will be procured using the grant funding;
 - Arrangements entered into by the Authority and Police Scotland where constables or police staff provide services for the Authority, or where members of the Authority's staff provide services for Police Scotland (co-operation between the Authority and Police Scotland);
 - Arrangements entered into under sections 86 and 87 of the 2012 Act (provision of police services and provision of other goods and services), but will apply to any goods, services or works that require to be procured by or on behalf of the Authority to enter into or as a consequence of such arrangements.
 - Arrangements or Agreements (including memoranda of understanding) between the Chief Constable of Police Scotland and other Chief Constables or Justice Agencies or bodies as permitted by and in accordance with any statutory provision and in accordance with relevant procurement legislation, but will apply to any goods, services or works that require to be procured by or on behalf of the Authority to enter into or as a consequence of such arrangements.
 - Any contract which is excluded by virtue of a provision within the 2015 Regulations, 2014 Act or 2016 Regulations, in which case the Head of Strategic Procurement shall determine the appropriate procedure in consultation with Police Scotland Legal Services.
23. Whilst the types of arrangements and agreements referred to in this clause are not subject to the tendering and award process under these Standing Order Relating to Contracts, consideration must be given to the risks and long term commitments associated with such

arrangements and agreements, the suitability and capability of any other organisation to meet their obligations in such an arrangement and the extent to which such arrangements and agreements are compatible with procurement law and/or state aid rules.

REVIEW, SUSPENSION, VARIATION AND REVOCATION OF STANDING ORDERS

24. The Standing Orders shall be comprehensively reviewed at least annually by the Head of Strategic Procurement to ensure that they continue to fulfil and further the Authority's aims and objectives.
25. Further, the Head of Strategic Procurement will monitor whether any changes are required to these standing orders on an ongoing basis and maintain a log of any new or revised legislation, guidance or other relevant documents considered. This should include, but not be limited to:
 - Procurement legislation
 - Statutory guidance
 - The Framework Document
 - The SPA Corporate Governance Framework
 - Scottish Public Finance Manual
 - Scottish Government Procurement Policy Manual
 - Scottish Procurement Policy Handbook
 - Scottish Government Consultancy Procedures
 - Construction Procurement Handbook
 - Scottish Procurement Policy Notes
 - Procurement Journey
 - Domestic and relevant International court opinions and judgements
26. Should the Head of Strategic Procurement establish from his/her ongoing monitoring that changes are required to these standing orders, the Head of Strategic Procurement may submit to a meeting of the Board a note of any new Standing Order, or alteration/deletion of any existing Standing Order, which seems to him/her to be required to ensure the continued effective operation of these Standing Orders. Such proposals shall be considered and decided on by the Board.
27. These Standing Orders may be varied or revoked by the Board. Any variation to or revocation of these Standing Orders decided on by the Board will be effective on the first working day after the conclusion of the Board meeting at which it was approved.
28. No Standing Order adopted by the Board shall be suspended at any Board meeting except on the agreement of a majority of the Members. These Standing Orders or any part of them may be suspended by the Board in respect of any procurement exercise or contract on receiving a joint recommendation from the Head of Strategic Procurement and the Chief Executive that there are special circumstances justifying such suspension and that it is in the interests and within the powers of the Board to do so.
29. Committees and sub-committees of the Authority have no power to vary, revoke or depart from these Standing Orders.

30. In order to facilitate administrative changes to these Standing Orders, the Chief Executive shall have power to vary these Standing Orders Relating to Contracts. Administrative changes will include, although will not be restricted to, changes required for the following reasons:-
- to reflect changes in job titles, reorganisations of departments and vacancies in posts,
 - to change references to legislation where existing legislation is repealed or amended and to insert references to new legislation where the new legislation largely re-enacts the provisions of the repealed or amended legislation, or
 - to take account of any periodic changes to GPA Thresholds where referred to in these standing orders.
31. Where any such administrative variation is made, a report describing the change should be submitted to the next Board meeting for noting.

GENERAL POWERS AND DUTIES OF THE HEAD OF STRATEGIC PROCUREMENT

32. The Head of Strategic Procurement may transfer any power or duty incumbent on him/her under these Standing Orders to the Police Scotland Chief Financial Officer, or another senior Police Scotland staff member agreed by the Chief Executive, provided both the Head of Strategic Procurement and the Chief Executive have agreed in writing to the transfer in advance.
33. The Head of Strategic Procurement may delegate, in writing, any power or duty incumbent on him/her under these Standing Orders to an appropriate Designated Procurement Officer nominated by the Head of Strategic Procurement, always ensuring that the nominated person is suitably qualified and experienced to carry out the power or duty in question.
34. The Head of Strategic Procurement will prepare, publish and maintain a Procurement Manual which sets out the procurement procedures to be used for contracts for supplies, services and works below the thresholds for application of the procedures in these Standing Orders Relating to Contracts.
35. The Head of Strategic Procurement may include in the Procurement Manual, or publish additional guidance notes containing, further detailed procedural guidance in relation to the tendering procedures for contracts awarded on behalf of the Authority under the tendering procedures in these Standing Orders Relating to Contracts. Any such guidance notes once published shall form part of these Standing Orders Relating to Contracts and shall be complied with from the date the guidance is issued. However, in the event of any conflict, these Standing Orders Relating to Contracts take precedence.
36. The Head of Strategic Procurement will prepare and publish a Procurement Strategy and Annual Reports on behalf of the Authority in accordance with the 2014 Act. The Head of Strategic Procurement will seek the Authority's approval before first publishing such documents. The Head of Strategic Procurement will ensure that any Procurement Strategy for a period of more than one year is reviewed at least annually and any material changes to the Strategy are presented to the Authority for approval before re-publishing.

TENDERING, APPROVAL, AWARD AND TERMINATION OF CONTRACTS

37. The Police Scotland Scheme of Financial Delegation details, by reference to the value (exclusive of VAT) of the prospective contract and the nature of the requirement (goods, services or works), the reporting and approval process which must be followed by Police Scotland before the award of any contract.
38. Unless otherwise determined as necessary by the Head of Strategic Procurement in order to secure Best Value, all Procurement Activity will be carried out utilising an appropriate E-Tendering system (Public Contracts Scotland, Public Contracts Scotland Tender or similar). This will generally negate the need for exhaustive precautions and practices regarding receipt and custody of tenders. Any E-Tender tool used must not allow tenders to be opened before the closing date and must not allow the original electronic version of the tender to be amended post the closing deadline. The system will record and allow audit of all transactions.

VALUATION AND AGGREGATION

39. The total estimated value of a proposed contract must be estimated in accordance with the methodologies in Regulation 3 and the 2016 Regulations and Regulation 6 of the 2015 Regulations in order to determine the appropriate procurement procedure and governance route.
40. The total estimated value of a proposed contract must be calculated taking into account aggregation of similar types of supplies, services and works, depending on their nature and if they are regular or recurring in nature across the whole organisation.
41. The values stated in the standing orders are the total estimated value of the contract concerned, including all extension options, and not the estimated annual value of the contract.
42. Where it is likely that the provision of supplies, services and works will be required on a continuing basis over a number of years, for example with maintenance contracts, the Head of Strategic Procurement shall take into account the anticipated duration and similarity of the continuing supply when estimating the value of the contract for the purposes of these standing orders.
43. If the total estimated value exceeds a threshold then, even if the procurement of any single requirement is split among a number of contracts, each of these contracts is subject to the Standing Orders Relating to Contracts in the same way as if the requirement were procured through a single contract.
44. It is not permitted to deliberately divide any potential contract, procurement procedure or disposal into two or more contracts if the intention in doing so is to avoid the application of any financial thresholds in these Standing Orders Relating to Contracts, the 2015 Regulations, the 2014 Act or the 2016 Regulations.
45. Notwithstanding the prohibition on dividing contracts to avoid application of financial thresholds, contracts may be split into lots if the Head of Strategic Procurement determines that this is in the interest of securing Best Value.

PROCUREMENT PROCEDURES

46. The procedure for the award of any contract depends upon the total estimated value of that contract. The relevant threshold values and the associated tendering procedure that must be applied, are detailed in below. All values are relate to the total value of the contract (including any potential extension).
47. Unless otherwise provided for in these Standing Orders Relating to Contracts, all contracts shall be procured in accordance with one of the following procedures defined in the 2015 Regulations:
- The open procedure
 - The restricted procedure
 - The competitive procedure with negotiation
 - The competitive dialogue procedure
 - the innovation partnership procedure
48. Contracts for supplies and services which have an estimated value of less than £138,760 including VAT and for works which have an estimated value of less than £5,336,937 including VAT do not need to comply with the minimum timescales set out in those procedures unless required to do so by any laws, but the Head of Strategic Procurement must set reasonable and fair timescales for replying to invitations to participate and tender.
49. The competitive dialogue procedure and competitive procedure with negotiation and the must only be utilised when the specific circumstances specified in the 2015 Regulations are met.

CIRCUMSTANCES IN WHICH A CONTRACT CAN BE AWARDED WITHOUT COMPETITION

50. Contracts for supplies and services which have a value estimated to be not less than £25,000 excluding VAT and less than £138,760 including VAT may only be awarded without competition if the contract falls within the circumstances described in Regulation 6 of the 2016 Regulations.
51. Contracts for supplies and services which have a value estimated to be not less than £138,760 including VAT may only be awarded without competition if the contract falls within the circumstances described in Regulation 33 of the 2015 Regulations.
52. Contracts for works which have a value estimated to be not less than £25,000 excluding VAT and less than £5,336,937 including VAT may only be awarded without competition if the contract falls within the circumstances described in Regulation 6 of the 2016 Regulations.
53. Contracts for works which have a value estimated to be not less than £5,336,937 including VAT may only be awarded without competition if the contract falls within the circumstances described in Regulation 33 of the 2015 Regulations.
54. In such circumstances, the Head of Strategic Procurement can approve the use of a negotiated procurement procedure without a call for competition as an alternative to carrying out a competitive procurement procedure in accordance with Standing Order 47.
55. The Head of Strategic Procurement must record the reasons and justification for awarding a contract without competition in terms of Regulation 6 of the 2016 Regulations.

56. The Head of Strategic Procurement must seek the approval of the Chief Executive, Authority and the Scottish Government to award a contract via a non-competitive action as defined in the Framework Document and SPA Corporate Governance Framework.
57. The Head of Strategic Procurement must provide a report to the SPA Resources Committee on a quarterly basis detailing all contracts and the reason that the procedure was used, that have been awarded via a non-competitive action following a negotiated procurement procedure without a call for competition.
58. Contract award notices must be published in accordance with the relevant provisions of the 2015 Regulations and 2016 Regulations.

UTILISATION OF FRAMEWORK AGREEMENTS

59. Where a Framework Agreement has been concluded by the Scottish Government or other Public Sector body and the Framework Agreement permits the Authority to call off against the framework, the Head of Strategic Procurement can approve the use of that Framework Agreement as an alternative to carrying out a procurement procedure in accordance with Standing Order 47, subject to ensuring that it is suitable for use by the Authority and Police Scotland, and that it will deliver best value in terms of the 2012 Act.
60. Any procurement using a Framework Agreement must comply with all applicable regulations and the requirements of the Framework Agreement.
61. Call-off contracts, and any other documentation required under the Framework Agreement may be signed by the Head of Strategic Procurement.
62. Unless otherwise agreed between the Head of Strategic Procurement and the Authority, all call-off contracts awarded under a Framework Agreement must comply with the award approvals process as if they were contracts awarded in their own right.

GPA PROCUREMENT: SUPPLIES, SERVICES OR WORKS CONTRACTS ABOVE GPA THRESHOLD

63. The tendering of contracts for supplies and services which have a value estimated to be not less than £138,760 including VAT (i.e. above GPA threshold as updated from time to time) must be undertaken in accordance with the 2015 Regulations and the GPA Principles.
64. The tendering of contracts for works which have a value estimated to be not less than £5,336,937 including VAT (i.e. above GPA threshold as updated from time to time) must be undertaken in accordance with the 2015 Regulations and the GPA Principles.

REGULATED PROCUREMENT: SUPPLIES, SERVICES OR WORKS CONTRACTS ABOVE REGULATED CONTRACTS THRESHOLD, BUT BELOW GPA THRESHOLD

65. The tendering of contracts for supplies and services which have a value estimated to be not less than £50,000 excluding VAT but less than £138,760 including VAT (i.e. Regulated Contracts below GPA threshold as updated from time to time) must be undertaken in accordance with the 2014 Act and 2016 Regulations and the GPA Principles.

66. The tendering of contracts for works which have a value estimated to be not less than £2,000,000 excluding VAT, but less than £5,336,937 including VAT (i.e. Regulated Contracts below GPA threshold as updated from time to time) must be undertaken in accordance with the 2014 Act and 2016 Regulations and the GPA Principles.

UNREGULATED WORKS CONTRACTS

67. The tendering of contracts for works which have a value estimated to be not less than £500,000 excluding VAT, but less than £2,000,000 excluding VAT (i.e. Unregulated works contracts below the Regulated Contracts threshold as updated from time to time) must generally be tendered as if they were Regulated Contracts in accordance with the 2014 Act and 2016 Regulations and the GPA Principles, unless otherwise approved by the Head of Strategic Procurement in order to achieve Best Value. However, nothing in these Standing Orders Relating to Contracts will oblige the Authority to comply with such regulations in law where they would not otherwise apply.

NEGOTIATED AND EXTENDED CONTRACTS FOR GOODS, SERVICES OR WORKS

68. The approval process for negotiated and extended contracts will be detailed in the Procurement Manual. Such contracts will be progressed in accordance with the Provisions of the Procurement Manual.

PART II: STANDING ORDERS RELATING TO CONTRACTS: SPECIAL MATTERS

CONTRACTS RELATIVE TO THE DISPOSAL OR ACQUISITION OF HERITABLE PROPERTY

69. The acquisition of heritable property has been taken to include not only the purchase and/or acquisition of heritable property outright by the Authority but the obtaining by the Authority of any right in heritable property including but not limited to a licence to occupy or memorandum of terms of occupancy (MOTO) of heritable property or any part thereof, a lease of heritable property, a servitude or way leave right over, across or through heritable property, a Standard Security over heritable property and a right of common or joint property in heritable property and any matters supplementary thereto.
70. Similarly the disposal of heritable property has been taken to include not only the sale or disposal of heritable property outright but shall also mean the granting by the Authority to third parties of rights in heritable property including but not limited to the grant by the Authority of a licence to occupy or MOTO of heritable property or any part thereof, the lease of heritable property and any matters supplementary thereto, the grant of a servitude or wayleave or other right over, across or through heritable property, entering into Ranking Agreements or Deeds of Postponement relative to Standard Securities granted in favour of the Authority or its predecessors as police authority and the granting of any deed waiving, altering or amending title conditions, or the registration of any notices, discharges in the appropriate Land Register in respect of the preservation or discharge thereof.
71. The disposal and acquisition of heritable property must be undertaken as detailed within the Procurement Manual and where appropriate, in accordance with the particular requirements of the Acquisitions and Disposals section of the Scottish Public Finance Manual.

CONTRACTS RELATING TO THE DISPOSAL OF SURPLUS MATERIALS

72. The care, custody and level of stores and equipment in any service Division/Department is the responsibility of the Divisional Commander/Head of Department. He or she shall, in consultation with the Head of Strategic Procurement, ensure that all obsolete or excess stock or scrap materials are identified and disposed of by competitive tender or public auction or through the auspices of the Disposal Services Agency.
73. The detailed process relating to the disposal of surplus materials is covered within the Procurement Manual.

CONTRACTS FOR THE LOAN OF EQUIPMENT AND OTHER TANGIBLE ASSETS BY OR TO POLICE SCOTLAND.

74. The ownership of assets (including equipment) lies with the Authority. To the extent that such assets have been provided to Police Scotland, it will be for the Chief Constable to determine the extent to which such assets may be provided on loan to third parties. However, any contract of

loan should include appropriate terms and conditions to protect the interests of the Authority in the assets.

75. Care should be taken when negotiating the terms and conditions of Contracts where assets are provided on loan to Police Scotland to ensure that risks are assessed and terms and conditions are not unduly onerous.

SPECIAL TYPES OF CONTRACTS: CONCESSION CONTRACTS, UTILITIES CONTRACTS, HEALTH AND SOCIAL CONTRACTS, DEFENCE CONTRACTS ETC.

76. Where the subject matter of a contract dictates that a contract is concession contract, utilities contracts, health and social contract or defence contract, the Head of Strategic Procurement will determine the appropriate procurement procedure based on current legislation with advice from Police Scotland Legal Services as required.

PART III: CODE OF CONDUCT FOR PROCURING OF GOODS, SERVICES & WORKS

PURPOSE

77. The purpose of this Code of Conduct is to detail the minimum standards expected of staff in their procurement activity and also to ensure fairness and consistency of approach in line with sound commercial practice.

INTRODUCTION

78. The Authority and Police Scotland are jointly responsible for ensuring that goods, services and works are procured in accordance with relevant legislation and internal governance.
79. The day to day procurement activity must be conducted in accordance with this Code of Conduct, the requirements in the Procurement section of the Scottish Public Sector Finance Manual, SPA Standing Orders and the SPA Procurement Manual.
80. Authority and Police Scotland members of staff are expected as a minimum to meet the principles set out in this Code and will regard it as the basis of best conduct.
81. Staff should raise any matter of concern of an ethical nature with their line manager, another senior colleague or the Professional Standards Unit, irrespective of whether it is addressed in the Code.

PRINCIPLES

82. Staff shall always seek to uphold and enhance the reputation of both organisations and will always act professionally by:

OFFICIAL

- Maintaining the highest possible standard of probity in all their commercial relationships, inside and outside the organisation(s);
- Rejecting any business practice which might reasonably be deemed improper and never using their position for personal gain;
- Enhancing the proficiency and stature of the organisation(s) by ensuring the highest possible standards of professional competence and maintaining the highest standards of ethical behaviour;
- Optimising the use of resources to provide the maximum benefit and Best Value to the organisation(s);
- Complying both with the letter and the spirit of
 - the law and all legislation governing their procurement activity, and
 - guidance and professional advice; and
 - contractual obligations

Staff must never allow themselves to be deflected from these principles.

GUIDANCE

83. In applying these principles, staff must follow the guidance set out below:

- Declaration of Interest – any personal interest that may affect or be seen by others to affect a member of staff's impartiality in any matter relevant to their duties must be declared.
- Confidentiality and Accuracy of Information – the confidentiality of information received in the course of duty must be respected and must never be used for personal gain. Information given in the course of duty should be honest and clear.
- Competition – the nature and length of contracts and business relationships with suppliers can vary according to circumstances. These should always be constructed to ensure deliverables and benefits. Arrangements that might in the long term prevent the effective operation of fair competition should be avoided.
- Business Gifts – gifts other than items of small or of no intrinsic value, such as business diaries or calendars, should not be accepted but should be declined courteously.
- Hospitality – the recipient should not allow themselves to be influenced, or be perceived by others to have been influenced, in making a business decision as a consequence of hospitality. The frequency and scale of hospitality accepted should be managed openly and with care and should not be greater than the organisation is able or willing to reciprocate.

ADVICE

84. Any matters arising that are outside the bounds of this Code should be referred immediately to the relevant Head of Department.