



PROCUREMENT STANDING ORDERS

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Procurement Standing Orders

1. Introduction, Purpose and Ambit

- 1.1 The purpose of Procurement Standing Orders (“the Standing Orders”) is to set clear rules and procedures for the procurement of goods, works and services for the South West of Scotland Transport Partnership (“SWestrans”). The rules and procedures help ensure that SWestrans complies with its legal obligations and is fair, transparent and accountable in its dealings with contractors and suppliers. These Standing Orders are also intended to ensure that SWestrans obtains best value for money and that it is taking good care of the public pound.
- 1.2 The Standing Orders shall apply to the making of all contracts by or on behalf of SWestrans. For the avoidance of doubt, the term “contract” includes any form of agreement, written or unwritten, to which SWestrans is a party which creates rights and / or responsibilities for any of the parties involved but excludes a Grant. Guidance on use of Grants is however included within these Standing Orders.
- 1.3 The Standing Orders are subject to any overriding requirements of the Procurement Reform (Scotland) Act 2014 and all regulations and guidance made under and in terms of the Act (“the Procurement Reform Act”).
- 1.4 For the procurement of works contracts, the Scottish Government’s Construction Procurement Handbook shall also be followed.
- 1.5 No tenders shall be invited, nor any offer made or acceptance until a Contract Strategy Document, Framework Utilisation Form or a Negotiated / Contract Extension Request form, including the information set out within Schedule 1, 2 or 3 respectively, has been approved. Likewise, no contract shall be awarded without the approval of the Contract Authorisation Report, in the form set out within Schedule 4.

2. Definitions

- 2.1 The following words and expressions used in these Standing Orders shall have the meanings hereby assigned to them:
 - a) “Act” means the Procurement Reform (Scotland) Act 2014 (as amended);
 - b) “Best Value” means good governance and effective management of resources with a continuous focus on continuous improvement, to deliver the best possible outcomes for the public;

- c) "Call-Off Contract" means a contract for the provision of goods, services or works to SWestrans which is procured under an existing Framework Agreement which SWestrans are permitted to use;
- d) "Collaboration Agreement" means the agreement which sets out the roles and responsibilities of all parties participating in a Collaborative Procurement;
- e) "Collaborative Procurement" means the procurement of goods, services or works by SWestrans in collaboration with one or more Contracting Authorities, as defined by the 2015 Regulations, with the aim of achieving value for money for SWestrans through sharing expertise, resource and / or by securing benefits through economies of scale through the aggregation of spend to create greater buying power.
- f) "Contract Documents" means the documents to be used in any procurement procedure and where different those intended to form part of any contract following on from a procurement procedure. It includes, but is not restricted to, the SPD, the invitation to tender for or to negotiate a contract, the proposed conditions of contract, the specification or the description of the goods, services or works required and the pricing document and includes any such documents or their equivalents issued using electronic means.
- g) "Contracting Authority" has the meaning given to it in Regulation 2(1) of the 2015 Regulations or as the case may be in Section 1 of the Act, typically for the purposes of these Procurement Standing Orders means SWestrans.
- h) "Contract Authorisation Report" means the document referred to in Standing Order 36.1, containing a summary of the tender process conducted and details of the contract recommended for award. This report shall be provided in the form at Schedule 4.
- i) Contract Notice means the notice published to advertise the procurement opportunity to the market and must include the minimum and specific requirements as set out within the 2015 Regulations.
- j) "Contracts Register" means the register of contracts which SWestrans maintains, pursuant to Section 35 of the Act, and which applies to all contracts of £20,000 or greater in value.
- k) "Contract Strategy Document" means the document referred to in standing order 1.7 which sets out the procurement strategy for delivery of a requirement and is agreed jointly between the Dumfries and Galloway Council's and SWestrans. This report shall be provided in the form at Schedule 1.
- l) "Council" means the Dumfries and Galloway Council constituted under the Local Government etc. (Scotland) Act 1994.
- m) "Dynamic Purchasing System" means an electronic procurement system developed for commonly purchased requirements. Such a system shall be open to any economic operator, meeting the minimum selection requirements,

throughout its duration. The number of operators placed on the system should not be restricted.

- n) "Electronic Means" means electronic equipment for the processing (including digital compression) and storage of data which is transmitted, conveyed and received by radio, by wire, by optical means or by other electromagnetic means.
- o) "Financial Regulations" means the SWestran's Financial Regulations which provide policies to handle SWestrans finances.
- p) "Framework Agreement" means any agreement which sets out terms and conditions under which specific purchases (Call-Off Contracts) can be made throughout the term of the agreement, where SWestrans have expressly been named to use the agreement within the Contract Notice at the time of setting up the agreement.
- q) "GPA Thresholds" means the financial value thresholds derived from the Agreement on Government Procurement (GPA) by the World Trade Organisation and as updated within Schedule 5 of these Procurement Standing Orders.
- r) "Grant" means funding which is provided as a contribution towards another party's activities for its own purposes and which provides no goods or services to the SWestrans in return.
- s) "Lead Officer" means the SWestrans appointed lead officer responsible for the procurement requirement.
- t) "Public Contracts Scotland Portal" means the Scottish Government's official national portal for advertising public sector contract opportunities, which include the Quick Quote facility.
- u) "Quick Quote" means the online quotation facility on the Public Contracts Scotland Portal which allows Contracting Authorities to obtain competitive quotes electronically for low value requirements.
- v) "Quote" means a binding offer made by an organisation to provide goods, services or works to SWestrans. Typically, a quote may only provide a price or a price and methodology for delivery of the requirement specified by SWestrans in their invitation to submit a quotation.

- w) “Regulated Contract” means a contract for the provision of goods or services with an estimated value / spend over £50,000 in total or a contract for the provision of works with an estimated value / spend over £2,000,000 in total unless the Contract is excluded under the Procurement Reform Rules.
 - x) “Regulated Procurement” means (i) any procedure carried out by SWestrans in relation to the award of a Regulated Contract including, in particular, the seeking of offers in relation to the contract and the selection of suppliers; and (ii) the award of a Regulated Contract by SWestrans.
 - y) “Signature” or “Signed” includes a reference to a signature or other form of formal confirmation using electronic means, such as a digital signature, encryption or other formally recognised authority for identification purposes. For the avoidance of doubt, facsimile signatures are not acceptable.
 - z) “SPD” means the Single Procurement Document. This document is consistently used throughout Scotland and enables tenderers to provide self-declarations to confirm their ability to meet the minimum requirements through a selection procedure. The use of the SPD is mandatory for Regulated Contracts.
 - aa) “Sustainable Procurement Duty” means the duty of that name under the Act.
 - a) “SWestrans” means the South West of Scotland Transport Partnership defined in the Transport (Scotland) Act 2005.
 - dd) “Tender” means a formal legal document prepared by a supplier in response to an invitation to submit a tender to deliver goods, services or works to SWestrans. This will include specifics of how a requirement will be met and will generally include a price and response to qualitative criterion.
 - ee) “the Threshold” for the purpose of these standing orders refers to the threshold under the 2015 Regulations and the Concession Contracts (Scotland) Regulations 2016. The sterling equivalent is recalculated every second year on 1 January of that year to ensure they remain aligned to thresholds set out in the GPA. The next change is due on 1 January 2024. Details of the full list of thresholds applying from 1 January 2022 are set out in Schedule 5.
 - ff) “Written” or “in writing” means any expression consisting of words or figures which can be read, reproduced, and subsequently communicated. It may include information which is transmitted and stored by electronic means provided its provenance / authorisation can be proven.
 - gg) “2015 Regulations” means the Public Contracts (Scotland) Regulations 2015.
 - hh) “2016 Regulations” means the Procurement (Scotland) Regulations 2016.
- 2.1 Any reference in these standing orders to a statute, other legislation or Directive shall

include reference to any statute, legislation or Directive amending or replacing it.

- 2.2 Any reference in these Standing Orders to a contract shall include, where the context allows, reference to a sub-contract.

3 Compliance

- 3.1 The procurement and award of all contracts, Framework Agreements or Dynamic Purchasing Systems by and on behalf of SWestrans shall comply with the Standing Orders and Financial Regulations.
- 3.2 In the event of conflict between these Standing Orders and the requirements of legislation or directives, such legislation or directive overrides the Standing Orders.
- 3.3 The procurement and award of all contracts for goods, services and works by and on behalf of SWestrans shall also comply with the following duties:
- 3.3.1 All tenderers, suppliers and contractors shall be treated equally and without discrimination. Tenderers shall be provided with an equal opportunity when tendering for contracts with SWestrans, based on the same information and criteria and tenders shall be evaluated in a non-discriminatory manner. The ongoing management of suppliers and contractors shall continue to be conducted in a non-discriminatory manner.
- 3.3.2 SWestrans shall act in a transparent and proportionate manner. Tenderers shall be informed in advance, of the evaluation criteria and the scoring methodology which will be used to assess tender responses and determine the successful tenderer. All evidence sought during the tender process shall be proportionate to the value, risk and nature of the requirement.

4 Variation, Revocation and Suspension of the Procurement Standing Orders

- 4.1 These Standing Orders may be varied or revoked by the Board of SWestrans. Any variation to or revocation of the Standing Orders shall be effective on the first working day after the conclusion of the Board meeting at which it was approved.
- 4.2 The SWestrans Lead Officer may approve variations to the Standing Orders in the following circumstances:
- 4.2.1 To change references to legislation, where the legislation is repealed or amended, to insert updated references to the new legislation; or
- 4.2.2 To change the financial values of the Thresholds where referred to in the Standing Orders, to implement any changes in these Thresholds.
- 4.2.3 To amend the Schedules.

5 Exemptions

- 5.1 Subject to standing order 1.2, there shall be exempted from the provisions of these Standing Orders all contracts for the supply of goods or materials for the provision of services or for the execution of works where:-
- 5.1.1 The total estimated value of the proposed contract is less than £50,000 for goods and services and less than £500,000 for works but the contract shall be granted in accordance with the SWestrans' Procedure Note for Lower Value contracts as set out in Schedule 6.

- 5.1.2 In the opinion of the Lead Officer, urgent action is required to prevent danger to life, serious risk to health or damage to property. In such circumstances a report will be submitted to the SWestrans Board at the first available subsequent meeting detailing both the circumstances justifying use of this exemption and the action taken. In such circumstances, any relevant requirements of the GPA and the Procurement Reform Rules shall be complied with. On all occasions where this exemption has been used, SWestrans Board shall be notified and consulted as soon as is reasonably practicable.
- 5.1.3 The contract relates to any of the functions being exercised by Dumfries and Galloway Council on behalf of SWestrans, in which case the procurement standing orders for the Council shall apply.
- 5.1.4 The services required are the appointment of junior or senior legal counsel and Solicitor Advocates (for the avoidance of doubt the appointment of Solicitors is not exempt). However, any such contract must be granted in accordance with the relevant requirements of the Act.
- 5.1.5 Where in the SWestran's Board opinion it is essential that the contract is entered into for the settlement of any claim or litigation raised by or against SWestrans.
- 5.1.6 The contract is for the disposal by SWestrans of surplus or scrap materials and equipment previously used by SWestrans. Best Value shall still be obtained.
- 5.1.7 The contract is being funded by money provided by an external party (including funds from the National Lottery funding distributors, Scottish Government etc) and the award of that money to SWestrans is subject to such conditions that make it impractical for SWestrans to comply with these Standing Orders in procuring the contract. In such circumstances, this will be reported to the SWestrans Board explaining the procedure followed and justification for doing so. In such circumstance, any relevant requirements of the Treaty Principles, the EU Procurement Rules and the Procurement Reform Rules shall be complied with. Otherwise externally funded contracts shall follow these Standing Orders.
- 5.1.8 The contract is co-funded by SWestrans, and SWestran's contribution is less than 50% in cash terms (i.e., discounting in-kind values). However, SWestrans shall ensure Best Value is obtained. Advice may be sought from Legal Services, who shall ensure these obligations shall be passed to the contracting authority.
- 5.1.9 The contract relates to the performing arts. Where performing arts are commissioned by SWestrans, Best Value shall be obtained.
- 5.1.10 It is for a contract of employment, unless the contract is with an employment agency for the supply of staff.
- 5.1.11 The contract relates solely to the transfer, acquisition or disposal of heritable property including a license to occupy or use heritable property.
- 5.1.12 The spend relates to the award of a Grant by SWestrans and not the procurement of a contract for the provision of goods, services or works to SWestrans but shall be awarded in accordance with the Guidance Note on Use of Grants at Schedule 7. Specific advice in relation to the award of Grants by SWestrans should be obtained from the Council's legal service.
- 5.1.13 The award of works or services concessions which are subject to the application of

the Concessions Contracts (Scotland) Regulations 2016.

6 Financial Provision

- 6.1 No tender shall be invited or accepted unless appropriate financial provisions have been made and approved in terms of the SWestran's Financial Regulations, or funding has been guaranteed to be provided by a third party.
- 6.2 Where tenders are required to be sought in circumstances where financial provision has not been secured, approval to do so is required from the SWestrans Lead Officer, taking advice from the Council's Procurement and Commissioning Manager and tenderers shall be clearly advised of the basis that tenders are being invited.
- 6.3 The financial provision for the purposes of this Standing Order 6 must include for the full value of the contract, as calculated in accordance with Standing Order 7.

7 Valuing the Contract

- 7.1 For the purposes of these Standing Orders, the value of a contract shall be calculated over the whole life of the contract not the annual value. Where it is likely that a supply of goods, services or works shall be required on a continuing basis over a number of years, the anticipated duration of the continuing supply shall be taken into account when estimating the value of the contract for the purposes of these Standing Orders. When it is not possible to anticipate the length, the annual contract value shall be multiplied by 4 to reach an indicative contract value.
- 7.2 The contract value includes the amount payable as a result of the procurement exercise of any form and any extension period as explicitly set out in the Contract Documents.
- 7.3 Where SWestrans provides for prizes or payment to third parties, these shall be taken into account when calculating the estimated contract value.
- 7.4 It is not permissible to disaggregate a contract in order to circumvent the requirements of these Standing Orders or the Act.
- 7.5 For Regulated Procurements the estimated value must consider any applicable Value Added Tax that may be levied as set out within Schedule 5.
- 7.6 If the cost of a contract is only being met in part by SWestrans the total value of the contract including the funding from a third party shall be, for the purposes of these Procurement Standing Orders, calculated by totalling all the contributions to be made towards the contract cost.
- 7.7 Where a contract includes the provision of services or other funding in kind to the contractor / supplier by either SWestrans or a third party, the value of the contract shall be calculated by including the value of the services being provided and / or the

funding in kind in addition to any monetary consideration.

- 7.8 The estimated value shall be the value estimated at the time at which the procurement is commenced, ensuring it is representative of the current market conditions and tender submissions that may be received.
- 7.9 On receipt of tenders, where the tenders returned are higher than the Threshold applied, advice on how to proceed must immediately be sought from the Council's Procurement and Commissioning Manager. The SWestrans Lead Officer may authorise the procedure to continue where the breach is not to a regulated Threshold, and where there is sufficient evidence to validate the pre-tender estimate as genuine, justification for the additional costs and the proposed contract value does not exceed the permissible financial delegations as set out within the Finance Scheme of Delegation.
- 7.10 In the case of the procurement of a Framework Agreement the estimated value shall be the total estimated value of all of the contracts envisaged thereunder pursuant to and for the total term of the Framework Agreement.
- 7.11 In the case of the procurement of a Dynamic Purchasing System the estimated value shall be the total estimated value of all of the contracts envisaged pursuant to and for the total term of the Dynamic Purchasing System.
- 7.12 In the case of an innovation partnership procurement, the estimated value shall be the total estimated value of the research and development activities to take place during all stages of the partnership together with the estimated value of works, supplies or services to be developed and delivered by the partner.
- 7.13 In the case of a public works contract the estimated value shall include the total estimated value of any supplies and services that are necessary for executing the works and that are to be provided by SWestrans to the contractor.
- 7.14 In the case of a procurement to be awarded in the form of separate lots, the estimated value shall be the total estimated value of all such lots.
- 7.15 In the case of a public supply contract relating to the leasing, rental, hire or hire purchase of products the estimated value shall be—
- I. in the case of a fixed term contract for a period of less than or equal to 12 months, the total estimated value of the contract;
 - II. in the case of a fixed term contract for a period of more than 12 months, the total value including the estimated residual value; and
 - III. in the case of a contract without a fixed term or the term of which cannot be defined, the monthly value multiplied by 48.
- 7.16 In the case of a public service contract for a service of a kind mentioned in this

paragraph, the estimated value shall be calculated by reference to—

- I. for insurance services, the premium payable and any other form of remuneration;
- II. for banking and other financial services, the fees, commissions payable, interest and any other form of remuneration; and
- III. for design contracts, the fees, commissions payable and any other form of remuneration.

8. Best Value

- 8.1 All procurement of goods works or services shall be based on “Best value”. “Best value”, in this context, is defined as the optimum combination of whole life cost and quality (or fitness for purpose) to meet SWestran’s requirements. Additional guidance is provided within the guidance note for completion of the Contract Strategy Document.
- 8.2 No tender evaluations shall use price or cost as the sole contract award criteria, without prior approval from SWestran’s Lead Officer taking advice from the Council’s Procurement and Commissioning Manager. No such approval shall be granted for Regulated Contracts.

9. Use of Existing Contracts

- 9.1 Where SWestrans has an existing contract for the provision of goods, services or works, which has been competitively tendered and awarded, this contract shall be used for all requirements falling within the scope of that contract.
- 9.2 Where SWestrans has an existing Framework Agreement or Dynamic Purchasing System in place, this should be used where the requirements fall within the scope of the Framework Agreement or Dynamic Purchasing System. However, where an existing SWestran’s Framework Agreement or Dynamic Purchasing System will not represent value for money, this shall be clearly documented within the Contract Strategy Document and an alternative route to market may be recommended.
- 9.3 Where the Council, another local authority or public sector body have an existing collaborative contract, Framework Agreement or Dynamic Purchasing System in place which can be utilised by SWestrans, this should be used. Advice from the Council’s Corporate Procurement Team shall be taken in conjunction with the Council’s Governance and Assurance Service Manager to ensure that the contract is one to which SWestrans can be party and that no further compliance procedures on the part of SWestrans are necessary. Where an existing Framework Agreement or Dynamic Purchasing System will not represent value for money to SWestrans, this shall be clearly documented within the Framework Utilisation Form provided at Schedule 2 and an alternative route to market may be recommended.
- 9.4 Where there is no suitable existing contract, Framework Agreement or Dynamic Purchasing System, SWestrans may consider the use of a Collaborative Procurement provided it is in the best interests of SWestrans so to do. However, prior to utilising a Collaborative Procurement, the SWestrans Lead Officer shall enter into a Collaboration Agreement.

10 Extensions to Existing Contracts and Contract Variations

- 10.1 Where an existing contract includes the option to extend within the terms of the contract, SWestrans Lead Officer shall consider and may authorise the exercise of the extension option on behalf of SWestrans. Such an extension may only be authorised, without wider contract authorisations where the value stated within the Contract Authorisation Report and contract award notice has not been reached, including the value of spend that may be spent on the contract during the extension period. The Council's Procurement and Commissioning Manager and Governance and Assurance Manager shall be consulted as necessary on the scope of the extension option and any necessary notices or documents to be issued / entered into.
- 10.2 For the purpose of clause 10.1, an extension of a contract includes the option to increase the amount of supplies, services or works acquired under the contract as well as the option to increase the duration of the contract.
- 10.3 Changes (variations) to contracts can occur throughout the lifetime of a contract, subject to the terms and conditions of the contract. Such changes may relate to:
- Service Delivery;
 - Scope of Work;
 - Performance;
 - Costs;
 - Product Availability/ Specification Change/ Revision of Rates;
 - Legislative changes;
 - Whether the contract represents Best Value.

The need for contract variations should be minimised. Any contract variation must be compliant with the 2015 Regulations. Where a substantial change is required, it may require a new procurement of a new contract. This should only be done following receipt of appropriate legal and procurement advice.

- 10.4 For works contracts, it is recognised that a degree of flexibility is required to allow the responsible contract manager on site to respond to unforeseen circumstances necessary to allow completion of the planned works. To accommodate this, a tolerance of £50,000 or 20% of the contract value shall be allowed. Such variations shall be retrospectively report to the SWestrans Board.
- 10.5 Where a contract has been advertised in accordance with the Thresholds and it becomes apparent that the indicative total value of the contract as previously reported within the Contract Authorisation Report is likely to be exceeded, the SWestrans Lead Officer shall obtain appropriate legal and procurement advice on what action requires to be taken.
- 10.6 Where a contract has not been advertised under the Thresholds and the increase in

the value of the contract is such that the Threshold is likely to be exceeded, no further orders shall be made under the contract.

11. Indicative Total Values of Contracts

- 11.1 Where a contract has been advertised in accordance with the Thresholds and associated rules and it becomes apparent that the indicative total value of the contract as previously reported is likely to be exceeded, the SWestrans Lead officer shall obtain appropriate procurement and legal advice on what action requires to be taken.
- 11.2 Where a contract has not been advertised under the relevant Thresholds and the increase in the value of the contract is such that the Threshold is likely to be exceeded, no further orders shall be made under the contract.
- 11.3 In every contract which is priced on a schedule of rates, prior to invitations to tender being issued, indicative quantities shall be provided. The indicative quantities shall be used to provide an indicative total value for the contract used for the tender evaluation. The relevant indicative total value shall also be set out in all reports and relevant Contract Notices.

12. Framework Agreements and Dynamic Purchasing System

- 12.1 Where there is likely to be a repeated need for a particular supply of goods, services or works to SWestrans, this can be procured by way of a Framework Agreement or Dynamic Purchasing System. Appropriate assistance and guidance shall be obtained from the Council's Corporate Procurement Team before proceeding by way of setting up or utilising a Framework Agreement or Dynamic Purchasing System.
- 12.2 No Framework Agreement shall last longer than 4 years except in exceptional circumstances, as justified under the 2015 Regulations and fully documented within the Contract Strategy Document.

13. Form of Contract

- 13.1 Every contract shall be:
- In the name of SWestrans;
 - In writing;
 - Signed by an officer authorised by SWestrans to sign contracts; and
 - Subject to the Laws of Scotland.
- The Contract Documents in respect of all contracts over the Thresholds shall be drafted by the Council's procurement or governance & assurance services.
- SWestrans shall use template terms and conditions provided by Legal Services or shall request drafting of fit for purpose terms and conditions from Legal Services where suitable templates are not available.
- 13.2 SWestrans may also make use of Contract Documents prepared by the Scottish Government, the Crown Commercial Services, Scotland Excel, or any other agency of the UK government, other Scottish Centres of Procurement Expertise;

local authorities; and other collaborative bodies where SWestrans are eligible to use the Contract Documents and that these are suitable for the contract.

- 13.3 All tender documents shall clearly state that the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004 apply to all contracts arranged by or on behalf of SWestrans. This is to ensure that contractors / suppliers / service providers are aware that SWestrans may be required, as a matter of law, to release information to third parties which may include information that the contractor / supplier / service provider may wish to be treated as confidential.
- 13.4 The following rules shall apply when determining how to treat a mixed procurement of any contract for the supply of goods, provision of services and the carrying out of works:-
- (i) Services/Supplies
Determining factor is the main subject matter identified by reference to the element which has the highest estimated value i.e., if the value attributed to services exceeds that attributable to supplies then it will be treated as a services contract.
- (ii) Services/Social and Specific Services
Determining factor is the main subject matter identified by reference to the element which has the highest estimated value i.e., if the value attributed to services exceeds that attributable to the Social and Specific Services then it will be treated as a services contract
- (iii) Concession/ Works, Services and/or Supplies
If the estimated value of the works/services/supplies element exceeds the Thresholds, it will be treated as a public contract for works/services/supplies and not a concession contract
- (iv) Works/ Services or Supplies
Determining factor is the main subject of the contract in question regardless of the relative values of the elements and then the relevant Threshold applies to determine the applicable rules.

14. Nomination of Sub-Contractor

- 14.1 Where a contract provides for the nomination of a sub-contractor, the appointment of a nominated sub-contractor shall comply with these Standing Orders.

15. Specification of Standards

- 15.1 Where there is a recognised British, European or International Standard applicable to any contract which is current at the date of tender, the Contract Documents shall require that the goods, materials or services to be used or supplied and all workmanship shall at least meet the requirement of that standard.

16. Procedures

- 16.1 All contracts shall be awarded in accordance with one of the procedures set out in these Standing Orders. Generally, the Open Procedure or call offs under existing

contracts or Framework Agreements will be used, however due to complexity of the requirements use of another procedure may be recommended and approved within the Contract Strategy Document.

- 16.2 The procedure to be used, along with the reasons for using that procedure, shall be recorded within the Contract Strategy Document provided at Schedule 1.
- 16.3 No tender shall be invited or offer made or accepted for any contract for the supply of goods, or the carrying out of works or the provision of services (including a call off from an internal or external Framework Agreement) without a contract reference number having been attributed.
- 16.4 A Contract Strategy Document in the form provided at Schedule 1 or a Framework Utilisation Form set out at Schedule 2, shall be prepared for all requirements where the estimated aggregated value exceeds £50,000 for goods and services or £500,000 for works. The Contract Strategy Document shall record the procedure to be used and the reasons for the recommended use of that procedure. Where using an existing Framework Agreement, typically those provided by the Council, Crown Commercial Services, Scotland Excel or Scottish Government, then the Framework Utilisation Form provided at Schedule 2 may be used to record this information and the market information provided within the framework owner's contract strategy can be relied upon to inform the decision making on the suitability of its use.
- 16.5 Where the estimated value of any contract is likely to equal or exceed the higher Threshold, procurement advice shall be obtained on the appropriate threshold to be applied. Where tenders return over the threshold for the procedure utilised, procurement advice must be obtained. The SWestrans Lead Officer shall not authorise the award of the contract where the recommended contract value is greater than the relevant Threshold plus 10%. This applies to contracts governed by the Procedure Note for Lower Value Contracts provided at Schedule 6 of these Standing Orders.
- 16.6 Where it is established that the Regulated Procurement Rules apply to any contract, procurement advice shall be obtained, which should ensure the appropriate procedure is followed in terms of those Rules.
- 16.7 Any contract that is not required to follow a procedure set out in the Regulated Procurement Rules shall be let in accordance with one of the procedures set out in these standing orders and shall comply with any procurement guidance issued.
- 16.8 The SPD shall be used in all procedures.
- 16.9 All prior information notices, Contract Notices and contract award notices must be published via the Public Contracts Scotland website and Find a Tender and OJEU (if applicable) in accordance with applicable provisions of the Act, the 2015 Regulations, any other regulations made by the Scottish Government under the Act and any guidance issued by the Scottish Government under the Reform Act.

17. Open Procedure

- 17.1 The Contract Strategy Document approval may authorise the use of the open procedure which shall be conducted in accordance with this Standing Order.
- 17.2 Where using the open procedure a Contract Notice shall be published on the Public Contracts Scotland Portal and where the estimated contract value is above the Threshold, the notice shall also be published on Find a Tender. Additional publicising of the contract opportunity may be placed, for example in local newspapers.
- 17.3 The Open Procedure may be used to procure a public contract, Framework Agreement, Dynamic Purchasing System, alliance contract or public social partnership with one or multiple providers.
- 17.4 The date and time stated in the notice by which tenders must be received, shall be no sooner than 5 working days from the date the notice is published, however, to encourage competition longer tender times should be allowed. For Regulated Procurement the relevant 2015 Regulations prescribed timescales must be observed, this is generally a minimum of 30 calendar days from publishing the tender until the tender deadline, taking into account reductions available for use of electronic tender systems.
- 17.5 The Invitation to Tender template document provided on the Council's Procurement Sharepoint site shall be used.
- 17.6 Any queries received during the tender process shall be submitted and responded to utilising the question-and-answer facility of the e-tender platform, providing the response to all interested parties.
- 17.7 Clarifications and queries should be minor. Where there are a substantial number of queries or fundamental clarifications or changes are required to the tender document, procurement advice shall be obtained by the SWestrans Lead Officer to determine if this requires a new procurement procedure to be followed.
- 17.8 At the same time as a notice is published, the relevant contract documents shall also be available electronically. The Contract Notice shall not be published where a final set of tender documents are not available for publication.

18. Restricted Procedure

- 18.1 The Contract Strategy Document approval may authorise the use of the restricted procedure which shall be conducted in accordance with this Standing Order.
- 18.2 Where using the restricted procedure, a notice shall be published on the Public Contracts Scotland Portal and where the estimated contract value is above the Threshold, the notice must also be published on Find a Tender. Additional publicising

of the contract opportunity may be placed, for example in local newspapers.

- 18.3 All applicants responding to the notice issued in terms of Standing Order 18.2 shall be required to provide a completed SPD by the date and time specified in the notice. This date and time shall take cognisance of the complexity of the subject matter of the contract and the time needed to prepare the SPD.
- 18.4 No organisation shall be invited to tender unless they have successfully complied with the technical and financial checks in standing order 33 and have met the criteria to be invited to tender set out in the Contract Notice.
- 18.5 A sufficient number of organisations shall be selected to be invited to tender to ensure genuine competition; this in any event shall not be fewer than five for each contract / lot. Where fewer than five applicants express an interest, all those applicants meeting the minimum evaluation criteria, shall be invited to tender.
- 18.6 Invitations to tender shall be sent simultaneously to each applicant selected to tender for a contract and the invitation to tender shall be accompanied by a link to the Contract Documents which shall have been made available electronically.
- 18.7 The invitation to tender shall also include the final date and time for the receipt of tenders by the Council and the criteria to be used in evaluating the tenders.
- 18.8 The Invitation to Tender template document provided on the Council's Procurement Sharepoint site shall be used.

19. Negotiated Procedure without Prior Publication of a Notice

- 19.1 The negotiated procedure without prior publication of a notice is only available in very limited circumstances and shall only be used where it is identified as the appropriate procedure procurement advice shall be obtained by the SWestrans Lead Officer.
- 19.2 The negotiated procedure without prior publication of a notice shall only be used with the prior written approval of the SWestrans Board, taking cognisance of all relevant procurement and legal advice.
- 19.3 Where the 2015 Regulations do not apply, the negotiated procedure without prior publication of a notice shall only be used in the circumstances stated in the Procurement Reform Rules (Regulation 6 of the 2016 Regulations).
- 19.4 Where the 2015 Regulations apply, the negotiated procedure without prior publication of a notice shall only be used on any grounds specified in those Rules.
- 19.5 For the purposes of these Standing Orders the negotiated procedure without prior publication of a notice means the direct negotiations with a single contractor or supplier or service provider without competition, with a view to awarding the contract to that contractor or supplier or service provider or to extend an existing contract.
- 19.6 Where the negotiated procedure without prior publication of a notice has been used the contract shall be awarded on behalf of SWestrans by the Lead Officer, with the

prior approval of the SWestrans Board.

- 19.7 In all cases where the negotiated procedure without prior publication of a notice is used, a full written record of all contacts, discussions and communications with prospective contractor(s), supplier(s) or service provider(s) shall be kept by the SWestrans Lead Officer.
- 19.8 A minimum of two officers, shall be present at all times during any discussions with prospective contractors. One of these officers may be a Council officer.
- 19.9 The SWestrans Lead Officer shall ensure that records of all discussions with prospective contractors are signed as such by all participants.
- 19.10 The principles of fairness, equal treatment, and transparency shall be observed at all times during the negotiations.

20. Competitive Procedure with Negotiation

- 20.1 The Contract Strategy Document may recommend, and authorisation of the Contract Strategy Document may elect to use the competitive procedure with negotiation where the restricted and open procedures in these Standing Orders are not appropriate for a requirement.
- 20.2 The competitive procedure with negotiation may only be used on one of the following grounds:
 - a. Where the needs of the SWestrans cannot be met without adaptation of readily available solutions;
 - b. Where the contract includes design or innovative solutions;
 - c. Where the requirement is complex in nature, in its legal and financial make-up or because of its risks;
 - d. Where the technical specifications cannot be established with sufficient precision; or
 - e. Where unacceptable or irregular tenders have been received following a restricted or open procedure.
- 20.3 The justification for use of the competitive procedure with negotiation shall be recorded in the Contract Strategy Document.
- 20.4 Where the competitive procedure with negotiation is used, the rules for such a procedure as set out in the 2015 Regulations shall be followed. However, where the 2015 Regulations would not otherwise apply to the contract, timescales that are applied to the procedure shall take into account factors such as the complexity of the subject matter of the contract.
- 20.5 In all cases where the competitive procedure with negotiation is used, a full written record of all contacts, discussions and communications with tenderers shall be kept by the SWestrans Lead Officer.
- 20.6 A minimum of two officers, shall be present at all times during any discussions with tenderers. One of these officers may be a Council officer.
- 20.7 The SWestrans Lead Officer shall ensure that records of all discussions with tenderers are signed as such by all participants.

- 20.8 The principles of fair, equal treatment and transparency shall be observed at all times during the negotiations.

21. Competitive Dialogue Procedure

- 21.1 The Contract Strategy Document may recommend, and authorisation of the Contract Strategy Document may elect to use the competitive dialogue procedure where the restricted and open procedures in these Standing Orders are not appropriate for a contract.
- 21.2 The competitive dialogue procedure shall only be used on one of the grounds set out in standing order 20.2.
- 21.3 The justification for the use of the competitive dialogue procedure shall be recorded within the Contract Strategy Document.
- 21.4 Where the competitive dialogue procedure is used, the rules for such a procedure set out in the 2015 Regulations shall be followed. However, where the 2015 Regulations would not otherwise apply to the contract, timescales that are applied to the procedure shall take into account factors such as the complexity of the subject matter of the contract.
- 21.5 In all cases where the competitive procedure is used, a full written record of all contacts, discussions and communications with tenderers shall be kept by the SWestrans Lead Officer.
- 21.6 A minimum of two officers, shall be present at all times during any discussions with tenderers. One of these officers may be a Council officer.
- 21.7 The SWestrans Lead Officer shall ensure that records of all discussions with tenderers are signed as such by all participants.
- 21.8 The principles of fair, equal treatment and transparency shall be observed at all times during the negotiations.

22. Innovation Partnership

- 22.1 The Contract Strategy Document may recommend, and authorisation of the Contract Strategy Document may elect to use the innovation partnership procedure as defined within the 2015 Regulations, where there is a need for innovative works, products or service which cannot be met by solutions already available on the market.
- 22.2 The aim of the innovation partnership will be the development of the required innovative works, products, or services and the subsequent purchase of the resulting works, supplies, or services.
- 22.3 The estimated value of the works supplies, or services shall not be disproportionate in relation to the investment required for their development.

22.4 Where the innovation partnership procedure is used, the rules for such a procedure set out in the 2015 Regulations shall be followed. However, where the 2015 Regulations would not otherwise apply to the contract, the timescales that are to apply to the procedure shall take into account factors such as the complexity of the subject matter of the contract.

23. Quick Quote

23.1 Where a contract is above the Thresholds for the Procedure Note for Lower Value Contracts provided at Schedule 6 but below the regulated Threshold, the Contract Strategy Document may elect to use the quick quote procedure.

23.2 The Quick Quote procedures to be followed shall be the same as those set out in Schedule 6 to these Standing Orders, notwithstanding that the value of the contract will be greater than the procedure note thresholds.

24. Electronic Auctions

24.1 For the purpose of these Standing Orders, the expression “electronic auction” means:- A repetitive process involving an electronic device for the presentation of new prices, revised downwards, and/or new values concerning certain elements of tenders, which occurs after an initial full evaluation of the tenders, enabling them to be ranked using automatic evaluation methods or utilising an existing framework agreement where the use of electronic auctions as a call off mechanism is permitted.

24.2 The Contract Strategy Document may recommend, and authorisation of the Contract Strategy Document may elect to use an electronic auction where the possibility of the use of an electronic auction has been stated in the approved Contract Strategy Document and subsequent Contract Documents issued to suppliers and, where the 2015 Regulations apply, in the Contract Notice published in the appropriate portal and journals.

24.3 Electronic auctions shall be considered for IT purchases.

24.4 For the avoidance of doubt, an electronic auction may be used where previous stages of a tendering procedure have not been undertaken using electronic means.

24.5 Before proceeding with an electronic auction, a full initial evaluation of the tenders shall have been made in accordance with the award criteria. All tenderers who have submitted admissible tenders shall be invited simultaneously by electronic means to submit new prices and/or new values.

24.6 Throughout each phase of an electronic auction SWestrans shall instantaneously communicate to all tenderers involved at least sufficient information to enable them to ascertain their relative rankings at any moment. SWestrans may also, at any time, announce the number of participants in that electronic auction. In no case, however, shall SWestrans disclose the identities of the tenderers during any phase of an electronic auction.

24.7 Prior to the commencement of any electronic auction, SWestrans shall intimate to all tenderers involved the date and time fixed for the carrying out of the electronic auction and the proposed duration of the electronic auction together with any proposals for the extension of the duration of the electronic auction.

25. Framework Agreements

- 25.1 Where SWestrans wishes to establish a framework agreement (“Framework”) to provide for agreement on the terms for future contracts for the purchase by SWestrans of goods, services and works, the following requirements shall be complied with: -
- (a) Where the 2015 Regulations apply, SWestran’s Lead Officer shall establish the Framework in accordance with those Regulations.
 - (b) In all other circumstances: -
 - i. The suppliers to be invited to tender shall be selected from those who have responded to a notice.
 - ii. The notice shall be published in accordance with the relevant procedure being followed.
 - iii. The notice shall mention: -
 - a. that SWestrans wishes to establish a Framework;
 - b. a description of the goods, service or works which are to be purchased under the Framework;
 - c. The conditions and call off procedure of the Framework and the applicable contract conditions that shall apply to contracts called off under the Framework.
- 25.2 Where a Framework has been established SWestrans may award a contract under the Framework without being required to seek further competition amongst the contractors on the Framework, where the call off procedure of the Framework permits them to do so, doing so presents value for money and where the direct award Framework call off procedure has been approved as the procurement route in the Contract Strategy Document.
- 25.3 Where a Framework has been established but it does not lay down all of the terms of a proposed contract including, for example, where a new item can legitimately be added to the Framework, a mini competition procedure under the Framework in accordance with Standing Order 25.4 below shall be conducted, where use of the Framework has been approved as the procurement route within the Contract Strategy Document.
- 25.4 Any mini-competition procedure shall be conducted in accordance with the procedures laid down in the Framework and the following:-
- a) every contractor on the Framework capable of performing the contract shall be issued with an invitation to take part in the mini competition. All invitations shall be issued at the same time;
 - b) the invitations shall specify the closing date and time for submission of tenders under the mini competition procedure. The time limit fixed for the return of tenders shall take into account factors such as the complexity of the subject matter of the contract and the time needed to prepare a tender, but, in any event, shall be not less than 4 working days from the date the invitations are issued;
 - c) each tender shall be kept confidential until the expiry of the time limit for the receipt of tenders;
 - d) any award of contract shall be made to the contractor or contractors who submitted the best tender or tenders on the basis of the award criteria specified in the

- Contract Documents based on the Framework documents; and
- e) any award of contract following a mini competition procedure shall comply with Standing Orders 33 and 36.

25.5 Where a Regulated Contract is awarded, following a direct award or further competition, under a Framework, an award notice must be published on the Public Contracts Scotland Portal.

25.6 Where, in order to participate in an existing Framework, SWestrans is required to enter into a participation agreement or other similar agreement regulating the use of the Framework by SWestrans, the Lead Officer shall have the authority to enter into the agreement on behalf of SWestrans.

26. Dynamic Purchasing Systems

26.1 The SWestrans Lead Officer may elect to establish and use a Dynamic Purchasing System ("DPS") if satisfied that:

- a) it is in the interests of SWestrans to do so;
- b) the DPS will only be used for commonly used purchases the characteristics of which, as generally available on the open market, meet SWestrans's requirements; and
- c) the costs of the DPS will not outweigh the likely benefits of using the DPS.

26.2 Any DPS established under this Standing Order shall be operated as a completely electronic process and, throughout its period of validity, shall be open for the admission of any suppliers who meet the selection criteria set.

26.3 Where the Contract Strategy Document elects to establish and use a DPS, the rules for such a procedure set out in the 2015 Regulations shall be followed.

27. Concessions

27.1 Where SWestrans intends to grant a services concession contract or a works concession contract ("concession"), SWestrans Lead Officer shall be responsible for determining a best estimate of the financial value of the concession which shall be in accordance with the Concession Contracts (Scotland) Regulations 2016, if applicable.

27.2 Based on the best estimate of the financial value of the concession, the SWestrans Lead Officer, seeking procurement and legal advice, shall determine the procedures that require to be followed in terms of these Standing Orders and, where applicable, the Concession Contracts (Scotland) Regulations 2016. This shall ensure the principles fair, equal, transparent treatment of interested parties continue to be observed and is likely to recommend an advertised opportunity irrespective of if the Concessions Contracts (Scotland) Regulations 2016 threshold applies.

28. Design Contests

28.1 Where the SWestrans Lead Officer considers it appropriate to do so, a design contest may be held, which shall be a competitive procedure whereby plans and designs are invited under predetermined rules in terms of which the successful entry selected is awarded a contract.

- 28.2 Where a design contest is to be held, a notice shall be placed on the Public Contracts Scotland Portal and in addition may also be placed in one or more national newspapers circulating in the Dumfries and Galloway area and also in such trade journals as may be considered necessary. The notice shall state:-
- a) that a design contest is being held;
 - b) a description of the project;
 - c) the place where a prospective competitor may obtain a copy of the rules; and
 - d) the date not less than 14 days from the date of the publication of the notice by which the prospective competitor must intimate, in writing, their interest in being involved in the contest.
- 28.3 After the expiry of the period specified in the notice, invitations to tender shall be sent to at least three persons selected. If fewer than three persons have applied and are considered suitable, then invitations to tender shall be sent to all suitable persons.
- 28.4 Where only one suitable applicant has applied, SWestrans Lead Officer shall decide either to abandon the contest or to negotiate with the sole suitable applicant for the award of the contract using the Negotiated Procedure without Prior Publication of a Notice in Standing Order 19.
- 28.5 For the purposes of these Standing Orders a design contest means a competition in which SWestrans:-
- a) invites the entry of plans and designs;
 - b) establishes rules for the competition under which the plans or designs will be judged by a jury;
 - c) may award prizes; and
 - d) is enabled to acquire the use or ownership of plans or designs selected by the jury.

29. E-Procurement

- 29.1 This Standing Order shall apply to any tendering procedure (including for the avoidance of doubt a mini competition under a Framework) or contract entered into using electronic means.
- 29.2 Unless in exceptional circumstances, all procurement exercises or negotiated procedures shall be conducted by electronic means ("e-procurement").
- 29.3 No tender submitted using electronic means shall be considered unless it is received in the format requested and prior to the deadline for the receipt of tenders as stated in the Contract Documents and is submitted via the electronic tender system.
- 29.4 All tenders received shall be kept unopened in a single secure electronic mailbox that cannot be opened before the deadline for the receipt of tenders.
- 29.5 Insofar as is reasonably practicable the electronic tender system used does not allow the identity of the organisation(s) submitting the tender to be revealed prior to the tender being opened after the deadline for the receipt of tenders.
- 29.6 For each procurement exercise the electronic tender system used shall keep and, if required, produce a record showing the time and date of receipt of all tenders received.
- 29.7 Late tenders shall be clearly identified as such by the system and shall be recorded as rejected on the system with the tenderer being notified to this effect.

- 29.8 Late tenders shall be rejected except in special circumstances where a late tender is required to be received. Acceptance of a later tender shall only be granted in circumstances where for example only one other offer has been received by the deadline and may only be accepted provided the other offer has not yet been opened.
- 29.9 The tender deadline for the submission of tenders shall be extended:
- i) where additional relevant information, although requested by a potential tenderer in good time, is not supplied at least six days before the deadline; or
 - ii) where significant changes are made to the Contract Documents; or
 - iii) Where it is considered appropriate to do so to provide the best possible tender returns.
- 29.10 Where the deadline for submission of tenders is extended, the officer responsible for the administration of the tender process shall notify all potential tenderers of the extension and any tenderers who have already submitted tenders shall be given the opportunity to re-submit their tenders.
- 29.11 This Standing Order shall also apply to the receipt and custody of tenders for sub-contracts let using electronic means to be performed by nominated sub-contractors.

30. Opening of Tenders

- 30.1 All tenders shall be opened as soon as is reasonably practical following the tender deadline.
- 30.2 All tenders for a procurement exercise shall be opened immediately one after the other during one session.
- 30.3 A minimum of two officers from shall be present when tenders are opened. The officers present shall complete and sign a record to show who opened the tenders, who witnessed the process and the responses received. One of these officers may be a Council officer.

31. Validation, Clarification and Correction of Tenders

- 31.1 All tenders shall be subject to checking.
- 31.2 Between the last time and date for the receipt of tenders and the date on which a decision is taken as to which, if any, tender is to be accepted a tenderer may be contacted where it is necessary to validate or clarify the terms of the tender, including the withdrawal of any qualification to the tender or to affect any necessary adjustments. A full written record shall be kept of all such contacts and shall be retained with the original tender.
- 31.3 An arithmetical check of all tenders will be carried out and recorded as having been completed. Where examination of the tenders reveals arithmetical errors, or obvious errors in the rates tendered or discrepancies, the tenderer will be given the opportunity of confirming, amending (in the case of arithmetical errors only) or withdrawing his tender. All correspondence relating to such matters shall be in writing or in email and shall be retained with the original tender.

- 31.4 For works contracts, reviews to ensure sustainable pricing of all tenders will also be carried out. Where this review provides areas for concern the clarification procedures as set out within the Scottish Government Construction Procurement Handbook for abnormally low tenders and sustainable pricing shall be conducted and as further set out within section 33.
- 31.5 Where during the commercial evaluation of tender submissions, the evaluators consider that a tender may be abnormally low, the procedures set out to clarify abnormally low tenders within the relevant procurement handbook or procurement journey provided by Scottish Government shall be followed to ascertain the sustainability of the offer.
- 31.6 The application of this procedure and the outcome must be documented within the Contract Authorisation Report.

32. Technical and Financial Checks

- 32.1 No organisation may be awarded a contract for the supply of goods, materials or services or the execution of works unless a satisfactory review of the proposed organisation has been carried out as to:-
- the technical capability of the tenderer; and
 - the financial standing of the tenderer.
- 32.2 It shall not be necessary to review the financial standing of proposed contractors where:
- the estimated value of the contract is £100,000 or below; or
 - the tenderer has been reviewed in the preceding 12 months from the date of the tender.
- 32.3 Assessment of a tenderer's technical capacity shall include a determination as to whether:
- a) the tenderer meets the selection criteria; and
 - b) any exclusion grounds under the Procurement Reform Rules apply to the tenderer.
- 32.4 The assessment under Standing Order 32 shall be based initially on the SPD submitted by the tenderer but, at any moment during the procedure, SWestrans may require the tenderer to submit all or any of the supporting documents where it is considered to be necessary to ensure the proper conduct of the procedure.
- 32.5 Where a procedure requires a shortlist of participants to be prepared, before a participant may be included on the shortlist the officers responsible for the procurement shall:-
- a. verify that the participant whom he/she intends to shortlist meets all relevant criteria; and
 - b. require the participant to submit such means of proof and supporting documents that is considered to be necessary.

- 32.6 Before preparing any report to seek approval to award a contract, the officers responsible for the procurement shall:-
- a. verify that the participant who is the proposed contractor meets all relevant criteria; and
 - b. require the participant who is the proposed contractor to submit such means of proof and supporting documents that is considered to be necessary.
- 32.7 Where the responsible officers are unable to verify that an organisation meets all relevant criteria, or where an organisation fails to submit such means of proof and supporting documents as required, the organisation shall be excluded from the procedure.
- 32.8 A record showing the results of each check of the technical capacity and financial standing for each tenderer shall be retained on file by the Corporate Procurement Team. Procuring service departments shall provide copies of such records to Corporate Procurement Team where they were not directly involved in the evaluation.

33. Post -Tender Negotiations

- 33.1 Once the evaluation of tenders has been completed, SWestrans may enter into post tender negotiations. Post tender negotiations shall only be used in circumstances where the tender evaluation process has been conducted in accordance with the Standing Orders and has identified a tenderer or tenderers who have submitted the most economically advantageous tender to SWestrans for a contract or part of a contract and is satisfied that there is scope for improvement in the offer received and that such negotiations will be in the best interests of securing value for money or improved terms and conditions for SWestrans. Post tender negotiations shall only be used with that tenderer so identified. The post tender negotiations shall not be used to put other tenderers at a disadvantage or to distort competition.
- 33.2 Where it is considered possible that post tender negotiations might apply, a clear indication will be given to prospective contractors in the instructions to tenderers that post tender negotiations might be considered.

34. Notification of Award

- 34.1 Following the evaluation of all tenders received, the Contract Authorisation Report provided at Schedule 4 shall be prepared and submitted for approval in advance of notifying tenderers of the outcome or awarding a contract.
- 34.2 The successful tender shall only be accepted on behalf of SWestrans in accordance with the Scheme of Delegation.
- 34.3 The SWestrans Lead Officer may terminate any procedure at any time up to the award of the contract where in circumstances where Lead Officers believes that justification exists for that course of action and appropriate procurement and legal advice has been obtained. Where a procedure is terminated, all tenderers shall be informed of the decision in writing as soon as reasonably practicable.
- 34.4 In accordance with the Procurement Reform Rules, where a tenderer is excluded from a procedure at any stage before submitting a tender, the tenderer shall be notified in writing and provide reasons as soon as reasonably practicable.
- 34.5 All tenderers shall be informed in writing of the success or otherwise of their tender as

soon as is reasonably practicable after the approval of the successful tender and shall be provided with reasons in accordance with the applicable Procurement Reform Rules.

- 34.6 Where e-tendering has been used, the communication with tenderers in terms of Standing Order 34.5 above shall be undertaken using the e-tender system.
- 34.7 Advice may be sought from the Council's Corporate Procurement Team on the wording of these letters, or templates to be used where available.

35. Mandatory Standstill Period

- 35.1 Where the 2015 Regulations apply and authority has been granted for the acceptance of the successful tenders, no tender shall be accepted until the date when the mandatory standstill period in terms of those Regulations has expired, and no valid challenge has been received to the contract award decision.
- 35.2 The mandatory standstill period is a period of at least 10 calendar days between the date of dispatch of the letters issued in accordance with the 2015 Regulations and the date when it is proposed to enter into the contract.

36. Health and Safety

- 36.1 No contract shall be awarded to a contractor unless the contractor, supplier or service provider satisfies SWestrans that they are operating health and safety policies which conform to the current legislation.

37. Equality

- 37.1 No contract shall be awarded to a contractor unless the contractor, supplier or service provider satisfies SWestrans that they are complying with the Equality Act 2010.

38. Contracts Register

- 38.1 Within 5 working days of the award of a contract, the officer who has responsibility for awarding or managing the contract shall ensure it is included on the appropriate Contracts Register.

39. Extension of Contract Duration

- 39.1 Where appropriate and in conformity with the 2015 Regulations, provision can be made in a contract for a period of extension.

40. Assignment, Termination and Modification

- 40.1 In every contract, there shall be a provision whereby the contractor shall be prohibited from transferring or assigning to any person or persons whatever, any portion of the contract without the prior written consent of SWestrans. SWestrans shall seek appropriate legal and procurement advice prior to considering the assignment of a contract.
- 40.2 The Lead Officer may exercise any power on behalf of SWestrans to terminate any

contract or part of a contract or to terminate SWestran's participation in a Framework Agreement or to agree to vary or amend the terms of any contract but only following legal and procurement advice and subject to them all being satisfied that it is reasonable and in the interests of SWestran's to exercise that power.

41. Pilot Projects

- 41.1 These Standing Orders shall apply to any procurement related to pilot projects for which SWestrans has responsibility whether or not fully or part funded by SWestrans, the Council, the Scottish Government or another third party.

42. Sustainable Development

- 42.1 SWestrans are committed to achieving sustainable procurement outcomes and must ensure SWestrans fulfils its Sustainable Procurement Duty.
- 42.2 The Sustainable Procurement Duty will be considered in the development of every Contract Strategy Document for a Regulated Procurement, taking into account how the Regulated Procurement can:
- (a) improve the economic, social and environmental wellbeing of the Dumfries and Galloway area;
 - (b) facilitate the involvement of small and medium enterprises, third sector organization and supported businesses in the Regulated Procurement; and
 - (c) promote innovation.

43. Commencement Date

- 43.1 These Standing Orders shall come into effect on the first working day after the SWestrans Board meeting at which they are approved.

SCHEDULE 1 – CONTRACT STRATEGY DOCUMENT

1 SECTION ONE – CONTRACT OVERVIEW

1.1 CONTRACT DETAILS

Contract Title	
Contract Reference Number	
Proposed Contract Duration Period (including Optional Extension)	
Date Created	
Author	
Department	

1.2 EXECUTIVE SUMMARY

GUIDANCE: Highlight the key points of your strategy considering:

DO's	DON'Ts
<ul style="list-style-type: none"> • Be clear and concise (max 5-8 sentences) • Focus on Why? What? How? • Note key findings on: <ul style="list-style-type: none"> ➤ benchmarking and opportunities ➤ options considered ➤ recommendations (incl. procurement route) and key actions ➤ contract benefits ➤ key risks and resource implications 	<ul style="list-style-type: none"> • Use jargon • Be inconsistent • Add new information (to what was detailed in the report) • Include additional tables • Write it before the report is completed

1.3. USER INTELLIGENCE GROUP

GUIDANCE:

- User Intelligence Group (UIG) is created by both procurement and technical professionals to ensure a contract is developed to meet user requirements.
- You will need to identify the key stakeholders for this procurement exercise.
- More guidance can be found in the UIG Welcome Pack template attached

Important: All members of the User Intelligence Group need to complete the Procurement Conflict of Interest Declaration before the tender documents are developed.



1.1. UIG Welcome Pack including Procurement Conflict of Interest I

It will only be in very limited circumstances where a UIG will not be required to ensure a collective understanding

of the business requirements at the outset of any procurement process.

Yes – UIG will be required for this contract. Attach completed Procurement Conflict of Interest Declarations to this Contract Strategy.

No – UIG will not be required for this contract. Provide a brief justification below.

1.4 CONTRACT OBJECTIVE & SERVICE STRATEGY/FORWARD PLAN

GUIDANCE:

- Highlight contract's key objectives based on the prior analysis.
- Consider: **what does this contract need to do?** and **what will this contract achieve?**
- Detail any outcomes the contract is required to deliver.
- Explain how this contract will contribute to your service area's plan (include hyperlinks to relevant Committee papers as appropriate at the end of the document).

1. AGREED BUDGET

GUIDANCE: Information MUST be completed prior to the contract strategy sign off.

Authorised Budget Amount		Estimated Annual Contract Value	
Budget Year(s) in which expenditure will be incurred			
Cost Centre		Account Code	
Additional Comments:			

2 SECTION TWO – CURRENT CONTRACT INFORMATION


2.1 CURRENT SITUATION, CONTRACT STATUS & SPEND ANALYSIS



GUIDANCE:

- Provide information on how the requirements are currently being bought or have been bought (in the last 4 years) e.g., start and end dates, current supplier and contract spend.
- Provide a summary of the current contract scope with any TUPE implications (if applicable) and the agreed exit strategy.

New or Recurring Requirement?

New - if there is no current contract, please provide brief information on how the goods services or works are currently being bought or have been bought in the past.

Recurring - complete the below fields regarding the current contract			
Contract Start Date		Contract End Date	
Contract Duration		Lead Authority For collaborative contracts e.g. Scotland Excel	
Contract Scope 1 - 2 sentence(s) summary, highlighting any key amendments to the planned new contract if applicable			
TUPE Implications			
<p>GUIDANCE: TUPE = The Transfer of Undertakings (Protection of Employment) Regulations 2006</p> <ul style="list-style-type: none"> • TUPE applies if there is either a business transfer or a service provision change. • It aims to protect employees' rights and ensure continuity of employment. • If you are not sure if TUPE applies, please review the guidance below and/or consult with Legal and HR teams & complete section 9.1. Contract Strategy Consultation. <p> Guide to TUPE Regulations 2006.pc</p>			
Do TUPE implications apply? (if no, please move to the next section)			
Details/Justification (include details if clauses to allow for TUPE information to be shared within tender documents from incumbent provider are in current contract and any known risks)			
Current Supplier(s)			
FINANCIAL SPEND			
Annual Spend (Year 1)			

Annual Spend (Year 2)		
Annual Spend (Year 3)		
Annual Spend (Year 4)		
Total Spend		
GUIDANCE: <i>Check Spikes Cavell Hub to gain a detailed understanding of the current commodity spend.</i>		
New/Recurring Contract	New	Recurring
Spend by Commodity and any Sub-Commodity		
Spend by Department		
Off Contract Spend		
2.2 CURRENT EXIT STRATEGY		
GUIDANCE:		
<ul style="list-style-type: none"> • Attach the current contract exit strategy if available • Describe plans and timetable to be followed when the current contract is due to expire. • Consider how to ensure smooth transition to a new contract: handover of files, exit period/implementation period, communication with new supplier, communication with clients about changes to the service provided etc. 		
2.3. KEY LESSONS LEARNED		
GUIDANCE:		
<ul style="list-style-type: none"> • What have you learned from previous experience? • Are there any issues that should be considered in the development of this contract? • The documents below can be used as a template to prompt lessons learned if they have not previously been tracked (Lessons Learned tracker should be used throughout the duration of your contract to record relevant notes). 		
		
Post Project Review.doc	1.4. Lessons Learned Log.xlsx	
3 SECTION THREE – COMMODITY & SUPPLY MARKET ANALYSIS		
3.1 COMMODITY ANALYSIS		
GUIDANCE:		
<ul style="list-style-type: none"> • Complete the table below with information which summarises the commodity characteristics. • This information will help populate the tender specification. 		

- Consider the use of additional tools such a PESTLEE Analysis, Porters 5 Forces or SWOT Analysis (the guidance on how to use these tools is attached below)



1.5. Commodity and Supply Market Analy

Functionality

What are the key requirements of the contract?

End User Requirements

What does the end user need the contract to deliver?

Organisation Requirements

What are the requirements of the organisation?

Future Trends

Are there any future changes to be considered e.g., IT developments?

Constraints

Are there any barriers that could prevent requirements being met?

3.2 SUPPLY MARKET ANALYSIS

GUIDANCE:

- Complete the table below with information which summarises the current market conditions.
- This information will be used to inform business engagement activities and will influence the development of the commodity strategy e.g., route to market, lotting strategy.

Market Description

E.g., construction, adult care, transport

Market Overview

Summary of market conditions e.g., size, cycle/stage, number of suppliers.

Trade Associations



Who we may need to consult to obtain information to develop specifications, e.g., regulatory bodies

Key suppliers

Who is likely to respond to this?

Market Trends

E.g., inflation			
Developments and Innovation Are there any new developments in technology?			
Has Market Consultation been carried out? If not, please provide justification for not doing this. If yes, please provide key points and findings.			
3.3. POLICIES AND REGULATIONS			
GUIDANCE: Consider which Policies / Regulations apply to the contract. If any policy applies, or you are unsure, please contact the relevant team for further information. If you seek consultation with other teams, please complete section 9.1. Contract Strategy Consultation.			
Policy/regulation	Consider	Outcome	Contact
GDPR/ Data Protection Act 2018 ("DPA")	Does GDPR / DPA apply? A Data Protection Impact Assessment may be required.		Data Protection Officer
IR35	Does IR35 apply?		HR
Transfer of Undertakings Protection of Employment	Does TUPE apply?		Legal & HR
Construction Design and Management Regulations	Do CDM regulations apply?		Health & Safety
Equalities and Fairness	Have the outcomes this contract is required in support of been assessed for Equality and Fairness? An EFIA may be required.		Equalities Officer
Payment Card Industry Data Security Standards (PCIDSS)	Does this contract include an income stream for which customers will make payments via a debit or credit card?		IT
3.4. ICT REQUIREMENTS			
GUIDANCE:			
<ul style="list-style-type: none"> • Consider whether there any IT requirements to be included in the contract. • If yes, please contact your IT Service for further guidance. • This is critical where there will be a requirement to run software or connect devices to the Council's ICT infrastructure. 			

3.5. KEY RISKS		
<p>GUIDANCE:</p> <ul style="list-style-type: none"> • What are the risks which will need to be managed for this procurement? • Information noted here will help to determine the content of the tender documentation. • Complete the Risk Register (template below) and attach it with your response. <p></p> <p>1.6. Appendix B - Risk Register.docx</p>		
Key Risks Overview		
Risk Register Attach completed risk register		
4 SECTION FOUR – OPPORTUNITY ASSESSMENT		
4.1 BEST VALUE TRIANGLE		
<p>GUIDANCE: Consideration should be given to the Best Value Triangle. An example Best Value Triangle can be found in the attachment below.</p> <p></p> <p>1.7. Initial Opportunity Assessr</p>		
Best Value Triangle – Opportunities		Considerations
Purchase Demand Management	Reduce Consumption	
	Consolidate Spend	
	Improve Specifications	
Supply Base Management	Restructure Relationships	
	Increase Competition	
	Restructure Supply Base	
Total Cost Management	Optimise Total Supply Chain Costs	
	Reduce Total Ownership Costs	
	Reduce Transactions	
4.2. ALTERNATIVE DELIVERY METHODS		

GUIDANCE: Has an alternative resource to deliver the contract been considered? Is there in-house resource, partner organisation's or an arm's length organisation's existing agreement to be used to meet the requirements of this contract? If yes, a **summary of the In-House/Outsourcing Decision Making record should be provided.**



Inhouse
Outsourcing Decisic

	Yes/No	Additional Comments
Have you considered in-house resource?		
Have you considered partner's or an arm's length organisation resource?		

4.3. COLLABORATION

GUIDANCE:

- Complete the table below detailing potential collaboration opportunities.
- Consider if there are similarities in the scope of other public bodies' contracts.
- Consider if there are national/collaborative contracts and frameworks available (e.g., Scottish Government, Scotland Excel, CCS).
- Consider if these are appropriate to be used by SWestrans.
- Where a collaborative contract is available, the commodity strategy relating to this contract should be obtained for review.

Is there an opportunity for collaboration?	
Details / Justification	
Collaborative Contract Available	
Lead Authority	

5 SECTION FIVE – PROCUREMENT PROCESS

5.1 OPTIONS APPRAISAL

GUIDANCE: Describe the strategic options which have been considered and the preferred option to be implemented. This may include several option appraisals to demonstrate consideration for route to Market (open or restricted) and lotting considerations.

	Option 1	Option 2	Option 3	Option 4
Procurement Route				
Pros and Cons of each option				

Recommendation and justification				
	Option 1	Option 2	Option 3	Option 4
Procedure				
Pros and Cons of each option				
Recommendation and justification				
Lots	Not Applicable	1 Lot	Geographical	Product/Service
Pros and Cons of each option				
Recommendation and justification				
How many suppliers per lot?				
It is suitable as a reserved contract? Reserved contract – contract’s participation is reserved to sheltered workshops, economic operators and programmes aimed at integration of disabled or disadvantaged people (Ref: Reg. 20 of Public Contract Regulations 2015)				
5.2. PROCUREMENT ROUTE & PROCESS TO BE FOLLOWED				
Procurement Route				
Lots (if applicable)				
Form of contract				
Selection Criteria (Themes and minimum criteria)				
Insurance requirements values for Employer’s Liability Public Liability Professional Indemnity Other				
Award Criteria (Price/Quality Ratio)				
Award Criteria (Themes)				
Award Criteria (Additional Comments)				

6 SECTION SIX – PROPOSED CONTRACT’S BENEFITS

6.1 SOCIAL VALUE

GUIDANCE:

- The Sustainable Procurement Duty requires an organisation to consider how they can improve the Social, Environmental and Economic wellbeing of the area in which they operate in (with a particular focus on reducing inequality).
- Sustainable procurement is concerned with identifying the potential environmental, social and economic aspects that could be incorporated within a procurement process and would contribute to delivering social value.
- Sustainable procurement should align with the climate change priority to 'Urgently respond to climate change and transition to a carbon neutral region'.
- Consider how sustainability areas relevant to the contract requirements might be specified within the procurement process.
- Complete the Sustainability Test (as a min. for contracts falling into high ranked categories on the Prioritisation Tool)
- Guidance documents and the Sustainability Test are available on:
<https://sustainableprocurementtools.scot/>

ECONOMIC BENEFITS

GUIDANCE: Consider the following

- Availability of suitable and high-quality jobs
- Measures to encourage local small businesses
- Efficient and effective transport links
- Lifelong learning
- Training and skills development
- The provision of infrastructure, new information and communication technologies

SOCIAL BENEFITS

GUIDANCE: Consider the following

- The promotion of good quality and affordable housing
- Safe communities
- The encouragement of the voluntary sector including social enterprises and supported businesses
- Looking after the needs of children and young people
- Looking after the most vulnerable

ENVIRONMENTAL BENEFITS

GUIDANCE: Consider the following

- Availability of clean air, clean water and clean streets
- The quality of the built environment
- The removal of objects considered hazardous to health
- Removal of disfiguring or offensive graffiti
- Protecting communities against the threat of climate change

- Reducing the impact of climate change through the reduction of greenhouse gas emissions
- Adopt low carbon technologies
- Freedom from high-risk flooding
- Improving and promoting biodiversity and accessibility to nature

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EQUALITY

GUIDANCE: If the contract award decision is likely to have a significant impact on people affected by the decision, those should be consulted beforehand. This can be done by producing an Equality Impact Assessment (EQIA):



1.8. EQIA Assessment.docx

Is EQIA Assessment Required?	
If 'Yes', attach the completed document:	
If 'No', provide justification:	

FAIR WORK FIRST

GUIDANCE:

- As part of the SWestran's procurement duties, we must consider the effect fair work practices will have on the quality of the services and goods to be delivered.
- How will you evidence the successful supplier is taking responsibility for this?



Fair work commodity service st

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COMMUNITY BENEFITS

GUIDANCE:


- Consider if this contract is suitable for the delivery of Community benefits.
- Community Benefits is the term used to refer to a range of 'social issues' including targeted recruitment and training, equal opportunities considerations, supply change initiatives, awareness raising programmes and community engagement activity which contribute more widely to sustainable procurement.


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6.2 FORECAST SAVINGS To be completed jointly by: Service & Procurement Teams

GUIDANCE: Contact the Finance Team if you seek further guidance.

Value	Percentage	Description	Financial Year

Additional Comments:	
6.3 NON – CASHABLE FINANCIAL BENEFITS To be completed jointly by: Service & Procurement Teams	
GUIDANCE: Detail the planned non-cashable financial contract benefits such as cost avoidance (e.g., fixed pricing), procurement efficiency (e.g., increased performance), added value elements.	
Description	Comment
7 SECTION SEVEN – CONTRACT AND SUPPLIER MANAGEMENT	
7.1 CONTRACT MONITORING ASSESSMENT	
GUIDANCE: <ul style="list-style-type: none"> The level of contract and supplier management required depends on the risk, value and complexity of the contract. Based on the Contract Segmentation Categories – Guidance document (attached below) determine the Contract Management level for your procurement.  <p>Contract Segmentation Catec</p>	
Contract Management Level Low/Medium/High	Comment
Frequency of Contract Management Monthly/Quarterly/Bi-Annually/Annually	
How will performance be monitored? E.g., Use of balanced scorecard	
What are the resource arrangements for contract management? Consider BAU contract management and escalation	
What will be the internal and external communication activities/plan?	
7.2 PLANNED CONTRACT PERFORMANCE MEASURES	
GUIDANCE: <ul style="list-style-type: none"> Attached are examples of KPIs which can be used on all contracts. 	


 DGC Standard KPIs for Goods and Servi

KPI ID	KPI Title	KPI Description	Frequency

7.3 FUTURE EXIT STRATEGY

GUIDANCE:

- **Complete Appendix A – Exit Strategy** to provide details of any requirements (to be included within the tender documentation) relating to the process to be followed when the contract is due to expire.
- Consider: handover of files, exit period/implementation period, communication with new supplier, communication with clients about changes to the service provided etc.

 Appendix A - Exit Strategy.docx

Exit Strategy Overview	
Exit Strategy Attach completed Exit Strategy (Appendix A)	

7.4 PAYMENT ARRANGEMENTS

What are the payment milestones / frequency of payments to be included within the contract?	
What will be the payment method under the contract?	
What fixed pricing period will apply and what mechanism will be used to support any price variations? Please include reasons why.	

8 SECTION EIGHT – GOVERNANCE

8.1 RESOURCES (CROSS-FUNCTIONAL TEAM)

GUIDANCE: Identify all members of project team; this should include everyone who will have an involvement in the project.

Project Role	Name	Department
Project Lead		
Project Sponsor		
Procurement Lead		
Insurance Advisor		
Health & Safety		
Finance		
Technical Specialists		
Contract Manager		
Tender Evaluation Panel		

8.2 PROJECT PLAN & KEY ACTIVITIES

GUIDANCE: This will be your procurement timeline. Depending on the procedure you have selected it may not be necessary to follow all steps set out below. Please note there are set timescales for carrying out an above threshold tender process.

Key Milestone	Duration (In days)	Planned Start Date	Anticipated End Date
Specification Development			
Stakeholder Consultation (e.g., Insurance, H&S Levels, Legal)			
Tender Published			
Tender Return Date			
Tender Evaluation & Clarification			
CAR/PSC Papers due for Approval by Stakeholders			
Approval Obtained			
Notification of Outcome Letters			
Obtain supporting documents Request for documentation			
Standstill Period			

Contract Award			
Contract Mobilisation & Implementation			
Contract Start Date			
Supplier on Site Date (if applicable)			
Review Tasks Complete Lessons Learned Log			

9 SECTION NINE – STRATEGY APPROVAL

9.1 Contract Strategy Consultation

GUIDANCE: Complete when other departments have been consulted on the Contract Strategy e.g., in relation to TUPE, IR35, GDPR, DPA, Approved Budget, Forecasted Savings.

Department	Name and Title	Date	Signature
Legal Team			
Finance Team			
HR Team			
H&S			
IT			
Other			

9.2 Contract Strategy APPROVAL

To be completed jointly by: Procurement Teams

GUIDANCE: This section of the strategy requires sign off. The relevant levels are detailed below:

- Contract Value less than GPA Threshold – SWestrans Lead Officer with agreement from the Council's Procurement and Commissioning Manager
- Contract Value over GPA Threshold - SWestrans Board with agreement from the Council's Head of Finance and Procurement

Name	
Title	
Signature	
Date	

SCHEDULE 2 – FRAMEWORK UTILISATION FORM

This form is for use where SWestrans have been considered and influenced the development of a wider contract strategy where the framework is set up, typically frameworks owned and managed by Dumfries and Galloway Council, Scotland Excel, Scottish Government and Crown Commercial Services.

1 SECTION ONE – CONTRACT OVERVIEW					
1.1 CONTRACT DETAILS					
Contract Title					
Contract Reference Number					
Proposed Contract Duration Period (including Optional Extension)					
Framework to be utilised (including Framework Owner and Lot)					
Framework Reference Number					
Date Created					
Author					
Department					
1.2 EXECUTIVE SUMMARY					
GUIDANCE: Highlight the key points of your report considering:					
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center; padding: 5px;">DO's</th> <th style="text-align: center; padding: 5px;">DON'Ts</th> </tr> </thead> <tbody> <tr> <td style="padding: 5px; vertical-align: top;"> <ul style="list-style-type: none"> • Be clear and concise (max 5-8 sentences) • Focus on Why? What? How? • Note key findings on: <ul style="list-style-type: none"> ➤ Contract requirements ➤ Financial information ➤ Details of the framework to be used and call off mechanism </td> <td style="padding: 5px; vertical-align: top;"> <ul style="list-style-type: none"> • Use jargon • Be inconsistent • Add new information (to what was detailed in the report) • Include additional tables • Write it before the report is completed </td> </tr> </tbody> </table>	DO's	DON'Ts	<ul style="list-style-type: none"> • Be clear and concise (max 5-8 sentences) • Focus on Why? What? How? • Note key findings on: <ul style="list-style-type: none"> ➤ Contract requirements ➤ Financial information ➤ Details of the framework to be used and call off mechanism 	<ul style="list-style-type: none"> • Use jargon • Be inconsistent • Add new information (to what was detailed in the report) • Include additional tables • Write it before the report is completed 	
DO's	DON'Ts				
<ul style="list-style-type: none"> • Be clear and concise (max 5-8 sentences) • Focus on Why? What? How? • Note key findings on: <ul style="list-style-type: none"> ➤ Contract requirements ➤ Financial information ➤ Details of the framework to be used and call off mechanism 	<ul style="list-style-type: none"> • Use jargon • Be inconsistent • Add new information (to what was detailed in the report) • Include additional tables • Write it before the report is completed 				

 || **1.3. CONFLICT OF INTERST FORM** | |

GUIDANCE:

- You will need to identify the key stakeholders for this procurement exercise.
- All key stakeholders listed must complete the Procurement Conflict of Interest Declaration.



Procurement
Conflict of Interest I

1.4 CONTRACT OBJECTIVE & SERVICE STRATEGY/FORWARD PLAN**GUIDANCE:**

- Highlight contract's key objectives based on the prior analysis.
- Consider: **what does this contract need to do?** and **what will this contract achieve?**
- Detail any outcomes the contract is required to deliver.
- Explain how this contract will contribute to your service area's plan (include hyperlinks to relevant Committee papers as appropriate at the end of the document).

1. AGREED BUDGET

GUIDANCE: Information MUST be completed prior to the contract strategy sign off.

Authorised Budget Amount (including annual breakdown where relevant)

Cost Centre

Account Code

2 SECTION TWO – CURRENT CONTRACT INFORMATION**2.1 CURRENT SITUATION, CONTRACT STATUS & SPEND ANALYSIS****GUIDANCE:**


- *Provide a summary of current contract arrangements where necessary, including last 4 years expenditure from Spikes / Integra, any exit strategy agreed, TUPE implications, notice periods etc.*


3.3. POLICIES AND REGULATIONS			
GUIDANCE: Consider which Policies / Regulations apply to the contract. If any policy applies, or you are unsure, please contact the relevant team for further information. If you seek consultation with other teams, please complete section 9.1. Contract Strategy Consultation.			
Policy/regulation	Consider	Outcome	Contact
GDPR / Data Protection Act 2018 (“DPA”)	Does GDPR / DPA apply? A Data Protection Impact Assessment may be required.		Data Protection Officer
IR35	Does IR35 apply?		HR
Transfer of Undertakings Protection of Employment	Does TUPE apply?		Legal & HR
Construction Design and Management Regulations	Do CDM regulations apply?		Health & Safety
Equalities and Fairness	Have the outcomes this contract is required in support of been assessed for Equality and Fairness? An EFIA may be required.		Equalities Officer
Payment Card Industry Data Security Standards (PCIDSS)	Does this contract include an income stream for which customers will make payments via a debit or credit card?		BTS
ICT Requirements	Consider whether there any IT requirements to be included in the contract. If yes, please contact your IT Service for further guidance. This is critical where there will be a requirement to run software or connect devices to the Council's ICT infrastructure.		BTS
4 SECTION FOUR – OPPORTUNITY ASSESSMENT			
4.2. ALTERNATIVE DELIVERY METHODS			
GUIDANCE: Has an alternative resource to deliver the contract been considered? Is there in-house resource, partner organisation's or an arm's length organisation's existing agreement to be used to meet the requirements of this contract? If yes, a summary of the In-House/Outsourcing Decision Making record should be provided.			



Inhouse
Outsourcing Decisic

	Yes/No	Additional Comments		
Have you considered in-house resource?				
Have you considered partner's or an arm's length organisation resource?				
Can the service be delivered differently (e.g., stopped, reduced frequency, reduced specification)				
5 SECTION FIVE – PROCUREMENT PROCESS				
5.2 OPTIONS APPRAISAL				
<p>GUIDANCE: Describe the frameworks and call off procedures available and the pros and cons of each before making a recommendation.</p> <p>You must provide a statement to confirm the recommendation is permissible within the framework agreement.</p> <p>The options should include details of minimum criteria to be met by framework providers (to be placed on framework and contract specific) and the award criteria to be applied to result in a recommended supplier or contractor for award.</p>				
	Option 1	Option 2	Option 3	Option 4
Procurement Route				
Suitability / compliance checks on the SWestran's ability to use the framework (highlighting any risk – e.g., speculative frameworks)				
Pros and Cons of each option				
Recommendation and justification				
Award Criteria (Additional				

Comments)			
6 SECTION SIX – PROPOSED CONTRACT’S BENEFITS			
6.1 FAIR WORK FIRST			
Describe how fair work first criteria will be considered as part of the contract award process (where relevant)			
6.2 COMMUNITY BENEFITS			
Describe the proposed approach to secure community benefits (where relevant).			
6.3 FORECAST SAVINGS			
GUIDANCE: Contact the Finance Team if you seek further guidance.			
Value	Percentage	Description	Financial Year
Additional Comments:			
7 SECTION SEVEN – CONTRACT AND SUPPLIER MANAGEMENT			
7.1 CONTRACT MONITORING ASSESSMENT			
GUIDANCE: <ul style="list-style-type: none"> The level of contract and supplier management required depends on the risk, value and complexity of the contract. Based on the Contract Segmentation Categories – Guidance document (attached below) determine the Contract Management level for your procurement. 			
 <p>Contract Segmentation Catec</p>			
Contract Management Level		Comment	
Low/Medium/High			
Frequency of Contract Management			
Monthly/Quarterly/Bi-			

Annually/Annually	
How will performance be monitored? E.g., Use of balanced scorecard	
What are the resource arrangements for contract management? Consider BAU contract management and escalation	
What will be the internal and external communication activities/plan?	
7.2 FUTURE EXIT STRATEGY	
<p>GUIDANCE:</p> <ul style="list-style-type: none"> • Complete Appendix A – Exit Strategy to provide details of any requirements (to be included within the tender documentation) relating to the process to be followed when the contract is due to expire. • Consider: handover of files, exit period/implementation period, communication with new supplier, communication with clients about changes to the service provided etc. <p> Appendix A - Exit Strategy.docx</p>	
Exit Strategy Overview	
Exit Strategy Attach completed Exit Strategy (Appendix A)	
7.3 PAYMENT ARRANGEMENTS	
What are the payment milestones / frequency of payments to be included within the contract?	
What will be the payment method under the contract?	
What fixed pricing period will apply and what mechanism will be used to support any price variations? Please include reasons why.	
8 SECTION EIGHT – GOVERNANCE	
8.1 RESOURCES (CROSS-FUNCTIONAL TEAM)	

GUIDANCE: Identify all members of project team; this should include everyone who will have an involvement in the project.

Project Role	Name	Department
Project Lead		
Project Sponsor		
Procurement Lead		
Insurance Advisor		
Health & Safety		
Finance		
Technical Specialists		
Contract Manager		
Tender Evaluation Panel		

8.2 PROJECT PLAN & KEY ACTIVITIES

GUIDANCE: This will be your procurement timeline. Depending on the procedure you have selected it may not be necessary to follow all steps set out below. Please note there are set timescales for carrying out an above threshold tender process.

Key Milestone	Duration (In days)	Planned Start Date	Anticipated End Date

9 SECTION NINE – STRATEGY APPROVAL

9.1 Contract Strategy Consultation

GUIDANCE: Complete when other departments have been consulted on the Contract Strategy e.g., in relation to TUPE, IR35, GDPR, DPA, Approved Budget, Forecasted Savings.

Department	Name and Title	Date	Signature
Legal Team			
Finance Team			
HR Team			
H&S			
IT			

Other			
9.2 Contract Strategy APPROVAL			
<ul style="list-style-type: none"> Contract Value less than GPA Threshold – SWestrans Lead Officer with agreement from the Council's Procurement and Commissioning Manager Contract Value over GPA Threshold - SWestrans Board with agreement from the Councils 			
Name			
Title			
Signature			
Date			
Name			
Title			
Signature			
Date			

SCHEDULE 3 – NON-COMPETITIVE ACTION REQUEST FORM

PROPOSAL FOR CONTRACT NEGOTIATION / CONTRACT EXTENSION	
Contract Title:	
Created By:	
Tender / Quotation Ref No:	
Date Created:	
Supplier:	
Procedure Recommended:	
Contract Value:	
Contract Term:	
Details of Current Contract Status:	
Previous Spend:	
Previous Contract Term:	
Summary of Contract Requirements:	
Justification for request:	
Procurement Standing Orders / Regs exemption relied upon for Negotiation / Extension:	
Synopsis of Longer Term Plan / Strategy for delivery of these requirements:	
Implications if extension or negotiation is not approved:	

SCHEDULE 4 – CONTRACT AUTHORISATION REPORT TEMPLATE

CONTRACT AUTHORISATION: [TITLE OF REPORT]

1. Purpose of Report

- 1.1 [**Guidance:** should include an outline of the purpose of the contract, state the reasons for tender, links to any National programmes and confirm when the Contract Strategy was approved and by whom.]

2. Recommendations

- 2.1 [**Guidance:** State the supplier(s) name and registered address that you recommend awarding the contract, framework agreement or dynamic purchasing system to, the reference number attributed to the contract, the contract title, contract value and start / end dates and details of any extension timeframe applicable to the contract.]

3. Considerations

- 3.1 [Summary: What process was used (Open, Restricted, Negotiated, Framework Call Off, E-Auction etc.). State the number of companies to whom ITTs were issued/downloaded by but who failed to submit a bid and any reasons for this that have been recorded.]

- 3.2 [Market Engagement: Record actions and measures take for prior engagement with the market and record details where a supplier was excluded from tendering on this basis]

- 1.3 [Tender Information:

- i. Provide details of the qualitative selection criteria and reduction of number of tenderers where applicable. This must include the name of the selected tenderers and the reasons for their selection and the names of the tenderers rejected and the reasons for their rejection. Where a tender has been rejected as it was found to be abnormally low, reasons for this must be detailed. Where the minimum turnover threshold required was higher than two times the contract value, the reasons for this requirement must be provided.]
- ii. Provide details of the contract award criteria and the outcome of the evaluation. This should include a summary of the scoring for all tenderers considered at this stage using the table below:

	Price	Quality	Total
Supplier A			
Supplier B			
Supplier C			

- iii. The name of the successful tenderer and the reasons why its tender was selected.
- iv. Where it is known, details of sub-contracting arrangements must be recorded. This should include the share (if any) that the tenderer intends to subcontract to third parties and the names of the main contractor's subcontractors (if any).
- v. Where the competitive dialogue or competitive procedures with negotiation have been used, the circumstances justifying the use of the procedure should be recorded.
- vi. Where the negotiation procedure without prior publication procedure has been used, the circumstances justifying the use of the procedure should be recorded.

- vii. Where the recommendation includes the decision not to award a contract, framework or dynamic purchasing system following the tender procedure, the reasons for this must be provided.
- viii. Where applicable, the reasons why means of communication other than electronic means have been used for the submission of tenders must be provided.]

3.4 [Financial:

- Provide confirmation that sufficient budget is available to fund the contract.
- Where savings are generated through the procurement process, we need to set out where these savings will be attributed (e.g., against Procurement savings targets or other).
- Where there is a funding shortfall, we need to identify how this will be addressed.
- The relevant Procurement Officer and Finance Officer should agree the content of this section.
- This approach should not only apply to those contracts above the thresholds where a Contract Authorisation Report is required. Need to discuss how to achieve this.
- Where the contract funding includes revenue budget, include the table below to provide a breakdown of the costs and savings:

	Annual Budget	Recommended Annual Contract Value	Annual Revenue Saving / Cost Increase
Total			

- Where the contract funding includes capital or external sources of funding, include the table below to provide a breakdown of the costs and savings:

	Capital Budget for contract scope (excluding contingency)	Recommended Contract Value (excluding contingency)	Contingency Sum	Saving / Cost Increase
Total				

- The above reflects the 'standard content' to cover budgetary implications and treatment but this section should also contain other relevant information such as benchmark costs/comparisons etc where relevant.
- May also wish to refer to cost avoidance (or cost increase avoidance) where relevant (e.g., where an anticipated increase in cost has been minimised as a result of the procurement process).
- May need to amend the above where there is a difference between budgets available and current annual costs, although this should be less of an issue provided that budgets have been realistically aligned.]]

3.5 [Programme reference, where appropriate. e.g., Is the tender part of a Capital programme that has required prior board approval or need to be reflected in the award letter?]

3.6 [Commercial Specifics: Give detail on any bonding arrangements. e.g., Bonds, parent company guarantees, retentions, Insurances.]

3.7 [Where applicable: Statutory approvals obtained. e.g., has appropriate Planning

permission been obtained. Are there any other permissions that should be considered or reflected in the award letter?]

- 3.8 [Where applicable: SWestrans or Council ownership or equivalent of site or buildings.]
- 3.9 [Sustainable considerations and committed outcomes: Provide details of sustainable outcomes that will be achieved. Where no commitments have been sought or provided explain reasons why. Also include details of if Fair Work First criteria were considered and provide justification why not if this was not considered].

4. Governance Assurance

- 4.1 [Regulatory Compliance: Confirm any EU legislative routes that were followed, if GPA rules applied, if falls under light touch regime or any other regulatory impact on the tender or contract and detail how this has been complied with]
- 4.2 [Procurement Standing Order Compliance: state the specific clauses that are being acted upon.]
- 4.3 [Where applicable, detail any conflicts of interest detected and subsequent measures taken].

5. Impact Assessment

- 5.1 [only to be used for reports which propose a change in policy/strategy plan/project]

Author(s)

NAME	DESIGNATION	CONTACT DETAILS

Approved by

[This section of the Contract Authorisation Report required sign off. The relevant levels are detailed below:

- Contract Value less than GPA Threshold – SWestrans Lead Officer with agreement from the Council's Procurement and Commissioning Manager
- Contract Value over GPA Threshold - SWestrans Board with agreement from the Council's Head of Finance and Procurement

.]

NAME	DESIGNATION	SERVICE
		Finance and Procurement
		Procuring Service(s)

Appendices

Background Papers

SCHEDULE 5 – PROCUREMENT THRESHOLDS

The thresholds within this Schedule are relevant to procurement exercises which commence on or after 1 January 2024 (all which have not been advertised).

The thresholds which apply from 1 January 2024 shall now need to consider VAT, where applicable, when calculating the estimated value of a procurement for the purpose of determining whether the contract meets or exceeds the threshold values. Unless purchasers can demonstrate that a lower or no rate of VAT applies to a contract, the method used to estimate the value of contract is to add the standard rate of VAT (currently 20%) to the net contract estimate. This is the highest rate of VAT, which is chargeable in the UK, therefore this will avoid underestimating the contract's value if this is used to determine which set of regulations apply (i.e., if the relevant notices will be published on the UK-wide Find a Tender Service website).

To establish if a contract falls under the Procurement Reform (Scotland) Act 2014, VAT should be excluded when calculating the estimated value of the contract.

When completing relevant forms on Public Contracts Scotland, procurement officers are required to quote the estimated contract value, excluding VAT from the value.

The table below lists the threshold values. The final column is indicative only and shows the value of the new thresholds including the standard rates of VAT.

The Public Contracts (Scotland) Regulations 2015

	GPA Threshold	GPA Threshold including indicative VAT
Supplies & Services (including subsidised services contracts)	£179,807	£214,914
Works (including subsidised works contracts)	£4,447,174	£5,3372,609
Light touch regime for services	£552,950	£663,540
Small lots: supplies and services	£58,982	£70,778
Small lots: works	£737,267	£884,720

The Concession Contracts (Scotland) Regulations 2016

	Threshold	Threshold including indicative VAT
Concession contracts	£4,447,174	£5,3372,609

The Procurement Reform (Scotland) Act 2014 Thresholds:

Public contract (other	£50,000	n/a
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than a public works contract		
Public works contract	£2,000,000	n/a

Thresholds will next be reviewed on 1 January 2026

SCHEDULE 6 – PROCEDURE NOTE FOR LOWER VALUE CONTRACTS

PROCEDURE NOTE FOR LOWER VALUE CONTRACTS:

**Minimum Procedure for placing all contracts with a value of less than £50,000
for goods and services and £500,000 for works**

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1. Introduction

- 1.1 This guidance note details SWestran's procedures for placing contracts with a total estimated value of less than £50,000 for goods and services and £500,000 for works, exclusive of VAT but only where no contract exists. Note that the use of existing contracts is mandatory.
- 1.2 Where SWestrans has a Framework Agreement or contract already in place covering the requirement, the instruction must be awarded in terms of that Framework Agreement or Contract. Advice may be obtained from the Council's Corporate Procurement Team.
- 1.3 This defines the minimum requirement for any such procurement exercise. However, the Lead Officer may decide to follow SWestran's Standing Orders relating to contracts for any contract, regardless of its value.
- 1.4 Expressions used in this Guidance shall have the same meaning as that given to them in the SWestran's Standing Orders Relating to contracts, unless this guidance provides a different meaning.
- 1.5 Please refer to appropriate procurement delegations for clarity on officers with the relevant authority to seek and accept quotations.

2. Contracts between £0 and £1,999 (ex VAT) for goods and services and £0 to £4,999 (ex VAT) for works

- 2.1 The following procedures are to be adhered to, subject to the commodity and value of the procurement exercise being undertaken.
- 2.2 Values are not to be deliberately disaggregated to avoid the rules and to bring the expenditure under the thresholds.
- 2.3 The procuring service must seek Best Value for SWestrans and where applicable, must be able to clearly demonstrate transparency, non-discrimination and equal treatment within the chosen tender process and in the award of a contract.

Supplies/Services/Works

Title	Threshold	Procedure
Best Value	£0 - £1,999.99 (ex VAT) for goods and services £0 - £4,999.99 (ex VAT) for works	Low value tenders can be undertaken at SWestran's officers' discretion. A written quotation is not required provided that Best Value principles are observed.

RFQ	£2,000 - £19,999.99 (ex VAT) for goods and services	Request for Quote (RFQ) carried out by SWestrans officers 1. 4 written quotations (including email) from competent suppliers to be sought; 2. Where only one supplier exists, see paragraph 4.2 below; 3. Where contracts are considered high risk and/or legally complex, seek procurement and legal advice; 4. Suppliers to be given
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		<p>at least five working days to respond;</p> <p>5. RFQ response to include details of the supplier and the price quoted;</p> <p>6. Responses to be opened following the deadline for responses;</p> <p>7. Written quotations to be retained in accordance with the SWestran's document retention policy.</p>
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3. Contracts between £20,000 and £49,999.99 (ex VAT) for goods and services and between £5,000 and £499,999.99 for works

- 3.1 Quick quote procedure must be carried out using the Public Contracts Scotland Portal (www.publiccontractsscotland.gov.uk) facility for quick quotes.
- 3.2 A minimum of six (6) suppliers will be invited to quote, (as many as possible but at least 50% of which should be local suppliers from the Dumfries and Galloway area where possible).
- 3.3 Suppliers shall be selected from those registered for that category on the PCS web portal and the selection shall not be restricted to existing suppliers.
- 3.4 Where there are less than six (6) suppliers registered, a proportionate level of research to encourage new suppliers to register on PCS must be undertaken. Failing that, all qualifying suppliers will be invited to submit quotations. In the event that there is only one qualifying supplier, the negotiated procedure shall be used in terms of paragraph 4 below.
- 3.5 Tenderers invited should be rotated where there is sufficient supply base.
- 3.6 Invitations to quote shall be prepared using the templates provided by on the Council's Procurement Sharepoint site.
- 3.7 A written specification shall be prepared and incorporated within the Invitation to Quote.
- 3.8 As a minimum the specification will incorporate:-
- 3.8.1 a clear description of what the supplier will be expected to provide under the contract;
 - 3.8.2 information about how SWestrans will pay for what is to be provided under the contract;
 - 3.8.3 details of the level of service to be provided under the contract, including, but not restricted to, timescales for delivery or performance and any performance measures set by SWestrans;
 - 3.8.4 the evaluation criteria to be used for the award of the contract;
 - 3.8.5 the terms and conditions applicable to the contract;
 - 3.8.6 the appropriate level of insurance.
- 3.9 The timescale permitted for the return of quotations must be sufficient to allow all of those invited the same and adequate opportunity to respond.
- 3.10 Any contract shall be awarded to the supplier/s who has submitted the Most Economically Advantageous Tender (MEAT), taking into account the price offered and the supplier's response to any quality or other criteria set by SWestrans.
- 3.11 The commercial evaluation shall be undertaken by an officer independent to the technical evaluation.
- 3.12 An evaluation of the quality responses shall be undertaken by a panel of technical or user experts.
- 3.13 The officer leading the quotation procedure shall then consolidate the commercial and

quality evaluation scoring to provide an overall quotation score and recommendation to award the contract.

- 3.14 All tenderers who submitted a quotation must be notified of the outcome in writing as soon as is practically possible. Feedback should also be provided.
- 3.15 The contract award is to be published on the Public Contracts Scotland web portal, quick quote facility.
- 3.16 Details of the contract awarded must be included within the SWestrans contract register.

4. Negotiated Procedure

- 4.1 The Lead Officer may authorise the use of the negotiated procedure, but only where the following limited grounds apply:
 - 4.1.1 where as a result of the invitation of competitive tenders, no valid offer or only one valid offer complying with specification has been received; provided always that no significant changes are made to the tender documents that were previously issued; or
 - 4.1.2 where the Lead Officer is satisfied that the requirement of the contract is unique or, after research, only one suitable source of supply can be identified; or
 - 4.1.3 where the Lead Officer is satisfied that for reasons of technical complexity or compatibility or for reasons connected to the protection of exclusive rights, subsequent deliveries of equipment or goods or the provision of services require to be purchased from the original supplier; or
 - 4.1.4 where in the case of a supply contract, the goods to be purchased or hired are to be manufactured purely for the purpose of research, experiment, study or development, but not when the goods are to be purchased or hired to establish their commercial viability or to recover their research and development costs; or
 - 4.1.5 when (but only if strictly necessary) for reasons of extreme urgency brought about by events unforeseeable by and not attributable to SWestrans, it is not possible to comply with the procedures in paragraphs 2 and 3; or
 - 4.1.6 where in the case of a services or a supply contract, in the opinion of the Lead Officer it is in the interests of SWestrans to take advantage of particularly advantageous bargain available for a very short period of time at a price considerably lower than normal market prices; or
 - 4.1.7 where pending the letting of a contract (“the main contract”) it is necessary to award a short-term contract to cover the period up to the commencement of the main contract. However, the short-term contract shall generally be for a period of no more than six months but in exceptional circumstances may be up to a twelve month period and shall not exceed £50,000.
- 4.2 In all cases where negotiated procedures have been used in terms of this paragraph 4, a full written record of all contacts, discussions and communications with prospective suppliers shall be kept by SWestrans, together with a full explanation as to why it was considered it to be appropriate to use the negotiated procedure.
- 4.3 All requests under clause 4.1 and 4.2 of this procedure note shall be prepared and recorded using the Non-Competitive Action Request Form provided at Schedule 3 of these Procurement Standing Orders.

5. Extension to Existing Contracts

- 5.1 Where the Lead Officer considers that an existing contract should be extended and the option to extend is given to SWestrans in terms of the contract, the Lead Officer may authorise the exercise of that option on behalf of SWestrans. For the avoidance of doubt, where the contract does not make provision for the extension of the contract, the Lead Officer shall not extend that contract unless the use of the negotiated procedure can be justified in terms of this Guidance and the procedure in paragraph 4 of this Guidance and, where appropriate, standing order 12 of SWestran’s Contract Standing Orders have been followed.
- 5.2 For the purposes of paragraph 5.1 of SWestran’s Contract Standing Orders an extension

of a contract includes the option to increase the amount of supplies, services or works acquired under the contract as well as the option to increase the duration of the contact.

SCHEDULE 7 – GUIDANCE NOTE FOR USE OF GRANTS

What is a grant?

A “grant” is a donation paid by SWestrans to an organisation to be used for a specified purpose which SWestrans wishes to support to help meet SWestrans strategic objectives and benefit the community. In effect, a grant is a gift of financial assistance from SWestrans with conditions attached. The attached conditions must be either grant conditions approved by SWestrans, or grant conditions required to be included by an organisation providing funding for the purpose of the grant. Whereas these conditions impose limits and instructions on how the grant may be used, they do not set out the precise details of any services to be provided nor do they prescribe how the specified purpose will be achieved. Grants are different from loans in that there is no expectation that any part of the grant will be repaid provided the conditions of grant are complied with. If the conditions are breached, SWestrans’s only remedy is to demand that the grant be repaid.

What procedures require to be followed when a grant is being provided?

The Council’s legal service shall provide appropriate grant conditions which must be used. No grant shall be paid unless these procedures are followed and a binding agreement is in place setting out conditions that apply to the grant. Any questions regarding these procedures and terms and conditions must be referred to legal services.

Do the Procurement Regulations apply to grants?

There are some circumstances in which a grant might be viewed as a public services contract for the purposes of the 2015 Regulations. The 2015 Regulations set out the detailed procedural rules that apply to the purchase of works, services and supplies by SWestrans. Under the rules, a “public services contract” is defined as “a contract, in writing, for consideration (whatever the nature of the consideration) under which a contracting authority engages a person to provide services”. Therefore, these rules do not apply to straightforward grants. However, distinguishing between contracts, to which the rules would apply, and grants, to which they do not, is often difficult, for example, where SWestrans directs what, or how, services are to be provided or derives any benefit from them. Where there is any doubt, advice must be obtained from legal services.

What about Subsidies?

Even where the Procurement Regulations do not apply, the rules on subsidies are an important consideration. These are a complex set of rules which prohibit subsidies being paid by public bodies, such as SWestrans, which could confer any unfair advantage on an organisation or distort competition. An example would be where SWestrans gives a sum of money to only one of a number of local organisations who provide a service to the community, without there being any competition for that funding. The other organisations could claim that there has been an unfair subsidy paid to the organisation that was given the grant because they too could have provided the service if they had been given the opportunity.

There are some limited exceptions and financial limits below which funding is not considered to be a subsidy but, broadly, for a grant to be classed as a subsidy, the following criteria require to be met:-

- It is given by a public authority. This can be at any level – central, devolved, regional or local government or a public body;
- It makes a contribution (this could be a financial or an in-kind contribution) to an enterprise, conferring an economic advantage that is not available on market terms. Examples of a contribution are grants, loans at below market rate, or a loan guarantee at below market rate or allowing a company to use publicly owned office space rent free. An enterprise is anyone who puts goods or services on a market. An enterprise could be a government department or a charity if they are acting commercially; and
- It affects international trade. This can be trade with any World Trade Organisation member or, more specifically, between the UK and a country with whom it has a Free

Trade Agreement. For example, if the subsidy is going towards a good or a service which is traded between the UK and the EU this could affect trade between the EU and the UK. (Please note that you are not being asked whether the subsidy could harm trade but merely whether there could be some sort of effect.) Subsidies to truly local companies or a small tourist attraction are unlikely to be caught as this is unlikely to affect international trade.

A breach of the subsidy rules could have serious consequences for SWestrans. Therefore, any concerns about whether a grant could be considered a subsidy must be referred to legal services.

Is a competitive process needed where neither the Procurement Regulations nor the rules on Subsidies apply?

In some circumstances, such as where only limited funding is available or if applicants for grant funding have similar purposes, a competitive application process may be appropriate to determine how funding should be allocated whether or not the Procurement Regulations or the rules on subsidies apply. As it is a public body, SWestrans has certain duties when dealing with grants. It must act in a fair, transparent and consistent manner and all potential grant recipients must be treated equally.