Conflict of Interest – Guidance for Wave Energy Scotland

A fundamental principle for all activity undertaken by Highlands and Islands Enterprise (HIE) and any of its subsidiaries is that this it is undertaken in a manner which is above reproach and aligned with the principles included in the Ethical Standards in Public Life etc. (Scotland) Act 2000.

The Ethical Standards in Public Life etc. (Scotland) Act 2000 sets out nine general principles of conduct which underpin public life in Scotland. These nine Scottish principles (which are defined in Annex 1 of HIEs Conflict of Interest Policy) are as follows:

- Selflessness
- Integrity
- Objectivity
- Accountability and Stewardship
- Openness
- Honesty
- Public Service
- Leadership
- Respect

The handling of conflicts of interest is a particularly important and sensitive issue for HIE and has implemented a Conflict of Interest Policy. Wave Energy Scotland (WES) as a subsidiary of HIE is expected to apply the same policy when assessing the materiality of any potential conflicts.

WES is taking proactive steps to ensure that sufficient internal and external resources (including procurement of expert advisors) are in place to support its activities, and avoid conflicts. Experts, for the purpose of this document, are sector specialists with the required skills and expertise to be contracted by WES for specific tasks.

The nature of WES activity and the number of experts and entities operating in this environment, with the required criteria, means that there are specific issues which require conflicts to be subject to additional consideration throughout the full WES process including development of scope, assessment of applications etc. The unique nature of the wave energy sector has required HIE through WES to take a unique approach.

Inherent factors in the wave energy sector include the:

- Limited number of entities,
- Limited number of experienced professional experts supporting the sector (that meet the criteria) e.g. engineers, scientists, researchers etc., and
- Transient nature of experts.

When determining whether there may be a material CoI it is essential to achieve an appropriate balance between risk and having access to an adequate number of suitably skilled and experienced individuals to support WES. Any external experts will be required to follow Conflict of Interest requirements and sign a Confidentiality and Non-Disclosure Agreement.

<u>Suggested Approach</u>

The table below gives a summary of the additional considerations for WESs in terms of Conflict of Interest

Default Positions - unless justifiable reason can be agreed to divert from these

			Member of project team with which the interest exists.		
Interest	Risks	Protection	Lead Applicant	Consortium Member	Sub-Contractor
Current financial interest (e.g. employee or shareholding of a company named)	• Inability to be objective • Potential to introduce bias to benefit the bid where an interest exists • Potential to gain benefit, either financially or through access to information	• Indemnity can be put in place • Strict confidentiality conditions will be put in place before any information is shared	Does not take part in evaluation process	Does not take part in evaluation process	Cannot evaluate application in question but can assess other applications
Previous financial interest (within last 12 months)			Does not take part in evaluation process	Does not take part in evaluation process	Cannot evaluate application in question but can assess other applications
Previous financial interest (more than 12 months ago)			Can take part in evaluation process	Can take part in evaluation process	Can take part in evaluation process
Involved in tender submission (e.g. writing or advising)		• Named tender lead will be required to confirm all named entities in the bid have been contacted and are aware of inclusion in bid	Does not take part in evaluation process	Does not take part in evaluation process	Does not take part in evaluation process
Involved in and/or advising WES in relation to the specific tender requirements/documentation	• Unfair advantage which could distort competition	• Ensure no distortion of competition e.g. provision to all tenderers of relevant information exchanged in the context of, or resulting from, the earlier involvement	Does not take part in evaluation process (unless can demonstrate competition was not distorted)	Does not take part in evaluation process (unless can demonstrate competition was not distorted)	Does not take part in evaluation process (unless can demonstrate competition was not distorted)
Competitor to an entity involved in any tender submission	• Inability to be objective • Potential to introduce bias to negatively impact the bid where competition exists • Potential to gain benefit, through competition or through access to information	• Indemnity can be put in place • Strict confidentiality conditions will be put in place before any information is shared	If interest is financial, does not take part in evaluation of a competitor but can evaluate others	If interest is financial, does not take part in evaluation of a competitor but can evaluate others	If interest is financial, does not take part in evaluation of a competitor but can evaluate others
Other interests. This would include a stake in the initial development of the IP which will be used during the projects	Combination of the above		Decision on a case-by-case basis	Decision on a case-by-case basis	Decision on a case-by-case basis

* The proportion of work being carried out, or the value of the sub-contract work will determine if there may be a potential material conflict.

Characteristics for different approach to above defaults

Reputational considerations

Assessment of conflicts on a case by case basis may be considered in the following situations: Any current or previous issue which may actually or be perceived to compromise objectivity e.g. dispute, relationship issue, ongoing contract, close family friend, current employment negotiations, employment is held out to represent a particular entity/group, previous work e.g. on a technical component/prototype, connection with the IP being developed in a project.

The determination if a conflict could lead to a reputational risk will be the responsibility of WES as detailed in the Key process points section below.

Materiality considerations

What is a 'material' interest?

Public confidence in HIE and its subsidiaries depends on it being clearly understood that decisions are taken in the public interest and not for any other reason. Individuals (including staff and Board members) should only play a role in any decision making process if they can demonstrate objectivity.

In considering whether an interest is material (significant), an individual must consider not only whether he or she will be influenced but also whether any reasonable person would think that he or she might be influenced. The test is whether a member of the public, acting reasonably, might think that a particular interest could influence the decision made (the public perception test).

Interests may be financial or non-financial but there is a particular risk in respect of financial interests. In the case of a financial interest, there should be a presumption that the interest is material and that the conflicted individual should withdraw from playing any part in the process.

Individuals should also be aware of situations when it would be appropriate to declare relevant interests of close family or friends (indirect interests). Close family includes spouse, live-in partner, parent, child, brother, sister and the spouses of any of these.

Key process points

There is a need to ensure that the following is built into processes

- Openness – ensure the process for identifying individuals is open and transparent
- Transparency – ensure that there is a transparent process to identify and record any potential conflicts of interests and decision reached on individual cases and rational
- Agree approach – ensure that both the WES Board and HIE agree the proposed approach
- Develop characteristics of higher risk – agree high risk characteristics and develop over time based on experience
- Decision making – have appropriate processes in place to consider and record key decisions around potential conflicts – including WES board, HIE approval, suggest that there is a small core group which consider and make recommendations on individual cases – HIE Standards Officer/Head of BIIA , Head of Procurement/ Procurement Manager, WES Director/Senior Manager

- Clarity and awareness raising – ensure that everyone is clear on the processes and what they are required to do in particular circumstances
- Personal responsibility – declaring interests which may be perceived to compromise objectivity is a personal responsibility and individuals should ensure that WES is notified of any issues or changes in circumstances as soon as practicable.
- Data gathering for Calls at application stages should ensure that details of all project team members are easily available, and a declaration is given in the applications that all team members have been consulted prior to naming. This also applies to any updated teams at a stage-gate.

Any procurement of support must be compliant with Conflict of Interest Policy and Guidance.