Procurement Policy and Procedures

Contents

Glossary and abbreviations ..... **ii**

Policy and Guidance **4**

Introduction and scope **4**

Definition **4**

Key principles of procurement policy **4**

Competition 4

Legal aspects 5

Value for Money (VfM) 5

Ethical standards 5

Buying sustainably 5

Cyber security 5

Separation of duties **5**

Legal framework **6**

Consultancy services **6**

Delegated Purchasing Authority (DPA) **6**

Commitment of a contract **7**

Competition and Advertising **7**

Procurement process **7**

Contract documentation **8**

Contracts register and transparency **8**

Value for Money (VfM) **8**

Buying sustainably **9**

Non-Competitive Action (NCA) **9**

Consultancy services **9**

Contract management **9**

Ethical standards **9**

Fraud response procedures: external fraud **10**

Paying the Supplier **10**

Disposing of goods **10**

Openness and transparency **11**

Procurement Procedures **12**

Purpose **12**

Background **12**

Guidance on Conducting a Procurement with a Value of £5k or more but less than £50k **13**

Project commencement 13

Invitation to Quote (ITQ) 13

Stages of the ITQ 13

Draft documentation 13

Identify Suppliers 14

Issue ITQ 14

Receive and Evaluate Responses 14

Award the contract 16

Contract Management 16

Guidance on conducting a procurement with a value of £50k or more but less than the EU threshold **16**

Background 17

Develop Strategy 17

Produce Invitation to Tender (ITT) documentation 18

Issue Invitation to Tender (ITT) documentation 20

Receive and Evaluate Tenders 20

Contract Implementation 23

Contract and Supplier Management 24

Document control sheet **25**

Glossary and abbreviations

Term used	Explanation
VfM	Value for Money
Commissioner	Scottish Information Commissioner
DPA	Delegated Purchasing Authority
PCS	Public Contracts Scotland
OJEU	Official Journal of the European Union
SMEs	Small and medium-sized enterprises
NCA	Non-Competitive Action
HOBS	Head of Business Support

ESPD	European Single Procurement Document
The Act	The Procurement Reform (Scotland) Act 2014
ITQ	Invitation to Quote
FOISA	Freedom of Information (Scotland) Act 2002
EIRs	Environmental Information (Scotland) Regulations 2004
GDPR	General Data Protection Regulation
DPA 2018	Data Protection Act 2018
DPIA	Data Protection Impact Assessment

Policy and Guidance

Introduction and scope

1. This manual sets out the policy, guidance and procedures that apply to the Scottish Information Commissioner (the Commissioner) and the Commissioner's staff who are involved in procurement activity.

2. This manual should be read in conjunction with the Procurement Journey (a toolkit providing practical guidance on procurement procedures) and other guidance issued by Scottish Procurement, including Scottish Procurement Policy Notes (SPPNs) (which provide updates on legal and procurement policy developments). Account must also be taken of the relevant legal framework and statutory guidance published under the Procurement Reform (Scotland) Act 2014. If you have difficulty accessing the guidance, please contact the Head of Business Support (HOBS).

3. The rules are designed to ensure that procurement activity is:

    - focussed on the delivery of Value for Money (VfM);
    - conducted to high professional standards and to the relevant legal requirements; and
    - overseen by appropriately trained and authorised staff to minimise the risk of legal challenge to the Commissioner and our staff.

Definition

4. Procurement is the process of buying goods, services and works from external suppliers. The procurement process begins after a need to buy something is identified and a decision is made to do this and will generally end after the contract is awarded.

Key principles of procurement policy

5. All procurement activity should comply with the principles of:

    - transparency
    - equal treatment and non-discrimination
    - proportionality
    - mutual recognition

Data Protection

6. The Commissioner is subject to the UK GDPR and the DPA 2018.

7. Where a service is being procured which will involve the processing of personal data by the contractor on behalf of the Commissioner, the Commissioner must also ensure that the requirements of the GDPR and the DPA 2018 are complied with in the procurement process. In particular, the requirements set out in Appendices 4 and 5 of the Commissioner's Data Protection Policy should be taken into account in the procurement of the service.

Competition

8. Contracts must be awarded through genuine and effective competition unless there are exceptional reasons to the contrary.

Legal aspects

9. Contracts for the procurement of goods, services and works must be in writing and awarded by staff with relevant Delegated Purchasing Authority (DPA) (see below).

Value for Money (VfM)

10. Contracts should be awarded on the basis of VfM (see paragraphs 36 to 38).

Ethical standards

11. The Purchaser is responsible for ensuring the procurement process complies with this procurement policy.

12. All Purchasers must adhere to and apply the highest ethical standards in their procurement activity.

Buying sustainably

13. All Purchasers must consider sustainability in their procurement activity (see paragraphs 39 to 41).

Cyber security

14. Suppliers must supply evidence of their cyber security credentials by providing copies of related cyber security certifications as part of the procurement process.

Separation of duties

15. It is the Commissioner's policy that there are at least two defined roles in a procurement process:

    (i) the Customer (either the budget holder or a person acting under the instructions of the budget holder) who perceives the need, makes out the business case to obtain any necessary approval to spend and seeks the authority or has the authority to buy the goods or services; and

    (ii) the Purchaser who is responsible for ensuring that the procurement process fully complies with procurement policy

16. A Purchaser should not act as Customer in connection with the services/goods being procured and, generally, should not be responsible for any financial approvals connected with the contract that is being procured[1]

17. These roles must be separated in order to protect the staff concerned from accusations of impropriety. However, both the Purchaser and the Customer may be members of the same team where this is appropriate providing adequate provisions are in place to ensure the separation of decision making.

[1] The Commissioner is a small organisation and it may not always be possible to separate out roles depending on the contract being procured.

Legal framework

18. Public sector procurement in Scotland takes place within a framework of rules including:

- The Utilities Contracts (Scotland) Regulations 2016 (legislation.gov.uk) Contracts (Scotland) Regulations 2016
- The Public Contracts (Scotland) Regulations 2015 (for contracts commenced on or after 18 April 2016)
- The Procurement (Scotland) Regulations 2016 (for contracts commenced on or after 18 April 2016)
- The Concession Contracts (Scotland) Regulations 2016 (for contracts commenced on or after 18 April 2016)
- The Utilities Contracts (Scotland) Regulations 2016 (for contracts commenced on or after 18 April 2016)
- The Procurement Reform (Scotland) Act 2014

19. If the above Regulations[2]are not followed, then formal challenges and complaints may be brought against the Commissioner alleging a breach of these rules. The consequences of a successful challenge, depending on the nature of the breach, may result in the following action being taken against the Commissioner

- imposition of a fine
- the duration of a contract being shortened
- an award of damages against and
- reputational damage to the Commissioner

Consultancy services

20. The procurement of consultancy services must adhere to the Scottish Government Consultancy Procedures. Use of consultants: guidance - gov.scot (www.gov.scot)

Delegated Purchasing Authority (DPA)

21. DPA is the authority to award a contract for goods, services and works. In doing so, the person exercising DPA, the Purchaser takes responsibility for overseeing the process leading up to, and including, the award of a contract and any subsequent changes to that contract.

22. DPA is not:

(i) to be confused with finance authority which is detailed in the Commissioner's 's Scheme of Delegation;

[2] Please check that the website has the up to date version of the legislation

(ii) to be confused with the authorised signatory provisions relating to the signing of agreements and contracts in the Commissioner's Scheme of Delegation

(iii) required to purchase goods, services or works from single supplier framework agreements awarded or approved by Scottish Procurement

Commitment of a contract

23. A contract is a legally binding agreement between the Commissioner's SIC and one or more suppliers for the supply of specified goods, services or works.

24. All contracts must be in writing although legally contracts can be made by word of mouth, or implied by the action of the parties and subject to Scots Law. Therefore, in discussions with suppliers it is essential that staff take care to ensure that a contract is not unintentionally created.

25. All contracts must only be signed in accordance with the Commissioner's Scheme of Delegation

Competition and Advertising

26. Goods, services and works must be awarded through genuine and effective competition unless there are exceptional reasons to the contrary. Purchasers are responsible for identifying the most appropriate procurement process that is likely to offer the best VfM. Procurement processes for each form of competition are outlined in this document and further detailed within the Scottish Government Procurement Journey, which must be used for all procurements.

27. New competitions should normally only be launched where the requirement cannot be met through an existing contract or where appropriate a framework. There is a list of Scottish Government Frameworks. If it is intended to use a framework, then you must check with the Head of Business Support (HOBS) whether this can be done (HOBS will check with the relevant framework Manager whether the Commissioner is eligible to use the framework or not).

Procurement process

28. A requisition, including a business case (using the template in VC) must be completed for all purchases by the Customer.

29. Requirements below £5,000 (excluding VAT) do not require formal competition. However, the Purchaser is required to represent overall VfM and offer fair and equitable treatment to suppliers, therefore, it may be appropriate to normally obtain three competitive quotes – see the table at the end of paragraph **67**.

30. Requirements of £5,000 and up to £50,000 (excluding VAT) require a degree of competition. A minimum of three written quotations is required. The value should include any potential extensions to the contract. It is recommended that consideration should be given to the use of the Quick Quote facility on Public Contracts Scotland if this is appropriate.

31. In addition to The Public Contracts (Scotland) Regulations 2015 requirements, the Procurement Reform (Scotland) Act 2014 requires all public bodies who are conducting a regulated procurement (any procurement for goods or services with a value of £50,000 and

above) to publicise their intention to seek offers (contract notice) and the award of a contract or framework agreement (contract notice) on Public Contract Scotland (PCS). The PCS info centre contains further information on how public bodies can meet their publication obligation. This means that all regulated contracts for goods and services with an anticipated value of £50,000 and above must be advertised on the Public Contracts Scotland advertising portal. The value of the contract is the total amount, net of VAT, which the Commissioner expects to pay over the full duration of the contract (including any options to extend). Requirements with a value greater than the OJEU threshold must in the Find a Tender service prior to advertising on PCS, however your notice should be sent to PCS in the first instance and they will arrange for it to be published on Find a tender (see https://www.ojec.com/thresholds.aspx).

32. If there is uncertainty about the possible cost of the project and you expect it may be close to a threshold level, you should comply with the requirement for the next level up.

33. The HOBS and the BSM should be made aware of all proposed procurement and their advice and guidance obtained before any procurement processes are commenced.

Contract documentation

34. The contract documentation should include Instructions to Tenderers, a specification, a pricing schedule and terms and conditions as a minimum. All contract documentation covering the key stages of the procurement of goods, services and works should be retained in accordance with the Information and Records Management Policy and Handbook.

35. If the procurement involves procuring services or goods which relate to the processing of personal data, the guidance set out in the Data Protection Policy and Handbook must be followed concerning the relevant matters that need to be taken into account and the terms and conditions to be included in the related contract.

Contracts register and transparency

36. The Procurement Reform (Scotland) Act 2014 requires all public sector contracting organisations to keep and maintain a contracts register and to provide an internet-based publicly viewable version of it to include all regulated procurement which commenced on or after 18 April 2016.

37. The Commissioner publishes a contract register on the Commissioner's website.

38. While the onus is on individual organisations to produce and publish their contracts registers, in order to provide support to the public sector, Public Contracts Scotland provides functionality on its portal to produce a contracts register that also meets the requirements of the Act: **PCS guidance Contracts Register**

Value for Money (VfM)

39. VfM is defined as the optimum combination of whole life costs and quality (or fitness for purpose) to meet the customer's requirements. Depending on the nature of the contract, whole life cost may include implementation costs, ongoing operating costs and end-of-life disposal.

40. The Scottish Model of Procurement promotes VfM as being an appropriate balance between cost or price, quality and sustainability. In delivering VfM, cost or price, quality and sustainability are all factors which should be taken into account when establishing contract award criteria.

41. It is The Commissioner's policy that contracts must be awarded on the basis of VfM.

Buying sustainably

42. The Environmental Policy details how the Commissioner continually aims to improve its environmental performance. It is the Commissioner's policy to purchase in an environmentally responsible manner. Environmental impact will be considered and evaluated within the procurement process and VfM will be determined on the basis of whole life costs (including the environmental impact of purchase and disposal). The Procurement Reform (Scotland) Act 2014 builds on the work achieved so far in the reform of public procurement in Scotland. It establishes laws about sustainable public procurement to maximise the social, environmental and economic benefits through effective and efficient procurement activity.

43. The sustainable procurement duty encompasses these elements.

44. Smart use of procurement can play a key role in promoting jobs and growth, encouraging innovation, boosting training and apprenticeship opportunities and helping small and medium enterprises (SME's), third sector organisations and supported businesses to compete effectively for contracts. It is mandatory to consider sustainability in all projects greater than £4million; however, it is good practice to consider sustainability in all relevant procurements.

Non-Competitive Action (NCA)

45. An NCA for a requirement over £7,500 and above is only granted in exceptional circumstances. It is strictly limited to situations where competition is not deemed appropriate, for example, extreme situation, urgent requirements, only one possible supplier.

46. All requests to proceed with an NCA for procurements over £7,500 and above must be referred to the HOBS and approved in advance by the Commissioner.

Consultancy services

47. Robust procedures must be followed for the engagement of consultancy services to ensure that these resources are used sparingly, appropriately and effectively.

48. The Scottish Government consultancy procedures provide further information.

Contract management

49. Contract management is strongly recommended for all the Commissioner's contracts where the contract is either high risk to the organisation or high value (relative to the organisational spend). Contract management guidance is provided in greater detail in the Contract and Supplier Management | Procurement Journey

Ethical standards

50. The highest standards of honesty, integrity, impartiality and objectivity must be preserved in all dealings with suppliers and potential suppliers. The Commissioner and the staff who are

involved in procurement activity must always be honest, fair and impartial in their dealings with suppliers. Relationships with suppliers must always be conducted on a professional basis, with proper regard to ethics and propriety.

51. The Commissioner and all staff who are involved in procurement activity must declare and record any personal interest that might influence, or be seen by others to influence, their impartiality in arriving at a procurement decision. Those who have business or personal relationships with, or friends/relatives employed by, outside organisations bidding for the Commissioner's contracts must inform the HOBS at the outset.

52. Staff involved in procurement activity, or any other members of staff who may be perceived to be in a position of influencing purchasing decisions, may not solicit or accept contributions of any kind from suppliers. The Commissioner and members of staff should only accept gifts in line with the acceptance of gifts policy. Records of all gifts offered and whether or not they were accepted must be kept in the Declaration of Gifts. If there is any doubt over whether a gift should be accepted, advice should be obtained from the HOBS.

53. Modest hospitality (e.g. lunch, sandwiches, dinner) may be accepted from a supplier, provided it is for a legitimate reason, is infrequent and that a situation is not reached where impartiality may be influenced, or be perceived by others to be influenced. Invitations from suppliers or potential suppliers to attend social functions or events must not be accepted without receiving the prior consent of the HOBS. Records of all hospitality offered and whether or not accepted must be kept in the Declaration of Gifts. Offers from suppliers of "corporate entertainment" (e.g. tickets to sporting events, theatre, and travel) must always be politely refused.

Fraud response procedures: external fraud

54. The Commissioner's staff are responsible for the detection, reporting and handling of fraud in accordance with the Commissioner's Anti-fraud Policy.

Paying the Supplier

55. Contractors should be paid within agreed terms of the contract that has been entered into. We are committed to the Scottish Public Finance Manual (SPFM) requirements to ensure the prompt payment of invoices for goods and services and have KPIs which are in accordance with the SPFM requirements. Our KPIs require us to pay 95% of undisputed invoices within 10 days of receipt or fewer and 100% of undisputed invoices within 30 days or fewer and we met these in 2022-23.

56. , However, exceptions can be made in certain circumstances, which will be covered by appropriate contract conditions. No contract specifying advance payment should be entered into without the prior agreement of the HOBS.

57. The arrangements for authorising payment of invoices are detailed in the Scheme of Delegation.

Disposing of goods

58. Some assets may have a resale value, whilst for others there may be a cost (including an environmental cost) for their disposal. All these factors should be taken into account at the outset. Goods should be re-used wherever possible. Goods that cannot be re-used must

always be disposed of in a manner that minimises the impact on the environment, recycling as many components as possible and in accordance with data protection requirements. Whatever the method of disposal, it is particularly important that clear records are kept, documenting decisions and actions taken and that the Commissioner's Fixed Assets Policy is taken into account.

Openness and transparency

59. The Commissioner is a Scottish public authority for the purposes of the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (the EIRs). Anyone has the right to request any recorded information held by the Commissioner, including information which comes from third parties, such as tenderers or contractors. In most cases, the Commissioner aims to respond to an information request by disclosing the information. FOISA and the EIRs permit the Commissioner to refuse to disclose information, but only in certain limited circumstances, for example, under section 33(1)(b) or 36(2) of FOISA or regulation 10(5)(e) of the EIRs.

60. From past experience, it is likely that the Commissioner will, after a tender has been awarded, receive information requests for the tenders and for other documents involved in the award of the tender. Therefore, if a tenderer considers that the information they are providing to the Commissioner for the purposes of the tender would attract one or more of the exemptions in Part 2 of FOISA (or, where relevant, one or more of the exceptions in regulation 10 or regulation 11 of the EIRs), the tenderer must alert the Commissioner to this fact when the information is provided, detailing the information in question, the exemption(s)/exception(s) which the tenderer considers applies and why. Any information appearing in the tender which is not marked as possibly attracting one or more of the exemptions in Part 2 of FOISA or exceptions in regulation 10 of the EIRs will be disclosed in the event that an information request is made for it, on the understanding that, in providing the information to the Commissioner, the tenderer is consenting to its disclosure (providing that the Commissioner is satisfied that disclosure would not be contrary to the UK GDPR or the DPA 2018).

61. In line with the Scottish Ministers' Code of the discharge of functions by Scottish Public Authorities under FOISA and the EIRs, the final decision on whether to disclose information in response to a request under FOISA is one for the Commissioner to take.

62. The Commissioner will agree to accept information in confidence from tenderers or contractors only in very limited circumstances. Even where it is agreed to accept information in confidence, that information may still be disclosed if, in the view of the Commissioner, at the date of the request the disclosure would no longer constitute an actionable breach of confidence.

Procurement Procedures

Please Note: These procedures are a summary of the guidance contained in the Scottish Government Procurement Journey and should be used in conjunction with the official guidance. The Commissioner's Procurement Policy and Guidance must also be taken into account and will take precedence in the event of any inconsistency.

Purpose

63. These procedures have been developed to assist Purchasers in the procurement of goods and services. It includes information on electronic tendering through Public Contracts Scotland (PCS). Using PCS is optional at the time of writing for non-regulated procurements, that is, contracts with a value less than £50,000.

64. A separate PCS user guide for procurements less than £50k available giving step-by-step instructions on how to make use of PCS.

Background

65. Procurement is the process of buying goods, services or works (including hire, lease and disposal) from external suppliers. The procurement process begins when a need to buy something is identified and a decision is made to do this and will generally end after the contract is awarded.

66. The process should also consider the requirements of sustainable procurement. Our activities affect the environment in which we live. Effective procurement should help to reduce the negative environmental and social impacts associates with the purchase of goods and services.

67. In a similar way, legislation encourages all procurement to consider the possibilities for community benefits. The opportunities to realise such benefits may be limited when the procurement is very specific and of lower value, but those engaged in procurement should always consider the possibility that community benefits may be achievable.

68. Before starting any procurement process, you should consider whether your requirement for goods or services could be met through an existing national framework or contract. A list of the national frameworks can be found here:SG framework directory

69. If a framework does not meet your requirements then you should carry out a procurement exercise in accordance with the Commissioner's Policy and Guidance and these procedures.

70. When selecting suppliers to submit quotations, it is worthwhile remembering that a diverse range of organisations - whether multi-national companies, SMEs, social enterprises or third sector bodies - may be ideally placed to provide innovative solutions to meet the Commissioner requirements and to deliver VfM, either individually or as part of a group.

Guidance on Conducting a Procurement with a Value of £5k or more but less than £50k[3]

Project commencement

71. Before commencing with the Procurement exercise, the following points should be considered:

- Can your requirement be met through an existing national framework or contract?
- Have alternatives to procuring being considered and discounted?
- Do you have an approved budget?
- Is there a robust documented business case supporting this procurement?
- Are there sufficient resources available to conduct the evaluation?
- What is the level of risk associated with the delivery of this requirement?
- What timescales are required to conduct the procurement?

Invitation to Quote (ITQ)

Stages of the ITQ

- Draft documentation
- Identify suppliers
- Issue Invitation to Quote (ITQ)
- Receive and evaluate bids.
- Award Contract
- Contract Management

Draft documentation

72. The ITQ documentation is made up of the following documentation:

- Covering letter (including how the response will be evaluated)
- Brief (which includes evaluation and award criteria)
- Pricing schedule
- If required, a Pre-Contract Questionnaire – this will be required for all contracts that concern the processing of personal data
- The Commissioner's Terms and Conditions[4]
- Form of Tender.

[3] See paragraph 28 for guidance on conducting a procurement with a value of less than £5k

[4] These should be based on the Commissioner's Standard Terms and Conditions

73. **Covering letter** – an example of a covering letter is attached

Under £50k covering letter.doc

74. **Brief and evaluation criteria** - The Purchaser, in liaison with the Customer (who will have detailed knowledge of the requirements), should prepare a written Brief which should reflect the requirements. See below a suggested format.

Prepare a Brief - Brief Template Docum

75. As a minimum, the Purchaser and the Customer should identify the key requirements, outputs, consider how the responses will be objectively evaluated and include estimated timescales for the requirement. Consideration should be given as to how you are going to manage the contract in terms of quality, service and cost.

76. The completed Brief, Pricing Schedule, some of the mandatory questions from the SPD (if required) and the Commissioner's 's draft Terms and Conditions should be attached to the ITQ. It is important to ensure that you include your evaluation criteria (including weightings) in the Brief and that the ITQ documentation is clear on how you will evaluate the bids.

Identify Suppliers

77. You should seek quotations from a minimum of three suppliers who have the experience and expertise to meet your requirements for the goods or services. In order to receive three quotes back from suppliers you may wish to approach four or five suppliers in case not all respond.

78. Suppliers may be identified by searching the register of suppliers on PCS. This website also offers a 'Quick Quote' system to seek quotations from suppliers registered on the website.

Issue ITQ

79. Suppliers may ask questions about the ITQ document and as a result you may wish to issue further information or clarification not contained within the original document. If you have issued any clarifications, you should communicate all questions, answers and clarifications in writing to all suppliers. If you have used PCS Quick Quote facility then this can be via the bulletin board within 'Quick Quote'. Care should be taken to remove all commercially sensitive information in this process, for example, names of suppliers, contract prices.

80. You should keep to your original timescales identified in your brief document; however, in exceptional circumstances you may choose to consider extending the deadline for receipt of quotations. Remember you must communicate this to all suppliers, if appropriate via PCS.

81. The time limit for quotation responses should reflect the complexity of the requirement, but should be sufficient for the supplier to make a considered response. For a simple requirement, a period of up to two weeks should be sufficient; however, for more complex requirements, you should consider a longer period (up to four weeks).

Receive and Evaluate Responses

82. Once the responses have been received, they should be opened and checked to ensure all information has been submitted. If less than the expected number of responses were returned, you may wish to ask the suppliers why they did not submit their quote and this information should be retained on file.

83. Any quote which shows an abnormally low price out of context may be queried with the supplier to identify the reasons for this. If this is due to a mistake by the supplier, you should consult with the HOBS for advice on how to proceed.

84. If quotation responses are received with alternative Terms and Conditions of contract to those you are using in the ITQ, the supplier must be informed in writing that the Terms and Conditions of Contract as originally identified will apply to the requirement. If the supplier continues to challenge the Terms and Conditions, you should seek advice from the HOBS on how to proceed.

85. If you need to seek clarification of any or all quotation responses, this should be done in writing and a specific timeframe for a response should be given. You should take care to treat all suppliers on an equal basis in this process.

86. The technical evaluation panel should individually score the Tenderer's responses against the pre-determined scoring and weighting criteria. The HOBS or the BSM can provide advice on the membership of Panels and should be consulted. For procurements of less than £5,000, the panel may consist of the Purchaser and Customer. For procurements of £5,000 or over but below £50,000, the panel may consist of the Purchaser, Customer and Budget Holder.

87. The tender evaluation panel should send their scores to the Purchaser for collation and recording of the mean average score. If it becomes apparent that individual evaluators' scores for particular questions differ significantly from one-another, i.e. a difference of two steps or more, then a moderation meeting (chaired by the Purchaser) should take place. The scores and the comments should be discussed at the moderation meeting. Following discussion, evaluators can decide whether to amend their score or allow their scores to stand.

88. Once the results of the technical evaluation and the commercial evaluation are available, then you should populate your evaluation tool to determine the response which best meets your needs. Attached is an example evaluation tool.

Copy of Route 2
Develop Documents _

89. It is important that the evaluation of tenders is robust in order to provide a full justification and audit trail for the resultant award decision. Organisations must also be aware that tender evaluation and contract award documentation can be made available, if requested, under FOISA or the EIRs. The role of the Purchaser in the evaluation panel is to ensure an impartial and objective approach is taken to the evaluation of tenders and can withstand scrutiny

96. In exceptional circumstances, you may consider interviewing/inviting presentations from suppliers in order to assist in the evaluation of quotation responses. This need should be identified upfront in the ITQ.

97. The presentation can either be scored in its own right (where you have objective criteria to score it against) or you can use the presentation to validate the responses received to your award questions. Suppliers should be provided with an equal opportunity for interview, presentation or site visits unless the initial evaluation undertaken shows that the supplier could not meet the core requirements.

98. Records of the interviews/presentations must be kept for audit purposes.

Award the contract

99. Identify the successful supplier and seek approval to award the contract.

100. The chosen supplier should be notified of their success in writing using a Contract Award letter. This must be signed by a person with the DPA and commit the Commissioner to the contract. Attached is an example of an award letter

Contract Award Letter under £50k.do

101. At the same time as the above, unsuccessful suppliers should be notified using an Unsuccessful Quotation Letter. Attached is an example.

Unsuccessful Quotation Letter.doc

102. A supplier is entitled to ask for the reasons why their quotation was unsuccessful. It is essential that all feedback is documented for audit purposes and based on the objective criteria used to evaluate the quotation. De-briefing provides suppliers with positive constructive feedback to help improve their performance in future competition.

103. Once these letters have been issued to the successful supplier, the quotation becomes live and can now be referred to as a contract.

Contract Management

104. The supplier's performance should be managed throughout the lifetime of the contract by the Customer and you should ensure that the goods/services are delivered in line with the performance or service level expectations i.e. quality/service/cost/delivery identified in the original quotation.

105. Variations to the specification or extensions to the period of the original quotation may result in a situation where a new procurement process becomes necessary. Variations/extensions are an exception and should be kept to a minimum. They should only take place where the changes that you make would not materially alter the original contract. Where a significant change to the contract scope, value or duration is proposed you must refer the matter to the HOBS.

106. This concludes the procurement exercise and you should record any lessons learned for future procurement exercises.

Guidance on conducting a procurement with a value of £50k or more but less than the EU threshold

Background

107. All procurements with a value of £50k or more are classified as regulated procurements and as such are subject to a formal competition process.

108. There are two main procedures which you should consider:

109. An **open** competition – this is where there is no attempt to limit the number of suppliers who may tender. Consequently, you may or may not have a large number of suppliers submitting tenders which you will need to assess. This is referred to in Scottish Government literature and on PCS as a "single stage procedure" for procurements under the procurement threshold of £189,330.

110. A **restricted** competition – the number of suppliers from whom full tenders are obtained will be limited by using the Single Procurement Document (SPD) as a separate stage to restrict the number of tenders obtained. This is referred to in PCS as running a "dual stage procedure" for procurements under the OJEU threshold of £189,330.

111. The decision on whether to use a single or dual stage procedure depends on the timescales available and the number of suppliers who can provide the commodity.

112. If you choose to opt for the open competition, then you may still wish to use elements of the ESPD to either exclude bidders or down select bidders.

113. Before commencing with the Procurement exercise, the following points should be considered:

- Whether your requirement could be met through an existing national framework or contract.
- Have alternatives to procuring being considered and discounted?
- Do you have an approved budget?
- Is there a robust documented business case supporting this procurement?
- Are there sufficient resources available to conduct the evaluation?
- What is the level of risk associated with the delivery of this requirement?
- The time required to conduct the procurement

Develop Strategy

114. For any tender likely to cost £50k or more, a tender strategy is needed. The strategy should outline the project and the aims of the project, how you will identify the suppliers, the suggested procurement route, the risks and whether PCS will be used or not. Attached is an example of a Procurement Strategy.

Strategy Document Template over £50k.c

115. The Strategy should not include any information provided by tenderers which has been designated as confidential.

116. The tenderer may wish to consider adding a requirement to ensure their organisation's confidential information is protected throughout the procurement process, taking into account FOISA and the EIRs.

Produce Invitation to Tender (ITT) documentation

117. The ITT documentation consists of the following documentation:

- Covering letter
- Instructions to Tenderers
- Specification/Brief
- Pricing Schedule
- Pre Contract Questionnaire, if required
- Terms and Conditions
- Form of Tender
- ESPD and Advert

118. **Covering letter** - see attached an example

ITT covering letter.docx

119. **Instructions to Tenderers** – This document should explain the tendering process and how the bid will be evaluated. See the example attached. N.B - it is important that when you describe how you will evaluate the bids that this is the process you follow and you do not deviate from the guidance provided.

EXAMPLE INSTRUCTIONS TO T

120. **Specification/Supplier's Brief and Award Criteria** - A clear and unambiguous specification of requirements should be contained within the supplier's brief. This is vital to the later success of the procurement. It will help ensure that the procurement team is clear about what it is expecting suppliers to provide and will also minimise the time spent dealing with suppliers' questions during any tendering process. The foundation of a good specification/brief is laid in the planning and research undertaken before writing begins. Allow sufficient time to create the specification.

121. The specification/brief should be developed by the person in the Commissioner who requires the service to be delivered and approved by the budget holder. The finalised specification/brief is not required until it is to be released to potential suppliers, but preparing it in advance ensures that other tender documents are consistent with the specification/brief and that there is time to gain the appropriate approval.

122. The award criteria must be linked to the specification/brief. The award criteria must be relevant to the subject matter of the contract and not discriminatory.

123. Remember that once a contract is awarded the scope to make changes to the specification/brief (e.g. asking the contractor to deliver more, or less of something that was not specified at the time of tendering) is limited and any significant changes may be challenged in the courts. If it is not possible for the supplier to deliver the contract as originally intended, as a result of omissions or errors in the specification, the contract may have to be terminated and a new procurement undertaken.

124. For additional information on the areas to be covered by the Specification, please refer to the Scottish Government's Procurement Journey

125. **Award Criteria** - The Award Stage involves examination of the merits of the bids. This will identify which of the eligible tenderers will deliver the best value for money for the organisation depending on the agreed criteria and include the price or cost using a cost effectiveness approach. A cost effectiveness approach may include life cycle costing.

126. Purchasers and the customer must establish the price/quality ratio and must consider and agree what criteria will be used to assess quality, and weight, of each of the criteria.

127. Suggested Price/Quality Ratio

- Low Value/High Volume - Many Existing Alternatives - 80:20
- High spend area - Many Sources of Supply, Commercial involvement can influence price - 60:40
- Strategic to Operations - Few Sources of Supply, Large Spend Area, Specification may be complex - 60:40, 50:50, 40:60
- Few Sources of Supply and alternatives available, Complex specifications, If supply fails impact on organisation could be significant - 40:60, 10:90

128. The Purchaser should ensure that a robust methodology is developed to assist with the evaluation process. An example of scoring methodology is provided below and should be used in conjunction with an evaluation matrix which can be tailored to suit the specific requirements of the procurement exercise.

129. **Scoring Methodology for Award Stage Evaluation**

- 0 - Unacceptable. Nil or inadequate response. Fails to demonstrate an ability to meet the requirement.
- 1- Poor. Response is partially relevant and poor. The response addresses some elements of the requirement, but contains insufficient/limited detail or explanation to demonstrate how the requirement will be fulfilled.
- 2 - Acceptable. Response is relevant and acceptable. The response addresses a broad understanding of the requirement but may lack details on how the requirement will be fulfilled in certain areas.
- 3 – Good. Response is relevant and good. The response is sufficiently detailed to demonstrate a good understanding and provides details on how the requirements will be fulfilled.

- 4 – Excellent. Response is completely relevant and excellent overall. The response is comprehensive, unambiguous and demonstrates a thorough understanding of the requirement and provides details of how the requirement will be met in full.

130. **Pricing Schedule** – This document should be tailored to the commodity which is being purchased. You may wish to ask for a breakdown of the costs and a total cost for every year of the contract. It must be clear that the price should include all of the costs involved in delivering the service or goods. You should take into consideration the Whole Life costs and be clear that the price excludes VAT.

131. **Terms and Conditions** – the Commissioner's Standard Terms and Conditions should be used[5]

132. **ESPD and Advert** - The European Single Procurement Document replaces the Standard Pre-Qualification Questionnaire (sPQQ) and it is best practice to use the ESPD (Scotland) for all over £50k procurements which begin on or after 18 April 2016. An electronic version of the SPD is available on PCS to use - SPD Guidance | Procurement Journey

133. The guidance found in this area of the Procurement Journey centres around the use of the SPD Guidance | Procurement Journey to assess the resources and capability of suppliers which express interest in the published Contract Notice. In addition to being able to employ a formal and separate two stage process, where you elect to use a one stage procurement exercise you should also use ESPD (Scotland) questions within tender documents as a means of assessing suppliers' capability. Where this approach is used, it is important to note that your procurement documents must make a careful and transparent distinction between the exclusion, selection, and award criteria – including information for bidders explaining how the different questions and sections of the process will be assessed.

134. The exclusion and selection questions should be used in conjunction with the Standardised Statements for the Contract Notice. More information on the ESPD (Scotland) and the Standardised Statements can be found here SPD Guidance | Procurement Journey

135. PCS contains guidance on how to populate the advert template. Contract Notices must be used to advertise all procurement exercises with a value of £50k or more. However, a Prior Information Notice (PIN) can be used by sub-central organisations (any Organisation which does not belong to Central Government nor National Health Services) as a call for competition instead of a Contract Notice.

Issue Invitation to Tender (ITT) documentation

136. Once the procurement has commenced, care must be taken and a process put in place to ensure that all correspondence between the bidders and the Commissioner are carried out in a fair and transparent manner. For example, any question submitted by a bidder along with the answer provided by the Commissioner must be made anonymous and circulated to all of the bidders involved in the process. The PCS notice board can be used for this purpose

137. You should provide details of the deadline for the submission of any questions and the date by which all questions will be answered within the ITT documentation.

Receive and Evaluate Tenders

[5] The Commissioner has template terms and conditions which should be used as the basis for any Conditions of Contract

138. It is important that transparency and impartiality are maintained throughout the process of tender evaluation and that the evaluation of tenders is robust in order to provide a full justification and audit trail for the resultant award decision.

139. If only one tender response is received you should first consider why this is (in particular has the market been restricted in some way or has the opportunity been unattractive). In such cases you should consider restarting the process. If you are satisfied that there are no particular reasons for the submission of only one tender response, and that the bid is compliant, then you may consider continuing.

140. It is considered best practice for the Purchaser to notify the tenderer if the late tender has been accepted or rejected. The Purchaser should check the following before distributing to the evaluation panel:

- Tender has been signed and dated by the tenderer
- Price schedule has been completed in accordance with the instructions within the ITT
- Standard Terms and Conditions of Contract[6] and all other conditions of contract issued with the ITT have not been amended or altered nor replaced by the supplier's terms and conditions of contract
- Any omissions must be recorded in writing, and kept for the registered file

141. If a tender is incomplete, or does not conform to instructions, it may be disqualified, but advice from the HOBS should be sought before any action is taken. If the tender is disqualified, the Purchaser must inform the tenderer in writing at the earliest opportunity that the tender has been disqualified and give the reason(s) for disqualification.

142. An evaluation panel of at least two people should be established and consist of individuals with demonstrable technical ability to evaluate tenders (and this may or may not include the Purchaser). Ideally the panel membership will be consistent throughout the entire process including presentations and site visits. The evaluation panel should be able to withstand any scrutiny and it is the responsibility of the Commissioner to ensure that, as for any other stage of the procurement exercise, no member has a conflict of interest which would prevent them from making a fair and objective assessment of the tenders, or which might give rise to accusations that they were unable to do so.

143. The panel members should read and score the quality/technical aspects of the tenders independently using the pre-defined evaluation criteria and scoring system, prior to a moderation meeting taking place. At the moderation meeting the evaluators come together to agree the final moderated average scores. The process to agree the final scores must be fully transparent and documented. The Purchaser should evaluate the commercial aspects of the tenders separately, including the price evaluation. As a matter of good practice, no member of the evaluation panel should assess both the quality/technical elements and the commercial elements of the tender. The role of the Purchaser is to ensure an impartial and objective approach is taken to the evaluation of tenders.

[6] The Commissioner has template terms and conditions which should be used as the basis for any Conditions of Contract

144. The Purchaser should ensure that the evaluation panel provides justification to help when informing unsuccessful suppliers. A full justification of scoring is important and a record should be kept to ensure fairness and transparency of the process.

145. Comments made must not simply be a restatement of the scoring methodology. For example, if a response is assessed as “Good” it will not be sufficient to state that it is “relevant and good”. Comments must identify the features of the submission itself which justify the particular score. It may also be helpful to record what could have been added to the tender response to secure a higher score.

146. The price/commercial evaluation of tenders should be completed by the Purchaser.

147. To enable an easier comparison, you should include a price schedule with a breakdown of the product/service areas for bidders to complete. The evaluation should identify and compare all the costs and benefits' which can be quantified in money terms.

148. **Post Tender Clarification -** The objective at the clarification stage is to clarify the tenders as submitted. Tender or bid clarifications may become necessary during the evaluation of tenders (for example, where there are aspects of the bids that are unclear or contain minor errors; if a bid appears abnormally low, or especially high on price, it may be that an arithmetical error has been made). Clarification may also be sought from tenderers on matters of quality performance or particular terms and conditions of contracts. In seeking clarification, all communications with tenderers must be properly recorded so that an audit trail is maintained. **Any requests for amendment to the Terms and Conditions can only be considered where they are minor and not considered to be a “material change”**. Negotiations in relation to price or other areas where bid improvements may be possible should not take place.

149. Abnormally Low Tenders - any quote which shows an abnormally low price out of context may be queried with the supplier to identify the reasons for this. If this is due to a mistake by the supplier, you should consult with the HOBS for advice on how to proceed.

Contract Award

150. You should now be at a stage where you have identified the successful tenderer(s). More information on this stage can be found in the Procurement Journey. Contract Award and Implementation | Procurement Journey

151. **Contract Award Recommendation Report (CARR)** - A CARR contract should be prepared by the Purchaser and endorsed by the customer prior to approval by the appropriate delegated authority level.

152. The report should contain reference to the following:

- Summary of the process to date
- Ensure any decisions for supplier disqualification have been fully documented and that the paperwork is available for inspection
- Recommendation of award & request for approval
- Selection Stage evaluation results (if not contained within previous report)
- Technical & commercial evaluation (including whole life costing) together with details of any clarifications conducted benefits and savings available

- Details of any risks still present and mitigation plans
- Sustainability considerations (life-cycle costing, social, economic and environmental)
- Considerations in relation to Community Benefits
- Details on how the tender outcome will meet the requirements identified in the Commodity Strategy

153. Once you have obtained approval from the HOBS, you can notify both the successful and unsuccessful tenderers of the outcome and you should do as soon as possible:

    - advise any unsuccessful tenderer of the reasons for the rejection of its request to participate
    - inform any unsuccessful tenderer of the reasons for the rejection of its tender, including any decision that the goods or services do not meet the performance or functional requirements
    - confirm the name of the successful tenderer, the criteria on which the contract was awarded and the score of the successful tenderer.

154. If requested, you also have to provide the characteristics and relative advantages of the successful tender, within 30 days of request.

155. Any tenderer may request additional information regarding the tendering process. The tenderer should be asked to confirm whether this is an RFI under FOISA/the EIRs or “giving further information” in compliance with, say, s33 of the 2014 Act as the requirements (and the information the tenderer can obtain) are different.

156. The contract documentation should be collated and finalised to reflect the successful tenderer’s submission and agreed terms and conditions. Where required, the documentation must be signed in duplicate by the appropriate authority levels in both the contracting and tenderer's organisations.

157. The Contract Award Notice should be published in PCS and is mandatory for ALL regulated procurement exercises. The Contract Award Notice must be despatched no later than 30 calendar days after the contract or framework agreement award date. This also applies when a mini competition has been held for a Framework Agreement and the value is £50k or more for goods and services. The aforementioned Notice(s) must be published on the Public Contracts Scotland (PCS) portal. Contract Award Notices published via PCS will contain all of the mandatory information required. The contract register is automatically updated with the Contract Notices on PCS and should be publicly viewable unless in the opinion of the Commissioner this is not appropriate.

Contract Implementation

158. Contract implementation consists of two distinct phases:

    - Migration - facilitating the movement of organisations to a new contract post 'go-live'
    - Mobilisation - the process of moving from contract award to 'go-live' , that is, the point when a user can actually buy from the contract

159. Some steps in this process may happen concurrently.

160. **Post Award Supplier Meeting** - Where appropriate, you should hold the first meeting with the successful supplier as soon as possible after the contract has been awarded. The purpose of this meeting is to discuss the contract implementation phase and agree roles, responsibilities, identify activities and agree timescales. It is important to keep in regular contact with the supplier during the contract implementation phase and to arrange meetings etc. when required.

Contract and Supplier Management

161. The purpose of Contract and Supplier Management is to work closely with suppliers and internal customers to minimise the total cost of ownership and to maximise efficiencies throughout the supply chain.

162. Contract and Supplier Management should result in contract procedure and process improvements, as well as increasing knowledge and experience in the procurement function which can then be used to benefit future contracts. Care should also be taken to manage risks to changes in contracts, for example, you may require to retender if there is a substantial modification.

163. This concludes the procurement exercise and you should record any lessons learned for future procurement exercises.

164. Note: For all procurements with a value greater than the Procurement threshold, the Purchaser should refer to the Procurement Journey – Route 3 for guidance: **Route-3**

Document control sheet

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Summary of changes to document

Date	**Action by** *(initials)*	**Version updated** *(e.g. v01.25-36)*	**New version number** *(e.g. v01.27, or 02.03)*	**Brief description** (*e.g. updated paras 1-8, updated HOPI to HOBS, reviewed whole section on PI test, whole document updated, corrected typos, reformatted to new branding*)
26/10/23	BOW	05.00	05.01	New document created following approval of draft
26/10/23	BOW	05.01	05.02	DCS updated, published on website
20/01/26	LB	05.02	05.03	Added reference to requirement that suppliers biding for a contract provide evidence of their cyber security credentials
09/02/26	LB	05.03	05.04	LCB approved updated via email / LB accepted changes

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