

Reviewed and approved by SMT on  
at its meeting March 2021

## **Procurement Policy**

### **Introduction**

Procurement is the process of obtaining goods, services or works (including hire, lease and disposal). The procurement of services includes the commissioning of research.

### **Authority to purchase**

The Commissioner is responsible for providing his office with the goods and services it needs. This means that The Commissioner is the Contracting Authority, with legal responsibility for all procurement decisions.

The Commissioner's Scheme of Delegation outlines the authority of each postholder for all procurement decisions including authority to purchase.

Purchasing Authority is the authority to enter into a legally binding contract on behalf of The Commissioner (Note: a Purchase Order or Payment Request is a legally binding contract). Authority covers all purchasing commitments, including variations to and extensions of contracts.

### **Procurement thresholds and processes**

Procurement must achieve value for money (VFM). Best overall VFM is the optimum combination of whole life costs and quality (which includes all relevant environmental, social and ethical issues) to meet the need.

### **Requirements below £5,000 (excluding VAT)**

Requirements below £5,000 (excluding VAT), for the lifetime of the contract, do not require formal competition. However, the purchase is required to represent overall value for money and offer fair and equitable treatment to suppliers. It may therefore be necessary from time to time to obtain two or more quotations, but this should be considered in relation to the associated administrative costs.

### **Requirements between £5,000 and £50,000 (excluding VAT)**

Requirements between £5,000 and £50,000 (excluding VAT), for the lifetime of the contract, require a minimum of three written quotations. However, for potentially complex or high-risk requirements, formal tendering procedures should be considered. The value should include any potential extensions to the contract.

### **Requirements above £50,000**

Formal tendering procedures must be used for all procurements with a value of more than £50,000 (excluding VAT), and for any lower value requirements that are potentially complex/ high risk. However, the extent and complexity of the documentation should be no greater than is necessary for the nature/ value of the requirement. All tenders must be advertised appropriately (including via the Public Contracts Scotland portal).

### **Requirements above the EU threshold**

All procurement on behalf of CYPSC is governed by a framework of rules including:

- Treaty on the Functioning of the European Union (EU Treaty) – fundamental principles of transparency, equal treatment, non-discrimination, Procurement Policy proportionality and mutual recognition apply to all procurements, regardless of whether the full EU procurement rules apply.
- EU Procurement Directives - EC Procurement Directive 2014/24/EU provides detailed procedural rules that we must comply with when procuring and awarding contracts above EU financial threshold. Directive is given effect into Scots law by the Public Contracts (Scotland) Regulations 2015.
- The Public Contracts (Scotland) Regulations 2015 – these regulations apply to procurement when the estimated value of the contract equals or exceeds the current EU financial threshold. They impose minimum procurement standards that must be followed at all times.
- European Court of Justice and national case law as published.
- Procurement Reform (Scotland) Act 2014 – this Act provides a framework for sustainable public procurement above and below EU threshold contract values where appropriate.
- Public Services Reform (Scotland) Act 2010 – this Act requires listed public authorities, including CYPSC, to publish quarterly information on a range of expenditures incurred on the following matters: Public Relations; Overseas

Travel; Hospitality and Entertainment; External Consulting; and Payments with a value in excess of £25,000 (incl. VAT).

- **The legal framework is not static and, therefore, the policy will evolve through new and amended legislation, European Commission decisions and relevant Court judgements.**

***Failure to comply with this legislation carries severe penalties for which The Commissioner would be held accountable.***

### **Non-competitive action (NCA)**

All requests to proceed with non-competitive action must receive prior written approval by The Commissioner.

An NCA may only be granted in exceptional circumstances and is strictly limited to situations where competition is not deemed appropriate.

Sometimes known as single tender action, NCA is required when purchases that need to be made cannot be obtained through the normal competitive process. However, great care is needed in authorising NCA, as EU procurement rules must be fully complied with at all times and this **must** be taken into account when NCA is being considered<sup>1</sup>. Additionally, it remains essential to achieve best value for money and to demonstrate the fair and equal treatment of suppliers, so the procurement process selected must always be fully defensible.

### **Examples of exceptional circumstances where NCA may be justified include:**

For work of exceptional urgency caused by unforeseeable circumstances where competitive tendering would cause unacceptable delay (for example, after critical equipment breakdown, storm, fire, etc.).

The proposed supplier has, by recent experience (normally, within the last 12 months, but this will depend on relevant market conditions), proved to offer best value for money as the result of a fully compliant, competitive procurement exercise. Further competition would be highly likely to produce the same outcome. However, EU procurement rules must be taken into account, dependent on the value of the additional requirement.

The proposed supplier is the only one known to provide the goods and / or services required (adequate research must have been carried out to demonstrate that this is the case) and there are no satisfactory alternatives.

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<sup>1</sup> Contracts awarded following NCA are known as "Direct Awards" and, if the total contract value exceeds the EU threshold, may be challenged under the Remedies Regulations. Remedies the court may order include rendering the contract ineffective and/or imposing a fine on the Contracting Authority

Where Intellectual Property Rights are an issue, for example, bespoke designs and some research programmes. However, it is essential that procedures are in place to ensure value for money.

*Note: where the total contract value exceeds the current EU procurement threshold, details of this process will be included in the return issued by CYPCS to the EU Commission.*

Insufficient organisational planning (for example, requirement to spend funds within a particular financial year) cannot be considered as acceptable justification.

### **Defining the need**

Prior to any procurement being undertaken, the actual **need** must be clearly defined, i.e. that it is fit for the purpose for which it is intended. If an actual requirement does exist, it must be procured by means that offer best overall value for money.

It is essential that the full extent of the anticipated **and potential** need is defined at the outset. The extent of the requirement dictates the overall contract value which, in turn, determines the appropriate procurement process.

### **Environmental impact**

Not purchasing goods or services is the most effective method of reducing environmental impact. Re-using existing items, refurbishment or upgrade should be considered wherever possible. The extent to which goods contain recycled materials or are recyclable at end of life should also be considered.

### **Selection of suppliers**

The objective is to identify organisations that have the necessary resources and capability to meet the specified requirement and to ensure that suppliers are selected in a way that is fair and transparent. In practice, for all but very low value requirements, this will mean a degree of advertising. In general, all advertisements will be posted on the Public Contracts Scotland Portal.

Due to the size and nature of our business and types of procurement exercises undertaken, it may be proportional and effective to send a Pre-Qualification Questionnaire (PQQ) to interested suppliers.

### **The Specification**

For requirements in excess of £30,000 (excluding VAT), a full specification must be produced. The specification should be developed in output terms, i.e. by defining **what** is to be achieved and not by stating **how** it is to be achieved. A full tender must be followed for all procurement activity above £50,000.

For requirements below £50,000, the specification should be appropriate to the value and complexity of the purchase. It must be written in a way that does not give an

advantage to any particular supplier(s) and enables suppliers to produce a meaningful submission that can be effectively evaluated. The specification should not normally give an indication of the anticipated contract price, except when commissioning research when it will be acceptable to specify an anticipated fee range.

Companies tendering for the contract will base their tenders on the information CYPCS provides. Tenders will only be evaluated on the basis of how each supplier responds to the requirements stated in the Project Specification. It is imperative that every aspect of the services required is identified at the beginning of this process.

### **Procurement Requiring Tendering**

The Scottish Government provides an online tool, the [Procurement Journey](#), which is intended to support all levels of procurement activities by providing one source of guidance and documentation for the Scottish public sector, which is updated with any changes in legislation, policy; and facilitates best practice and consistency.

This resource may be used for a procurement exercise requiring tendering, to access the most recent guidance and templates.

### **Issuing Invitation to Tender (ITT)**

The completed Invitation to Tender and evaluation documents must be forwarded to the Commissioner for approval prior to the start of the tender process. Once approval has been given, the ITT is to be sent to appropriate companies and uploaded to the Public Contracts Scotland Portal with a brief summary of what services are to be procured. All incoming tenders must be collated without opening until the deadline for submissions date.

### **Evaluation of bids**

The objective when evaluating submitted bids is to identify the one which most closely meets the requirements as set out in the specification, and which represents best value for money to CYPCS in terms of whole life costs. Evaluation criteria, and any associated weightings and evaluation guidance must be determined prior to invitations to tender or quote being issued (for very straightforward quotes, criteria may not be necessary). The evaluation criteria must be reflected in the Project Specification included in the invitation to tender. If an item is not included in the Project Specification, it cannot be included in the evaluation.

Tenders must be evaluated by at least two CYPCS staff members with the evaluation sheets completed independently. Once all tenders have been evaluated, the staff members who completed the evaluations must meet with the Head of Corporate Services to review and appoint a successful supplier. The successful bid should meet

the specification in full and, where the lowest total price (over the lifetime of the contract) was not selected, the reasons should be recorded.

### **Awarding the contract**

For purchases above £50,000, a contract award recommendation will be produced and submitted to the Commissioner for approval. The recommendation will demonstrate the procurement process that took place; it will provide a brief summary of the submissions received and justify the award recommendation.

Only CYPCS has the authority to award contracts. All contracts must be in writing.

All purchasing decisions and contracts above £5,000, regardless of whether a full tendering process was used must contain a **decision record sheet**. This establishes the procurement method used and why and it utilised which helps ensure that decision making is transparent and tracked.

### **Mandatory Standstill Period**

The mandatory EU standstill period allows a period of time between the notification of a contract award decision and the commencement of that contract.

### **De-briefing suppliers**

**All unsuccessful suppliers must be notified by letter and offered a de-brief to explain why their bid was unsuccessful.**

All contracts let on behalf of The Commissioner should be subject to Scots law. Any proposal to the contrary, or any attempt by a supplier to make any other law applicable, must be referred to The Commissioner. All contracts must be in writing.

The Commissioner's Standard Conditions of Contract will be supplied with the Invitation to Quote/ Tender. The Commissioner's Standard Conditions of Contract should also be incorporated into the final contract.

## **Managing the contract**

Contractor Performance Management (CPM) is the process that enables both parties to a contract to meet their obligations in order to deliver the objectives required from the contract. It also involves building a good working relationship between The Commissioner and contractors.

## **Paying the supplier**

Contractors must be paid within agreed terms, and the CBI Prompt Payers Code observed at all times. Unless otherwise stated in the contract, payment is to be made promptly and, where appropriate, in accordance with the Scottish Government target of 10 working days of invoices for goods and services, completed to the satisfaction of The Commissioner.

Payment should not be made in advance of goods and/or services being delivered. 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.**

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

## **Disposing of goods**

Some assets may have a resale value, whilst for others there may be a cost (including an environmental cost) of 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.

Whatever the method of disposal, it is particularly important that clear records are kept, documenting decisions and actions taken.

Disposal of any goods in the appropriate fashion in paramount to CYPSCS accounting processes.

## **Openness and transparency**

It is the Commissioner's policy that their office's procurement services will be delivered in an open and accessible manner.

## **Freedom of Information**

CYPSCS is a Scottish public authority for the purposes of the Freedom of Information (Scotland) Act 2002 (the Act). Anyone has the right to request information the office holds, including information which comes from third parties, such as contractors. In most cases, CYPSCS will respond to an information request by disclosing the

information requested. The Act does permit the office to refuse to provide information, but only where an exemption in the Act can be applied. For example, the office may claim the section 33 exemption (commercial interests) in the Act to withhold information if its disclosure would prejudice substantially someone's commercial interests. If a contractor considers that the disclosure of information they have provided CYPCS would attract the exemption in section 33 of the Act, the office will expect the contractor to alert CYPCS to this fact before the contract is finalised.

CYPCS will not generally agree conditions in contracts which require prior approval of the contractor for the release of information.

Occasionally, contractors may provide information to CYPCS on the basis that it will remain confidential and will not be disclosed in the event that an information request is made for it. The office will agree to accept information in confidence from contractors only in very limited circumstances. Even where CYPCS does agree to accept information in confidence, the information may still be disclosed if the disclosure would no longer constitute an actionable breach of confidence, e.g. if the information is no longer confidential.

### **Public Services Reform (Scotland) Act 2010**

The Public Services Reform (Scotland) Act 2010 requires listed public authorities, including CYPCS, to publish information on a range of expenditures incurred on the following matters:

- Public Relations
- Overseas Travel
- Hospitality and Entertainment
- External Consulting
- Payments with a value in excess of £25,000 (incl. VAT)

### **Procurement records**

For audit purposes, there must be a clear record of all procurement decisions taken and the reasons for them.

### **Responsible purchasing**

All purchasing is undertaken in a responsible manner and delivers benefits not only for the organisation but for society, the economy, and the environment.

CYPCS is committed to delivering tangible improvements across the following areas:

environmental impact

ethical and social issues and;

Small and Medium Enterprises (SMEs) and Scottish suppliers.

Appropriate equality considerations will be incorporated into the production of specifications, evaluation of tenders, and Contractor Performance Management. All

suppliers working at CYPCS will abide by CYPCS Health and Safety procedures and all relevant Health and Safety legislation.

Purchasers will actively support and encourage suppliers to create and maintain an ethical supply chain for the direct procurement of goods, services and minor works.

### **Ethical Standards**

Staff must maintain the highest standards of honesty, integrity, impartiality and objectivity in all dealings with suppliers and potential suppliers. Relationships with suppliers must always be conducted on a professional basis, with proper regard to ethics and propriety.

Purchasers and customers must not be involved in any procurement where they have a relationship or interest in organisations likely to bid for CYPCS contracts. Those who have business or personal relationships with, or friends / relatives employed by, outside organisations bidding for CYPCS contracts must inform a member of the Senior Management Team and where this pertains to the Senior Management Team, the Commissioner.

Staff involved in procurement activity, or others who may be perceived to be in a position of influencing purchasing decisions, may not solicit or accept contributions of any kind from CYPCS contractors, or those bidding for CYPCS contracts. Invitations from potential suppliers to attend social functions or offers of corporate entertainment (for example tickets to sporting events, theatre and travel) must always be politely refused.

If there is any doubt about whether or not a gift or hospitality should be accepted, contact a member of the Senior Management Team for advice.