

## Procurement Policy

### 1. 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.

The key areas of the procurement policy of the Commissioner's office are:

- Authority to purchase
- Procurement thresholds and processes
- Defining the need
- Selection of suppliers
- The specification
- Evaluation of bids
- Awarding the contract
- Debriefing suppliers
- EU Procurement rules
- Managing the contract
- Paying the supplier
- Disposing of goods
- Openness and transparency
- Responsible Purchasing
- Ethical standards for purchasers

### 2. 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 is a legally binding contract). Authority covers all purchasing commitments, including variations to and extensions of contracts.

### 3. 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.

### 3.1 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

### 3.2 Requirements between £5,000 and £30,000 (excluding VAT)

Requirements between £5,000 and £30,000 (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. The Public Contracts (Scotland) Regulations 2006 require a degree of advertising appropriate to the nature of the requirement.

### 3.3 Requirements between £30,000 and the current EU threshold

Formal tendering procedures must be used for all procurements with a value of more than £30,000 (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).

### 3.4 Requirements above the EU threshold

The Public Contracts (Scotland) Regulations 2006 and the Public Contracts and Utilities Contracts (Scotland) Amendment Regulations 2009 apply to procurement by The Commissioner and must be complied with.

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

### 3.5 Non-competitive action (NCA)

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

#### 4. 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

#### 5. 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. All advertisements will be posted on the Public Contracts Scotland Portal.

#### 6. 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.

For requirements below £30k, 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.

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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

## 7. 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 The Commissioner 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 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.

## 8. Awarding the contract

For purchases above £1,000, 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.

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.

## 9. De-briefing suppliers

All unsuccessful suppliers must be offered a de-brief to explain why their bid was unsuccessful.

## 10. EU procurement rules

The Public Contracts (Scotland) Regulations 2006 and the Public Contracts and Utilities Contracts (Scotland) Amendment Regulations 2009 apply to procurement by The Commissioner and must be complied with. **Failure to comply with this legislation carries severe penalties for which The Commissioner would be held accountable**

## **11. 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.

## **12. 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.

## **13. 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.

## **14. Openness and transparency**

<p>It is The Commissioner's policy that his office's procurement services will be delivered in an open and accessible manner.</p>
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### **14.1 Freedom of Information**

The Commissioner 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 he holds, including information which comes from third parties, such as contractors. In most cases, the Commissioner will respond to an information request by disclosing the information requested. The Act does permit the Commissioner to refuse to provide information, but only where an exemption in the Act can be applied. For example, the Commissioner 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 to the Commissioner would attract the exemption in section 33 of the Act, the Commissioner will expect the contractor to alert the Commissioner to this fact before the contract is finalised. He will not generally agree conditions in contracts which require him to gain prior approval of the contractor for the release of information.

Occasionally, contractors may provide information to the Commissioner 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 Commissioner will agree to accept information in confidence from contractors only in very limited circumstances. Even where he 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.

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

The Public Services Reform (Scotland) Act 2010 requires listed public authorities, including the Commissioner, 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)

## **14.3 Procurement records**

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

## **15. Responsible purchasing**

It is The Commissioner's policy that all purchasing is undertaken in a responsible manner that contributes to Sustainable Development. The Commissioner is committed to delivering tangible improvements in environmental impact, ethical and social issues; support to SMEs and Social Enterprises.

Environmental impact will be considered and evaluated at all stages of the procurement process and value for money will be determined on the basis of whole life costs (including the environmental impact of purchase and disposal).

## **16. Ethical standards for purchasers**

### **16.1 Relationship with suppliers**

Staff involved in the procurement process, 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

## **16.2 Declaration of interest/potential conflict of interest**

Staff 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 contracts must inform The Commissioner at the outset.

## **16.3 Personal Gain and Gifts**

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 suppliers. Staff should only accept gifts of a trivial nature. Records of all gifts offered and whether or not they were accepted must be notified to the Office Manager and recorded in the Register of Gifts and Hospitality. If there is any doubt over whether a gift should be accepted, the Office Manager should be contacted for advice.

## **16.4 Hospitality**

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 Commissioner. Records of all hospitality offered and whether or not accepted must be notified to the Office Manager and recorded in the Register of Gifts and Hospitality. Offers from suppliers of “corporate entertainment” (e.g. tickets to sporting events, theatre, and travel) must always be politely refused.