



# Procurement Policy

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<b>Prepared By</b>	Development Director
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<b>Reviewed By</b>	PHA Board

## 1. Introduction

- 1.1 The policy seeks to ensure that we comply with the relevant legislation, regulations and guidance which regulate our procurement activities. It applies equally to the procurement of works, goods and services, the appointment of contractors and consultants and the purchase of office supplies.
- 1.2 PHA has a Value For Money Strategy, so we aim to ensure that our procurement activities allow us to achieve value for money for us and our customers, that quality standards are achieved and that propriety is observed in selecting suppliers and contractors and in awarding tenders. PHA also has Group Standings Orders, including a Scheme of Delegation, which must be observed when implementing the Procurement Policy.

## 2. Legal Framework

- 2.1 We are defined as a contracting authority for the purposes of procurement and we are therefore required to comply with legislation and relevant case law relating to procurement, and all related regulations. In recognition of this, our procurement practices treat economic operators equally and without discrimination and we act in a transparent and proportionate manner. We seek to conduct our procurement activities in line with the regulations and will not artificially narrow competition or unduly favour or disadvantage certain economic operators.
- 2.2 We will comply with The Procurement Reform (Scotland) Act 2014 (**the 2014 Act**), the Public Contracts (Scotland) Regulations 2015 (**the 2015 Regulations**) and Procurement (Scotland) Regulations 2016 (**the 2016 Regulations**) and statutory guidance issued by the Scottish Government and the Scottish Housing Regulator.

## 3. First steps

### 3.1 Identifying the Contract Manager

Before drafting tender documentation and starting the procurement process, we will identify a Contract Manager. They will usually be the manager within PHA within whose remit the item to be procured falls. The Contract Manager will be responsible for both implementing the procurement and for managing the contract once it is let. For audit purposes, they will keep an accessible and comprehensive electronic file of all documentation relating to the procurement.

### 3.2 Agreeing the Business Case

Before starting the procurement process, the Contract Manager should draft a business case for procuring the items required for approval by their Director. This is a key document which outlines and records for audit purposes why the procurement is required and how it will be implemented.

It should include:

- details of the item to be procured and whether it is for works, services or goods;
- an explanation of why it is required, referring to the achievement of specific Group Corporate Plan objectives and details of any options appraisal carried out;
- implications of not progressing with the procurement;
- an estimate of its value and which category of contract (works, services or goods) it falls into;
- a statement of budget it is to be funded from and confirmation that there is appropriate budgetary provision;
- how the tender is to be advertised on the Public Contracts Scotland (PCS) portal;
- confirmation if the procurement is to be a single stage process ('open' procedure) or if shortlisting by means of a Pre Qualification Questionnaire (PQQ) is required ('restricted' procedure). If a PQQ is to be used then we will use the Scottish Government's Standard Single Procurement Document (Scotland) (**the SPD**) if the value is over the value limits/ thresholds for the 2015 Regulations. Guidance on the use of this is included within the Scottish Government's Procurement Journey – see

<https://www.procurementjourney.scot/route-2/develop-documents/exclusion-selection-and-award-criteria/single-procurement-document-spd>;

- a timetable for the procurement stages from Prior Information Notice (PIN) to tender award, taking account of the statutory timescales for tenders as set out in the 2015 Regulations;
- what the balance of quality and price will be;
- a Sustainable Procurement Duty report if required;
- a report outlining why the procurement should be restricted to supported businesses if applicable; and
- a report outlining what community benefits are to be achieved if applicable.

The Contract Manager should only start the procurement process after the business case had been approved by their Director.

#### **4. Rules applying to all tenders**

##### **4.1 Contract Values**

All contract values are net of VAT. If the estimated value of a contract falls on the borderline between two categories, the procedure for the higher value category should be used.

##### **4.2 Electronic Tendering**

The Public Contracts Scotland portal allows for uploading of electronic tender documents, (Prior Information Notices, Contract Notices, Award Notices, posting of SPDs, tender documents, questions and answers during the tender period, and the submission of tender returns to the electronic postbox. These facilities should be used for all procurement activities, to comply with Section 23 of the Act.

##### **4.3 Tender Documentation**

For all tenders and quick quotes a contract specification, pricing document, quality questionnaire (if required) and standard SPD (if required) should be used.

For all contracts with a value over £50,000 the terms of the contract to be entered into must be included in the tender documentation. This should be accompanied by a statement to the effect that by returning the tender, the tenderer is deemed to have read, understood and taken legal and insurance advice on the terms of the contract and that no amendments or deletions to the contract terms set out in the tender document will be accepted after the tender has been awarded.

##### **4.4 Quality Questionnaires**

From 18 April 2016 it has been mandatory under the 2015 Regulations for a quality element to be included within all tender assessments and price only tenders are therefore not allowed.

When using a quality questionnaire the Contract Manager should ensure that the questions are relevant, are capable of being easily understood and marked, and the marks available for each question are stated. Clear guidance on the criteria to be used for marking the questions should be included.

Quality questionnaires should all be marked out of 100 and the quality weighting then applied to the mark, to give the quality score.

For example if a quality questionnaire gets a mark of 80% and the quality weighting is 60% then the quality score will be 48. This should be clearly explained within the questionnaire.

#### 4.5 Price Scores

Where a balance of quality and price is used to evaluate tenders, price scores should be calculated by finding the mid-point between the highest and lowest price.

All tenderers start with 50 marks. Then one mark is added for every percent they are below the mid-point, or, one mark is deducted for every percent they are over the mid-point. This gives the price mark. Then the price weighting is applied to the mark to give the price score.

For example if the highest tender is £150, and the lowest is £50 then the mid-point is £100. A contractor returning a price of £80 will be 20% below the midpoint so they get 70 marks (50+20). A contractor returning a price of £120 will be 20% over the midpoint so they get 30 marks (50 -20). If the price weighting is 40% their price scores will be 28 (70 x 0.4) and 12 (30 x 0.4) respectively. This should be clearly explained within the documentation.

#### 4.6 Tender Opening

For all tenders with a value exceeding £50,000 the opening of the electronic tender postbox by the Contract Manager should be witnessed by a Director who is not involved in the delivery of the contract.

For audit purposes the Contract Manager will compile a Tender Report, identifying the operators who submitted tenders, their prices and quality marks, the weighted and combined price and quality scores, as well as the successful contractor. The Contract Manager will lodge the details of the successful tenderer on the Contracts Register (see 6.8 below).

We will adopt clear procedures that set out how evaluation is done, by whom and how we will tell bidders of the outcome (e.g. scores, etc.). These will also include details of how we manage standstill periods if we are operating under 2015 Regulations.

#### 4.7 Tender Awards

The Contract Manager is responsible for lodging the tender award on the Public Contracts Scotland portal and for dealing with any appeals or requests for feedback.

#### 4.8 Contract Documentation

After awarding the contract the Contract Manager is responsible for ensuring that a written contract is drawn up and signed by both PHA and contractor representatives before any work on the contract starts. It is not sufficient to rely on contract terms included for information in the tender documents.

If the contract has a value over £50,000, the contract terms will have been included within the tender documents (see 4.3 above) and should not be departed from when concluding a contract at this stage.

#### 4.9 Record Keeping

For audit purposes the Contract Manager will compile a report, compliant with Regulation 84 of the 2015 Regulations, on the process and conclusion of the procurement.

For most cases the information required will be contained within the contract award notice. In addition the records should include a PDF or 'read only' electronic copies of:

- the business case for the procurement;
- the tender documentation;
- the tenders returned;
- the Tender Report;

- the Award Notice;
- the Contract, signed by both parties; and
- any relevant PHA or PWL Board reports.

The report should be kept for at least three years following the award and be made available to PHA auditors and the Scottish Government if requested.

#### 4.10 Use of Frameworks

There are a number of industry recognised frameworks established externally for selecting suppliers / contractors for different types of works and services. PHA has actively sought to participate in such frameworks where they meet our business needs.

Such frameworks can include national standalone businesses, where the running costs and profit are taken from a standing charge to use the service. Or they can be local frameworks, perhaps operated by other RSLs who may look to charge a fee for utilising their framework.

PHA may also choose to put in place a Framework Agreement of its own where it considers this appropriate.

These frameworks can be used if they have complied with all necessary legislation that governs procurement and where they are able to show that the parties shortlisted to provide services have gone through the necessary tendering process set by that particular framework. If there is also a requirement to comply with legislation then the chosen framework will require to show in writing that there is compliance.

Frameworks can be an effective way of securing suppliers efficiently and quickly. The Contract Manager will prior to appointing a particular party require to compile a report, on the process and conclusion of the procurement.

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- the business case for the procurement;
- the tender documentation;
- the tenders returned;
- the Tender Report;
- the Award Notice;
- the Contract, signed by both parties; and
- any relevant PHA or PWL Board reports.

The report should be kept for at least three years following the award and be made available to PHA auditors and the Scottish Government if requested.

#### 4.11 Exceptional Situations

In exceptional circumstances, the Contract Manager can look to make a direct appointment of a supplier/s outwith the normal tendering process where there is an emergency situation that requires to be dealt with expediently.

An exceptional situation could include one that could have an immediate potential to impact on the business financially or reputationally, such as where an immediate resolution is required to comply with an Emergency Statutory Instruction or to prevent one being imposed; or where there could be a serious adverse impact on life or property in terms of Health & Safety.

Any such use of exceptional measure will require the approval of the Chief Executive and in their absence another member of the Leadership Team. A full written case for this approach will require to be prepared and approved.

However by their very nature such situations should rarely if ever arise and must

never be used to circumvent the other tender rules. The effective use of frameworks, where the tender process has already been completed, can offer an effective and alternative approach in most emergency situations.

## 5. Tender Categories

### 5.1 Small Contracts for Works, Goods and Services - Less than £50,000

Contracts with these values are not regulated by the 2014 Act. They can be awarded on the basis of price only, or price and quality as set out in the business case. The method for advertising the tender should be agreed in the business case in order to ensure that value for money and a proportionate level of competition and transparency is achieved. In most cases this will be satisfied by advertising the tender to selected operators by using the Quick Quote facility on the Public Contracts Scotland portal.

For other small contracts where the Quick Quote facility is not appropriate, the directions set out within our Scheme of Delegation should be followed as to who can award contracts, depending on the value of the contract in question and the procedure used to identify a contractor / supplier.

### 5.2 Medium Contracts for Works only - £50,000 to £2,000,000

These contracts are not regulated by the 2014 Act. However the need to ensure value for money means that the same process as for regulated contracts should be followed (with the omission of the 'sustainable procurement duty').

### 5.3 Regulated Contracts for Goods and Services over £50,000 and Works over £2,000,000

Contracts with these values are regulated by 2014 Act so the procurement process must ensure that:

- all relevant economic operators are treated equally and without discrimination;
- we act in a transparent and proportionate manner; and
- we comply with the 'sustainable procurement duty'.

All such regulated contracts will be advertised on the Public Contracts Scotland portal. The Contract Manager can propose in the business case whether the tender should be advertised in a single stage, or over two stages using a Pre Qualification Questionnaire to shortlist potential suppliers. For two-stage tenders, the standard SPD format should be used. A proportionate balance of quality and price will normally be applied.

### 5.4 Large Contracts for Works or Services over £4,000,000

Contracts with these values are clearly regulated by the 2014 Act so the procurement process is the same as for lower value regulated contracts. However, **in addition**, PHA must consider the potential delivery of community benefits. If community benefits are not to be required, the reason for this must be included within the Contract Notice.

### 5.5 Large Contracts for Goods and Services over £181,302 and Works over £4,551,413

The procurement process for these contracts is the same as for regulated contracts under the 2014 Act, **with the addition** that the contract should also be compliant with the 2015 Regulations. There is a facility within the Public Contracts Scotland portal to facilitate this.

Where we are using a two-stage process which complies with the restricted procedure under the 2015 Regulations, we will normally require to use the standard SPD to build a shortlist because such notices are likely to generate a larger number of responses. We will normally apply a proportionate balance of quality and price.

Contract Managers should be aware of (or take advice on) the timescales involved in the advertising and award process as set out in the 2015 Regulations, and the way the timescales can be reduced by issuing a Prior Information Notice.

## **6. Compliance with the 2014 Act**

### **6.1 General Principles**

The 2014 Act came into force on 18 April 2016. PHA is a contracting authority and subject to the 2014 Act because it is a contracting authority for the purposes of the 2015 Regulations.

The 2014 Act regulates the procurement of contracts and frameworks worth over £2m for works and over £50,000 for goods and services. When carrying out a regulated procurement we must ensure that we:

- treat relevant economic operators equally and without discrimination;
- act in a transparent and proportionate manner; and
- comply with the 'sustainable procurement duty'.

Other obligations from the 2014 Act are detailed in the rest of this part 6.

### **6.2 Sustainable Procurement Duty (Section 9)**

We will have regard to the guidance published by Scottish Government on this section of the Act. When procuring a regulated contract, the procuring officer will write a brief and proportionate report as part of their business case, outlining how the procurement will be used to:

- identify and secure improvements to the economic, social and environmental wellbeing of the area;
- facilitate the involvement in the delivery of the procurement of:
  - third sector organisations (bodies which exist wholly or mainly to provide benefits to society or the environment);
  - supported businesses (those whose main aim is the social and professional integration of disabled or disadvantaged persons, and where at least 30 per cent of the employees are disabled or disadvantaged);
  - small and medium enterprises (businesses with fewer than 250 employees); and
- promote innovation.

The Contract Notice and contract will be drafted to include these requirements and will set out how they will be achieved monitored and measured.

### **6.3 Restriction of tenders to Supported Businesses (Section 11)**

PHA can restrict the procurement of regulated contracts to supported businesses or supported employment programmes when the tender is below the value threshold in the 2015 Regulations, i.e. £2,000,000 to £4,551,413 (works) and £50,000 to £181,302 (goods and services).

If the tender is to be restricted to supported businesses, the reasons for this should be outlined in the business case. Guidance on the use of supported businesses can be found in Scottish Procurement Policy Guidance Notes.

In addition PHA can contract directly with supported businesses on the Scottish Government's Supported Business Reserved Framework Agreement for the following goods and services: furniture and associated products, document management, textiles and personal protective equipment, and signage. Guidance on the use of the framework can found in Scottish Procurement Policy Guidance Notes.

### **6.4 Procurement Strategy (Section 15)**

This duty applies in any year when PHA expects to procure regulated contracts with a total value of over £5m. Officers will prepare a report for the Board outlining how we intend to carry out regulated procurements.

The procurement strategy will detail how we intend to ensure that our regulated procurements will:

- contribute to the carrying out of its functions and the achievement of its purposes;
- deliver value for money; and
- ensure that we treat relevant economic operators equally and without discrimination, act in a transparent and proportionate manner, and comply with the sustainable procurement duty.

The report will include a statement of our policy on:

- the use of community benefit requirements;
- how we consult and engage with people affected by our procurements;
- the payment of a 'living wage' (as defined by the Living Wage Foundation) to people involved in delivering our regulated contracts, including subcontractors and suppliers;
- how we will promote compliance by contractors and sub-contractors with Health & Safety legislation; and
- the procurement of fairly and ethically traded goods and services.

The report will set out how we intend to ensure that, so far as reasonably practicable, payments by us to a contractor, by the contractor to subcontractors, and by one subcontractor to another are all made within 30 days of being invoiced.

If we are required to produce a Procurement Strategy, where we have procured £5m or more in a year, this will be published on PHA's website and we will also notify Scottish Ministers when the Strategy for the year is published.

#### 6.5 Annual Procurement Report (Section 18)

At the first meeting following the end of the financial year, officers will submit a report to the PHA Board summarising the regulated procurements completed during the previous year, including:

- a review of whether those procurements complied with our Procurement Strategy;
- if any did not comply, a statement of how we intend to ensure that future regulated procurements will comply;
- a summary of any community benefit requirements fulfilled during the year;
- a summary of any steps taken to assist the involvement of supported businesses during the year; and
- a summary of the regulated procurements we expect to start in the next two financial years.

If we are required to produce an Annual Procurement Report, where we have procured £5m or more in a year, this will be published on PHA's website and we will notify Scottish Ministers when the Report for the year is published.

#### 6.6 Community Benefits (Section 25)

If we are procuring a regulated contract worth more than £4m we will consider, as part of the business case, whether to impose any community benefit requirements as part of the contract. We will include a statement on the community benefits we expect to be delivered via the contract in the contract award notice. If we do not intend to include any community benefit requirements, we will state in the contract notice our reasons for not doing so.

#### 6.7 Selection, Exclusion of Tenderers and Feedback (Sections 32 to 34)

We will provide feedback within 30 days to any tenderers excluded from a regulated tendering process and will give all unsuccessful tenderers:

- the names of the economic operators who have not been excluded;
- the criteria used to exclude the tenderer; and
- our scoring against those criteria.



After awarding a contract we will provide all tenderers with:

- the name of the successful tenderer;
- the criteria used to award the contract; and
- our scoring, against those criteria, of the unsuccessful tenderers and the successful tenderer.

If we receive requests for further information within 30 days of these notices, we will provide unsuccessful tenders within 30 days those reasons why they were excluded from tendering or why their tender was unsuccessful, and the characteristics and relative advantages of the successful contractor's tender.

PHA is entitled to withhold information from a person if its disclosure would impede law enforcement, be contrary to the public interest, prejudice the commercial interests of any person or prejudice fair competition between economic operators.

## 6.8 Contracts Register (Section 35)

As a contracting authority we must keep and maintain a register of those contracts we have entered into as a result of a regulated procurement from 18 April 2016. The register will contain the following information:

- the date of award;
- the name of the contractor;
- the subject matter;
- the estimated value;
- the contract start date;
- the contract end date (disregarding any option to extend the contract) or a description of the circumstances in which the contract will end; and
- the length of any potential contract extension period.

Entries within the register will be deleted only after a contract has expired or been terminated. Our Contracts Register is published on the PHA website, setting out details of relevant contracts entered into from 18 April 2016.

We may withhold an entry or part of an entry within the register if we consider that making it publicly available would impede law enforcement, be contrary to the public interest, prejudice the commercial interests of any person, or prejudice fair competition between economic operators.

## 7. Compliance with the 2015 Regulations

### 7.1 General Principles

The 2015 regulations came into force from 18 April 2016 and were designed to transpose European law into Scots Law. Since Brexit, the Regulations remain in place and continue to apply but without the link to European law. The key implications relevant to PHA's activities, when procuring contracts over the value thresholds set for the 2015 Regulations, are set out below.

- the minimum time limits for procurement exercises are set;
- the minimum level of annual turnover which we can require a business to have is limited to no more than two times the value of the contract;
- a failure to meet tax or social security obligations is a mandatory ground for excluding a business from bidding;
- there is a discretionary ground for excluding bidders who have breached social, environmental and employment law obligations;
- the concept of 'self-cleansing' means that a business which has been excluded from bidding can present evidence of remedial measures it has taken to rectify breaches;
- in accordance with the 2015 Regulations and the Single Procurement Document (SPD),
  - it is mandatory for us to exclude businesses which have admitted or been convicted of blacklisting;
  - the maximum period for excluding business from tendering is now five or three years from the date of conviction;
  - contracts should never be awarded on the sole basis of lowest price or lowest cost; and

- contracts must include a clause requiring contractors to comply with their obligations in the fields of social, environmental and employment law;
- all communication as part of a procurement procedure should be by electronic means:
  - 'supported businesses' are defined as business or supported employment programmes whose main aim is the social and professional integration of disabled or disadvantaged persons, and where at least 30 per cent of the employees are disabled or disadvantaged persons; and
  - where we are procuring large contracts, we must consider dividing them into smaller lots so as to encourage the participation of small and medium enterprises.

## **8. Government Guidance**

8.1 The Scottish Government has issued guidance on the following issues:

- the selection of tenderers and award of contracts;
- the sustainable procurement duty;
- the carrying out of regulated procurements relating to contracts for health or social care services;
- the preparation and publication of procurement strategies and annual procurement reports;
- addressing fair work practices, including the Living Wage; and
- the use of community benefit requirements.

The requirements of the 2015 Regulations and the 2014 Act is incorporated within PHA's Procurement Procedure Manual which will be used by all PHA staff involved in procurement.

## **9. Policy review**

9.1 This Policy and supporting procedures will be reviewed on a three-yearly basis or sooner if there is relevant updated guidance or legislation.

9.2 Periodically the Scottish Government will update regulations and issue notifications such as updated tender value thresholds. We will comply with such changes from the date that they come into effect and automatically amend our policy and processes to comply.