

PROCUREMENT POLICY

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1. INTRODUCTION

- 1.1 Procurement is a high value activity for the association that has a critical impact on its performance and success. The organisation spends over £5.0M per annum on revenue goods, works and services and approximately £7.5M on capital investment. Obtaining best value for money through its procurement processes is therefore of paramount importance to the association and our customers
- 1.2 This policy outlines the principles which will be used by the association in the procurement of Works, Goods and Supplies.
- 1.3 As a body governed by public law the association must comply with EU Directive 2014/24/EU which has been incorporated into Scottish Law by The Public Contracts (Scotland) -Regulations 2015 and with the Procurement Reform (Scotland) Act 2014 and the Procurement (Scotland) Regulations 2016.

2. LEGAL AND REGULATORY FRAMEWORK

- 2.1 The legal framework which governs public procurement includes:
 - a) EC treaty obligations
 - b) EC procurement directives as implemented by legislation
 - c) European Court of Justice and National Case Law
 - d) The Public Contracts (Scotland) Regulations 2015- 2015 Regulations
 - e) The Procurement Reform (Scotland) Act 2014- 2014 Act
 - f) The Procurement (Scotland) Regulations 2016- 2016 Regulations

3. STRATEGIC OBJECTIVES

- 3.1 In carrying out procurement the association will ensure compliance with the Procurement Reform (Scotland) Act 2014 in relation to contracts regulated under that Act and to the Public Contracts (Scotland) Regulations 2015 by
 - a) Treating relevant economic operators equally and without discrimination
 - b) Acting in a transparent and proportionate manner
 - c) Complying with the sustainable procurement duty
- 3.2 The sustainable procurement duty is defined in the 2014 Act as the duty to consider how the procurement process could:
 - a) Improve the economic, social and environmental wellbeing of the area
 - b) Facilitate the involvement of small and medium enterprises, third sector bodies and supported businesses in the process
 - c) Promote innovation
- 3.3 To consider the use of Community Benefit Requirements as defined in the Procurement Reform (Scotland) Act 2014 when commissioning any procurement

whose value is in excess of £4 million. Such requirements will be contractual-

Relating to:

- Training and recruitment
- The availability of sub-contracting opportunities, or
- Intend to improve the economic, social or environmental wellbeing of the area in a way additional to the main purpose of the contract.

3.4 To ensure that all unregulated procurement is carried out in accordance with the association's Financial Regulations

4. AIM OF POLICY

4.1 The aim of this policy will be that all procurement processes:

- achieve value for money¹
- are carried out in an efficient and effective manner
- are proportionate to the level of expenditure to be incurred
- have a clear audit trail

5. POLICY

5.1 Procurement Rules

Thenue will ensure that all procurement across the organisation complies with the Financial Regulations and where applicable the Procurement Reform (Scotland) Act 2014, the Procurement (Scotland) Regulations 2016 and the Public Contracts (Scotland) Regulation 2015.

The tables below detail the arrangements for all contracts whether regulated or unregulated.

Contract Value	Procurement Rules	Procurement Type
£5,000 to £10,000	A minimum of 3 competitive quotations should be sought from appropriate suppliers. In the event less than 3 quotes are obtained the contract can be awarded subject to approval by the Head of Department or Chief Executive.	Unregulated
£10,000 to £50,000	A minimum of 3 competitive tenders should be sought from appropriate suppliers or by utilising the Quick Quotes process. In the event less than 3 tenders are obtained the contract can be awarded subject to approval by the Head of Department or Chief Executive.	Unregulated

¹ See Appendix 1 for definition of Value for Money

Table 1 : Service and Supply Contracts		
Contract Value	Procurement Rules	Procurement Type
Above £50,000 but Below Public Contracts (Scotland) Regulations 2015 limit (currently £181,133)	Contract will either be: <ul style="list-style-type: none"> a) Advertised on Public Contracts Scotland Website(PCS) or b) Quick Quotes sought on Public Contracts Scotland Website or c) A Framework contract may be utilised 	Regulated
Above Public Contracts (Scotland) Regulations 2015 limit (currently £181,133)	Contract will either be; <ul style="list-style-type: none"> d) advertised on the PCS Website and the European Journal or e) A Framework contract may be utilised 	Regulated

Table 2 : Works Contracts		
Contract Value	Procurement Rules	Procurement Type
£5,000 to £10,000	A minimum of 3 competitive quotations should be sought from appropriate suppliers. In the event less than 3 quotes are obtained the contract can be awarded subject to approval by the Head of Department or Chief Executive.	Unregulated
£10,000 to £50,000	A minimum of 3 competitive tenders should be sought from appropriate suppliers. In the event less than 3 tenders are obtained the contract can be awarded subject to approval by the Head of Department or Chief Executive.	Unregulated
£50,000 to £2,000,000	A minimum of 3 tenders should be sought from a list obtained through the PCS web site either by advertising or by utilising the process known as 'Quick Quotes'. In addition adverts may also be placed in other appropriate vehicles determined by the nature of the contract. Alternatively a Framework contract may be utilised	Unregulated
Above £2,000,000 but below Public Contracts (Scotland) Regulations 2015 limit (currently £4,551,413)	Contract will either be: <ul style="list-style-type: none"> a. Advertised on Public Contracts Scotland Website(PCS) or b. A Framework contract may be utilised 	Regulated
Above the Public Contracts (Scotland) Regulations 2015 limit (currently £4,551,413)	Contract will either be; <ul style="list-style-type: none"> c. advertised on the PCS Website and the European Journal or d. A Framework contract may be utilised 	Regulated

6.1 It is acknowledged that in certain circumstances particularly in relation to specialist services or suppliers it may only be possible to select one party to provide the service or supply in which instance a procurement process is not possible. In these circumstances the Head of Finance or Chief Executive should agree that a full procurement process is not possible. Where such a service or contract is above the procurement threshold the appropriate processes that may be laid down in regulation by the Scottish Government must be followed and if necessary specialist legal advice sought.

6.2 Procurement Procedures:²

Procurement processes under the 2015 Regulations require application of a procedure which complies with the regulations. Regulation 27 details the choice of procedures and the circumstances in which they can be applied. Procedures which comply are:

- a) Regulation 28: Open Procedure:
- b) Regulation 29: Restricted Procedure:
- c) Regulation 30: Competitive Procedure with negotiation
- d) Regulation 31: Competitive Dialogue:
- e) Regulation 32: Innovation partnerships:
- f) Regulation 33: Use of negotiated procedure without prior publication:
- g) Regulation 34: Establishing a Framework

Procurements will normally be advertised under either Regulation 29-Restricted Procedure or Regulation 34-Establishing a Framework.

Where it is proposed to advertise under Regulations 28, 30 and 31, a detailed case including risk assessment and cost estimates will have to be approved by the Executive Team. For procurements under Regulation 32, formal Board approval will also be required.

6.3 Procurement Process:

Contracts procured under the 2015 Regulations require that contract awards are made on the basis of the 'Most Economically Advantageous Tender (MEAT). Price or cost must not be used as the sole award criteria. The Scottish Government has extended this method to include all regulated contracts.

*'The most economically advantageous tender must be identified on the basis of criteria linked to the subject matter of the public contract in question and must include the price or cost, using a cost effectiveness approach.'*³

Criteria may include:

- a) Quality including technical merit, aesthetic and functional characteristics
- b) Organisation, qualifications and experience of staff
- c) After sales service and technical assistance

² Details of the Regulations 28-34 are given in Appendix 2

³ Public Contracts (Scotland) Regulations 2015: Regulation 67

Full details of the Regulation 67 are given in Appendix 4 which should be considered when determining the Price/Quality ratio.

In determining the appropriate quality/price ratio the table below should be used as a reference.

% Quality	% Price	Procurements
80%	20%	May be used for projects where innovation or design is of primary importance or for studies to consider inception/feasibility of projects
70%	30%	Typically for services above 2015 Thresholds e.g. consultant appointments where design/experience is an important criteria
60%	40%	Typically for regulated service /works contracts e.g. Gas service and repair
50%	50%	Where price and quality are of equal importance but care must be taken that lowest price is not the sole determinant
40%	60%	Suitable for a supply contract where quality may not be a significant issue
30%	70%	Suitable for a supply contract where quality may reflect a standard e.g. photocopiers
20%	80%	This ratio will only apply by exception to either; <ol style="list-style-type: none"> 1. A supply contract where quality is not a factor e.g. office supplies or 2. Where a rigorous pre-qualification process has ensured that all tenderers meet a predetermined high quality threshold e.g. new build works contracts

Regulated procurements and those carried out under Regulations 29, 30, 31 and 34 of the 2015 Regulations will require a Pre-Qualification process to select those operators who will be invited to tender.

The Pre-Qualification Questionnaire (PQQ) will be the European Single Procurement Document (ESPD Scotland) for regulated works procurements and for all procurements under the 2015 Regulation. Regulated services and supply procurements may require to modify the ESPD to reflect the circumstances of the procurement exercise.

All procurement processes will determine a minimum threshold required in the PQQ submissions to select the operators Invited To Tender (ITT).

The contract notice will be lodged with the PQQ, ITT and the Quality/Price Ratio.

For procurements above the 2015 Regulation threshold and for regulated works procurements, the PQQ and ITT quality submissions will be assessed by a tender panel consisting of two members of Thenue staff, at least one of which will be a member of the Operational Managers Team (OMT) or Executive Team (ET) and a third party independent procurement consultant.

For other regulated service and supply procurements the tender panel will consist of two members of Thenue staff at least one of which will be a member of the OMT or ET.

Tender submissions will consist of a quality submission and a separate priced submission. The Tender Panel will complete the assessment of the Quality Submissions and record the Quality score without any knowledge of the price submissions. Price submissions will be opened only upon completion of the quality assessment. Price submissions will be assessed on the basis of comparison above or below the average in the Quality/Price matrix shown in Appendix 5.

6.4 Framework Agreements:

Thenue may establish Frameworks⁴ as defined under Regulation 34 of the 2015 Regulations for works contracts and for the supply of goods or services. Thenue may utilise Frameworks established by other parties where it is possible to do so and where these represent value for money.

Such agreements may be with one or more economic operators for the provision of services, supplies or works. Such agreements should not normally exceed 4 years except in exceptional circumstances.

The Framework Agreement will indicate how contracts will be awarded either:

- without re-opening competition, call-off in accordance with Regulation (34)(7)(b)(i) or
- re-opening completion, mini tender, in accordance with Regulation 34(7)(b)(ii)

6.5 Abnormally Low Tenders: ⁵

A tenderer will be required to explain the price or costs proposed in a tender where the tender appears abnormally low in relation to the works, supplies or services. The tender may be rejected if the conditions detailed in Regulation 69(4) apply and must reject it when Regulation 69(5) applies.

7. Procurement Strategy

In compliance with the Procurement Reform (Scotland) Act 2014 Thenue will produce an annual Procurement Strategy and Annual Procurement Report. The Procurement Strategy will be approved by the Board and included in the Business Plan. Reports will cover the previous financial year. The Annual Report will be submitted to the Board after the end of the Financial Year.

⁴ See Appendix 2 for definition of Framework

⁵ Public Contracts(Scotland) Regulations 2015: Regulation 69

8. Contract Register

Thenue will keep and maintain a contract register as required by the 2014 Act. The register will hold the following details:

- The date of the award
- The name of the contractor
- The subject matter
- The estimated value
- The start date
- The end date provided for in the contract (disregarding any option to extend the contract)or, where there is no date specified a description of when the contract will end
- The duration of any period for which the contract can be extended
- Entries will only be deleted after the contract has expired or terminated
- The Contract Register will be available on the Thenue Web site
- Thenue reserves the right to withhold an entry or part of an entry in line with the guidance in the 2014 Act

9. Policy Implementation

Responsibility for implementation of this policy lies jointly with the Head of Property Services and Head of Finance.

10. Responsibility

- 10.1** The Board retains ultimate control of all decisions relating to procurement of goods, services and works. Under the terms of the Financial Regulations this responsibility has been delegated to the Executive Team under their delegated powers or to staff under their delegated authority within the Financial Regulations.
- 10.2** Full details of delegated powers are contained within the remits of the Board of Management, the Executive Team and the Financial Regulations.

PROCUREMENT POLICY APPENDIX 1

Definitions

Community Benefit Requirements defined in Section 24 of the 2014 Act⁶

Procurement: defined as being the acquisition of goods, services and works from third parties.

Public contract: a contract for pecuniary interest and having as its object the execution of works, the supply of products or the provision of services as defined in the Public Contracts (Scotland) Regulations 2015

Regulated procurement: any procedure carried out by the association which results in the award of regulated contract⁷

Regulated Contract: defined as a public contract governed the 2014 Act⁸ where the value of the contract is above the thresholds

Sustainable Procurement Duty as defined in Section 9 of the 2014 Act⁹

Unregulated contract: one where the value of the contract is below the thresholds of the 2014 Act

Value for money: defined as the optimum combination of whole life cost and quality or fitness for purpose to meet the organisations requirements. Value for money must also be assessed in relation to organisational policies regarding sustainability/corporate responsibility which recognise that lowest price is not the way to award contracts or purchase services.

Whole life costs: this could include implementation costs, ongoing operating costs and end of life disposal.

⁶ See attached Appendix 3

⁷ Regulated procurement is defined in S2 of the 2014 Act see attached Appendix 3

⁸ Regulated Contract is defined in S3 of the 2014 Act see attached Appendix 3

⁹ See attached Appendix 3

PROCUREMENT POLICY APPENDIX 2

Procurement Procedures:¹⁰

Regulation 28: Open Procedure: A contracting authority must permit any interested economic operator to submit a tender in response to a call for competition within the time period set by the authority in accordance with this regulation

Regulation 29: Restricted Procedure: A contracting authority must permit any economic operator to submit a request to participate in response to a call for competition within the time period set by this regulation. A contracting authority may limit the number of suitable candidates invited to tender

Regulation 30: Competitive Procedure with negotiation A contracting authority must permit any economic operator to submit a request to participate. There are then regulations governing the process

Regulation 31: Competitive Dialogue: A contracting authority must permit any economic operator to submit a request to participate. There are then regulations governing the process

Regulation 32: Innovation partnerships: A contracting authority may establish an innovation partnership conducting separate research and development activities

Regulation 33: Use of negotiated procedure without prior publication: A contracting authority may award a public contract following negotiated procedures without prior publication of a contract notice or prior information notice subject to the detail of the regulation

Regulation 34: Framework Agreements: A contracting authority may conclude a framework agreement provided that the authority applies the procedures in these regulations

¹⁰ Public Contracts (Scotland) Regulations 2015

PROCUREMENT POLICY APPENDIX 3

Extracts from the Procurement Reform (Scotland) Act 2014

Regulated procurements

For the purposes of this Act, a “regulated procurement” is—

(a) any procedure carried out by a contracting authority in relation to the award of a proposed regulated contract including, in particular—

(i) the seeking of offers in relation to the contract, and

(ii) the selection of economic operators,

(b) the award of a regulated contract by a contracting authority.

Regulated contracts

(1) A contract is regulated if—

(a) it is a public contract,

(b) the estimated value of the contract (see section 5) is equal to or greater than the contract threshold, and

(c) the contract is not an excluded contract (see section 4).

(2) For the purposes of this Act, the contract threshold is as follows—

Type of contract	Threshold
Public contract (other than a public works contract)	£50,000
Public works contract	£2,000,000

(3) The Scottish Ministers may by order amend the table in subsection (2) so as to substitute for the figures specified there for the time being such other figures as they consider appropriate

Sustainable procurement duty

(1) For the purposes of this Act, the sustainable procurement duty is the duty of a contracting authority—

(a) before carrying out a regulated procurement, to consider how in conducting the procurement process it can—

(i) improve the economic, social, and environmental wellbeing of the authority's area,

(ii) facilitate the involvement of small and medium enterprises, third sector bodies and supported businesses in the process,
and

(iii) promote innovation, and

(b) in carrying out the procurement, to act with a view to securing such improvements identified as a result of paragraph (a)(i).

(2) The contracting authority must consider under subsection (1) only matters that are relevant to what is proposed to be procured and, in doing so, consider the extent to which it is proportionate in all the circumstances to take those matters into account.

(3) In this section—

- “small and medium enterprises” means businesses with not more than 250 employees,
- “third sector bodies” means organisations (other than bodies established under an enactment) that exist wholly or mainly to provide benefits for society or the environment.

(4) In this section, references to the wellbeing of the authority's area include, in particular, reducing inequality in the area

Community benefit requirements

For the purposes of this Act, a community benefit requirement is a contractual requirement imposed by a contracting authority—

(a) relating to—

(i) training and recruitment, or

(ii) the availability of sub-contracting opportunities, or

(b) which is otherwise intended to improve the economic, social or environmental wellbeing of the authority's area in a way additional to the main purpose of the contract in which the requirement is included

PROCUREMENT POLICY APPENDIX 4

Public Contracts (Scotland) Regulations 2015: Regulation 67

Contract award criteria

67.—(1) A contracting authority—

(a) must base the award of public contracts on the most economically advantageous tender assessed from the point of view of the contracting authority; and

(b) may not use price only or cost only as the sole award criteria.

(2) A contracting authority must identify the most economically advantageous tender on the basis of the best price-quality ratio, which must be assessed on the basis of criteria linked to the

subject-matter of the public contract in question and must include the price or cost, using a cost-effectiveness approach.

(3) A cost-effectiveness approach referred to in paragraph (2) may include life-cycle costing in accordance with regulation 68 (life-cycle costing).

(4) Criteria referred to in paragraph (2) may comprise or include—

(a) quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, social, environmental and innovative characteristics and trading and its conditions;

(b) organisation, qualification and experience of staff assigned to performing the contract, where the quality of the staff assigned can have a significant impact on the level of performance of the contract; or

(c) after-sales service and technical assistance, delivery conditions such as delivery date, delivery process and delivery period or period of completion.

(5) The cost element may also take the form of a fixed price or cost on the basis of which economic operators will compete on quality criteria only.

(6) Award criteria must be considered to be linked the subject-matter of the contract where they relate to the works, supplies or services to be provided under that contract in any respect and at any stage of their life cycle, including factors involved in—

(a) the specific process of production, provision or trading of those works, supplies or services; or

(b) a specific process for another stage of their life cycle, even where such factors do not form part of their material substance.

(7) Award criteria must—

(a) not have the effect of conferring an unrestricted freedom of choice upon the contracting authority;

(b) ensure the possibility of effective competition; and

(c) be accompanied by specifications that allow the information provided by the tenderers to be effectively verified in order to assess how well the tenders meet the award criteria.

(8) In case of doubt, the contracting authority must verify effectively the accuracy of the information and proof provided by the tenderers.

(9) The contracting authority must specify, in the procurement documents, the relative weighting which it gives to each of the criteria chosen to determine the most economically advantageous tender.

PROCUREMENT POLICY APPENDIX 5

SELECTION OF CONTRACTOR/CONSULTANTS

EXAMPLE SHOWING 60%/40% RATIO

QUALITY/PRICE EVALUATION MATRIX:

Final Quality/Price Evaluation on 60%/40% Ratio

Tenderer:

Contractor-Consultant	A	B	C
Quality score (out of 100)	70	80	90
Total Tender Price	100,000	150,000	200,000
Mean 150,000	150,000	150,000	150,000
Above (-) and below (+) mean	50,000	0	-50,000
Percentage above (-) and below (+) mean	33.33	0.00	-33.33
Mean score 50 points	50	50	50
Price score	83.33	50.00	16.67
Weighted total score			
Quality x 60 Percent	42	48	54
Price x 40 Percent	33.33	20.00	6.67
Total	75.33	68.00	60.67

Price score

For each offer above the mean: deduct 1 point for each percentage point above mean

For each offer below the mean: add 1 point for each percentage point below mean

Signature of Assessor(s); _____

Date: _____