

Procurement Policy

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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 the 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 (SoD) outlines the authority of each postholder for all procurement decisions including authority to purchase. The SoD is located in [MS Teams – Whole Team – Corporate Resources – Finance – Finance Policies](#)

The budget holders have purchasing authority and are able to enter into a legally binding contract on behalf of the Commissioner. Authority covers all purchasing commitments, including variations to and extensions of contracts.

Procurement Process

Please use the [Procurement Process step by step guide](#) to walk you through the route to follow depending on the spend requirement.

- I. Identify a need and write a specification
- II. Check if a Data Protection Impact Assessment is required
- III. Investigate spend requirement to decide procurement route
- IV. Follow the approval and paperwork requirements for the specific route
- V. Invite proposals or issue invitation to tender
- VI. Evaluate options from either proposals or from scoring of ITT's
- VII. Agree who to award contract to
- VIII. Create contract documentation (with approvals from lead SMT member and final review by Corporate Services)
- IX. Award contract and ensure this is signed by both parties
- X. Pay supplier according to the agreed invoicing structure in the contract
- XI. File paperwork and set retention deadline
- XII. Share final new contract with Head Corporate Services for the Contracts Register and publishing of contract data

Procurement Thresholds

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).

Only members of SMT and/or the Commissioner may procure at this level.

Requirements above the Government Procurement Agreement (GPA) threshold

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

- [Sustainable Procurement Tools](#) – Best practice guidance for public bodies and suppliers on how to address fair work through a public procurement process, and practical tools to use at key stages of the procurement process.
- [The Public Procurement \(Amendment etc.\) \(EU Exit\) Regulations 2020](#) 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 financial threshold. They impose minimum procurement standards that must be followed at all times.
- [Procurement Reform \(Scotland\) Act 2014](#) – this Act provides a framework for sustainable public procurement above and below threshold contract values where appropriate.
- [Public Services Reform \(Scotland\) Act 2010](#) – this Act requires listed public authorities, including CYPCS, 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).

- World Trade Organisation [Agreement on Government Procurement \(GPA\)](#) and [UK-EU Trade and Co-operation Agreement \(TCA\)](#).
- [the European Union \(Future Relationship\) Act 2020](#) – provides that contracting authorities in the UK must treat EU-owned suppliers based in the UK no less favourably than UK-owned suppliers based in the UK.
- [The Procurement \(Scotland\) Regulations 2016](#)

The legal framework is not static, and, therefore, the policy will evolve through new and amended legislation 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 Public Procurement Rules must be fully complied with at all times and this **must** be taken into account when NCA is being considered¹. 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.

¹ Contracts awarded following NCA are known as “Direct Awards” and, if the total contract value exceeds the Public Procurement 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

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

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

Identifying a 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. This should be detailed in the specification.

Data Protection Impact Assessment (DPIA)

A DPIA is a process designed to help you systematically analyse, identify and minimise the data protection risks of a project or plan. Once a procurement need has been identified, the purchasing authority must check if a Data Protection Impact Assessment is required.

If unsure, please contact the Information Officer or Head of Corporate Services.

The DPIA form is located in the [Procurement File](#) on Teams.

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.

The Specification

All procurement requires a written specification. The detail of this specification will depend on the value and the risk of the exercise. 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 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, however please note that templates exist and are held within [MS Teams – Corporate Services – General – Files – Procurement & Contracts – Procurement Process](#).

Issuing Invitation to Tender (ITT)

The completed Invitation to Tender and evaluation documents must be forwarded to the SMT or 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 specification included in the invitation to tender. If an item is not included in the specification, it cannot be included in the evaluation.

Tenders must be evaluated by at least two 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 or another member of SMT 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

All contracts regardless of the value 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 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 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.
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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 SMT, the Commissioner and the supplier.

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 target of 10 working days of invoices for goods and services, completed to the satisfaction of the SMT or 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 without the permission of SMT or the Commissioner.**

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 CYPCS accounting processes. The disposal of assets is limited only to the work of the Corporate Services Team who hold the Asset Register for our organisation.

Openness and transparency

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

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 the Commissioner holds, 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 requested. However, FOISA and the EIRs permit the Commissioner to refuse to disclose information, but only in certain limited circumstances. For example, the Commissioner may apply a section 33(1)(b) exemption under FOISA to withhold information if its disclosure would prejudice substantially someone's commercial interests.

If a tenderer or contractor considers that the information they are providing to the Commissioner for the purpose of the tender or contract would attract one or more of the exemptions in Part 2 of FOISA or one or more of the exceptions in regulation 10 or 11 of the EIRs, the tenderer or contractor must alert the Commissioner to this fact when the information is provided, detailing the information in question, the exemption(s)/exception(s) they think apply and why.

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

In line with the [Scottish Ministers' Code of Practice on 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 is one for the Commissioner to take.

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, the 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.

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 and Retention Schedule

For audit purposes, there must be a clear record of all procurement decisions taken and the reasons for them. The procurement retention schedule is details below:

Procurement Route	Activity	Record Series	Examples of Records	Saved in MS Teams Channel:	Trigger	Retention Period	Action	Custodian
Direct Award / Route 1	Untendered Procurement	Untendered Procurement	Quotes and related correspondence	Whole Team - Corporate Resources - Files - Procurement	End of contract	5 years	Destroy	HCS
Direct Award / Route 1	Untendered Procurement	Untendered Procurement	Unsuccessful supplier quotes	Whole Team - Corporate Resources - Files - Procurement	On award of contract	None	Destroy	/
Route 2 / Route 3	Tendering	Initial Proposal	Business case; contract advertisement; statements of interest (successful); draft and agreed specification; evaluation criteria; invitation to tender.	Whole Team - Corporate Resources - Files - Procurement	End of contract	5 years	Destroy	HCS
Route 2 / Route 3	Tendering	Successful Tenders	Tender submission; tender evaluation; negotiations and notification records.	Whole Team - Corporate Resources - Files - Procurement	End of contract	5 years	Destroy	HCS
Route 2 / Route 3	Tendering	Unsuccessful Tenders	Statements of interest; tender submission; tender evaluation; negotiations and notification records.	Whole Team - Corporate Resources - Files - Procurement	Award of Contract	1 year	Destroy	HCS
All Routes that result in a contract being agreed	Contracting	Contract management files	Inc. contract award letters and agreements; post tender negotiations; service level agreements; compliance reports; performance reports; payment disputes; variations to contracts (revisions, extensions)	Whole Team - Corporate Resources - Files - Procurement	End of contract	5 years	Destroy	HCS
All Routes that result in a contract being agreed	Contracting	Internal authorisation for procurement	Email request / confirmation	Whole Team - Corporate Resources - Files - Procurement	End of current financial year	1 year	Destroy	HCS
All Routes that result in a contract being agreed	Contracting	Register of Contracts	Register of all our current contracts	Whole Team - Corporate Resources - Files - Procurement	Expiration / conclusion of contract	None	Delete Entry	HCS

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 for CYPCS will abide by our Health and Safety procedures and all relevant Health and Safety legislation.

We 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.

Employees must have due regard to our [conflict-of-interest policy](#). Those who have business or personal relationships with, or friends / relatives employed by, outside organisations bidding for our contract(s) must inform a member of the Senior Management Team and where this pertains to the Senior Management Team, the Commissioner. This should also be recorded in the Register of Interests held by the Head of Corporate Services.

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 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.

Sustainable development

When it makes purchases and awards contracts, the CYPCS aims to:

- minimise its environmental impact;
- promote positive social and economic benefits.

Fair working practices

The CYPCS is a living wage employer with inclusive work practices. CYPCS policy is that its contractors also take a positive approach to fair work practices.

Fair and ethical trading

CYPCS contracts must follow the principles of the Ethical Trading Initiative base code and ILO 8 core conventions – these are international labour standards that set out basic principles and rights at work.

[Find out more about the ethical trading base code](#)

[Find out more about ILO 8 core conventions](#)

Food and animal welfare

The CYPCS provides well balanced, nutritional food within the organisation. All catering contracts must respect animal welfare and promote sustainability and healthy eating.

Health and safety

All contractors and sub-contractors must make sure that their employees and others who may be affected by the delivery of CYPCS contracts are not exposed to health and safety risks.

All contractors and sub-contractors must comply with relevant statutory duties, including the Health and Safety at Work etc. Act 1974 and secondary legislation.

[Find out more about the Health and Safety at Work etc. Act 1974](#)

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