



PROCUREMENT MANUAL

2016

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1.0 THE FIRST SECTION:

1.1 AN OVERVIEW

Public procurement is the process by which public bodies acquire goods, services and works from third parties to meet customer and service user needs. Procurement covers all activities from identification of a requirement through to the end of the useful life or disposal of an asset

The impact of procurement is far greater than this definition of a 'process'. As detailed in the Council's Procurement Strategy for 2015–2018, effective strategic procurement arrangements can increase commercial excellence throughout the organisation, ensuring that our services deliver best value. Effective procurement arrangements can make significant contributions to a wide range of Council objectives including a successful local economy, a thriving voluntary sector, community involvement and environmental issues as well as delivering value for money. Strategic procurement recognises that it is essential that procurement decisions are taken with a focus on the outcomes that the Council is seeking to achieve.

1.2 Best Value

All purchasing must take place in accordance with the Council's statutory duty to secure best value under the Local Government in (Scotland) Act 2003. This requires the Council to:-

Secure continuous improvement in performance whilst maintaining an appropriate balance between quality and cost; and in making those arrangements and securing that balance, have regard to economy, efficiency, effectiveness, and equal opportunities requirements and to contribute to the achievement of sustainable development.

1.3 Savings

Savings from Procurement should be recorded in line with the Scottish Government's Procurement Benefits Reporting Guidance, this guidance is available at:

<http://www.gov.scot/Topics/Government/Procurement/about/Review/PRDG/BenefitsGuidance/Benreporting>.

1.4 Legal Context

Underpinning the duty to achieve Best Value, there are several layers of procurement regulation that dictate how public procurement must be conducted by the Council:-

EU law (Addressed at point 1.5 below)

Scottish legislation and guidance (addressed at point 1.6 below);

Council Contract Standing Orders (addressed at point 1.8 below)

1.5 EU Law

Three EU Procurement Directives have been adopted by the EU Commission and Parliament, and were published in the Official Journal of the European Union on 28 March 2014.

- [The Directives are:](#)

- [EU Procurement Directive 2014/24/EU](#) – on public contracts
- [EU Procurement Directive 2014/23/EU](#) - on the award of concession contracts
- [EU Procurement Directive 2014/25/EU](#) - on procurement by entities operating in the water, energy, transport and postal services sectors
- [EU Procurement Directive 2014/55/EU](#) - for electronic invoicing in public procurement

The aim of the Directives is to ensure that public purchases are made in the most rational, transparent and fair manner in order to increase the efficiency of public spending and enable small and medium-sized enterprises to participate in public procurement.

In order to promote free trade within the EU, the EU Treaty and Procurement Directives require local authorities to procure goods, works and services over a certain threshold (1.8 below) through open and transparent competitive tendering.

As well as promoting free trade the undernoted fundamental principles flowing from the EU Treaty, will apply regardless of value. The principles are:-

- Transparency – contract procedures must be transparent meaning contract opportunities should generally be publicised;
- Equal treatment and non-discrimination – potential suppliers must be treated equally;
- Proportionality – procurement procedures and decisions must be proportionate;
- Mutual recognition – equal validity is to be given to qualifications and standards from other Member States.

1.6 Scottish Legislation and Guidance

The current EU Directives are given effect by

- The Public Contracts (Scotland) Regulations 2015 (the Regulations)
- The Procurement Reform (Scotland) Act 2014(The Reform Act)
- Procurement (Scotland) Regulations 2016
- Concessions Contract (Scotland) Regulations 2016 and
- Utilities Contract (Scotland) Regulations 2016

The key changes introduced by the Public Contracts (Scotland) Regulations 2015

1. Shorter minimal procedure timescales
2. New innovation partnership procedure
3. Mandatory use of electronic communication
4. New light touch regime for social and other specific services
5. Presumption in favour of lotting contracts
6. Clarification of shared service exemptions
7. Supplier self-declaration
8. Yearly turnover requirement limited to twice contract value (unless justified)
9. Suppliers can be excluded on the basis of poor performance
10. Contract award criteria cannot be lowest price or lowest cost alone
11. Contract award criteria may include social characteristics and staff experience
12. Wider scope for reserved contracts

The Key Changes of the Reform Act 2014 and the Procurement (Scotland) Regulations 2016: New General Duty and Sustainable Procurement Duty aimed at improving the economic, social and environmental wellbeing of its area;

- Facilitate the involvement of small and medium enterprises, third sector bodies and supported businesses in the process;
- Promote innovation; and
- A requirement to consider the inclusion of community benefits

The Reform Act introduces a degree of regulation for procurements which fall below the EU financial thresholds (referred at 1.7 below). New requirements introduce regulated procurements which are defined as contracts between £50,000 for services and supplies (£2M for works) and the current EU financial thresholds (at 1.7). There will also be a requirement for Councils to publish and annually review their procurement strategies including how they will approach regulated procurements and deliver value for money. Annual reporting on compliance with the strategy, what the expected regulated procurements for the next 2 years will be and a duty to publish contract registers will all be required.

The key provisions of the Act will be in force from 18th April 2016.

1.7 Thresholds: Regulatory

The value of the contract opportunity is an estimate of the total amount that will be payable over the lifetime of the contract, including any options of extension. The Regulations prohibit sub division of the requirement so that it falls beneath the EU thresholds.

[The Current EU](#) thresholds from 1 January 2016 to 2018 above which the 2015 Regulations and full competitive tendering will normally be required:

Service and Supplies	Works
£164,176	£4,104,314

1.8 Thresholds: Local - Contract Standing Orders

Argyll and Bute thresholds which include the current EU financial thresholds and recommended routes are as follows:

	Value	Action
Supplies	£0 - £999	Pricing agreement should be reached prior to purchase, can be done verbally but file note must be kept/Quick Quote
	£1,000 - £20,000	Quick Quote (ITQ) (recommended from a min of 3 companies), use Public Contracts Scotland, if required can be carried out by email. File note must be kept.
	£20,000 - £49,999.00	Closed Open or Restricted Tender (- quick quote may be used dependent on risk)
	£50,000 - £164,176	Regulated Contracts also referred as "slice contracts " 2016 Regulations apply :including frameworks and dynamic purchasing agreements
	> £164,176(EU)	Tender - must be an OJEU notice- 2015 Regulations apply
Services- not including *health or social care contracts (see table below)	£0 - £999	Pricing agreement should be reached prior to purchase, can be done verbally but file note must be kept/Quick Quote
	£1,000 - £20,000	Quick Quote (ITQ)(recommended from a min of 3 companies), use Public Contracts Scotland, (if required can be carried out by email) File note must be kept.
	£20,000 - £49,999.00	Closed Open or Restricted Tender quick quote may be used dependent on risk
	£50,000 - £164,176	Regulated Contracts Tender or "slice contracts " 2016 regulations apply ()
	> £164,176 (EU)	Tender - must be an OJEU notice - 2015 Regulations apply
Works	£0 - £999	Pricing agreement should be reached prior to purchase, can be done verbally but file note must be kept/Quick Quote
	£1,000 - £500,000	Quick Quote (ITQ) (recommended from a min of 3 companies), use Public Contracts Scotland, (if required can be carried out by email. File note must be kept.)
	£500,000 - £2,000,000	If applicable Vendor Rating System (VRS) for Works Contracts Note : If no VRS or objective method of selection use Closed, Open or Restricted Tender from £50 k to £2m

	Value	Action
	£2,000,000- £4,104,394	Regulated Contracts Tender or “slice contracts” 2016 regulations apply
	> £4,104,314 (EU)	Tender – must be an OJEU notice- 2015 regulations apply

The undernoted table summarises the different rules that apply to **health or social care contracts**

€750,000 and above	Must be advertised in OJEU and the light touch provisions in the Public Contracts (Scotland) Regulations 2015 apply	
£50,000 – €750,000	May award without seeking offers, but should consider the TFEU fundamental principles where relevant. For contracts over £50,000, an award notice must be published on PCS and certain other rules apply (see supplementary Guide 8)	May choose to seek offers: in which case all provisions of the Procurement Reform (Scotland) Act 2014 apply
Below £50,000		Non-regulated procurement

The Official Journal of the European Union (OJEU) is an electronic journal and access to place a notice is given via the “Public Contracts Scotland” procurement portal.

The tables above reflect legal obligations and ensure that we demonstrate value for money and that public money is spent properly. It is important for those carrying out procurement activity to realise the agreed process are about legal compliance and to underpin the commercial approach for achieving value for money and efficiency.

Where compliance with the requirements of the tables referred in the preceding paragraph may not be possible or appropriate due to exceptional circumstances, decision making must be recorded via the following process: the completion of the agreed pro forma known as the justification for non-competitive action (JNCA); advice and involvement of the PCT is essential to ensure a clear audit trail and record the reasons for the justification and authorisation at senior level. The JNCA process is outlined in the Fourth Section –Supplementary: Guidance Note 1 and 1A.

1.9 Timeframes

Where contract values exceed the threshold, the directive also sets a minimum timescale for tender returns. Timeframes in relation to the different routes of procurement are found using the following link and at appendix 1:

<http://www.gov.scot/Topics/Government/Procurement/buyer-information/spdlowlevel/routetwotoolkit/supplierselectiontoolkit/OJEUTimescales>

1.10 Sustainability as Part of the Procurement Activity

Sustainable procurement means taking into account those social, economic and environmental considerations as part of the procurement process. As a matter of good practice sustainability needs to be built in to the earliest stages of the Journey, when requirements are being identified and specified. With the Procurement Reform (Scotland) Act 2014 the sustainable procurement duty applies to all regulated procurements which commence on or after 1st June 2016. See Appendix 2A for full details of the “How to Guide for Sustainability and types of Community Benefits “

The aim of Argyll and Bute Council’s Sustainable Procurement Policy (Appendice 2B) is to ensure that the Council embeds the principles of sustainability within its procurement activities to ensure that only products and services which can be described as ‘best value’ are selected and that in all cases a balanced consideration of social, ethical, environmental and economic impacts are undertaken throughout the procurement process.

Argyll and Bute Council is one of the region’s major purchasers and as such the PCT team recognises that its purchasing decisions have social, economic and environmental implications, both locally and nationally, now and in generations to come.

1.11 External Bodies

The Council can procure on behalf of external bodies and partner organisations. It is essential that proper governance arrangements are applied and that clear written instructions by way of minute of a meeting or equivalent are provided to the procurement team. Reference should be made to the process in Appendix 3 - Dealing with external bodies.3– External Bodies -Templates Folder

1.12 Overview of the Key Stages of the Tendering Process:

- Planning: procurement strategy, market testing, stakeholder engagement etc.
- Advertisement on the Public Contracts Scotland website and/or the Official Journal of the EU
- Supplier Selection to establish the resources and capability of bidders using the European Single Procurement Document - ESPD (Scotland)
- Invitation to tender
- Submission of tenders
- Evaluation of bids
- Award Decision
- Standstill
- Completion of contract
- Contract Award Recommendation Report
- Contract Management

1.13 The PCT - Contact Details

The table provides contact details of the PCT:

<p>Anne MacColl-Smith Procurement & Commissioning Manager Telephone: 01546 60 4194 Email: Anne.MacColl-Smith@argyll-bute.gov.uk</p>	<p>Frank Smith Category Management Officer Telephone: 01546 60 4187 Email: Frank.Smith@argyll-bute.gov.uk</p>
<p>Moira Logan Performance Improvement Officer – Legal Telephone: 01631 567948 Email: Moira.Logan@argyll-bute.gov.uk</p>	<p>Emma Graham Category Management Officer Telephone: 01586 55 5205 Email: Emma.Graham@argyll-bute.gov.uk</p>
<p>Christine Todd Category Management Officer Telephone: 01546 60 4239 Email: Christine.Todd@argyll-bute.gov.uk</p>	<p>Elaine Appleby Category Management Officer Telephone: 01369 60 8594 Email: Elaine.Appleby@argyll-bute.gov.uk</p>
<p>Artem Derevyankin Trainee Purchasing Officer Telephone: 01546 604088 Email: Artem.Derevyankin@argyll-bute.gov.uk</p>	<p>Samantha Torrie Trainee Purchasing Officer Telephone: 01546 60 4145 Email: Samantha.Torrie@argyll-bute.gov.uk</p>
<p>Sophie Paice Trainee Purchasing Officer Telephone: 01546 604363 Email: Sophie.Paice@argyll-bute.gov.uk</p>	<p>Julie Galbraith Procurement Training Administrator Telephone: 01586 55 5206 Email: Julie.Galbraith@argyll-bute.gov.uk</p>

1.14 Procurement team department responsibilities as from 25th April 2016:

CHIEF EXECUTIVE'S	
Strategic Finance – Kirsty Flanagan	Samantha Torrie
COMMUNITY SERVICES	
IJB	Samantha Torrie – Sophie Paice
Culture and Libraries – Donald MacVicar	Elaine Appleby
Leisure and Youth Services – Donald MacVicar	Elaine Appleby
Housing Services – Donald MacVicar	Elaine Appleby
Adult Learning – Donald MacVicar	Elaine Appleby
Education – Ann Marie Knowles	Emma Graham/Christine Todd
DEVELOPMENT & INFRASTRUCTURE SERVICES	
Roads & Amenity Services – Jim Smith	Artem Derevyankin
Fleet / Hire/ Waste – Jim Smith	Artem Derevyankin
Piers and Harbours – Jim Smith	Artem Derevyankin
Economic Development – Fergus Murray Airports – Fergus Murray TIF – Fergus Murray CHORD – Fergus Murray	Frank Smith Frank Smith Frank Smith/Elaine Appleby based on west/east Argyll locality
Planning & Regulatory Services – Angus Gilmour	Sophie Paice
CUSTOMER SERVICES	
Governance & Law – Charles Reppke	Samantha Torrie – Sophie Paice
Improvement and Strategic HR – Jane Fowler	Samantha Torrie – Sophie Paice
Temporary Agency Staff – Jane Fowler	Emma Graham/Christine Todd
Customer & Support Services – Judy Orr	Samantha Torrie – Sophie Paice
ICT Services – Judy Orr	Frank Smith with service carrying out quick quotes, mini comps
Facility Services – Malcolm MacFadyen	Elaine Appleby
Catering – Malcolm MacFadyen Cleaning – Malcolm MacFadyen	Artem Derevyankin (Sophie Paice)
Property – Malcolm MacFadyen	Elaine Appleby with Sophie supporting West Argyll locality
Transport – Malcolm MacFadyen	Christine Todd/Emma Graham
Corporate Contracts (Mail, Stationery, Office Equipment, Print, Advertising, etc.)	Emma Graham/Christine Todd

Procurement Staff by Specific Projects:

PROJECTS	
Spikes Cavell – Scottish Procurement Hub	Gillian Allenby
Sustainability	Elaine Appleby
Procurement Manual	Anne MacColl-Smith/ Moira Logan/Samantha Torrie/Elaine Appleby
Procurement Training	Gillian Allenby
Procurement Capability Assessment-PCIPS	Emma Graham / Anne MacColl-Smith
PECOS/PECOS training	Mary McKerral / Lynsey MacLennan/Julie Galbraith
Purchasing Cards	Artem Derevyankin/Malcolm Bannatyne
Public Contracts Scotland	Frank Smith
Bravo / PCS Tender/IKEN	Frank Smith
Supplier Development	Frank Smith
Procurements on behalf of external bodies	Frank Smith

2.0 THE SECOND SECTION – PROCUREMENT JOURNEY

This section covers:

- An overview of the Procurement Journey for Argyll and Bute Council (section 2.1)
- Planning Your Procurement (section 2.2)
- Make or Buy Decisions (section 2.3).
- How to plan (section 2.4) which procurement Route to use? Direct purchase or Routes 1, 2 or 3 (sections 2.6 to 2.12)
- Is there an existing contract or framework (2.5)
- Other considerations (2.13)

2.1 An overview of The Procurement Journey for Argyll and Bute

The Procurement Journey for Argyll and Bute Council (“the Journey”) closely follows the Scottish Government’s Procurement Journey, a tool developed and promoted since 2011 as part of the Public Procurement Reform Programme. This tool has been adapted to provide detailed guidance which supports the policies and objectives of this Council.

The Journey is intended to support all levels of procurement activity where there is not already a contract in place. Following the Journey will help achieve best practice and expected contract outcomes. It will also facilitate procedural consistency throughout the Council making the procurement process easier for tenderers, commissioners, procurement staff and contract managers.

By providing guidance, templates and standardised processes, the Manual should provide the user with an end to end guide for the procurement process from planning to delivery.

2.2 Planning Your Procurement

Planning is a critical success factor in any procurement. The earlier in the process that PCT are involved, the better to help avoid limiting options at too early a stage and achieve the outcomes that will best meet service needs and expectations.

2.3 Make or Buy Decisions

For many purchases there is essentially no real “make or buy” decision to be made. The purchase will be for a good, service or work that is completely outside the scope of what the Council as an organisation, produces.

There will in other cases however, be a decision to be made over whether a purchase has to be made or whether there is internal capacity to deliver the goods, services or works required. In such cases it is extremely important that the “make or buy” decision is reached before a formal tendering process is undertaken.

Where a “make or buy” choice results in the decision to “make” then no purchase has been made and none of the procurement rules apply. Therefore in order to keep work “in house” the Council are not required under any procurement rules to make any value justification.

In terms of achieving overall best value for the organisation however, officers considering a “make or buy” decision will want to consider the following questions;

Does the Council have available capacity to meet the requirements of the proposed purchase in house, to the required quality and within the required timescale?

If so, can the Council’s in-house resources deliver this at a marginal cost that is below the cost of purchase? (NOTE: Marginal Cost does not include any overheads that may be applied and does not include any costs of plant or machinery that would have otherwise been idle)

Can the Council deploy additional resources to meet the requirements at a cost that is less than the cost of purchase?

For the above comparisons the cost of purchase should be estimated from previous purchases or should be arrived at through other research. No formal tendering exercise will have been carried out at this point.

If a fully costed “make” option is prepared and there is a wish to compare this to a later tender price then this should form a control bid, which should be communicated within the tender documents. In these situations it should be noted that the Council’s “in-house” price is not prepared in competition with external prices and it is in the Council’s overall interest if suppliers can submit successful bids in this situation.

From time to time, as part of an overall service review, the Council may wish to explore an option to have services delivered by another method. This may involve services that have previously been delivered by the Council itself, being opened up to competition from other sectors.

If a make or buy decision is anticipated the basis for the decision should be noted using the process and template for decision making Appendix 4 to ensure proper procedure is followed and an audit trail of decision making is available.

2.4 How to Plan

The planning process is captured in an overarching Commodity Strategy and Sourcing Strategy covers the planning of separate tenders and frameworks.

Please see Appendices 5 & 5A for full information on the Commodity/Sourcing Strategy process, and the contents of the templates. Appendices 5B-5G provides the template documents to be used in the strategy stage dependant on value. Each template provides full guidance notes for their completion.

Early engagement with the PCT at the planning stage should avoid any delay to the process and allow a proper consideration of all the options available. It is essential that time is allowed for relevant market testing and lead times in contracts should be assessed to ensure that there is sufficient time for handovers to be completed and contract requirements to be fulfilled. This should be taken into account in producing the Sourcing Strategy. As an example of timescales a low value low risk procurement would use the Quick Quote process which can be carried out within a few weeks (depending upon the complexity and state of readiness of the specification) whereas a more complex tendering process takes around 9–12 months.

2.5 Is There An Existing Contract/Framework Provider?

Consider whether your requirement could be met through an existing Scottish, UK wide, sector led or local framework or contract which would provide best value. A framework contract is one where the main elements of the contract have been agreed and which set out the terms under which specific purchases (call-offs) can be made.

If not, and the contract value, including any recurring needs over a four year period, does not exceed £20,000 then generally the 'Quick Quote' facility will be the appropriate advertising route.

All contract opportunities over £1,000 will be advertised on Public Contract Scotland (PCS) portal Using PCS is a way of ensuring a degree of transparency and a consistent approach amongst public authorities and provides an essential audit trail.

2.6 Which Route?

The Procurement Decision Matrix should be used to ensure you select the most appropriate Procurement Journey Route:

The following steps help you to decide which route to take based on value and risk.

Step 1 – Estimate the value of the requirement:

What is the anticipated total spend over the lifetime of the contract or requirement? Spend MUST not be disaggregated i.e. making a series of one-off purchases in order to avoid what might be perceived as the "hassle" of a procurement exercise. The Council needs to drive out savings and ensure best value and very often this will be achieved in economies of scale.

Step 2 – Determine the level of risk or political sensitivity:

Is it a supply or issue that is likely to be politically sensitive or carry a high legal, reputational or delivery risk? The risk should be assessed by the Purchasing Officer and the Department using the Procurement Journey Decision Matrix and Risk Assessment – attached as Appendix 6.

2.7 Pricing Agreements For step by step guide – please see appendix 7.

2.8 Route One



For supplies and services the quick quote procedure should be used for purchases between £1,000 and £20,000 using the invitation to quote template (ITQ). For works the threshold is higher and the quick quote procedure is applicable for purchases between £1,000 and £49,999.00 (using ITQ) (for detailed requirement, see appendix 8).

For route 1 procurements, at least 3 formal quotes are required for all purchases or contracts over £1,000 unless an in-house provider or existing framework or contract is available.

The route provides guidance for procurements of relatively low risk, low value £1,000-£20,000 over the life of the contract and of a non-repetitive nature i.e. you should not place contracts for the same works, goods or services on a number of occasions over 4 years unless you already have a framework in place.

The difference between Route 1 and Routes 2 & 3 is that in Route 1 you are in control of who is invited to tender and therefore you must have already considered the capability of suppliers you are inviting. With a tender (Routes 2 & 3) the requirement is openly advertised so that any supplier can apply. A selection stage will therefore generally be necessary.

2.9 Routes 2 & 3

For use of Route 2 & 3, it is assumed that individuals will have been trained in EU regulations, the Procurement Journey and our applicable local procurement policies, guidelines and governance arrangements.

The same planning stages at 2.4 above should be followed. Services should not proceed without PCT involvement. The Reform (Scotland) Act 2014 introduces thresholds for regulated procurements above £50,000 for goods and services and £2 million for works procedures set out here.

Routes 2 & 3 follow the stages below:

Stage	Title	Appendix:
1	Develop Sourcing Strategy	5 A to G
2	Development of the procurement documents and issue- route 1 Route 2 - Develop Documents, Supplier Selection , Issue ITT Open and Evaluate Tenders Route 3 - Develop Documents , Supplier Selection , Issue ITT , Open and Evaluate Tender	8 – route 1 Follow hyperlink Follow Hyperlink
3	Open and Evaluating	12
4	Post Tender Clarification and tender review	13- 14
5	Contract Award	15
6	Contract and Supplier Management -how to guide and templates	16 and 17

The procurement function must operate within appropriate governance and risk management arrangements for the Council. The appropriate governance will help ensure probity, transparency and consistency of key procurement-related decisions. (Appendix 3 Dealing with External Bodies) For large or politically sensitive projects following Routes 2 & 3 this will almost certainly mean setting up a UIG and having senior officer involvement. Consideration should be given to reporting mechanism and governance arrangements in the planning of the project.

2.10 Roles and Responsibilities:

There are many stakeholders involved in procurement. The main roles of each are shown in the UIG roles and responsibilities paper attached as Supplementary Guidance No. 2. Some officers out with PCT may also be authorised to conduct procurement activities such as Quick Quotes where they have had training on how to conduct procurement exercises up to a certain value. Where there is cross service spend then the instructing customer will normally be the Service with the biggest spend (unless otherwise agreed) for the purposes of approvals, CARRs and contract management responsibilities.

2.11 Engaging the Market

Annual Procurement Reports must be published on regulated procurement activities as soon as reasonably practicable after the end of that financial year. The report must include a look back at the procurement activity over the year and a forward look which should include a summary of the regulated procurements the authority expects to commence in the next two financial years

Prior Information Notice (PIN)

When a contract is worth more than the EU thresholds set out at section 1.7 buyers may issue a prior information notice (PIN) – for early market engagement, to reduce procedural time limits and as a call for competition in restricted procedures or competitive procedures with negotiation.

A PIN can also be used as a call for competition in regulated also known as “slice contracts”

- PINs will follow a standard form and will outline: who the buyer(s) is/are, what is required, the anticipated contract value, the type of contract, and when the requirement should be fulfilled

. The following are some key notes about PINs:

- The PIN reduces the minimum timescales for the return of tenders
- The PIN is valid for a period of twelve months from issue.
- The PIN does not create any commitment from the Council to proceed with a tendering exercise.

Future Contract Opportunity (FCO)

For below-Regulated Procurements thresholds- Future Contract Opportunities (FCO) contracts notices can be used – please see above process for PIN’s.

Request for Information (RFI) – Market Tests

RFIs are primarily used to gather market information to help make a decision on what steps to take next. In addition to gathering basic information, an RFI is often sent to a broad base of potential suppliers for the purpose of conditioning suppliers' minds, developing strategy, building a database, and preparing for a future tender.

2.12 Advertising the Contract

The Sourcing Strategy will identify the contract award procedure to be used commensurate with the tables at section 1.8. The most commonly used procedures are listed at (a) to (d) below. The Regulations provide for the following procedures

- (a) Open Procedure-
- (b) Restricted Procedure-
- (c) Closed/Quick Quote Procedure
- (d) Frameworks which includes reference to Mini competitions
- (e) Competitive procedure with negotiation- use when justifiable
- (f) Competitive Dialogue – use when justifiable
- (g) Innovation Partnership - use when justifiable
- (h) Negotiated Procedure without prior publication – only in permitted instances

The key differences between the commonly used award procedures adopted by Argyll and Bute Council are summarised below.

2.12.1 Open Procedure

Under the open procedure all interested parties are entitled to request tender documents. In general the use of open procedure is not recommended as best practice except in cases where the market is extremely restricted in the number of likely bidders.

Where the open procedure is used the capability is firstly assessed using the European Single Procurement Document and if a pass achieved contract award criteria is thereafter evaluated on a quality / price basis, with the award going to the Most Economically Advantageous Tender (MEAT). This is represented by the term best price- quality ratio. This award criteria is the only way that procurements within the scope of Public Contracts (Scotland) Regulations 2015 may be carried out.

2.12.3 Restricted Procedure

Under the restricted procedure, the European Single Procurement Document (ESPD) is used to allow suppliers to demonstrate their qualifications and how they are selected to bid. The ESPD is mandated for use for all procurements with an estimated value of OJEU threshold and above commenced on or after 18th April 2016. It is best practice to use the ESPD for regulated procurements below OJEU thresholds.

It is important to note that while a quality / price mix is used in tenders issued under the restricted procedure, no further judgements should be made on the bidder's ability or capacity to perform the contract. Having gone through a selection procedure the short listed bidders are deemed to be capable of carrying out the contract. Their approach to the contract may still be subject to scoring as part of a quality assessment.

2.12.4 Closed/Quick Quote Procedure

Under the closed/quick quote procedure the tender documentation is to be issued to a restricted list of at least 3 suppliers with every effort normally being made to identify a minimum of 5 companies who may be interested in tendering. Whenever possible where the closed procedure is used the contract award criteria should be based on a quality / price mix, with the award going to the Most Economically Advantageous Tender (MEAT). In other cases, where quality is an absolute (mandatory or legislative), award can be made on the basis of lowest price, provided it meets the legislated threshold.

The closed tender should normally be issued via the 'Quick-Quote facility' on Public Contracts Scotland.

2.12.5 Framework Contracts

The Council is only allowed to participate in contracts that they have been named as part of from the offset, i.e. named on the contract notice during the advertising stage. If the service wishes to use a particular framework then they should contact their relevant purchasing officer in the first instance and they will check if the framework can be used.

A framework contract is often used where the extent of the purchase is not known or where it is anticipated that several suppliers will be engaged on the contract over a specific period of time. A framework contract may be let to either a single bidder or three or more bidders, but not two. It is possible that a framework can be tightly specified in terms of unit price and deliverables but this is

not always the case. Where it is not possible to arrive at specific prices it is possible to apply only pricing to core items or indeed have quality only criteria for inclusion in the framework. In such case, selection to specific supply under the framework would be undertaken by mini-bid, which may itself be price only or quality of submission for a specific supply.

2.12.6 Mini competitions

Where frameworks are awarded to several economic operators there are two options for awarding call-off under the framework;

(a) Apply the terms of the framework agreement (Direct Awards)

(b) Hold a mini competition

Under option (a) – where it is possible to determine the Best Value supplier as the tender assessed as having submitted the most economically advantageous tender from the pricing and quality submitted to get onto the framework agreement then direct award is the only option available, i.e. there must not be further competition unless that first ranking supplier does not have capacity. If that supplier does not have capacity then the second ranking supplier may be approached.

Where the terms laid down in a framework agreement are not precise enough or complete for the particular call-off, a further or mini competition – option (b) - may be held with all those suppliers within the framework capable of meeting the particular need. It is important that all suppliers on a framework are invited to take part in the mini competition in the first instance; assumptions should not be made regarding their capability.

2.13 Other Considerations

2.13.1 Benchmarking

The primary concern of benchmarking is measuring and assessing performance against identified best practice, with the aim of developing ways of matching or bettering that performance.

Competition is not always a perfect measure and the lack of a ready market for some services combined with barriers to entry in some industries, means that competition does not always ensure value for money. Key indicators that competition is not perfect may include;

- Few available bidders
- One or two dominant suppliers
- Lack of new entrants to bidding lists
- Demarcation between suppliers

Public Contracts Scotland portal can be used as a tool to aid benchmarking recent contract awards can be identified which might suggest a similar way of working. The Scottish Procurement Information Hub holds the procurement spend by supplier for every Scottish public sector body and those spends, either collectively or individually for named organisations, by commodity category can be compared to our own.

2.13.2 Demand Management

While procurement activity and strategic sourcing in particular focus on the price and quality of purchases that are made, demand management concentrates largely on the quantity that is purchased. The focus of demand management is on consumption.

Managing Consumption

The greatest single cost saving that can be made from any procurement exercise is the single, simple decision made at the beginning of the process, not to make the purchase. This obviously is not a decision that is available on many purchases; otherwise saving money through procurement would be an extremely simple business.

While the Council will be initiating individual demand management programmes for areas of indirect expenditure the following principles should be applied generally to purchasing decisions. Some examples are provided below:

Paper and Stationery

1. The Council purchases paper and stationery from national contracts. Ensure that you are using the contracted supplier for all purchases.
2. Ensure that the purchase is necessary and that no better alternatives are available from the large catalogue of stock that the contracted supplier has made available through the national contract.

Office Equipment

1. Printing, scanning and photocopying devices (Multi-functional devices) are the largest items of office equipment used by the Council. The Council leases this equipment through a national contract. Please ensure that all purchases are made from the contracted supplier.
2. The national contract is designed so that the supplier benefits from the number of prints, scans or copies produced rather than the number of multi-functional devices deployed across the Council. Reducing the number of devices benefits the Council through reduced leasing charges and benefits the supplier through reduced capital and maintenance costs. Ask for assistance from the contracted supplier in deploying the machines as effectively as possible within individual offices.
3. Direct as much print as possible away from desktop printers to the contracted multi-functional devices and save money on print costs.

It Hardware and Software

1. Ensure that purchases of IT hardware and software are only made to meet a defined business demand and that specifications are tailored to the most cost effective means of meeting that demand.
2. Always use the IT Service desk when purchasing IT hardware, software or peripherals to ensure that the specified equipment will be compatible with present and planned applications.

Consultants

1. Can the project be delivered in- house. Never employ a consultant in order to deliver more bodies on the ground, whatever the task. The Council has a large workforce with diverse

skills and has access to temporary recruitment agencies who can supply staff to work under Council management at competitive rates - access Guide to recruiting agency workers on the Hub.

2. Always have a clear specification of the work to be carried out and be aware of the clear advantages that the specialist skills of a consultant will bring to the task. Ensure the consultant is provided with a copy of the guide on engaging external consultants
3. Ensure that the contract has clear and specified deliverables and that it is clear that those have to be met in order for payment to be released.
4. Use the Guide to Engaging External Consultants at Supplementary Guidance 5.

2.14 Lessons Learned

Planning is a continual process and PCT should use lessons learned to inform current and future plans. Lessons learned reports should be prepared for all route 3 contracts, for route 2 contracts if there is a substantial issue in relation to quality, time or cost and a sample of route 1 contracts where considered appropriate by the Purchasing Officer. The template at Appendix 16 can be utilised throughout the procurement process or at contract award stage

3.0 THE THIRD SECTION – CONTRACT IMPLEMENTATION AND MANAGEMENT

This section outlines the process and activities associated with managing and implementing a new contract to ensure:

- supplier(s) have all the information they require to plan the migration of users to the contract
- users have all the information they require to use the contract e.g. suppliers contact details, information on the goods/services available from the contract
- continuity of supply

3.1 Contract Implementation

Contract implementation consists of two distinct phases:

- Migration - facilitating the movement of organisations to a new contract post 'go-live'
- Mobilisation - the process of moving from contract award to 'go-live' i.e. the point when a user can actually buy from the contract

The Mobilisation process is a guide to help plan activities between contract awards and go live. Some steps in the process may be done concurrently. The timescales for each of the stages should be amended to reflect your own specific procurement exercise. (Appendice 17)

You should hold the first meeting with the successful supplier as soon as possible after the contract has been awarded. The purpose of this meeting is to discuss the contract implementation plan and agree roles, responsibilities, identify activities and agree timescales. It is important to keep in regular contact with the supplier during the contract implementation phase and to arrange meetings etc. when required.

3.2 Contract and Supplier Management

THIS CONTRACT MANAGEMENT PROCEDURE DOES NOT REPLACE THE CONTRACT MANAGEMENT UNDERTAKEN AS REQUIRED BY SPECIFIC CONDITIONS OF CONTRACT, E.G. NEC, SBCC, etc.

The aim is to reduce risk, improve and develop contract and supplier performance across organisations, sectors and nationally via a consistent approach which maximises efficiencies and promotes value add contribution across the supply base. To appropriately influence supplier activity and decisions and improve value for money, over and above cost savings Contract & Supplier Management can be considered successful when:

1. the arrangements for service delivery continue to be satisfactory to both parties, and the expected business benefits and value for money are being achieved or exceeded
2. the supplier is efficient, co-operative and responsive
3. the organisation understands its obligations under the contract
4. there are no surprises
5. there are no disputes
6. professional and objective discussions over changes and issues are straightforward and easily managed
7. efficiencies are being realised.

3.3 Definition and Importance of contract management

There is often confusion between Contract Management and Supplier Management. They are both part of the continuum of activities that relate to post contract award management of the supplier and contracts. Supplier Management is the actions that apply across a supplier's whole portfolio of contracts, and generally is accepted to be around the more strategic, longer term activities we undertake with them.

However, the fact that it is a continuum has one important consequence. It is very difficult to perform effective Supplier Management if the basic Contract Management disciplines are not in place. It would be difficult to discuss strategic partnerships, innovation or joint ventures if you do not understand the detail behind the contracts your organisation has with this supplier, or how they're performing day to day. Effective Contract Management is therefore a necessary condition for successful Supplier Management.

3.4 Importance of Contract Management at Board/Senior Management Level

An effective Contract Management strategy should be a high priority for Senior Officers. Contracts which deliver services or provide infrastructure or third party essentials are so central to the running of an efficient and compliant business, that managing contracts effectively has been, and always will be, a necessity. Eliminating significant cost out of the business (not necessarily by impacting supply chain efficiency/profit), complying with corporate governance, managing enterprise risk and maximising revenue streams are all central functions of an organisation's Contract Management strategy.

Managing the information and obligations contained in a contract and the overall contract lifecycle are critical to meeting the compliance regulations. This means that the entire process of contract creation, clarity of final agreement (the contract terms) and contract performance reporting needs to be endorsed at a senior level.

3.5 Purpose

The purpose of contract and supplier management is to work closely with suppliers and internal customers to minimise the total cost of ownership and to maximise efficiencies for both buying organisations and suppliers throughout the supply chain by:

1. developing and managing constructive and transparent relationships with suppliers
2. ensuring the contract is successfully executed maximising value for money from suppliers and contracts
3. providing a formalised system of monitoring, managing and continuously improving the supplier and the buying organisations performance against the contract
4. ensuring that all parties recognise and understand their contractual roles and responsibilities
5. monitoring overall compliance to Key Performance Indicators and Service Level Agreements and implementing improvement plans in the event of under performance
6. leveraging supplier expertise in pursuit of cost and efficiency gains
7. realising of additional savings and benefits and sharing them appropriately
8. effectively managing the supply chain
9. providing a focus for development of initiatives and innovations
10. driving continuous improvement
11. identifying of lessons learned to inform future contract terms or strategies

12. Developing supplier relationships to maximise efficiency, collaborate towards common goals and reduce waste, environmental or social risks.

3.6 Benefits

Within legal limits, both parties should be motivated and enabled to deliver additional value add, over and above that which was specified in the original contract e.g. not simply extending the expenditure. The process should deliver benefit to both parties, by:

1. providing formal routes of engagement at different levels of management, thereby allowing opportunities for improvement to be exploited at senior levels
2. ensuring supply costs are contained and minimised for all parties, and that opportunities for improving cost effectiveness and efficiencies are explored and progressed e.g. packaging, service level definition
3. proactively ensuring that the business needs under the contract are delivered
4. ensuring both the customer and supplier's obligations are understood and managed
5. reducing reactive 'incident resolution activity' to minimise the cost of failure and of managing the relationship
6. promoting proactive issue resolution and ensuring clear escalation paths exist within both organisations
7. using the same standardised approach for a number of suppliers/customers, which will embed operational efficiency, consistency and quality
8. limiting the number of people involved to ensure consistency in process and communication
- ensuring the right people are involved in the right activities at the right time with the right information
9. encouraging the supplier to improve their product or service in ways which provide value add to the customer and to future customers
10. promoting efficiencies within both organisations will develop the skills of the employees and help the supplier's staff to deliver a better service

3.7 How to measure – Key Performance Indicators

Existing Contracts - Although the full implementation of contract management cannot be put in place, basic management can be implemented based on the tender specification. This can be done by reviewing the existing service specification and extracting performance measures under the heading of the balance scorecard

New Contracts - The performance of contract will be managed against Key Performance Indicators (KPIs), for quality scored or even mandatory performance. The list provided below are indicative of the level of KPIs which would be appropriate when a High level of management is required. For a Low level of management it may be sufficient to measure performance using the core KPI headings e.g. quality, service, delivery and cost and for a Medium level of management, a combination of core with only a few specific indicators may be sufficient

Quality:

- Fit for purpose in terms of quality of product/service
- Returns – incorrect item, damaged, substandard quality, incorrect item ordered
- Corporate Social Responsibility – dependant on specification of requirements
- Continual Improvement/Innovation

Service:

- Responsiveness
- Complaints
- Management Information
- Education/Training
- Communication

Delivery:

- Lead time/delivery time
- On time delivery against objectives
- Accuracy

Cost:

- Pricing Stability
- Invoice Accuracy
- Cost Reduction Initiatives

The specific requirements for each core performance indicator should be amended to reflect the specific requirements of the contract. The targets will either be stipulated within the ITT and Terms and Conditions or agreed by all parties concerned during the implementation stage of the contract or framework agreement. It is intended that these indicators will be developed throughout the lifetime of the contract/framework agreement as demand evolves and will reviewed annually (as a minimum) in consultation with the Supplier, Department and Procurement Team.

3.8 Contract and Supplier Management Plan

Once you have concluded which level of contract management is most appropriate in conjunction with your Purchasing Officer you should complete a Contract and Supplier Management Plan, which can be found as a template in Appendix 18, which includes details of:

- Roles and Responsibilities
- Level of Management (Low/medium/high) required
- Contract Objectives
- Performance Management defined in tender/quote
- Mobilisation Plan
- Migration Plan
- How to ensure contract compliance
- Change Control Process – Appendix 17A
- Exit plan
- Dates of review meetings
- Issues/Risks

3.9 Methodology for Contract and Supplier Management

The methodology used to carry out and record contract and supplier management will follow that laid down in the Scottish Procurement Directorate's Procurement Journey. This is carried out with reference to the template for a Balanced Scorecard (Appendix 18) and using the Scoring Template (Appendix 18)

Contract and Supplier Management will be carried out by the Council in a manner that is objective, fair and transparent. The relevant Purchasing Officer will assist with all scoring in the early stages. Scoring of suppliers in particular must only relate to their performance and matters under their control of their own suppliers and sub-contractors. All scoring will be visible to the suppliers involved and they will have an opportunity to comment on the scoring and have their comments noted in the records. All records will be held by PCT.

The balanced scorecard provides an example of the type of guidance (in the Quality, Service, Delivery, Cost worksheets) which would be used for a "High Level" contract but can be modified for "Medium and Low Level" contracts.

3.10 Performance Review Meetings

Performance Review Meetings are an important part of the Contract & Supplier Management process and provide the Procurement Team and the Supplier with an opportunity to focus on what is going well, identify any problems at an early stage and agree opportunities for improvement and innovation. The Performance Review Meeting template (Appendix 18) can be completed by both the buyer and supplier in advance of the meeting and provides a structure to the meeting.

It is suggested that for contracts/suppliers where a medium level of management is being applied that there should be at least one performance review meeting a year. For Contracts and/or Suppliers where a high level of management is being applied there should be at least four review meetings a year.

An early Performance Review Meeting could include a 'Procurement Procedure Review' session with the stakeholders on the tendering and contract implementation process – appendix 14.

3.11 Exit Strategy

An exit strategy is necessary to identify possible risks, define potential losses, ensure continuity of services and should be a 'front end' activity created before the contract is signed. This may appear counterintuitive, but without a well thought out strategy which is consistent with your overall sourcing strategy, the Council risks becoming locked into an unsatisfactory relationship or being forced to pay more to part ways and minimise operational impact.

With an exit strategy in hand at the outset of a supplier relationship, our organisation's needs will be incorporated into the contract, ensuring minimum business and customer disruption in the event that the relationship is terminated.

Exit strategies should be reviewed annually, or when significant change occurs. All route 3 service contracts should have an exit strategy; consideration should be given for other route 2 and 3 contracts where considered appropriate at sourcing strategy stage (Exit strategy template- 17 contract and supplier management exit strategy)

There are several considerations to be made when developing an exit plan, including:

1. Continuing Service Requirements
2. Data Security and Privacy
3. Knowledge and Documentation Transfer
4. Costs
5. People
6. Assets

4.0 THE FOURTH SECTION –SUPPLEMENTARY GUIDANCE

These are attached as appendices to the manual with an overview only set out below. The exception to this is for State Aid and Grants where the guidance is contained in full below.

4.1 Supplementary Guidance Note 1 - Justification for Non Competitive Action (JNCA)

Whilst it is recognised that contracts for goods works and services must be awarded on the basis of best value and in compliance with the procurement legislation following genuine and effective competition. There will be instances where it may be appropriate to award contracts for goods works and services without genuine and effective competition on a direct award basis. This procedure is known as Justification for Non Competitive Action (JNCA) and can only be applied in exceptional circumstances. JNCA will only be approved when a genuine business need exists which outweighs the need to compete the requirement. All evidence in support of JNCA must stand up to scrutiny or challenge by a potential supplier. The JNCA process should not contravene EU or national procurement law which will still apply. For this reason the JNCA process requires documented reasoning and senior authorisation.

The frequently answered questions and answers should be read prior to a request being submitted (**Guidance note 1A ref JNCA FAQs**)

Complete the JNCA request form and submit for authorisation (per Guidance Note 1) .

Please note that:-

1. A JNCA should not be granted retrospectively – contracts placed without approval will be treated as uncontracted spend which is monitored and reported to Executive Directors on a regular basis.
2. Direct Awards via the JNCA process will be aggregated – for the purpose of determining the appropriate approval level the value of the JNCA will take into account any preceding JNCA concerning the same contract or extension.

Supplementary Guidance Note 1A provides the details of the officer delegated to authorise a non- competitive action. Note that the change control process (appendix 17A) should be referred for extensions, variations changes or modifications of contracts during its term. Any variation /modification or change should not be made to contracts without specific advice from PCT to ensure the Regulations are not breached.

4.2 Supplementary Guidance Note 2 – UIG Roles and Responsibilities

Roles and Responsibilities Supplementary Guidance Note 2 Details of roles and responsibilities of both the department and the Procurement team

4.3 Supplementary Guidance Note 3 - Procurement Procedures

Procurement Procedures – Supplementary Guidance Note 3 is a step by step guide to processes used by Argyll and Bute Council and is a useful checklist and workflow for the procurement practitioner.

4.4 Supplementary Guidance Note 4 - State Aid

Under the European Union State Aid rules, if any support provided by a public body is given to a third party, which could constitute 'aid', then unless;

1. an exemption applies; or
2. a company is contracted by a public body in accordance with Scottish & EU competitive tendering requirements (procurement rules and regulations) it should not be given until the European Commission has been notified and approved.

The State Aid rules apply to a broad range of measures that can give, or add up to an economic benefit or advantage. The concept of 'aid' can include subsidies, grants, capital injections, soft loans, guarantees, sales or leases of property at undervalue, notional rents, compensation for providing certain public services, reductions in local tax liabilities and contracts that have not been through a competitive procurement process.

The thresholds for state aid are very low; a maximum of €200,000 over a three year period only and this includes any other aid or assistance from other public bodies such as grants and state funding.

Where proposed aid is below the EU procurement threshold over a three year period but exceeds €200,000 and has not followed a competitive process in accordance with the regulations, then it may well constitute state aid and approval from the European Commission may be required prior to awarding a contract or grant.

Therefore it is advisable that where the JNCA process is used or a contract extension, variation, or if a proposed contract is within the procurement thresholds and does not require to be advertised, or if a charity or local enterprise has been targeted to receive a Council funded benefit, specific legal advice should be sought at the earliest opportunity to determine if there is a potential state aid issue and whether such requires to be reported to the European Commission and advice sought from the State Aid Unit of the Scottish Government.

4.5 Supplementary Guidance Note 5 - Guidance on the Appointment of Consultants

The PCT have approved Guidance on the Appointment of External Consultants which was introduced to provide greater control and visibility over consultancy spends.

4.6 Supplementary Guidance Note 6 – Grants (Within)

Grant funding and other packages of community investment while subject to the Council's duties of best value will fall out with the scope of the procurement rules and hence this Manual . Sometime it can be difficult to determine what is a grant and what it is a contract with procurement implications.

In general where payment has been made conditional on the delivery of an outcome and/or where there is a high level of specification then this is likely to constitute a contract which will fall within the procurement rules. A requirement to ring fence monies on the other hand without any detailed specification and which does not provide for losses to be recovered if services are not provided as agreed may more properly be regarded as a grant. Advice should be sought to establish whether the funding is a grant or a contract to ensure the appropriate rules are followed

4.7 Supplementary Guidance Note 7 - Abnormally low tenders and procedure

Public bodies shall require bidders to explain the price or costs proposed in the tender where they appear abnormally low. The obligation is to reject a tender where it has been established that the tender is abnormally low because a supplier has not complied with the environmental, social and labour law listed at Annex 10 of the 2014 Public Contracts Directive. A bid may be rejected where the explanations given and any evidence supplied do not satisfactorily account for the low level of price or costs proposed. The approved abnormally low bid process outlined at Supplementary Guide 7 should be followed and the pro forma attached should be completed.

4.8 Supplementary Guidance Note 8 - Health and Social Care

Health and Social Care Services (those Services listed in Schedule 3 to the 2015 Regulations) refer to the table at page 9 section 1.8 for thresholds.

Where a contract is valued over £750k Euros (£589 k) and constituting a public service contract, it must be let in accordance with regulations 76 to 79 of the 2015 regulations. There is no set procedure though must be sufficient to accord with transparency and equal treatment. Referred as “the light touch regime “ .

From £50 k to £589k - the Reform Act applies, unlike for other services. This is in recognition that such services are often provided in a particular context due to different cultural traditions that will often vary between Member States and considerable discretion is left to Member States as to how they organise service providers.

This ‘lighter touch’ regime applies to contracts for health and social care and also to other specific services. This “lighter touch regime means that only the observance of basic principles of transparency, equal treatment and provision for quality criteria such as those set out in the Voluntary European Quality Framework for Social Services have to be applied. It is also explicitly stated that public authorities should remain free to provide these services themselves or provide them in a way that does not require the conclusion of a contract e.g. grant funding provided, there is sufficient advertising and that the basic criteria of transparency and non-discrimination apply.

4.9 Supplementary Guidance Note 9 – Procurement working with Finance

Procurement has a direct effect on the Council’s budgets and financial management. It is essential to good financial management that the work of procurement is communicated to the Finance Managers within the Council and that the results of contract award and management activities are reflected in the Council’s budgets – see supplementary guidance note 9.

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