



Introduction to Procurement

One of a series of four (4) FREE Procurement Training Courses funded through a collaboration between SFHA and Scottish Procurement Alliance (SPA).

In this introductory session we have designed a Procurement overview and awareness session for new staff to Housing Association or for staff who have not previously been involved with procurement. We will look at a range of procurement topic

- What it all means?

You will gain an insight to procurement and the requirements of the Public Procurement Scotland Regulation 2015 and the Procurement Reform Act 2014

Dougie Gold

- My background,
 - BSc (Hons) Construction Management
 - Senior Management LA & HA (15 Years)
 - Senior Management Private Sector (4 years)
 - Owner Gold Consultancy Ltd (9 years)
 - Currently the SFHA Procurement Advisor (Part-time)
 - Work with a number of HA's assisting with procurement activities
- The presentation is designed to be interactive, so please feel free to ask questions at any point...

Tell me a bit about you?

- Your Background?
 - Knowledge of Procurement?
 - Experience of Procurement?
 - Involvement of any Procurements?
 - Future Involvement with Procurement?
 - What you hope to gain from the session?

1. Why do we procure?
2. Notable EU PCS 2015 Regs Changes,
3. Notable Reform Act Changes,
4. Regulated & Non-Regulated Procurement,
5. Procurement Routes,
6. Works or Supplies or Services?,
7. ESPD,
8. Contracts into Lots,
9. Public Contracts Scotland & Quick Quote,
10. The Procurement Journey (PJ)
11. Q&A

Why Procure?

1. Legislation?
2. Regulation?
3. Comply with PCIP?
4. Best/Good Practice?
5. Value for Money (VfM)?
6. Price/Quality Assessment opportunity?
7. Move from lowest cost (bun fight?)
8. Community Benefits?
9. Make savings? – How much?

Procurement and Commercial Improvement Programme (PCIP)

- PCIP is being rolled out across the public sector during delivered by Scotland Excel (SE),
- As assessment designed to help HA's improve their procurement performance,
- The PCIP (Lite) comprises four sections - Leadership and Governance, Development and Tender, Contract and Purchasing Processes - with a total of 14 questions, some of which are pre-assessed,
- Priority is on Developing HA's, voluntary at present,
- <https://www.procurementjourney.scot/node/239>

Procurement Advisory Service Role?

- To provide HA's & other parties with guidance, advice & training on the impact of the legislation,
- To develop guidance on any issues that will arise,
- Translate & present to groups of HA's & other parties,
- Provide ongoing advice & training, attend meetings, forums, telephone and online engagement,
- Provide recommendations on best practice and the potential for shared group collaboration,
- At the same time making it as interesting & as useful as possible.

New Regulations & Guidance

- [Public Contracts \(Scotland\) Regulations 2015](#)
- [Procurement Reform \(Scotland\) Act 2014](#)
- [Procurement \(Scotland\) Regulations 2016](#)
- [Guidance under the Procurement Reform \(Scotland\) Act 2014](#) (issued 17 March 16)
- Changes came into effect 18 April 2016.

Notable EU PCS 2015 Regs Changes

Mandatory Requirements (no choice from EU)

- New European Single Procurement Document (ESPD) (reduction in documentation required of tenderers – SME and paper friendly)
- The minimum time limits reduced (faster procurement)
- Pre-market consultation encouraged (SME friendly)
- Mandatory & Discretionary Exclusion Grounds for: (also in Reform Act)
 - Breaches of tax, social security = mandatory exclusion (time limited),
 - Breaches of social, environmental and employment law = discretionary exclusion, ('Social' means breaches that include labour rights, human rights etc)
 - Allowing exclusion for *significant/persistent past failures* that resulted in early termination, damages or similar (must be documented)
 - Allowing exclusion of a contractor/supplier who falls foul of the exclusion criteria during the term of a framework or contract,
 - However, self-cleaning allowed!!

Notable EU PCS 2015 Regs Changes

- Minimum annual turnover now no greater than 2 x contract value (SME friendly)
- Contracts into smaller lots or explain why not.(SME friendly),
- Contracts must never be awarded on lowest price/cost, they must have some aspect of quality,
- Reserving contracts for “Supported businesses” - definition reduced from 50% to 30% disabled or disadvantaged persons.
(SG Guidance - to comply with SPD RSL’s must facilitate the involvement of SME’s, third sector bodies and supported businesses in procurement – can be through sub-contracting).

Notable Reform Act Changes

Optional Requirements (choice exercised by Scotland)

- Below EU thresholds covering public contracts (for goods/ services) above **£50K** and public works in excess of **£2M**, (EU £181k & £4.55m)
- Community Benefits can be required in procurements,
- Companies guilty of “blacklisting” mandatorily excluded,
- Framework Agreements and call off contracts under frameworks are defined so they don't have to comply with full public procurement, (E.g. Pre-tendered frameworks),
- Must advertise opportunity on Public Contracts Scotland (PCS),
- RSL's must keep a 'Contracts Register' for Regulated procurement,

Notable Reform Act Changes

Additional Requirements (specifically Scotland)

- Sustainable Procurement Duties,
- Procurement Strategy for organisations who spend more than £5m per annum, (new guidance “encourages” below £5m too??)
 - prepare a procurement strategy setting out how the authority intends to carry out regulated procurements, or
 - review its procurement strategy for the current financial year and make such revisions to it as you considers appropriate,
 - Must include value for money, transparency, non-discrimination, sustainability, community benefits, consultation, H&S, ethical procurement, prompt payment, living wage etc,
- To consider, Community Benefits for all spend more than £4m.

Regulated & Non- Regulated Procurement

Regulated Procurement

EU Regs – OJEU Notice (as of Jan 2018)

- Works Contracts to the value of \geq £4.55m
- Services Contracts to the value of \geq £181k
- Goods/Supplies Contracts to the value of \geq £181k

Procurement Reform Act - Scotland Notice

- Works Contracts to the value of \geq £2m
- Services Contracts to the value of \geq £50k
- Goods/Supplies Contracts to the value of \geq £50k

Non-Regulated Procurement

- Contracts which are worth less than £50k & £2m (non-regulated procurements) RSL's are subject to fewer rules,
- All procurement, no matter the value, RSL's need to consider the EU Treaty of Rome principles, the foundations for all procurement legislation, **Open, Equality, Transparency, Non-discriminatory & Proportionality**,
- What these principles imply in practice, is that a contract has to be "adequately" advertised and run "some form of fair competition" thereafter,
- RSL's are bound by these principles irrespective of contract value,
- Use of Quick Quotes is an option to consider below £50k in line with policy.

Construction Procurement Handbook

- Released 21 Dec 2018, 133 pages long,
- Wordy and tough to read, it mention Regs continually,
- Covers all construction procurement for HA's,
- Handbook is the first issue in a suite of handbooks to provide guidance for public sector construction clients ,
- Handbook focuses on the procurement of the contractors and consultants who support the contracting authority in delivering their construction projects,
- Some interesting areas in Chapter 4 & 6, talks about using QQ for up to £500k for construction projects?,
- Come with a Warning Label as in doing this you need to have a QQ strategy to ensure you are Fair, Equal, Proportionate?
- Your Policy & Financial Orders will be the deciding factor

Procurement Routes

Procurement Routes/ Techniques open to RSL's

- Frameworks, (T)
- Open Procedure (Single Stage),
- Restricted Procedure (Dual Stage),
- Dynamic Purchasing System (DPS), (T)
- Competitive Procedure with Negotiation,
- Competitive Dialogue ,
- Innovation Partnership,
- Negotiated Procedure without Prior Publication.

Procurement Routes

Procurement Procedures

EU REGIME

CONCESSIONS REGIME

Open Procedure

Restricted Procedure

Competitive Procedure
with Negotiation

Competitive Dialogue

Innovation Partnerships

Negotiated Procedure
Without Prior Publication

Use freely

Use when justifiable

Use only in the permitted
instances

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Framework Agreements

- A framework is an agreement between the contracting authority and one or more suppliers which establishes the terms under which the supplier will enter into a contract with RSL in the period during which the framework,
- RSL's can use their own Framework or Pre-tendered Framework set up by other Contracting Authorities (PfH/LHC/Excel),
- The term of the FA must not exceed 4 years,



Framework Providers

- [Scottish Procurement Alliance](#)
- [Procurement for Housing Scotland](#)
- [Scotland Excel](#)
- [Crown Commercial Services](#)
- [Advanced Procurement for Universities & Colleges](#)
- [NHS Scotland Procurement](#)

Open (Single) Procedure

- RSL must permit any interested contractor to submit a tender in response to a notice within the time period set, single stage tender,
- A commonly used procedure,
- Supposed to be used when there are few suppliers that could meet the needs in the market place,
- All suppliers who respond to an notice will be sent the invitation to tender, quality documents, along with requirement to complete the ESPD.

Restricted (Dual) Procedure

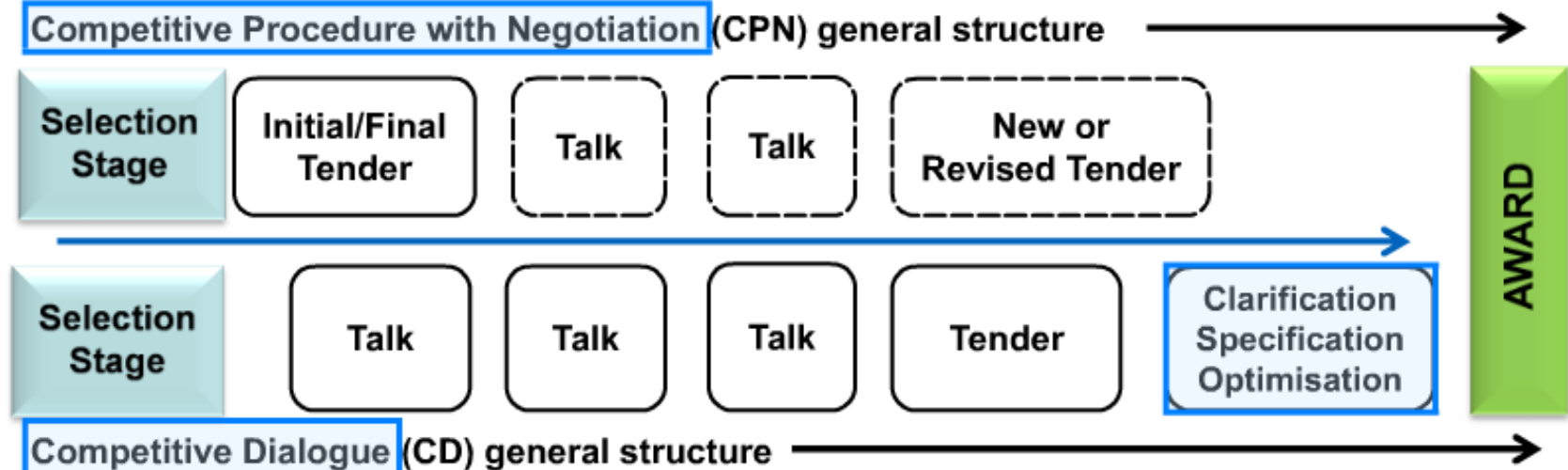
- RSL must permit any interested contractor to submit an ESPD,
- Section IV Selection Criteria, is used for scoring and to reduce the contractors/suppliers down,
- A 2 (or Dual) stage tender process, ESPD then ITT & Quality Methodology after initial selection,
- Min No of candidates is 5 (EU only) and must state this in the tender notice.

Negotiated Procedure without Prior Publication

- Remains largely unchanged,
 - where no tenders, no suitable tenders, no requests to participate or no suitable requests to participate have been submitted in response to an open procedure or a restricted procedure,
- where the works, supplies or services can be supplied only by a particular party, where:
 - the aim is the creation or acquisition of a unique work of art or artistic performance;
 - competition is absent for technical reasons;
 - the protection of exclusive rights, including intellectual property rights,
 - VEAT Notice
- Widely used by RSL's?

Competitive Procedure with Negotiation or Competitive Dialogue?

As these procedures are now able to be justified in the same way, procurers will have to determine which of them best meets their needs.



The CPN requires the development of a specification of its requirements in advance of inviting submissions from bidders, and to structure the negotiation around those requirements. It is likely that many procurers will opt for the CPN where they have a clearer idea of the possible solution. In contrast the CD simply requires that procurers identify their needs without having to prescribe the nature, characteristics or solutions to be offered.

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Minimum Timescales

(Please **click** on highlighted cells)

	Dispatch of Prior Information Notice Minimum Days	Selection Stage Minimum Days	Award Stage Minimum Days
Open Procedure	N/A	N/A	35
Open Procedure with electronic submission of tenders	N/A	N/A	30
Open Procedure with publication of compliant PIN	35	N/A	15
Open Procedure with duly substantiated state of urgency	N/A	N/A	15
Restricted Procedure	N/A	30	30/10
Restricted Procedure with electronic submission of tenders	N/A	30	25/10
Restricted Procedure with publication of compliant PIN	35	30	10
Restricted Procedure - Use of a PIN as a call for competition	35	30	30/25/10
Restricted Procedure - with duly substantiated state of urgency	N/A	15	10
Competitive Procedure with Negotiation	N/A	30	30/10
Competitive Procedure with Negotiation with electronic submission of tenders	N/A	30	25/10
Competitive Procedure with Negotiation with publication of compliant PIN	N/A	30	10
Competitive Procedure with Negotiation with PIN as a call for competition	35	30	30/25/10
Competitive Procedure with Negotiation - duly substantiated state of urgency	N/A	15	10
Negotiated Procedure Without Prior Publication	N/A	N/A	None
Competitive Dialogue	N/A	30	None
Innovation Partnership	N/A	30	None
Dynamic Purchasing System	N/A	30	10

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Reality of Changes

- RSL spends £15k per year on Stationary products in a 4 year contract = £60k (Goods & Service threshold £50k)
- RSL spends £30k per year on Legal services in a 3 year contract = £90k (Goods & Service threshold £50k)
- RSL spends £800k per year on a Modernisation project over a 3 year contract = £2.4m (Works threshold £2m)
- All the contracts above are now deemed to be “Regulated Procurement” under the Scottish changes in the Reform Act,
- RSL’s need to consider all buying activities – not just Construction related but Stationary, IT, Insurance, Internal & External Auditing, GDPR, Legal & Advocacy Services,
- SG Contract Directory -

<http://www.gov.scot/Topics/Government/Procurement/directory>

What if RSL's don't comply?

- **Legal Remedies!**
- Can bring proceedings - court determines & can suspend award, but can also consider negative consequences, including public interest,
- Court may:
 - By interim order suspend procurement process/award
 - Set aside award decision & award damages
 - Declare as **'ineffective'** and this will lead to re-tendering
 - Order amendment of any document
 - Award damages
- Legal challenges have 'significantly' increased (James McMorrow Harper MacLeod)....

Works?
Supplies?
Services?

Works or Supplies or Services?

‘a work’ means the outcome of building or civil engineering works taken as a whole which is sufficient in itself to fulfil an economic or technical function;

‘public supply contract’ means a public contract having as its object the purchase, lease, rental or hire-purchase, with or without an option to buy, of products which contract may include, as an incidental matter, siting and installation operations;

‘public service contract’ means a public contract having as its object the provision of services not including those comprising a public works contract (except a subsidised public service contract).

Works or Supplies or Services?

Create Notice - Nature of the Contract

Please select the nature of this contract from the list i.e. Is it for the supply of goods or the provision of services?

Services Contract

Provision of services, including maintenance

Supply Contract

Purchase or hire of goods (including installation services where appropriate)

Works Contract

Building and civil engineering work, demolition, installation of plumbing, heating or electrical equipment and building completion work (e.g. plastering, papering and tiling)

- Purchase, lease, rental or hire purchase of items e.g. computers, phones, equipment, (inc install and siting?)
- Purchase of goods e.g. Windows, Doors or Kitchens.

Mixed Contracts

What about a mixture of works and services?

- depends on the main activities to be carried out works,
- most of the time this should be obvious from the subject matter,
- Sometimes, though, it is less clear and a contract may be for more than one type of requirement,
 - Where the contract covers both goods and services, the part with the highest value will dictate what type of contract it is;
 - If it covers works and goods or works and services, it should be classified according to its predominant purpose;

Mixed Contracts

What about a mixture of works / services / supplies?

- depends on the main activities to be carried out under the contract, then the highest value!
- An example is S&F replacement Kitchens to 500 properties,
- A mix of supplies & services or supplies & works?
- Kitchen equipment cost £1,700 (Supplies)
- Install cost £900, (Works or Service)
- Total cost £2600 per job,
- Supplies Value - £850k & Works or Service Value - £450k
- Either way is it Regulated??
- If in doubt go for the lower threshold value...

European Single Procurement Document

ESPD and when to use it?

- Currently on v1.13, ESPD (Scotland) cannot be amended and new questions cannot be added!!
- But, RSL's can outline in the CN their interpretation of the ESPD Part IV?
- Comes with Standard Statement v1.10 - to assist setting out selection criteria and minimum standards, link between Contract Notice and the questions which bidders will be required to respond to in the ESPD,
- **Must be used** for all procurement over EU Thresholds, £181k & £4.55m,
- SG guidance says it **should be used** for procurement over Reform Act thresholds £50k & £2m,
- Therefore not required to be used below £50k service/supplies,
- What about below £2m works?
- I would say it should be used – but the RSL's choice? **The intention is to have a standard ESPD to remove some of the barriers to participation in public procurement, especially for SMEs & Micro-SMEs - SG**

Contracts into Lots

Contracts into Lots?

- Any type of contracts can be broken into Lots,
- You need decide when its appropriate to be used,
- A common contract that is broken into lots is a Reactive Maintenance Contract,
- You can also do this with a modernisation contract (kitchen, bathroom, re-wire & heating),
- This can be done in two differing ways:
 - Create separate MTC contracts for each lot; or
 - Create a Framework

Division of contracts into lots

- HA's can award an MTC contract or a Framework in the form of separate lots and can determine the size and details of the lots,
- HA's must indicate in the contract notice whether tenders may be submitted for one, for several or for all of the lots,
- HA's must provide reasons for not subdividing in the contract notice (Only required if Regulated Procurement),
- In a Framework you can have multiple suppliers on each Lot,
- In an MTC you can only have one supplier on each Lot,
- Framework gives you more options.

R&M Framework

- The Contract Notice would need to contain the fully details of all the Lots and how you intend to split the lots & sub-lots,
- You can keep them entirely separate and only allow one bidder per area, per lot or per sub-lot; or
- You can allow the bidders to bid for both areas but then only one lot or sub-lot in that area; or
- You can allow a combination of whatever suits the needs of your organisation best?
- You need to work out what is best for the service delivery and how you ensure competition in the areas.

R&M Framework

Lot on PCS	Workstream
1	Multi Trade Works - including any combination of Joiner, Electrician, Plumbing, Painter, Builder, Roofer & Plasterer works
2	OOH Service
3	Joinery
4	Plumbing
5	Electrical
6	Painting
7	Plastering
8	Roofing
9	Builderworks / Bricklaying
10	Drainage works including Jetting
11	Fencing
12	Groundworks/Tree surgeon
13	House Cleaning/ House Clearance / Garden Clearance
14	Glazier

Contracts into Lots – How can you do it?

- There is no limitation allowing HA's limiting the number of Lots that can be bid for,
- HA's can, to preserve competition & to ensure reliability of supply, limit the number of lots that a supplier/contractor may tender,
- HA's can limit the number of lots that may be awarded to any one tenderer & must be stated clearly in the Contract Notice (CN),
- The max number of lots that you are allowing the supplier/contractor to bid for must be stated in the CN,
- HA's must detail in support documents the objective and non-discriminatory criteria for determining the award of lots,
- HA's must also detail the award criteria that would result in one tenderer being awarded more lots than the maximum number.

Quick Quotes on PCS

Quick Quote (QQ)

- Quick Quote (QQ) is an online request for quotation facility for Suppliers who are registered on PCS,
- It is used to obtain competitive quotes for low value/low risk/non repetitive procurement exercises or for mini competitions within framework agreements,
- Access to Quick Quotes are restricted to those Supplier that have been invited by the Buyer through the QQ system,
- You receive an email invitation and will be required to log in and Accept or Decline the opportunity,
- [Quick Quote Purchaser Guide](#)

Prior Information Notice (PIN)

Prior Information Notice (PIN)

What is a Prior Information Notice?

- RSL's can make their intention of planned procurements known by publishing a Prior Information Notice (PIN) on Public Contracts Scotland,
- Publishing a PIN is not a mandatory requirement for RSL's,
- The PIN can be published up to 12 months in advance of the actual procurement exercise and will contain basic information regarding the goods, works or service to be purchased,
- Alerting the market of the opportunity in the next 12 months allows you to reduce the timescales needed to complete the procurement exercise,
- RSL's will follow up the publication of a PIN with a contract notice (advert) when they are ready to carry out the procurement exercise.

Prior Information Notice (PIN)

- Where a PIN may be used differently?
- PIN can not only be used to inform the market of future procurement activities but also to get market intelligence?
- PIN's are used widely to get information from the marketplace on issues they are unsure about for the procurement i.e.?
 - Appetite for breaking R&M to Lots?
 - Availability to supply over a large geographical area?
- You are able to gather and use this information to inform how you procure or to assist with your decision,
- Very useful if used in the correct way.

Public Contracts Scotland (PCS)

Public Contracts Scotland (PCS)

- PCS is the national advertising website for public sector procurement in Scotland,
- Contracting Authorities (Buyers) can post, and award, 3 levels of public Notices:
 - (OJEU) Notices - which are larger contracts over the European directive thresholds,
 - Site Notices – below threshold Notices,
 - Quick Quotes – small, low risk values.
- PCS is an openly accessible website and allows the opportunity to browse Notices without the need to register,
- Suppliers must register on the PCS portal to set up ‘Notice Alerts’ an email of all opportunities that is provided daily to allow suppliers to access documentation.



Creating a PCS Notice?

- [PCS Training Website](#)
- [PCS Live Website](#)

The Procurement Journey (PJ)

- Intended to support all levels of procurement activities of stakeholders, customers and suppliers,
- Facilitate best practice and consistency across the Scottish public sector,
- One source of guidance and documentation for the Scottish public sector which can be updated on a continual basis with any changes in legislation & policy ,
- SG encourage all to use the documentation in the PJ for every procurement exercise, so you have the most recent guidance and templates,
- The PJ is an online tool and not a manual and all templates can be downloaded and are reusable.
- <https://www.procurementjourney.scot/>

Questions?