

WEBINAR TITLE**DATE:** Wednesday 5th August**PRESENTER:** Lesley Anderson, Head of SPA Procurement, lesley@scottishprocurement.scot**SLIDE 3 - Introduction**

Following amendments to the procurement regulations that came into effect on 18th April 2016, SPA & SFHA created a Procurement Advisory Service (PAS) – bridge a gap in procurement knowledge & expertise within member organisations. This was fully funded by SPA for the first 2 years ensuring access and support was readily available, free of charge, to all SFHA members interested.

Following expiry of PAS, SFHA/SPA, have set up a new partnership, part of which is to continue to provide support and guidance to SFHA members in relation to procurement best practice. Service will continue to be free of charge. We are currently reviewing a partnership with the Chartered Institute of Purchasing & Supply (CIPS) to support delivery of training/best practice

Initial plans were to run 3 training sessions in 3 different locations – this will resume once we are safely able to do so. In the meantime, short bitesize best practice guidance sessions will be held. The subjects of these sessions were proposed by SFHA members at the last Procurement Forum.

It would be good to get feedback on your thoughts regarding the setup and any other subjects that would be beneficial for you and your organisation.

Public Sector Spend

Scottish Government identified that public sector spend is in excess of £11 Billion per year on goods, works and services. Therefore, making procurement a powerful tool and providing a significant contribution to Scotland's economy. Best practice procurement aims to ensure that this investment is spent in a way that can deliver the most benefit to society.

Few facts from the Scottish Ministers Annual Report on Procurement in Scotland:

- Public procurement spend generates around £10B of economic activity for Scotland, contributing £6B to Scottish Gross Domestic Product, supporting around 100,000 full time equivalent jobs
- There are over 20,700 businesses in Scotland, approx. 19,500 of which were SMEs, that have directly benefitted from spend in Scotland with many more indirectly benefitting through our supply chains
- Over 5,700 regulated contracts were awarded with a total estimated value of over £11B
- There has been a ten-fold increase in the past couple of years in the number of contract notices with community benefit requirements included.

Goods, Works & Services

Goods – physical products purchased or manufactured on request. Examples – office supplies and equipment, furniture, IT equipment, vehicles, etc.

Works – construction of new structures of all kinds, buildings, highways, renovations, extensions and repairs, etc.

Services – consultancy services such as project management, engineering, auditors, legal advisors, finance services, training & development, etc.

Scottish Government

Govern the legislative requirements and provide ongoing support by way of tools, procurement journey, templates and best practice guidance on their website.

Procurement and Commercial Improvement Programme (PCIP)

Scottish Government encourages continuous improvement through the Procurement and Commercial Improvement Programme (PCIP). This is in place to help organisations to measure and report on their levels of procurement delivery and develop action plans to achieve maximum value for money and improve their ability, when buying goods, services and works.

SPA are happy to support and guide you with procurement and technical support. Our dedicated Client Support Managers, Alistair Rankine and Patricia Ward, are always available to discuss any questions you may have.

SLIDE 4 - LEGISLATION OVERVIEW

The principal EU Public Procurement Directives detail the legislative requirements in relation to procurements undertaken by public authorities of the EU and its member states in order to award contracts for public contracts in accordance with the general principles underlying the Treaties of the EU.

EU Procurement Directive – 2014/24/EU

The core principles of these directives are transparency, equal treatment, open competition and sound procedural management. They are designed to achieve a procurement market that is competitive, open and well regulated, which is essential for putting public funds to good use.

Transposing the EU Directives into Scots law - The key pieces of legislation are:

- Public Contract (Scotland) Regs 2015 - (PC(S)R 2015)
- Procurement Reform Act 2014 - (Reform Act)
- The Procurement (Scotland) Regulations 2016 - (P(S)R 2016)

Public Contract (Scotland) Regs 2015

- Follows principals of EU Directives ie proportionality, non-discrimination, equal treatment and transparency
- require competitive processes to be followed for contracts with estimated values **exceeding EU thresholds** – EU Regulated Procurements.

EU Thresholds – updated bi-annually – 2020 currently sit at:

- Supplies & Services - £189,330
- Works - £4,733,252

Reform in Scotland

The Scottish Model of Procurement realises the key components of the Scottish Government's drive towards a more dynamic, sustainable and inclusive economy.

The public procurement reform programme developed four key strategic objectives aligned to the Scottish Model of Procurement:

- removing barriers to access to public contracts (in particular for SMEs)
- delivering savings and benefits
- maximising efficiency and collaboration
- embedding sustainability in all we do

The Procurement Reform (Scotland) Act 2014 supplements the provisions which apply under PC(S)R 2015. The Procurement (Scotland) Regs 2016 enact the Reform Act.

Over and above the EU legislation that we are required to follow, Scottish Government took it a step further and reduced the thresholds that are classed as **regulated procurements**.

Meaning, a regulated procurement, in Scotland, is any procedure carried out by a public body in relation to the award of a proposed contract with an estimated value **of £50,000 and above for goods and services and of £2 million and above for works**

Contracts above EU Thresholds require to follow PC(S)R 2015 and contracts below EU Thresholds are required to follow the Reform Act.

Contracts subject to regs: detailed on slide

- RSL's are contracting authorities therefore subject to the regs
- Estimated values exceed relevant financial thresholds – this means any goods, supplies & services you procure above £50K are subject to the regs - £2M for works

SLIDE 5 - BEST PRACTICE GUIDANCE

Governance requirements

You must comply with minimum requirements for EU Procurements in line with PC(S)R 2015, the Reform Act and your own internal governance procedures – Contract Standing Orders and Financial Regs – each organisation may be slightly different.

Estimating your contract values correctly

- Must be established on basis of whole life of the contract and all costs involved over the duration of the contract including any options to extend
- You cannot disaggregate contracts to lower the values – where you know the work is to be procured year on year you must look at the overall value

Publication of Notices

- All notices are required to be published in an open and transparent manner to ensure equal access to contract opportunities whether on OJEU to meet EU threshold requirements or PCS for Reform Act.
- Public Contract Scotland (PCS) is Scottish Government's recommended portal. Standard template available for notices
- Generally publish all notices via PCS. PCS automatically forward applicable notices to Tenders Electronic Daily (TED) for above OJEU requirements on our behalf ie you only have to publish in one portal.

Types of Notices

- Prior Information Notices/Contract Notice/Contract Award Notices – if you would like more information on these let me know
- Important to know that you are required to publish a CAN within 30 days of formal award of the contract.
- Where Call Off from Frameworks/DPS then you are only obliged to upload a CAN ie a CN is not required.
- Again, to re-iterate publication requirements apply to all contracts with values above £50K for goods, supplies and services & £2M for works contracts
- These values are the overall values of works/services required as indicated earlier. You must include any potential additional works that you are aware of at the outset.

Quick Quotes – PCS

- Below £50K for goods, supplies & services and £500K for works – generally advised to use the Quick Quotes portal to issue your tender info for lower value contracts. Your own CSO's and Financial Regs may be different in relation to QQ thresholds
- Not published to the open market you select the suppliers that you are inviting to tender
- Provides an auditable system for all parties
- Generally utilised for mini comps through frameworks/DPS as you can select the suppliers applicable and again ensures an audit trail

Remember your own internal Contract Standing Orders and Financial Regs may be slightly different and may require you to publish contract opportunities at a lower level than the regulated thresholds

SLIDE 6 - BEST PRACTICE GUIDANCE

Procurement Strategies & Annual Reports

- Re the Scottish Ministers report on the procurement activity in Scotland, they extract this info from the individual organisations annual procurement reports published each year.
- [The Reform Act](#) requires organisations that estimate the value of its regulated procurement to be equal to or greater than £5,000,000 (excluding VAT) in one year to publish a Procurement Strategy and an annual procurement report.
- This requires you to review the **cumulative value of all regulated procurements** to establish whether you are obliged to provide a Procurement Strategy & Annual Report ie all contracts with estimated values of £50K + for goods, supplies and services and £2M+ works contracts
- It is important to note that Contracting Authorities to whom these legal obligations do not apply are also encouraged to publish strategies and reports as a matter of good practice.
- The Procurement Strategy identifies how the regulated procurements contribute to the carrying out of the Contracting Authority's functions, delivering value for money and in compliance with the Reform Act's General Duty and Sustainable Procurement Duty.
- The Strategy should set 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 the authority considers appropriate.

The Strategy must include your orgs general policies on areas such as:

- The use of community benefit requirements
- Consulting and engaging with those affected by its procurements
- The payment of living wage to persons involved in regulated procurements
- Promoting compliance with the Health & Safety at Work etc Act 1974
- Procurement of fairly and ethically traded goods and services
- Contracts involving the provision of food
- Ensuring prompt payment (within 30 days) of invoices for public contracts

Annual Procurement Reports

These reports are used to record and publicise the Authority's performance and achievements in delivery of its Strategy. It is a reflection looking back on the procurement activity over the financial year including:

- Summary of regulated procurements in the year
- Review of how regulated procurements complied with proc strategy and where they don't
- Statement of how it will ensure compliance in future regulated procurements
- Summary of community benefits fulfilled during the year

- Summary of steps taken to facilitate the involvement of supported businesses in regulated procurement during
- the year covered by the report
- Summary of reg procurements expected to commence in the next 2 financial years

Scottish Government have provided a template for the annual procurement reports which can be found on their website. Reports must be published in a 'reasonable timescale' following the end of your financial year.

Guidance last year was within 5 months however SPPN 7/2020 advised that it is recognised that Contracting Authorities face a number of challenges at the current time and therefore this may impact on the timing of their report.

The Contracting Authority is required to notify Scottish Ministers as to where the Procurement strategy can be accessed. As a minimum this must be on the internet.

Contracts Register

Contracting Authorities are required to maintain a Contracts Register of all contracts awarded as a result of a regulated procurement. This must be made publicly available on the internet and include:

- Date of award
- Name of contractor
- Subject matter
- Estimated value of the contract
- Start and end date plus any potential extensions

Community Benefits/Social Value

- Community Benefits are intended to improve the economic, social or environmental wellbeing of the authority's area in a way **additional to the main purpose** of the contract.
- They contribute to a number of national outcomes - being well educated, skilled and able to contribute to society and tackling poverty by sharing opportunities.
- In any procurement equal or greater than £4M you must consider whether to impose community benefits as part of the procurement. The contract notice must include a summary of the community benefit requirements that will be included in the contract or if you are not intending to include community benefits the notice should include a statement of your reasons for not including.
- **Best Practice is to include Community Benefits in all values of contracts – they must be proportionate and appropriate to the particular contract**

Sustainable Procurement Duty - applies to all regulated procurements

Consider any procurements with a view to securing improvements to economic, social and environmental wellbeing of the authority's area.

Circular Economy Benefits

- the environment, by cutting waste and carbon emissions;
- the economy, by improving productivity and opening up new markets;
- and communities, by providing local employment opportunities and lower cost options to access the goods we need.

Consider how your procurement activity can be used to improve the economic, social and environmental wellbeing of your area, and how it will facilitate the involvement of SMEs, third sector and supported businesses.

Fair Work practices

- promote Fair Work practices in all relevant procurement processes while ensuring appropriate balance between quality and cost of the contract
- Suppliers delivering public contracts are also required to adopt and demonstrate appropriate Fair Work practices, ensuring that these are delivered for all workers engaged on the delivery of the public contract.
- Consider whether it relevant and proportionate to include questions on Fair Work practices in your procurement? Measures differ from contract to contract.

How can you facilitate involvement of SMEs through your contracts?

- From our perspective – all of our frameworks/DPS are broken down into appropriate regional/lotting structures ensuring fair access for all companies. We provide training and development for SMEs in conjunction with SDP and support all of the Meet the Buyer events. Encouraging local supply chain through regional lotting and the DPS in particular.

SLIDE 7 – PROCUREMENT ROUTES

Most common routes detailed on slide. Step by step guide via Scottish Government's Procurement Journey. If you would like further advice/info, please get in touch.

- Procurement Route chosen will depend on works/services required and overall value of contract
- Stakeholder Engagement – Internal & External. Market Research/pre market engagement re the amount of companies you would expect to respond will guide you in appropriate route ie Open or Restricted
- Value will identify legislative requirements in relation to appropriate publication method ie PCS or PCS & OJEU

Freedom of Information (Scotland) Act 2002 is increasingly being used to request information from organisations on the conduct of contract award procedures, procurement policy and decisions.

Framework Agreements

Pre-tendered and set out the terms governing contracts to be awarded during a given period. Regulations set out specific provisions governing the setting up and use of framework agreements, including rules governing 'call off' contracts awarded under them.

Dynamic Purchasing Systems (DPS)

Similar to a framework but remains open to any supplier satisfying the selection criteria throughout the duration. DPS is particularly useful where you would look to include your local suppliers/contractors in future opportunities, especially SMEs that tend to shy away from more onerous procurement routes.

We have just set up our first DPS this year for Whole House Refurbishment and it is specifically broken down into disciplines and regional areas to allow SMEs and local supply chains to apply.

We are running a best practice guidance session on 25th August on Frameworks & DPS.

SLIDE 8 - CONSEQUENCES OF NOT COMPLYING

Challenges to an award

An aggrieved party may seek redress in Sheriff Court or Court of Session. The claimant must inform you of the breach and its intention to bring proceedings.

Time Limits

- within 30 days beginning with the date the tenderer 'first knew or ought to have known that grounds for starting proceedings had arisen.
- Time limits when seeking to have a contract invalidated by an ineffectiveness order from the court - 30 days from the date of publication of valid CAN Or 30 days from the date the authority sends a contract award decision notice to all unsuccessful bidders

Pre-contractual remedies – if brought during the tender process then the tenderer can request the court to:

- Set aside any unlawful decision taken in the process
- Amend unlawful tender docs (discriminatory spec, unlawful selection or award criteria
- Make an award in damages for loss or damage suffered as a consequence of breach

The regulations allow automatic suspension of the procurement if legal proceedings are issued and served before the contract has been entered into with the successful tenderer. The suspension would remain in force until proceedings are determined, discontinued or disposed of.

Post contractual remedies

Damages – The challenger is entitled to claim its bid-costs and/or a proportion of lost profit on the contract depending on its chances of being awarded the contract but for the breach.

Ineffectiveness Order – where the authority has awarded a contract without following appropriate advertised tender process for example an illegal direct award; failed to conduct a valid debrief or standstill process; breached rules on mini comp under Framework or DPS.

An order will set aside the contract and render unenforceable all rights and obligations under it from the date of the order. A financial penalty will also be imposed (there is no upper limit)

The Single Point of Enquiry (SPoE)

- Set up by the Scottish Government to provide an independent, impartial and confidential service for suppliers to the public sector in Scotland.
- It provides advice on the procurement rules which must be followed by public bodies in Scotland and information on how contracts are advertised and awarded.
- Where issues arise in specific procurement, it offers to work with tenderers and authorities to try to resolve concerns.

Governance

Breach of procurement regs could potentially result in a Notifiable Event. Ultimately this could lead to Regulator involvement such as reviewing, monitoring and potentially an intervention.

Bad Publicity - Examples over recent years such as:

- RSL's where the regulator intervened stating that there had been breaches of procurement regs. Issues highlighted in the organisation, part of which was down to procurement processes and not being able to evidence achievement of best value
- Corruption claims against a Local Authority on BBC documentary – possible fraud, wrong doing and incompetency – where work was being awarded through 'approved contractors' with the LA receiving kickback on the final bill. Resulted in suspension of a significant amount of staff. Senior officials and elected members were seen to be culpable in the affair as they allowed the dept with a significant spend to operate on their own outside normal council procedures.
- Scottish Housing News - police investigation over extremely serious procurement allegations which were centred around contracts and the Council's procurement process

SLIDE 9 – WHAT ARE THE BENEFITS OF FOLLOWING BEST PRACTICE PROCUREMENT

Good governance

- being able to clearly evidence that you are complying with all requirements, in an open fair and transparent manner
- Achieving legal/ethical compliance, value for money and a competitive supply chain – also in an open fair and transparent manner for all parties
- Evidencing evaluation of price and quality combined to obtain the most economically advantageous tender – it is not just the lowest price being assessed
- Customer Perception – good quality contractors; good workmanship; whilst achieving best value for money
- Appropriate segregation of duties

Supporting the local economy

- through community benefits and social value achieved in your contracts
- Ensuring community benefits are included in all possible contracts, no matter the value.
- effective stakeholder engagement
- Pre-market engagement – re community benefits

Collaboration

- work with your other local RSLs or Local Authority leveraging your combined purchasing power
- Shared resources can help deliver cost savings and improve relationships with suppliers
- sharing best practices
- benchmarking
- Frameworks/DPS options - tap into added value resources, shorter timescales to procure, support and guidance through a compliant procurement route.

Minimising risk

- in all contracts whilst avoiding the risk of challenge
- Clear audit trail – mitigate compliance risk, ensure process transparency and accountability and efficiency whilst minimising procurement risks
- Avoiding reputational damage

Complying with Sustainable Procurement Duty

- improving the social, environmental and economic wellbeing of your area, encouraging SMEs, local supply chain, environmental benefits, life cycle costing – all of which can be achieved through good procurement processes