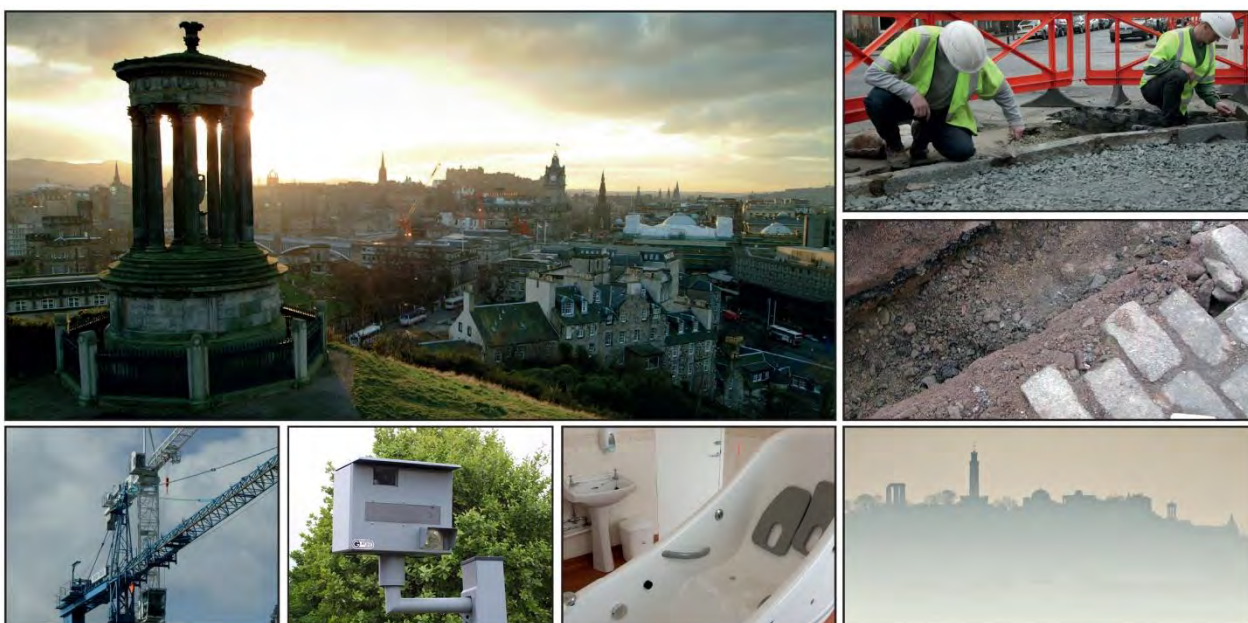


THE PROCUREMENT HANDBOOK 2017

The City of Edinburgh Council's Procurement Journey

Guide to Sourcing & Contract Management



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Foreword

In times of increasing demands on our services at the same time as reducing budgets the Council needs to deliver significant savings as well as improving the quality and sustainability of what we deliver. Council programmes such as Commercial Excellence recognise that procurement, and improved procurement outcomes, are key in assisting the Council in delivering these objectives.

This Handbook provides comprehensive guidance along with a suite of documents (the toolkit) which will assist in:

- reducing costs through intelligent and sustainable procurement of goods, services and works
- achieving genuine value for money by considering and reducing the whole life costs of what we procure
- enhancing contractor performance by setting challenging performance targets and actively managing contracts
- enhancing procurement delivery by making smarter use of existing framework agreements, undertaking joined up purchasing and reducing time to market through better procurement practices
- delivering more for our communities by maximising the use of community benefits which deliver real and needed benefits to our communities

I hope you find this Handbook a useful tool in your thinking, decision making and implementation. Procurement is a continually evolving area as such we will endeavour to update this Handbook on a regular basis. Your feedback is important in helping us improve. Please contact Maggie Deane, Maggie.Deane@edinburgh.gov.uk or myself with any feedback you might have.

Tammy Gillies Commercial and Procurement Manager

Introduction

The Council's Contract Standing Orders (CSOs) introduced in October 2012, and reviewed and revised annually, set out the legal framework for all procurement, i.e. purchasing of goods, works and services. The Procurement Handbook supplements the CSOs providing the detailed requirements for conducting procurement activity.

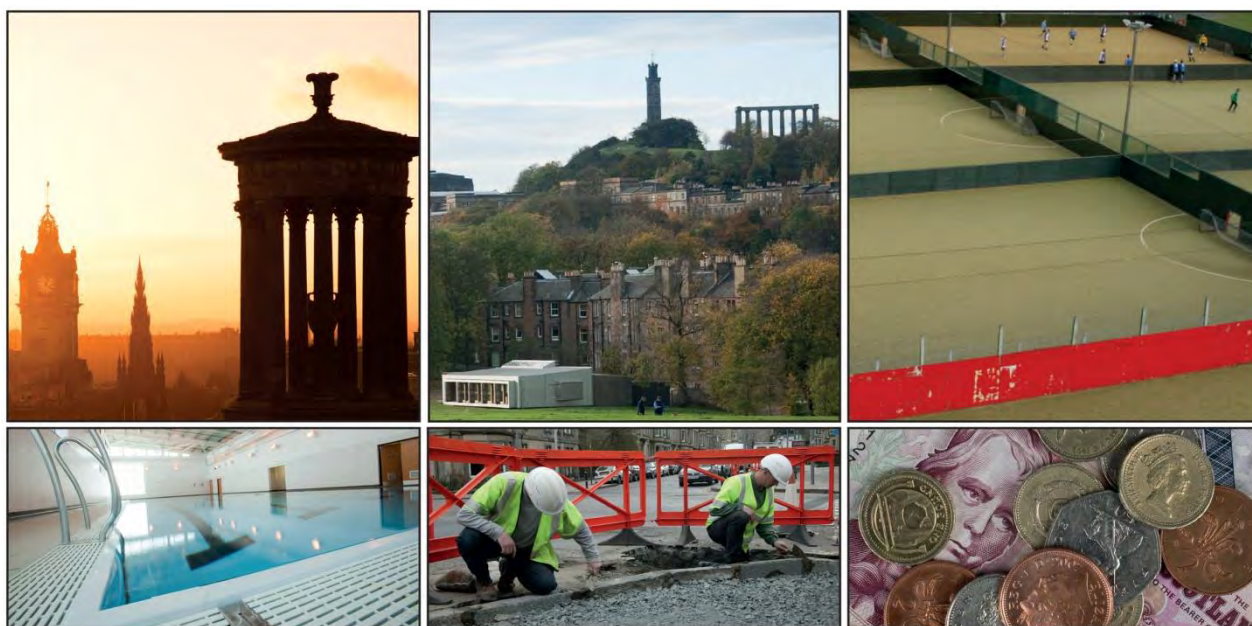
The Handbook is designed for use by all staff within the Council involved in the procurement of goods, works or services and the subsequent contract management of those contracts. Some may be trained to conduct their own Quick Quotes and others may want to refer to the Handbook for the purposes of planning a project which involves contracting for works, services or goods.

This guide sets out the process from start to finish: from the initial planning stages involving market intelligence and stakeholder engagement to the setting up of the successful supplier on the Procure to Pay system and the development of a contract management framework. Following the practices set out in this Handbook will ensure that the Council keeps within the law and is following best practice. It also introduces a more formalised and consistent approach to contract management throughout the Council.

The Handbook is split into 4 main sections which include guidance, templates, key risks and checklists:-

- **An Overview** – for those who simply want a general understanding of the procurement process and the reasons for procurement;
- **The Journey** – which covers sourcing & tendering in detail and follows closely the Scottish Government's [Procurement Journey](#) an online tool taking the procurement practitioner through the procurement process stage by stage;
- **Contract Implementation & Contract Management** – aligned with the Procurement Journey
- **Supplementary Guidance** – covering specifics such as guidance on the Council's approach to Risk Management

1. An Overview



1.1 Scope of Procurement

Procurement in its simplest form is “*the process of acquiring goods, services and works from third parties, whether under formal contract or otherwise*”. The scope of procurement can range from purchasing to meet our basic stationery needs to the commissioning of complex care requirements for some of our most vulnerable residents.

However the impact of procurement is far greater than this definition of a ‘process’. As recognised in the Procurement Strategy, effective strategic 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 Legal Context

There are several layers of procurement regulation that dictate how procurement must be conducted by the Council:-

1. EU law;
2. Scottish legislation and guidance;
3. Council Contract Standing Orders.

1.2.1 EU law

In order to promote free trade within the EU, the EU Treaty and Procurement Directives have to date required local authorities to procure goods, works and services over a certain value through open and transparent competitive tendering in order to eliminate discrimination.

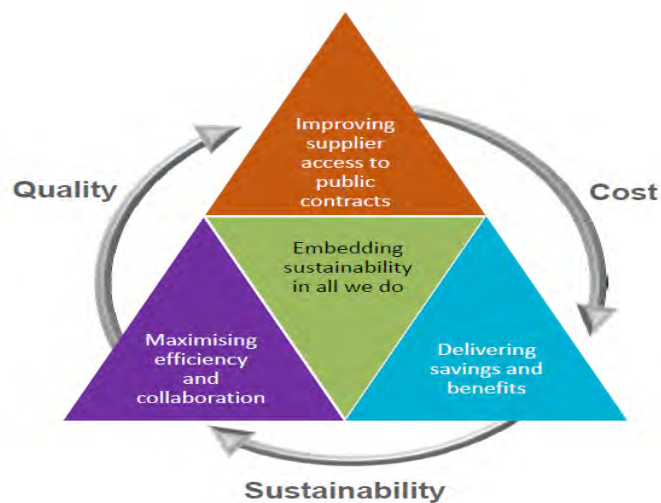
As well as promoting free trade the fundamental principles of procurement legislation are:-

- 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.

As the Directives have been implemented into national legislation these Regulations will still apply until revised or repealed following Brexit.

1.2.2 Scottish Legislation and Guidance

Scottish Model of Procurement



The Scottish Model of Procurement puts procurement at the heart of Scotland's economic recovery. It sees procurement as an integral part of policy development and service delivery.

The Scottish Government aim to make procurement business friendly and socially responsible. Looking at outcomes not outputs, it uses the power of public spend to deliver genuine public value beyond simply cost and /or quality in purchasing.

The Value for Money triangle sums up the Scottish Model of Procurement; it is not just about cost and quality, but about the best balance of cost, quality and sustainability.

The Procurement Reform (Scotland) Act 2014 (the Act) provides a national legislative framework for sustainable public procurement that supports Scotland’s economic growth through improved procurement practice and community wellbeing.

The following **Regulations** are based on EU procurement directives transposed into Scottish Regulations and allowing for a Scottish context.

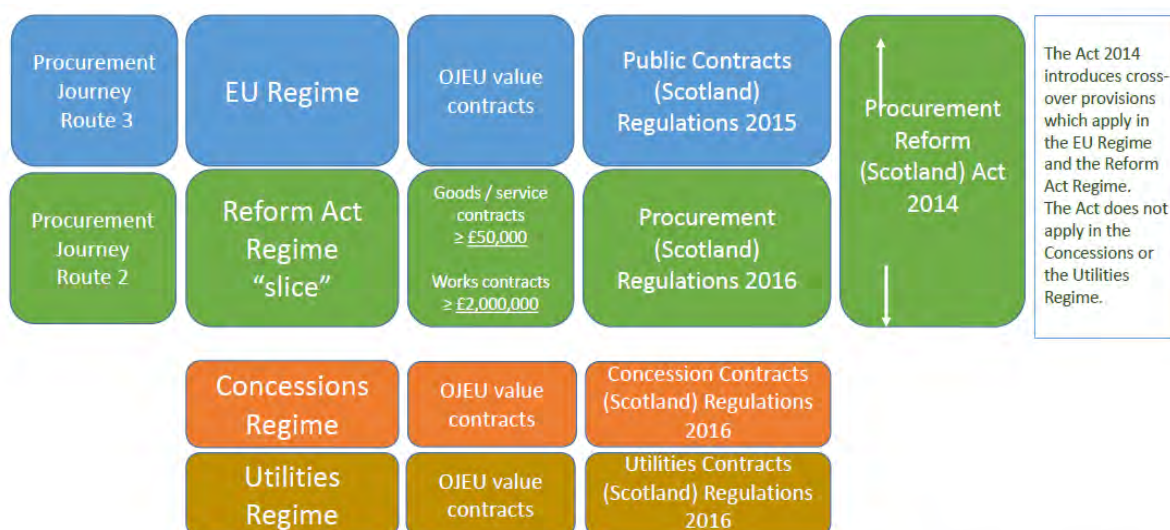
- Procurement (Scotland) Regulations 2016,
- Public Contracts (Scotland) Regulations 2015,
- Utilities Contracts (Scotland) Regulations 2016
- Concessions Contracts (Scotland) Regulations 2016

Companies and suppliers bidding for public sector work will now be required to demonstrate how their bids offer wider economic, social or environmental benefits for local communities and promote innovation when tendering for contracts.

The new regulations also promote fair work practices by prohibiting the awarding of public sector contracts to organisations that engage in blacklisting or who fail to meet their tax and social security obligations and allowing public bodies to taking account of whether a company pays the living wage or uses inappropriate zero-hours contracts.

Small and medium-sized enterprises (SMEs), the third sector and supported businesses are also be encouraged to bid for public sector work, with public bodies now required to break down large contracts into smaller parts and support SMEs as they bid for work or at least consider doing so and justify where they do not.

Scotland’s Public Procurement Legislation



The Procurement Reform (Scotland) Act 2014

The Procurement Reform (Scotland) Act 2014 provides a national legislative framework for sustainable public procurement that supports Scotland’s economic growth by delivering social and environmental benefits, supporting innovation and promoting public procurement processes and systems which are transparent, streamlined, standardised, proportionate, fair and business-friendly.

The Act creates a two-tier procurement regime for public contracts in Scotland. While the Regulations will continue to apply to contracts above the thresholds set by the EU, the Act will apply to public contracts below those thresholds.

The Act applies to “regulated procurements” which are services/goods contracts with an estimated value of more than £50,000, and £2 million for works contracts.

The Public Contracts (Scotland) Regulations 2015

The current EU Directive 2014/24/EU is implemented by the Public Contracts (Scotland) Regulations 2015 (the Regulations). Some of the changes brought about by the regulations are mandatory to all member states under the EU Directive, whilst others have been implemented by the Scottish Government due to the discretion permitted of how certain provisions are implemented. The Regulations set out the rules on where and when to advertise, specifications, selection, timescales and the award of contracts.

Many of the provisions are similar to those found in the EU regime (2004/18/EC) they are replacing. Part of the Scottish Government Economic Strategy focuses around harnessing the public spend to deliver wider social, economic and environmental benefits as well as provide access to SMEs.

Procurement (Scotland) Regulations 2016

These regulations ensure the rules applying to lower value contracts regulated by the Act are comparable with the equivalent rules for higher value contracts, which will be regulated by the Public Contracts (Scotland) Regulations 2015. This is intended to ensure consistency and clarity, and is in keeping with the views of those who responded to the public consultation on the changes to procurement legislation in 2015.

Concessions Contracts (Scotland) Regulations 2016

The Concession Contracts (Scotland) Regulations 2016 transpose EU Directive 2014/23/EU into Scots law and apply to concession contracts awarded by contracting authorities.

These regulations will regulate public works and public services concession contracts valued at over the threshold of £4,104,394.

The Regulations define the characteristics and features of a concession contract. In-scope concessions will need to be advertised in the OJEU and follow a procurement procedure that meets certain minimum standards around transparency, equality of treatment and non-discrimination. Duration of concession contracts must be limited to 5 years (unless it can be demonstrated that a longer term is needed for the concessionaire to recoup its investment).

Concessions are contracts under which a contracting authority outsources works or services to a contractor or provider, who then has the right to commercially exploit those works or services in order to recoup its investment and make a return. (or a right to exploit together with direct payment from the contracting authority) for.. The key feature is that the contractor/provider bears the operating risk of the arrangement and so has no guarantee of recouping its investment or operating costs.

Common examples of concessions might include: running catering establishments in publicly

owned sports and leisure facilities, provision of car parking facilities and services; or the operation of toll roads.

Utilities Contracts (Scotland) Regulations 2016

The Utilities Contracts (Scotland) Regulations 2016 transpose EU Directive 2014/25/EU into Scots law. It applies to entities operating in the water, energy, transport and postal services sectors. The 'utilities sectors' are covered by separate and more flexible rules, which will apply not only to traditional public purchasers (the state, municipalities, regions, etc.), but also to public or private companies.

Definitions

Act	A bill which has passed through the various legislative steps required and which has become law.
Regulation	<p>A regulation can be two things:-</p> <ul style="list-style-type: none"> ➤ a form of secondary legislation – law that is made by executive bodies or individuals under powers granted to them by primary legislation (Acts). The regulation sets out the way in which an Act will be implemented and enforced. Although it does not have the force of law, a regulation is enforceable because it advises how a law will be implemented. ➤ a form of European Union Law, which sets out a binding legislative act. It must be applied in its entirety across the EU, and becomes immediately enforceable as law in all member states simultaneously.
Directives	A legislative act of the European Union produced by the European Union and the Commission of the European Union. It sets out a goal that all EU countries must achieve within a certain time. However, it is up to the individual countries to devise their own laws on how to reach these goals. Directives are not directly applicable, but they can have a direct effect.

Best Value

In addition to the procurement rules 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, equal opportunities requirements and to contribute to the achievement of sustainable development.

1.2.3 Contract Standing Orders (CSOs) & Waivers

The Council's Contract Standing Orders (CSOs) reflect European and national requirements for tendering as well as the Council's requirements and levels of authority.

As well as being a legal requirement, following them will ensure value for money, propriety and that public money is spent properly. It is important for those carrying out procurement activity to realise that CSOs are not just about legal compliance but are there to underpin the commercial approach for achieving value for money and efficiency.

The authority to let contracts and the minimum process to be followed are set out in the CSOs. Where compliance with the CSOs may not be possible or appropriate, then provision has been made to allow CSOs to be waived and for legislative exemptions. Waivers should be on an exceptional basis and will be subject to the appropriate level of approval (Head of Service, Director or Committee) and the completion of a Waiver form. Further guidance is provided below.

Below £3,000

Where a contract requirement will not exceed £3,000 and is not a recurring requirement, then the officer procuring the supplies may make an appropriate choice of provider, use an existing framework or place a Quick Quote. The Council's Best Value requirements will normally be demonstrated by obtaining more than one quote before going direct to one supplier.

Between £3,000 and £25,000 (or up to £50,000 if the Quick Quote facility is being used)

Where a requirement exceeds £1,000 but not £25,000 then 3 written quotes must be obtained unless an existing framework can be used. If 3 written quotes are not obtained and no Waiver has been completed then your request to raise a Purchase Order will be scrutinised and will not normally be approved unless there is evidence to show that the 3 quotes have been sought. Often it will be appropriate for more than 3 quotes to be sought to ensure that 3 are received. Where you wish to use an online service or supplier that will not normally provide a quote e.g. an online market place or national supermarket a screenshot of the price will be sufficient.

The Public Contract Scotland Quick Quote facility (Quick Quote) allows a selection of those registered to be invited to tender. The upper financial limit for using the Quick Quote is £50,000.

Above £25,000

Where a potential contract opportunity exceeds £25,000 the Council will almost certainly require to publicly advertise the contract opportunity if there is not an existing contract or framework agreement. The Procurement Reform (Scotland) Act 2014 now requires public advertisement for all regulated procurements i.e. most requirements over £50,000 for goods and services (£2M for works). Where the contract opportunity exceeds the EU thresholds the procedure is much more tightly regulated and must be followed to avoid legal challenge. Commercial and Procurement Services will advise you as to the rules.

The tendering process will generally follow these key stages:

- Planning: procurement strategy, market testing, stakeholder engagement etc
- Advertisement on the Public Contracts Scotland website and/or the Official Journal of the EU
- Pre-qualification to establish the capability and capacity of the tenderers and evaluation of pre-qualification responses.
- Invitation to tender/participate in a dialogue/negotiate i.e. submission of a tender
- Dialogue or negotiation (competitive dialogue and negotiated procedures only);
- Submission of tenders
- Evaluation of bids
- Award Decision
- Standstill
- Completion of contract
- Reporting to Committee or Management Board
- Contract on-boarding – handover to the contract manager

1.2.4 Value Guidance Tendering Overview

The value of the contract opportunity is the total amount you estimate 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. Similarly CSOs prohibit subdivision where there is an ongoing requirement and that contract opportunity should rightly be advertised.

PROCUREMENT REFORM (SCOTLAND) ACT 2014

The thresholds apply from 1 st April 2016	
Public contract (other than public works contract)	£50,000
Public works contract	£2,000,000

PUBLIC CONTRACTS (SCOTLAND) REGULATIONS 2015

<i>The Current EU thresholds from 1 January 2016 above which competitive tendering will normally be required</i>	
Service and supplies	£164,176
Works	£104,394

1.2.5 Waivers

A waiver documents a departure from the Council's Contract Standing Orders (CSOs). The CSOs state that all Council purchases over £3,000 must have three quotes or to demonstrate best value, be procured through a competitive process for suppliers if the Council does not already have an existing contract in place. A waiver is required if these processes have not been undertaken unless it is a legislative exemption.

There will be instances where exemption or departures from CSOs are clearly appropriate, for example during an emergency or where there are no other providers. CSO 9 provides for departures from CSOs but care must be taken to ensure that the departure does not contravene EU or national procurement law which will still apply.

The requirement to waive these Standing Orders is not required where:-

- a procedure or specific situation other than the open or restricted procedure is permitted by the 2015 Regulations, 2016 Regulations, the Act, EU law or relevant case law. In deciding whether the use of another procedure or specific situation is permitted the relevant Head of Service or Director shall seek advice from the Chief Procurement Officer and/or Head of Legal and Risk.
- the circumstances of the proposed contract are covered by legislative exemptions, for example certain research and development services
- contracts with another public body for the purposes of ensuring co-operation with the aim of providing public services or
- a tender process or contract negotiations are currently in progress and contract award and contract commencement is anticipated within four months

Subject to the Council's duties of best value and the procurement rules a requirement to comply with any provision of the CSOs may be waived in accordance with the table below if on considering a written report by an appropriate officer the waiver is considered to be in the Council's best interests having regard to

- best value
- any potential risk of successful legal challenge
- the principles of transparency, equal treatment, non discrimination and proportionality and
- any impact upon services users

How

An application to waive CSOs can be requested by completing a Waiver form in the form of the template provided by CPS. The Waiver form sets out the reasons a departure from the CSOs is being sought and the justification for doing so.

Please note that:-

1. Waivers will not be granted retrospectively – contracts placed without an approved Waiver in place which do not comply with CSOs are treated as non-compliant spend which is monitored and reported to Directorates on a regular basis.
2. Waivers will be aggregated – for the purpose of determining the appropriate approval level the value of the Waiver will take into account any preceding Waivers concerning the same contract or extension.

Waivers – Approvals and Thresholds

The following table sets out the relevant values and waiver approval requirements: Please note the values of any waiver will be treated as cumulative where they are of a repetitive nature.

Value	Approval Procedure
£3,000-£25,000 (excluding consultancy spend)	The relevant Head of Service or the relevant Director and the Chief Procurement Officer
£25,000-£250,000 (0-£25,000 in the case of consultancy spend)	The relevant Director and the Director of Resources (or any other Director where the relevant Director is the Director of Resources)
Above £250,000 (above £25,000 in the case of consultancy spend)	The Council or Finance and Resources Committee

Urgency provisions

The Council's 'Committee Terms of Reference and Delegated Functions' provides for urgent decisions, which require to be made between Committees, to be made by the Chief Executive or appropriate Director in consultation with the Convener or Vice-Convener, who may take action subject to the matter being reported to the next meeting of the Committee. Subject to the Council's duties of best value and the procurement rules a requirement to comply with any provision of the CSOs may be waived when:-

- **The proposed contract is covered by legislative exemptions:** - In general EU procurement rules concern above threshold contracts i.e. £172,514 for goods and services and £4.3M for works contracts. Where there is potential for cross-border interest in a contract the principles of transparency may require competition via open advertisement but for low value contracts i.e. below £50,000 for services and goods this is less likely. Works thresholds are likely to be significantly higher. There are also specific exemptions such as services concession contracts or arbitration services.

- **Where the nature of the market has been investigated and it is demonstrated that a departure is justifiable in accordance with EU law and principles:-** this provision recognises the need on occasion for single sourcing where for artistic or technical reasons e.g. spare parts for complex machinery or reasons connected with intellectual property rights there is only one provider and conducting a competition would be an inefficient use of resources if it would inevitably result in insufficient numbers or requests to participate. Where the value of the contract exceeds the EU thresholds this standard of justification will be high and the Council is required to report such a departure. Completion of a Waiver form provides an important audit trail.
- **It is in the Council's best interests:-** this is really a catch all provision which would include the extension of current contracts but while it may allow departure from CSOs the requirements of EU procurement rules and best value legislation will still apply and therefore a risk assessment should be carried out.
- **There are other circumstances which are genuinely exceptional:** - this is designed to allow departure where there is an urgent need which wasn't foreseen, such as particularly severe winter weather. Again the procurement legislation and best value requirements will apply so advice from CPS should be sought.

How

An application to waive CSOs can be requested by completing a Waiver form in the form of the template provided by CPS. The Waiver form sets out the reasons a departure from the CSOs is being sought and the justification for doing so.

Please note that:-

Waivers will not be granted retrospectively – contracts placed without an approved Waiver in place which do not comply with CSOs are treated as non-compliant spend which is monitored and reported to Directorates on a regular basis.

Waivers will be aggregated – for the purpose of determining the appropriate approval level the value of the Waiver will take into account any preceding Waivers concerning the same contract or extension.

Waivers – Approvals and Thresholds

CSOs may be waived by the relevant Director in consultation with the Director of Corporate Governance, or, where the value does not exceed £25,000, by the relevant Head of Service in consultation with the Chief Procurement Officer

1.2.6 Contract Extensions or Variations

A Director may authorise an extension to a contract, or any other variation including a consequent change in price, provided such extension or variation is not contrary to the Regulations or the Council's EU obligations i.e. it is not a material change to the contract as advertised. Any consequent change in price must be contained within the authorised budget for the contract.

If the contract does not mention or permit extensions then advice from Legal, Risk and Compliance should be sought.

1.2.7 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 a waiver is sought for a contract extension or 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, legal advice should be sought at the earliest opportunity to determine if there is a potential state aid and whether such requires to be reported to the European Commission. See the Guide State Aid:[the Basics Guide](#)

1.2.8 Guidance on the Appointment of Consultants

The Guidance on the Appointment of Consultants sits alongside the CSOs. It was introduced to provide greater control and visibility over consultancy spend and to ensure that consultants are only used where necessary.

. The Guidance requires Committee approval of the appointment of a consultant or consultancy services, where the total costs of which are likely to exceed £25,000.

Consultants should only be appointed where the service in question cannot be provided internally due to lack of expertise or capacity.

Thresholds for consultancy/sign off

Total contract value/spend of consultants	Approval procedure
---	--------------------

Under £3000	Direct Award or Director, Head of Service or such other officer to whom the relevant Director or Head of Service has appropriately delegated their powers to in consultation with Chief Procurement Officer as appropriate.
£3,000-£25,000	Director or Head of Service (where delegated authority has been given) in consultation with Chief Procurement Officer (and Head of Legal and Risk as appropriate)
Over £25,000	Approval to award sought from Finance and Resources Committee or Council

Waiver Approval

Total value/spend of consultants	contract of	Approval procedure
0-£25,000		The relevant Director and the Director of Resources (or any other Director where the relevant Director is the Director of Resources)
above £25,000		The Council or Finance and Resources Committee

Where is Committee approval not required?

The exception to the rule is services which are essential to a project which already has Committee approval, which includes an explicit reference to the appointment of consultants and for which there is approved capital or revenue expenditure.

It is important to remember to include the need for consultants in committee reports for projects, even though consultants may not have a large role in the project

1.2.9 Grants

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. 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.

2. The Journey



Summary

This section covers:

- An overview of the Procurement Journey for Edinburgh
- Planning Your Procurement
- Which procurement Route to use? Direct purchase or Routes 1, 2 or 3

Links to key documents referred to throughout the Handbook are contained in the Appendix.

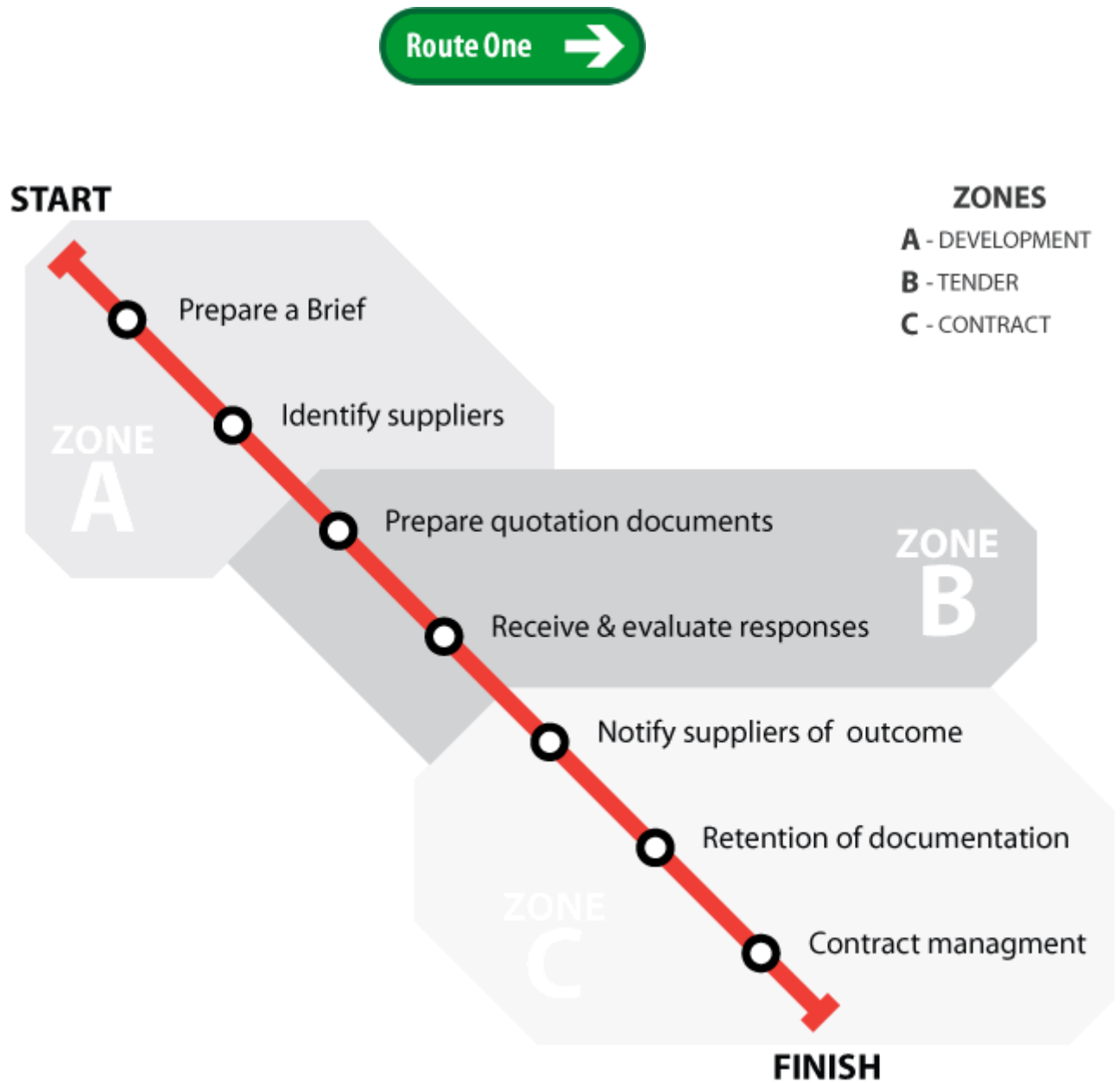
2.1 The Procurement Journey for Edinburgh

The Procurement Journey for Edinburgh (“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. We have tailored this tool 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 for the more straightforward of the procurement processes, the Handbook should enable our Commercial and Procurement Services (CPS) procurement specialists alongside Service Areas to concentrate on planning and delivering the higher value, higher risk procurements to which they can really add value and deliver value for money.

2.2 Planning Your Procurement



2.5 Route One – Introduction



Generally above £3,000 to £25,000 (up to £50,000 where using Quick Quote)

Route One reflects the CSOs requirement to ensure all purchases or contracts over £3,000 receive 3 formal quotes unless an in-house provider or existing framework or contract is available.

The route provides guidance for procurements of relatively low risk, low value £3,000-£25,000 over the life of the contract (or up to £50,000 if using Quick Quote) and of a non repetitive nature i.e. you are not placing contracts for the same works, goods or services on a number of occasions over 4 years unless you already have a framework in place.

If your procurement does not fall within this description or you do not have the authority to procure please contact CPS.

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 pre-qualification stage will therefore generally be necessary.

Is there an existing Contract or Framework or in-house provider?

First consider whether your requirement could be met through in-house provision or contact CPS to establish whether there is an existing Scottish, UK wide, sector led or local framework or contract which would provide best value. If not, and the contract value, including any recurring needs over a four year period, does not exceed £50,000 then generally the 'Quick Quote' facility will be the appropriate advertising route.

There is a general presumption that all contract opportunities over £25,000 will be advertised on Public Contract Scotland (PCS) portal unless there is a compelling business case for not doing so. PCS as well as ensuring a degree of transparency and a consistent approach amongst public authorities provides a very important audit trail.

2.5.1 Quick Quotes Explained

The Public Contracts Scotland (PCS) website is the national Quick Quote and tendering portal. Quick Quote is an online solution via the PCS portal for low value/low risk procurements which can be used to obtain competitive quotes from suppliers registered on

the portal. The idea is to provide a 'one-stop shop' for suppliers wishing to supply the public sector.

Registered suppliers complete the required details and submit their quote using the secure electronic post box. The electronic post box holds tender responses secure until the deadline for responses has passed and the system provides a full electronic audit trail of the process.

Timescales

Timescales will depend upon the complexity of response required but should be sufficient for the supplier to make a considered response. Quick quotes could be obtained within 2 days but will generally take a week and may need up to 4–5 weeks to give sufficient time for suppliers to submit their tender depending upon the nature and the value. The time scales should be proportionate to the requirement and allow suppliers adequate time to prepare quotes..

How do I create a Quick Quote?

Before you start you will need to ensure you have the necessary authorisation levels. CPS can assist with this. Again, please note that in accordance with CSOs all purchasing arrangements which will or are likely to exceed £25,000 must be made through CPS. While CPS may agree to you carrying out a Quick Quote in excess of £25,000 you must contact and agree this with CPS first.

The Quick Quote creation wizard on the [PCS portal](#) will guide you through the process of creating a Quick Quote. There are also online training guides on the PCS website.

You will be required to input:-

- A description of the contract details
- Quantity
- Deadline for Quotes
- Additional information
- Supply Categories – to assist identify the appropriate suppliers which relate to your requirement and generate a list of appropriate suppliers.
- Terms and conditions – the Council's standard terms and conditions can be selected and attached by hyperlink
- Question and Answer Administrator – to whom the supplier should direct their queries
- Tender Postbox Opener – anyone with Quick Quote Editor access can be selected;

By clicking on the distribution button once you have previewed your information you will then be redirected to the Quick Quote Distribution Page where you will be provided with a list of suppliers. You select the suppliers that you wish to invite to quote.

CSOs allow the Quick Quote facility to be used for spend up to £50,000. The Route 1 process should not be used above £50,000 as the opportunity is limited to those tenderers that are invited to submit a quote. This does not fulfil the requirement for open competition that tenders exceeding £50,000 should comply with. Where advertising is necessary, the requirement should be formally tendered through the PCS portal. (See Routes 2 and 3).

If you require to advertise a contract, please contact CPS and they will be able to assist in this or direct you to an appropriate Scotland Excel or other public framework.

2.5.2 Roles and Responsibilities

Only the CPS team and those authorised by CPS to use the Quick Quote facility can publish Quick Quotes on behalf of the Council. If you are not authorised please send your Procurement Requirement Form, Invitation to Quote and any attachments to CPS for publication.

Consider how the responses will be objectively evaluated, who will be involved and include estimated timescales for the requirement. You should also consider how you are going to manage the contract in terms of Quality, Service, Cost and Delivery at this point.

Before you commence your procurement journey please consider the following points:

1. is the product/service you are buying business critical?
2. is there a significant risk to the Council's reputation or ability to deliver if something went wrong with what you are buying?
3. is the estimated value of the goods/services you are buying more than £25,000? (over its lifetime – 4 years max.) The section on [Risk Management](#) should assist you.

If you have answered yes to any of these questions please contact CPS before proceeding.

Checklist

Description	Y/N
Budgetary sign off	
Council authority to procure – if above £25,000 must go through CPS unless agreed otherwise	
Procurement Requirement signed off	
Identify individuals with relevant experience to evaluate responses	

2.6 Prepare a Brief/Specification



The Procurement Requirement Form that you are required to have should assist you in preparing your written brief (specification) which will reflect your requirements and be provided to tenderers. A suggested format can be provided by CPS or found on the [Procurement Journey](#). As a minimum, you should identify the key requirements, outputs and outcomes. More detailed guidance is provided [here](#).

2.6.1 Identify Suppliers

CSOs require quotes from a minimum of three appropriate suppliers who have the experience and expertise to meet your requirements for the goods, works or services. So that a minimum of three quotes are received from suppliers you should generally approach at least 6 suppliers to allow for those that don't respond. You should consider inviting quotes from social enterprises, supported businesses and third sector organisations. The CSOs require at least one new SME to be invited each time to give new businesses a chance to win Council contracts. This will also help suppliers who have not previously bid for Council work but who may be ideally placed to provide innovative solutions either individually or as part of a group gain access to opportunities

Generally the 'Quick Quote' system through PCS will be the appropriate advertising and administrative route. If your previous or identified suppliers are not on the Quick Quote system they should be encouraged to register by completion of a simple form. Obtaining quotes can then be carried out by a simple search of suppliers registered on the PCS website. Guidance on how to do this can be found on the PCS website. Alternatively, for reasons of urgency, etc. you may seek quotes in writing or by e-mail but try to use PCS where possible as the system provides an important audit trail.

It can be useful to consider notifying potential organisations of your intention to seek quotes through Public Contacts Scotland (PCS) so that they can register with PCS in advance.

If there is only one supplier that can undertake the work required you should seek approval for Single Sourcing from CPS. A justification in the form of a Waiver must be provided. You should then follow the remainder of this process. For commercial reasons, you should not normally inform the supplier that they are the only supplier involved in the process.

Note: Single Sourcing is an exceptional procedure and should be strictly limited to certain situations and should be documented for audit purposes.

2.6.2 Prepare Quotation Documents

The Invitation to Quote for Goods/Services template is a guide and should be used as applicable. This may be amended to suit your requirements. Your completed brief and the Council's standard Terms and Conditions of Contract for the purchase of goods and/or services should be attached. It is important to ensure that you include your evaluation criteria

– including weightings – in the brief. If you need help providing evaluation criteria or determining weightings please contact CPS.

You should also consult the Guidance on Implementing the [Council's Sustainable Procurement Policy in Your Procurement](#) to identify any relevant sustainability requirements which should be included in the Invitation to Quote document.

Suppliers may ask questions about the Invitation to Quote document and as a result you may wish to issue further information or clarification not contained within the original document. If you have issued any clarifications, you should communicate all questions, answers and clarifications in writing to all suppliers. This can be via the bulletin board within 'Quick Quote' or by e-mail. Care should be taken to remove all commercially sensitive information in this process e.g. names of suppliers, etc.

You should keep to your original timescales identified in your brief document. However, in exceptional circumstances you may choose to consider extending the deadline for receipt of quotations. Please consult with CPS for further guidance. Remember to communicate this to all suppliers if you do so. When planning your procurement you should take account of dates when you are likely to be out of the office, e.g. Christmas for 2 weeks.

Checklist

Description	Y/N
Agree objective evaluation criteria prior to Invitation to Quote	
Evaluation criteria signed off by technical experts and senior management	
Names of those who will support the answer of supplier's technical or commercial questions	

2.6.3 Receive and Evaluate Responses

Quotation responses should always be received through the Quick Quote system, where possible. This provides a secure receipt mechanism, and is considered best practice. If you do not use Quick Quote, quotation responses may be received in hard copy or by email or a screen shot of online services. If you plan to receive responses via e-mail, you should bear in mind that these may go into your junk mail folder so it is important to look there after your deadline.

Quotation responses should be opened in line with CPS policy in the presence of a senior member of staff and date stamped where it is a hard copy. If you do not use Quick Quote, you should formally attach the three quotes with your requisition to evidence Best Value. If less than three quotation responses were returned, reasons should be sought from the suppliers who did not submit their quote and this information should be retained on file. If only one response is received, contact CPS on how to proceed and whether Single Sourcing is an option.

Any quote which shows an abnormally low price, out of context, may be queried with the supplier to identify the reasons for this. If this is due to a mistake by the supplier, you should consult with CPS or Legal, Risk and Compliance for further advice.

If quotation responses are received with alternative Terms and Conditions of contract to those you are using in the Invitation to Quote the supplier must be informed in writing that the Terms and Conditions of Contract as originally identified will apply to the requirement.

There may be adjustments to these to allow for reasonable revisals in the circumstances but the complete substitution of terms and conditions should never be accepted without reference to Legal, Risk and Compliance. If the supplier continues to challenge the Terms and Conditions, it may be that their response is considered to be a non-compliant offer and should be rejected. You should seek advice from CPS in such instances.

For those conducting a Quick Quote you should use the evaluation form and guidance from CPS which is based on that provided by the [Scottish Government](#).

If you need to seek clarification of any or all quotation responses, this should be done in writing and a specific timeframe for response should be given. You should take care to treat all suppliers on an equal basis in this process.

In exceptional circumstances, you may consider interviewing/inviting presentations from suppliers in order to assist in the evaluation of quotation responses. This need should be identified upfront in the process. Records of the interviews/ presentations should be kept for audit purposes.

Should you decide to score the presentation as part of the evaluation process this should be stated in the Invitation to Quote. Care should be taken to ensure equal treatment of suppliers in this process. All suppliers should be provided with an equal opportunity for interview, presentation or site visits unless the initial evaluation undertaken shows that the supplier could not meet the core requirements.

Checklist

Description	Y/N
Agreement amongst those evaluating the responses	
Sign off on the evaluation and recommendation before issuing any notification letters to suppliers	
Names of those who may be required to attend a feedback meeting with suppliers	



2.7 Notify Suppliers of Outcome

Once the successful supplier has been identified following the Receive and Evaluate Responses process approval to award the contract in line with Contract Standing Orders can be sought (See the CSOs Approvals and signing table).

The successful supplier should be notified of their success in writing using the standard Contract Award Letter which CPS can provide you with and signed by someone who has been designated as a proper officer in accordance with the Council’s Scheme of Delegation. The letter may be adapted as required. At the same time as the above, unsuccessful suppliers should be notified using the Unsuccessful Quotation Letter.

A supplier is entitled to ask for the reasons why their quotation was unsuccessful. It is essential that all feedback is documented for audit purposes and is based on the objective criteria used to evaluate the quotation. De-briefing should provide suppliers with constructive feedback to help improve their performance in future competitions.

Where CPS have carried out the process they will carry out the debrief in conjunction with the evaluation panel, otherwise it will be the responsible officer for conducting the Quick Quote. The debrief should take place after contract award and should generally be in writing. It should also act as an opportunity for suppliers to suggest improvements to our procurement processes.

Once these letters have been issued to the successful supplier, the quotation becomes live and can now be referred to as a contract.

Please remember that for the purposes of transparency and recording procurement activity an award notice should be published for every contract awarded.

You publish an award notice online by clicking the ‘award’ button and creating an award notice. The majority of the award notice will then automatically be completed for you, using the information contained in the contract notice, so you only need to review the content and then add the supplier information. For statistical purposes you enter the value of the winning quote but this is not shared with the other bidders. The successful suppliers receive an email letting them know they have been successful. It does not disclose the value of the other bids received.

Checklist

Description	Y/N
Issued a formal Award letter	
Issued unsuccessful letter(s)	
Remember to raise a Purchase Order	

2.7.1 Retention of Documentation

While PCS provides a useful audit trail all additional documentation relating to this quotation process must be retained in line with the [Council's Retention of Documents policy](#) to ensure a full audit trail.

2.7.2 Contract Register

CPS must be provided with the details necessary to enable them to complete all the fields in the Contract Register. It is a statutory requirement to publish the Contract Register and ensures effective planning and notification of the need to replace expiring contracts so it is essential to keep it up-to-date. Please see the fields [here](#). Failure to do so may mean the contract is not set up as a contract on the Council's payment system and payments to the supplier may not be made.

2.7.3 Contract Management

The supplier's performance needs to be managed throughout the lifetime of the contract. CSOs require a contract owner who should ensure that the goods/services, etc. are delivered in line with the performance or service level expectations i.e. Quality/Service/Cost/Delivery identified in the original quotation.

The Contract Owner should manage the contract in accordance with the [Council's Contract Management Framework](#) to ensure that any changes to the original quotation are minimised.

Variations to the brief or extensions to the period of the original quotation may result in a situation where a new procurement process becomes necessary. As such they should be kept to a minimum and only take place where the changes that you make would not materially alter the original contract. Where a significant change to the contract scope, value or duration is proposed you must contact CPS or Legal, Risk and Compliance.

On completion a review of the contract or a 'lessons learned' process should be conducted to identify what went right and what could be improved for future quotation processes. It is worthwhile involving the supplier in this review; however it must be recognised that any such information could be subject to a freedom of information request. Care should therefore be taken to ensure any information held is entirely objective in its nature.

The Commercial Insight and Development Team of CPS will be able to assist Service Areas with guidance, support and the provision of templates on contract management.

Before carrying on - checklist

Description	Y/N
A formal method for actively managing the contract is in place.	
A contract manager has been identified	
A handover pack has been prepared (see the Council's Contract Management Framework)	
The Supplier has been set up on Oracle or approved feeder system	

END OF ROUTE ONE

3. Routes 2 & 3



SUMMARY

This section covers:

- The Planning Stage:- Development of the Procurement Requirement Form and Procurement Plan (the procurement strategy)
- Development of the procurement documents

- Tender process
- Evaluation process
- Post tender clarification
- Contract Award
- Contract Implementation

Links to key documents referred to throughout the Handbook are contained in the Appendix.

3.1 Summary



This part of the Journey provides guidance for those procurements of moderate to high value and/or risk.

The main objectives of this section of the Handbook are:

- To provide a step-by-step guide to understanding a typical procurement exercise so that Service Areas can plan appropriately and allow those involved in the procurement to contribute effectively; and
- To highlight the minimum legal and policy obligations involved at each stage of the process.

Service Areas should not proceed without CPS involvement and CSOs require the purchasing arrangement for all procurements over the value of £25,000 to be made by CPS unless otherwise agreed.

The full procedural requirements of the Procurement Regulations will not apply to all the procurements using this route (such as social care contracts to which a new light touch regime applies or those below the OJEU thresholds). However as the Reform (Scotland) Act 2014 now requires most contract opportunities above £50,000 to be advertised then in practice, to avoid two different processes, they are likely to follow the procedures set out here.

3.1.1 Governance Process

The procurement function must operate within the appropriate governance and management arrangements for the Council. The Council's Framework on Risk Management can be found on the Orb. The appropriate governance will help ensure probity, transparency and consistency of key procurement-related decisions.

For large or politically sensitive projects following Routes 2 & 3 this will almost certainly mean setting up a project board and having senior project sponsors in line with best project

management practice . Council members are likely to want to be kept informed as to progress and be involved throughout the process. As such gateway reporting should be included in the planning of the project.

Suggested review points for sign off and approval from the agreed project governance to proceed to the next stage of the process are:

- Sign off of the Procurement Requirement form – ensuring procurement necessary
- For approval of the Procurement Plan/strategy including budget
- For approval of Contract Notice, procurement documents especially key criteria and weightings
- At contract award stage
- At implementation stage

. It is generally recommended that for procurements in excess of £500,000 that your procurement plan (the strategy) provides a governance process which sets out the key decision-making points in the procurement process (referred to as Governance Gateways) and identifies who will have responsibility for making decisions at these Gateways. This will help to ensure the probity, transparency and consistency of key procurement-related decisions.

3.1.2 Financial Probity Assessment

The Council now has a standard approach to financial probity assessment during a procurement process to analyse potential suppliers' financial position and determine the level of risk to the Council. The assessment takes account of the contract specification, value, criticality, and the nature of the market.

3.1.4 Five Stage Process

CPS work to a 5 stage plan to deliver savings projects with Service Areas which will follow these 5 key stages. For those projects to which this applies the process set out below will fit over and above the traditional procurement process.

		1. Identify Opportunity	2. Develop Proposal	3. Approve Proposal	4. Implement Project	5. Operate and Measure
Activities		Idea → Add to pipeline → Proceed? (Yes/No)	Develop Proposal → Review Proposal	Approve? (Yes/No)	Project Delivery → Approve? (Yes/No)	Contract Management Benefits Tracking
Key Docs		Idea Summary	Draft Proposal Final Proposal	Delivery Plan Project Closure Report	Contract Performance Report	
Confidence Weighting		20%	50%	75%	80%	90%
Responsibilities	Commercial & Procurement	<ul style="list-style-type: none"> Identify potential opportunities Complete Idea Summary Robust qualification of idea Establish high-level baseline spend and scoping High-level review of existing contractual arrangements Gather high-level market insight including benchmarking info Identification of key stakeholders Identification of political sensitivities Record details where decision taken not to proceed 	<ul style="list-style-type: none"> Develop Proposal including baseline, commercial approach and plan Develop Implementation Plan, including approach, roles, responsibilities and governance Ensure all key stakeholders are engaged and consulted Gain approval from service area, Commercial & Procurement Manager, and Principal Accountant Complete detailed review of existing contracts and available sourcing options Explore political sensitivity, if identified as potentially sensitive Record details where decision taken not to proceed 	<ul style="list-style-type: none"> Manage the Approval process Make any adjustments based upon Director feedback Distribute approved Proposals to key stakeholders Record details where decision taken not to proceed 	<ul style="list-style-type: none"> Complete detailed Implementation Plan Responsibility for Implementation (if agreed in proposal) Create and share Project Closure Report (including benefits) Implementation project management Support implementation of project, if not directly responsible Develop proposed contract management arrangements Record details where decision taken not to proceed 	
	Service Area	<ul style="list-style-type: none"> Identify potential opportunities Support the qualification process including provision of required information Critical review of idea 	<ul style="list-style-type: none"> Critical review of proposal Provide service information and performance information Work with Commercial and Procurement to develop proposal Approval of draft Proposal Highlight any issues and risks associated with the Proposal Approval of Implementation roles and responsibilities 	<ul style="list-style-type: none"> Director review and approval of Proposal 	<ul style="list-style-type: none"> Responsibility for implementation, if agreed in proposal Establish contract management responsibilities for post implementation Support implementation of project, if not directly responsible Provide technical input and contract specifications 	<ul style="list-style-type: none"> Delivery of benefits Ensure effective ongoing contract management Benefits tracking and monitoring Feedback to Commercial Excellence on the new commercial arrangements
	Finance	<ul style="list-style-type: none"> Support the qualification of ideas including the provision of Accounts Payable and other relevant data Critical review of idea 	<ul style="list-style-type: none"> Critical review of proposal Provide Accounts Payable and other relevant data to support proposal development Principal Accountant to approve Proposal 		<ul style="list-style-type: none"> Principal Accountant approval of Project Closure Report, specifically focused on the declared benefits Establish benefits tracking approach Support the implementation of the project 	<ul style="list-style-type: none"> Develop Contract Performance Report, including benefits tracking Reporting of benefits delivery to services area Adjust budgets to reflect new commercial arrangements

3.1.5 Pipeline Planning – Service Area Procurement Plans

In line with the requirements of the Procurement Strategy, the Director of each Service Area will with assistance from CPS detail in a 'Service Area Procurement Plan' the goods, works and services they intend to procure over the following three financial years. The Plan will list all procurement projects estimated to be above an aggregated value of £25,000 and this 'Service Area Procurement Plan' will need to be updated annually.



3.2 Develop Strategy: Procurement Plans

Arguably, the most important part of the purchasing process for significant purchases or contracts is the pre-procurement process. The point at which key decisions are taken and the procurement strategy in the form of a Procurement Plan is agreed.

Before a procurement can proceed, CSOs require a Procurement Requirement Form to be in place. CPS can provide you with a Procurement Requirement Form or it can be found on the Orb suitable for most relatively straightforward procurements and re-procurements where a contract has been let and is due to expire where there is no significant business change. Where it is a new need which is high risk a fuller business case may be more appropriate. CPO can assist in such cases.

3.2.1 Preparing a Procurement Requirement Form

The completed Procurement Requirement Form acts as the first point of contact with CPS. A common mistake is to involve CPS at too late a stage in the procurement process when there is not enough time to properly plan the procurement process. The Procurement Requirement Form should be completed as soon as a need is identified and CPS involved at the outset.

Depending upon the specifics of the procurement, the types of question that the procurement justification should answer are:

- Have alternatives to procuring been considered e.g. can it be delivered in-house?
- Are you aware of opportunities to buy your specific requirement through existing collaborative contracts, e.g. Scotland Excel, and do you know how to access them?
- Are the opportunities to collaborate with other Service Areas or neighbouring Councils?

The Procurement Requirement Form should set out:-

The Requirement for the goods, works or service and why we need it? There may be a statutory requirement to be fulfilled or it may be a requirement for a service to meet Council objectives but the need and the outcomes that the contract is seeking to achieve need to be identified at the outset. Consider carrying out an 'as is' analysis. What do our service users and the business need? Analyse historical usage and project future needs. Consider whether this is a one off purchase or whether there are likely to be multiple similar purchases over the next year or so which may make require a longer term contract to be put in place. Consider collaboration across Directorates and client groups such as schools.

Consider options -? consider the 'do nothing' option and whether there is an in-house provider, e.g. Edinburgh Building Services as well as external sourcing. How have we done things before and is there a better way? If the requirement is ad hoc, relatively low risk and

low value is there an existing framework agreement that can be used? CPS can assist with this.

Affordability – can we and should we afford it? Has the affordability limit been confirmed and tested. Have the costs for any business transformation been factored in? For example an expensive piece of IT equipment may not be used if the budget is not there to address the training needs of the end user. Do skills in-house exist to deliver and manage the contract? It would be advisable to have a cost/benefit analysis where possible. For significant contracts contract management costs are estimated at between 3 & 7% the value of the contract.

What are the proposed contract management arrangements and who is the nominated Contract Owner as required by Contract Standing Orders? It is essential to consider and budget at the outset for managing the contract. Benchmarking estimates suggest 5–7% additional savings on top of initial procurement savings can be identified through effective contract management. Identify the people and procedures necessary to manage the contract effectively from the start.

What are the benefits – how do we measure and account for the benefits? Benefits should be expressed in monetary terms where possible and should include any community benefits that have been agreed. You should consult the [Council's Procedure for Procuring Community Benefits](#) to ensure that you maximise the opportunity for securing community benefits

Sustainability. A number of sustainability considerations, such as identifying ways of avoiding procuring new goods or ensuring you purchase no more than is actually needed, should form part of your deliberations. These are detailed in the Guidance on Implementing the Council's Sustainable Procurement Policy in Your Procurement. In these unprecedented economic times, and where there is a need to procure sustainably, good procurement is not just about buying well but it's about buying less or, indeed, not buying at all.

Once produced please have your procurement justification signed off at the appropriate level. At a minimum this should be by the budget holder and where the value exceeds £1 million by the Director.

3.2.1 Developing the Procurement Plan

The next stage is to produce a Procurement Plan which documents your procurement strategy and details the “who, what, when and how” of your procurement. CPS will lead on this and work with you to develop an appropriate Procurement Plan.

The level of strategy development required should be proportionate to the risk, value and strategic importance of the supply to the Council.

The Scottish Government have developed a very useful [Strategy Development Pack](#) which supplement the Procurement Plan and can assist you in the strategy development.

You should also use the lessons learned from previous contracts/procurement exercises to inform your new strategy.

The Procurement Plan will include details of the requirement, budget, contract objectives, current commercial situation, market assessment, sustainability considerations, risks, potential benefits and savings, and the procurement options.

The Procurement Plan considers how tender responses will be objectively evaluated, who will be involved and the estimated timescales for carrying out the procurement. You should also consider at this stage how you are going to manage the contract in terms of Quality, Service, Cost and Delivery and how benefits will be assessed.

3.2.4 Taking Sustainability into account

Sustainable procurement means taking into account social, economic and environmental considerations as part of the procurement process. There is a new sustainable procurement duty details can be found here.

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. The Procurement Plan should take account of the [Council's Sustainable Procurement Policy](#) and [Guidance on Implementing the Council's Sustainable Procurement Policy](#). With the Procurement Reform (Scotland) Act 2014 and new Directives emphasising the need for sustainable procurement requirements for whole life costing are likely to be introduced.

3.2.5 Fair Work Practices and Paying and A Living Wage

The Council is committed to paying a living wage and encouraging its adoption by Council subsidiaries and contractors. However, guidance from the European Commission to make it a requirement of the tender process or grounds for selecting tenderers would infringe EU procurement rules. The Procurement Reform (Scotland) Act 2014 makes provision for Ministerial guidance on workforce matters, including payment of a living wage and the Council will pay close attention to any guidance produced in this respect.

3.2.6 Co-Production

The Council has made a commitment to Co-Produce services particularly care and support services with service users and their carers. See section 5 for further information.

3.2.7 Community Benefits

The Council aims to maximise the social, economic and environmental benefits from its procurement e.g. jobs, apprenticeships etc (known as 'Community Benefits') The [Council's Sustainable Procurement Policy](#) commits the Council to pursuing Community Benefits through its procurement. The intention is to make it standard practice to incorporate Community Benefit Clauses within contracts which exceed £50,000. These benefits are delivered by suppliers in addition to meeting the core requirements of the contract.

3.2.7 Equalities Impact Assessment

Equalities impact assessments should inform the development of all new and revised works and services and should be undertaken by the service area at the procurement planning

stage. For example when planning the service for wheeled bins it was appropriate at the outset to consider the impact on and need for a specialist collection service for older or disabled residents. The [Framework to Advance Equality and Rights 2012–2017](#) describes the responsibilities for ensuring impact assessment takes place.

3.2.8 Choice of Procedure

The Procurement Plan will also identify the contract award procedure to be used. The Regulations provide for four main contract award procedures:

- (a) Open Procedure
- (b) Restricted Procedure
- (c) Competitive Dialogue Procedure
- (d) Competitive Procedure with Negotiation
- (e) Innovative Procedure
- (f) Negotiated Procedure (with and without prior publication of a Contract Notice)

The Council can choose freely between either the Open or Restricted procedures but, in accordance with EU rules, must justify any decision to use the Competitive Dialogue and Negotiated procedures.

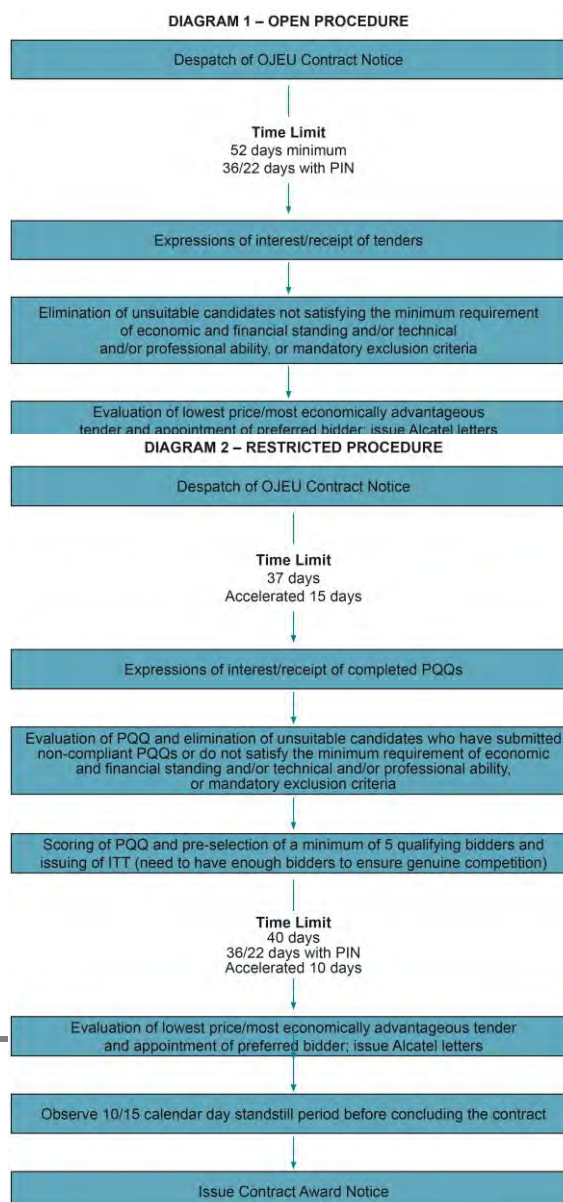
The key differences between the award procedures are summarised below.

Open Procedure

Under the Open Procedure all those candidates that respond to the Contract Notice are entitled to submit a tender for the contract. There is no initial selection stage limiting the number of tenderers who can submit tenders. It may be quicker than the other award procedures but may also be far more onerous in terms of the number of tenders to be evaluated.

Restricted Procedure

Under the Restricted Procedure the Council may limit the number of candidates using an initial selection stage to shortlist a limited number of tenderers. The selection is generally performed by means of an ESPD, which candidates can complete and submit. The Restricted Procedure requires that a minimum of five qualifying candidates must be invited to tender (ITT). You



could proceed with fewer than five bidders if fewer than five have passed the ESPD stage, if there is no suggestion that the ESPD requirements or selection process were unnecessarily onerous or otherwise disproportionate or discriminatory.

Competitive Dialogue Procedure

This procedure is designed to be used for the award of “particularly complex contracts”, where it is objectively impossible for the Council to define the means of satisfying its needs or to specify the financial and/or legal solution e.g. integrated transport infrastructure projects or large scale IT provision.

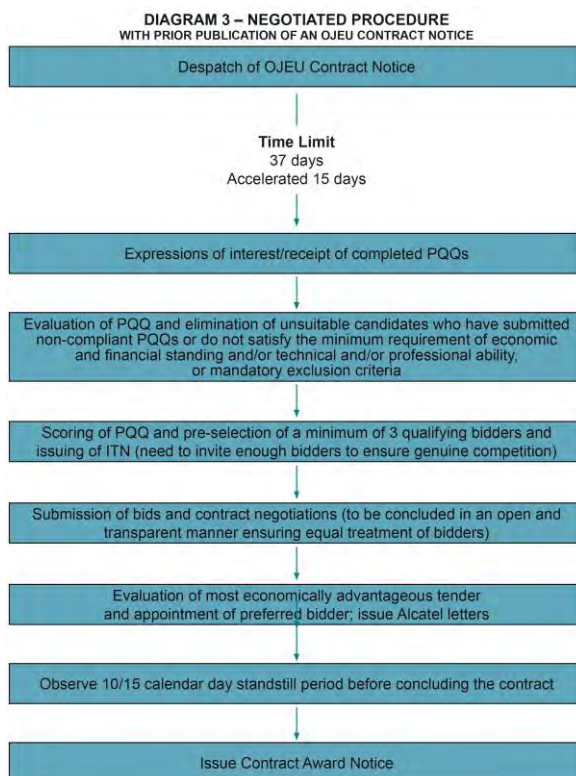
Under the Competitive Dialogue Procedure at least three candidates are invited to participate in a dialogue with the aim of developing one or more solutions capable of meeting the authority’s “needs and requirements”. The selection is normally carried out by means of a European Single Procurement Document(ESPD).

The dialogue is conducted on the basis of a “descriptive document” in which the Council sets out its “needs and requirements” as to what it ultimately wants the contractor to deliver. In practice, the descriptive document often forms part of the Invitation to Participate in Dialogue (ITPD) issued to the selected participants. During the dialogue phase, parallel discussions are conducted with each of the participants. The discussions will be used to develop the solutions proposed by each of the participants. The procedure allows the dialogue phase to run in successive stages to reduce, on the basis of the previously indicated contract award criteria, the number of proposed solutions.

The first dialogue phase generally involves an Invitation to Submit Outline Solutions (ISOS), which may be followed by a down-selection. This is generally followed by an Invitation to Submit Detailed Solutions (ISDS), possibly followed by further down-selection and dialogue. Once the Council is satisfied that it has identified one or more proposed solutions that contain all the elements required and necessary for the performance of the project, the closure of the dialogue phase is announced and all remaining participants are invited to submit final tenders (Call for Final Tenders (CFT)/ Invitation to Submit Final Tenders (ISFT)). Importantly, once the dialogue phase is concluded, there is only limited scope for post tender negotiations with tenderers, which must not go further than clarifying, specifying or fine-tuning their final tenders.

Negotiated Procedure (with and without prior publication of a Contract Notice)

The Negotiated Procedure is an exceptional award procedure. It can only be used in a limited number of situations narrowly prescribed in the Regulations. In accordance with EU rules the Council must justify its use. When using the Negotiated Procedure, the Council may limit the number of candidates using an initial selection stage to shortlist a limited number of tenderers, generally using a Pre-Qualification Questionnaire (ESPD). The Negotiated Procedure would allow the Council to invite three or more tenderers to negotiate the contract. Although the Regulations are silent as to how negotiations should be conducted they must comply with the fundamental principles of equal-treatment and non-discrimination such as disclosing the same level of detail to each tenderer.

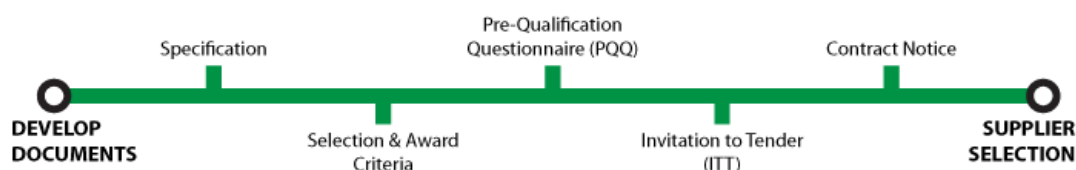


Checklist

Description	Y/N
Have you a signed of Procurement Requirement Form?	
Do you have a budget and the approval of the budget holder?	
Will this expenditure stand up to public scrutiny?	

3.3 Develop Documents

Note - PQQ now replaced by ESPD



This section of the Journey provides guidance on the following:

- Specification
- Selection and award criteria
- European Single Procurement Document (ESPD) Invitation To Tender (ITT) - including Terms and Conditions

It is a requirement best practice to have all the above documentation created before issuing the Contract Notice and advertising the requirement on PCS-Advertising or PCST to avoid the situation where the notice must be cancelled and re-published. CPS will work with you to

produce the above documents but you must allow for sufficient lead in time to do so. Generally 3-6 months.

3.3.1 A robust, performance based contract

A well constructed contract (comprising the specification, tender response, terms and conditions etc) which is clear as to the expectations of both parties will provide the foundations on which good relations can develop. Poorly constructed contracts on the other hand will make it much more difficult to develop a successful relationship. In planning your procurement you should build into your timetable the necessary time to allow Legal, Risk and Compliance to revise or create a bespoke terms and conditions where this is necessary. It may be possible to use CPS's standard terms and conditions or industry standard contracts adapted for use by the Council but please check in advance to prevent delays in the process. Legal support to develop specialist contracts may need to be instructed through the legal services framework. Allow time and budget for this.

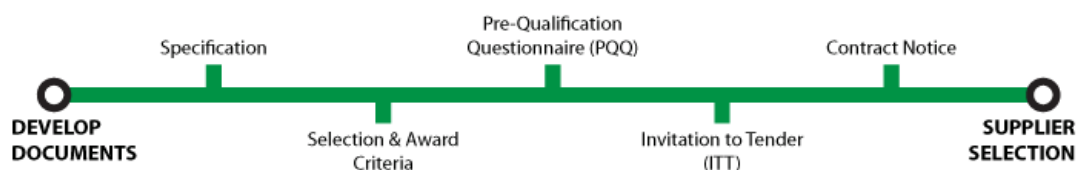
As well as being the legal document the contact needs to be practicable and workable. It needs to clearly identify both parties' obligations, how communications will be carried out and predetermined dates or milestones that the contractor is expected to meet. It should make clear that efficiency is a key driver for the Council and that the supplier should expect to be actively managed and bring a commercial approach to the contract management arrangements.

Drafting of the tender specification is the best opportunity to establish the performance that you will require from your eventual contractor, how risk will be managed and the arrangements for communicating and reporting.

There is often an expectation of trust. However this is something that has to be earned. By setting out the rules from the outset the Council/contractor relationship gets off to a good start enabling trust to be developed.

3.4 The Specification

Note - PQQ now replaced by ESPD



3.4.1 Who provides the specification?

The Service Area instructing CPS is responsible for developing the specification, but should ensure that other end-users, stakeholders and technical specialists are consulted or involved in the co-production process where appropriate. Part of the role is to challenge accepted thinking.

As the foundation of a good specification is laid in the planning and research before writing begins allow sufficient time for this stage.

There is often merit in discussing the specification with a broad range of potential tenderers. This must be done in a fair and transparent manner to avoid distorting competition and/or giving any potential tenderer an advantage. Care must be exercised to avoid not only genuine unfairness, but also the impression of unfairness. Under no circumstances should any commitments be made during this process.

Following discussions with the marketplace, care must be taken to ensure that innovative ideas and approaches which provide a supplier with a competitive edge are not disclosed in the development of the specification e.g. inclusion of proprietary methods of production or Intellectual Property Rights (IPR).

The Council may also use its commercial influence to help improve the competitiveness of suppliers by encouraging them to produce innovative goods and services which will assist the Council to deliver evolving policies and strategies e.g. with regards to sustainability low carbon products or co-operative working. At the specification stage opportunities to incorporate economic development and sustainability considerations should be explored.

3.4.2 Drafting the Specification

Traditionally the choice around specifications was whether to use an 'input' specification or an 'output' specification or a mix of both. In general the specification should be written in 'performance' terms which focus on the function of the product or the output of the service required. An 'output' specification should be used to ensure that your contract objectives are met.

Input /Conformance specifications set out the exact method or very prescriptive details as to how the supplier should provide the service - including materials, staffing levels and frequencies of an input e.g. how often the toilets are cleaned. Careful thought needs to be given as to whether an input specification should be used. One of the main difficulties is that the contract won't achieve what we meant it to and given that we have told the supplier exactly to do provide the service, if they have followed this to the letter then it will be very difficult to hold them to account. It can also stifle innovation and there is a danger that the need for attention to detail misses some crucial detail so that the contract fails to deliver expected outcomes.

Output/Performance Specifications set out or measure the performance or function of the contract i.e. what outcomes are to be achieved. Council's Procurement Strategy clearly sets out this Council's commitment is to outcome based contracting. By specifying only the end result the supplier is given the flexibility to decide how these outcomes should be achieved. This allows the supplier to use its expertise and that of the market place to decide how best to provide the supplies, services or works. Accordingly the balance of risk of delivery is shifted to the supplier for these decisions. However if we get our selection process right we will have chosen our supplier on the basis that it has the knowledge, ability and experience as to how to achieve these outcomes more efficiently and effectively than we perhaps do ourselves.

Community Benefits or 'Added Social Value' are a key element of this Council's Procurement Strategy and Sustainable Procurement Policy. The [Council's Procedure for Procuring Community Benefits](#) identifies how delivering these can help achieve social, environmental and economic benefits for communities in addition to the core requirements of

contracts. While the Procurement Reform (Scotland) Act 2014 will require that Community Benefits are considered for contracts exceeding £4m this Council would like to make it standard practice that they are a core consideration for all contracts over £50,000.

The Community Benefits offered as part of the tender will be included as a contractual requirement and the Contract Owner will monitor these. Where suppliers fail to deliver the contractually agreed Community Benefits, the Council may treat it as a breach of contract and apply penalties built into the standard terms and conditions requiring the supplier to reimburse the Council for those unmet Community Benefits requirements.

3.4.4 KPIs & Output Specifications

As you develop your specification, especially an output specification, you will start to consider how the quality and performance aspects of the goods and services of the contract will be measured. These factors should be translated into the Management Information (MI), and the KPIs that you will require from the supplier both of which will be included in the ITT and Terms and Conditions.

By including Key Performance Indicators (KPIs) that complement the deliverables of the contract the Council can manage its contracts far more effectively. **KPIs** should be clearly drafted and achievable.

The list provided below are indicative of the level of KPIs which would be appropriate when a high level of contract management is required. For a low level of contract 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 contract management, a combination of core with only a few specific indicators may be sufficient. See the section on [Contract Management](#) to determine High/Medium or Low.

Quality

- Fit for purpose in terms of quality of product/service
- Returns – incorrect item, damaged, substandard quality, incorrect item ordered
- Sustainability: including the importance of Community Benefits to the process
- Continual Improvement/Innovation
- Health & Safety

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 supply. The targets will either be stipulated within the ITT and Ts & Cs 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 be reviewed annually (as a minimum) in consultation with the Supplier.

Contractor Feedback – always provide a mechanism for contractor feedback. Generally informal channels of communication are as effective as formal ones for feeding back on the Council's performance in managing the contract, how the relationship is working and whether the right environment for delivering the contract was created.

3.4.5 Technical specifications and standards

The EU procurement rules set extensive rules on how contracting authorities may define and incorporate technical specifications and standards.

In drafting your specification you must avoid any references which have the effect of favouring or eliminating particular suppliers by specifying a particular material or goods of a specific make or source or to a particular process, or trademark, patent, type, origin or means of production e.g. do not specify "Hoover" when we mean a vacuum cleaner or "Intel" when we mean a Central Processing Unit of a PC. In exceptional circumstances such reference may be justified if either the subject of the contract makes the use of such references indispensable or where the subject of the contract cannot otherwise be described in a manner which is sufficiently precise and intelligible to all bidders. In either circumstance, such reference must be accompanied by the words "or equivalent".

Similarly, when a British Standard is used or referred to the words 'or equivalent' should follow to avoid challenge on the basis of discrimination.

The Council's Sustainable Procurement Policy commits the Council to using government standards for sustainable products. Where your procurement includes purchasing products which are covered by the [Government Buying Standards](#) you should adopt both the mandatory and best practice standards and insert these into your specification where affordable. For example BREEAM ([Building Research Establishment Environmental Assessment Methodology](#)) accreditation should be sought for new buildings and refurbishments with a project value over £500,000. Timber and wood products should be specified in line with the Council's Sustainable Timber Policy. Further information on all of these sustainability requirements can be found in the Guidance on Implementing the Council's Sustainable Procurement Policy in Your Procurement.

3.4.6 Simplification and variety reduction

Simplification and variety reduction techniques can help in reducing costs and in obtaining better value for money.

Simplification and variety reduction in a specification requires eliminating of complexities in design by omitting different types, sizes, grades etc. of products. At its simplest this might be

seen as the reduction in the number of colours in which an item is purchased, or in the sizes of envelopes which are purchased and kept in stock.

3.4.7 Review and sign-off

The key criteria that the specification should ensure are:

- Requirements are complete and accurate;
- The focus is on outputs or outcomes required without being prescriptive as to the method the supplier should use to provide it;
- Stakeholders needs are taken into account;
- Future developments have been taken into account;
- Consistency with the Council's requirements and objectives, EU Directives, and other relevant legislation, procurement and contracts strategies, sustainability commitments and evaluation strategy;
- Figures and volumes are correct
- Risk assessment is completed to ensure that related risks are managed

How effective the evaluation methodology is, will in part be down to the quality of the specification. As well as the key requirements, specifications should include critical success factors and reflect the benefits identified in the business case (see checklist below).

If the specification is wrong it may result in:

- Failure by the Council to meet its objectives
- Wasted money
- Unsuitable tenderers
- Unsuitable bids
- Mis-interpretation of requirements
- Major difficulties in evaluating the bids
- Wrong or unsuitable products/services supplied
- Claims of unfair treatment being made by tenderers

Specification Checklist

Description	Y/N
Are previous (similar or related) specifications available as a potential starting point?	
Are the requirements stated clearly, concisely and unambiguously described and do they set out the essential features or characteristics of the requirement?	
Does the specification contain enough information for potential suppliers to design and cost the products or services they will offer?	
Are limits, tolerances or performance targets reasonable and reliable? Are they written in such a way that they define the criteria for acceptance of offered products or services as well as permitting them to be evaluated by examination, trial, test or documentation?	
Do specifications refer to characteristics and avoid trade names or where national standards are used have you used "or equivalent"?	
Do specifications provide equal opportunity for all potential suppliers to offer a product or service which satisfies the needs of the user and which may incorporate alternative technical solutions? Ensure that specifications do not contain features that directly or indirectly unlawfully discriminate in favour of, or against any supplier, product or	

source.	
Has the relevant legislation e.g. health and safety and equality been taken into account?	
Is the specification presented in output/outcome terms to encourage innovation i.e. performance terms rather than a detailed design? If No why?	
Are you sure that it does not over-specify requirements i.e. specify performance that is more than "Fit for Purpose"?	
Have you taken due account of the Council's Sustainable Procurement Policy, Guidance on Implementing the Council's Sustainable Procurement Policy and the related Procedure for Implementing the Council's Sustainable Procurement Policy in Your Procurement? Are any Community Benefits included SMART?	
Have you considered the possibility of variety reduction and simplification?	
Does the performance of the contract require the contractor to hold licences, and does the specification reflect this?	
Does it include service levels and KPIs? Have you specified what Management Information you need and how often?	

Note – Once a contract has been awarded the ability to make changes to the specification is limited e.g. asking a contractor to deliver more or less of something. Material changes run the risk of a legal challenge.

To avoid difficulties flexibility may need to be built into the requirements of the specification or OJEU notice at the outset.

3.5 Selection and Award Criteria

Note - PQQ now replaced by ESPD



3.5.1 Overview

All exclusion, selection and award criteria must be relevant and proportionate to the subject matter of the contract. The specific requirements, the relevant exclusion grounds and the minimum standards that are relevant for the procurement exercise should be set out in the Contract Notice.

The Council is committed to the principles of co-production and especially for care and support services service users and their carers should be involved in shaping any criteria and questions for use in interviews and the nature and level of support they will require.

Selection criteria are focussed on "the bidder" while award criteria are focussed on "the bid" and the Council must maintain a clear distinction between both throughout the procurement process. This means that issues/questions which are appropriate to the selection criteria must be addressed at the selection stage and cannot form part of the award stage (even if they were omitted from the selection stage in error) and vice versa.

The selection stage, involves an examination of the suitability and capability of the potential suppliers to perform the contract that will be awarded at the end of the competition. The criteria used for selection must be appropriate, relevant and proportionate to the particular procurement. The selection process should be a "backward-looking, not forward-looking" process. That is, the criteria for selection must concentrate on the general suitability and capability of the supplier for the project, as opposed to the specific means by which the supplier would perform the contract.

Everyone who passes this stage should have the required capability and capacity to deliver the services, supply the goods or undertake the works.

The award stage involves an examination of the merits of the bids. This will identify which of the eligible tenderers will deliver best value for money for the Council, based on either the most economically advantageous tender or lowest price, depending on the criteria agreed. The award criteria must relate directly to, and be proportionate with, the subject matter of the requirement.

Although the selection and award criteria must be managed separately it is possible to conduct the stages simultaneously or in any order where the procedure allows. For instance, when using a two-stage procedure it may be preferable to assess the award stage prior to checking minimum selection criteria are met when only a small number of bids have been received.

Examples areas that are commonly known as "selection" and "award" criteria are listed in the table below.

Selection Criteria	Award Criteria
Business probity and criminality checks	Price
Technical and professional qualifications, capability including experience, service delivery	Quality
Economic and financial standing	minimum financial standards

3.5.2 Publication of criteria

In order to meet its obligations of transparency, the Council must publish details of the evaluation criteria to be used to select the suppliers to be invited to bid for the contract and identify the supplier to whom the contract will be awarded.

The evaluation criteria for both selection and award stages should be agreed, along with respective weightings, by CPS and the Service Area before the Contract Notice is published or at the latest before any documentation is issued. Tenderers must be informed of the selection or award criteria (depending upon the stage of the competition), sub-criteria, weightings, minimum standards, pass marks (if any) etc.

Where it is not possible to provide weightings on objective grounds, the criteria should be stated in descending order of importance in the contract notice or ITT documents

The agreed and advertised award criteria and weightings **must not** be changed once they have been notified to the tenderers.

3.5.3 Minimum Standards & Exclusion Grounds

The ESPD is used to assess the resources and capabilities of suppliers who express an interest in the published Contract Notice. As well as being able to use a formal and separate two stage process where you use a one stage process you should also use an ESPD (Scotland) questions within tender documents to assess suppliers capability. Where this is used the procurement documents must make a careful

There are clear stages in the procurement process:

Exclusion grounds - There are circumstances in which a bidder must be excluded from the procurement process, and there are other circumstances in which you may determine on a case by case basis whether a bidder should be excluded. These are referred to as mandatory and discretionary exclusion grounds, respectively.

In the case of Care and Support Services the mandatory exclusion grounds (regulation 8(1) of the Procurement (Scotland) Regulations 2016) must be applied to all procurements, and you can also choose to apply the discretionary exclusion grounds.

Selection criteria - There are also different criteria which are used to determine the suitability of bidders to perform the contract. These are referred to as selection criteria. These criteria consider a bidder's suitability to pursue a professional activity, economic and financial standing and technical and professional ability and must be relevant to the contract.

In the case of Care and Support Services the provisions in Procurement (Scotland) Regulations 2016 in respect of selection criteria do not apply. However, you may choose to use the ESPD (Scotland) for this purpose without amending the questions, and the Scottish Government recommend as a matter of best practice to do so.

Award criteria - are used to determine which bidder is best placed to deliver and which should be awarded the contract. You have the discretion to determine what award criteria to apply in relation to your specific procurement exercise. In all cases award criteria must be proportionate, and should relate to the goods or services to be provided.

Evaluation criteria - and Evaluation matrix may assist you in evaluation if you are not using PCS-T. More information on evaluation criteria can be found on the Award Criteria station.

For Care and Support Services an organisation may take account of some other issues when procuring services including:

- the quality of the service;
- the continuity of the service;
- the affordability of the service;
- the availability and comprehensiveness of the service;
- the accessibility of the service;
- the needs of different types of service users;
- the involvement of service users; and
- innovation.

This is not an exhaustive list and there may be other considerations that an organisation may also take account of and which are relevant on a case-by-case basis.

Exclusion grounds, selection and award criteria must be clearly defined in the call for competition and/or procurement documents, to ensure a common understanding of the requirements by all bidders, and must not be changed or waived during the procurement process e.g. the Contract Notice and the call for competition should contain a list and brief description of criteria regarding the personal situation of bidders that may lead to their exclusion, and minimum and specific requirements detailed.

Reserved Contracts

Suppliers whose main aim is the social and professional integration of disabled or disadvantaged persons, where at least 30% of their employees are disabled or disadvantaged workers are classed as **Supported Businesses**. It is possible for your Organisation to "reserve" competition to these supported businesses where it is assessed as appropriate.

Group Bids

Groups of suppliers can act together to bid and do not need to take a particular legal form to do so.

Organisations can set contract conditions which are specific to a group bid and can explicitly state requirements regarding group economic and financial standing or the criteria relating to technical and professional ability. However such conditions must be justified by objective reasons and be proportionate to the contract. Depending on the extent to which particular suppliers will be relied on to perform the contract, organisations may require particular members of the group to meet all or some of the particular selection criteria.

The Organisation may request the group to take a legal form if required for the performance of the contract if the group is to be awarded the contract.

The Council has developed a Financial Probity Assessment in Procurement Policy to introduce a standardised procedure for assessing the financial position of a company. The aim is to determine the level of risk to the Council and where unacceptably high to reduce this risk by excluding the tenderer by the application of criteria clearly set out in advance. The policy is designed to reduce the risk to the Council while ensuring the standards don't impose unfair burdens on SMEs, third sector organisations or new entrants.

Where suppliers propose to form a consortium, the prime bidder should be requested to provide a single set of responses covering all consortium members.

Under procurement regulations, the Council may only eliminate bidders on the basis of the financial probity assessment if:

- the bidder fails to meet thresholds set out in the contract notice and tender documentation; and
- the thresholds set out in the contract notice and tender documentation are related and proportionate to the subject matter of the contract.

The standard approach used sets out minimum standards, but gives the Council flexibility not to eliminate a bidder if mitigating information is available.

3.5.4 ESPD

The ESPD (Scotland) should be used for all selection stage questions. The selection stage questions can be issued either in advance of an ITT, as part of a two stage process, or within an ITT document, a one stage process. This is to allow the identification of suitably qualified and experienced bidders, and to ensure consistency in their approach to selection.

The Selection Stage should allow you to identify suitably qualified and experienced bidders. Selection criteria should be proportionate to the value of the purchase, its sensitivity, estimated risks, and the complexity of the requirement.

You should clearly state the minimum requirements and consider the mandatory and discretionary exclusions in the Contract Notice and relevant procurement documents. More detail on exclusion criteria can be found in the Exclusion Stage of the Procurement Journey.

The ESPD (Scotland) replaces the requirement for bidders to provide up-front evidence or certificates by allowing them to self-declare that they:

- do not fall within an exclusion clause (or, if they do, they can demonstrate that they have taken self-cleansing measures);
- meet the relevant selection criteria;
- (where applicable) fulfil the objective rules and criteria for reduction of candidates.

There are circumstances in which a bidder must be excluded from the procurement process, and there are other circumstances in which a bidder may be excluded from the procurement process if you have selected such grounds as possible exclusion grounds for your procurement process and you consider that exclusions is appropriate in that particular case. These are referred to as mandatory and discretionary exclusion grounds respectively, and can be found in Part III of ESPD (Scotland) and, if chosen for your procurement process, will apply to all bidders.

ESPD (Scotland) Questions

The generic ESPD is used across all Member States of the EU and formed the basis from which the ESPD (Scotland) was developed. The ESPD (Scotland) contains the standard set of questions in line with the ESPD requirements and this means that the questions in the ESPD (Scotland) cannot be amended and new questions cannot be added.

Contract Notices and Standardised Statements

The Procurement Officer should set out the specific requirements and minimum standards that are relevant and proportionate for the procurement exercise in the Contract Notice or the PIN, if that is being used as a Call for Competition.

This set of standardised statements has been developed to support you in preparing this aspect of the relevant Contract Notice(s) (or the PIN if that is being used as a Call for Competition). You can add these statements to your Contract Notice (or the PIN if that is being used as a Call for Competition) and complete where relevant. You may also set out further selection stage and exclusion information you require to be included in the Contract Notice (or the PIN if being used as a call for competition) where relevant and proportionate to the subject-matter of the contract.

More information on where to state information in the Contract Notice can be found on the Contract Notice and Advertising station in the Procurement Journey.

These statements are aligned to the relevant selection questions in the ESPD to enable Procurement Officers to adopt a standard approach in Contract Notices (and in PINs being used as Calls for Competition). Therefore where selection questions from the ESPD are not being used for the specific procurement exercise, the corresponding statements will not be required in the Contract Notice (and in PINs being used as Calls for Competition).

Some ESPD questions (and therefore statements) are naturally contract specific and you are required to add some information to these statements before insertion into the Contract Notice (or PIN if used as a Call for Competition) e.g. if requesting details of appropriate financial ratios you will only choose to use those appropriate to your particular contract, while others do not require further specification and you can choose to adopt them in their entirety.

This is not a definitive list of statements and the Procurement Officer should determine which statements are most appropriate for the individual procurement exercise.

The Scottish Government is working with the Public Contracts Scotland (PCS) system provider to have these standardised statements embedded in the contract notice functionality to enable Procurement Officers to use these online on PCS in the future.

Reliance on Other Parties

Where relevant and proportionate to the subject matter of the contract you may consider requesting a separate ESPD response from a sub-contractor, members of a consortia or any other body.

Supporting Evidence

If using ESPD (Scotland) a bidder is not required to produce supporting documentary evidence or certificates until specifically requested by the Procurement Officer to do so by you. You must request this evidence before awarding the contract, as part of your due diligence process. If the preferred bidder is unable to provide this evidence it should not be awarded the contract.

You may also, where it is necessary to ensure the integrity and proper conduct of the procurement process, request, at any time, all or part of the supporting documents from a bidder and any subcontractors, consortia members or other bodies, whose capability and capacity will be relied on to perform the contract. Supporting documentary evidence should only be sought during the procurement process where you have a genuine concern that there is a risk to the effective conduct of the procurement procedure or, in a two-stage process before moving from selection stage to award stage.

Multiple Use of the ESPD (Scotland)

Bidders may reuse the information that has been provided in an ESPD (Scotland) which has already been used in a previous procurement procedure, as long as the information remains correct and continues to be pertinent.

Bidder Responsibility

Bidders may be excluded from the procurement exercise, where:

- there is serious misrepresentation in filling in the ESPD (Scotland),
- or
- there is serious misrepresentation of, or withholding, the information required for:
 - the verification of the absence of grounds for exclusion;
 - the fulfilment of the selection criteria;

or

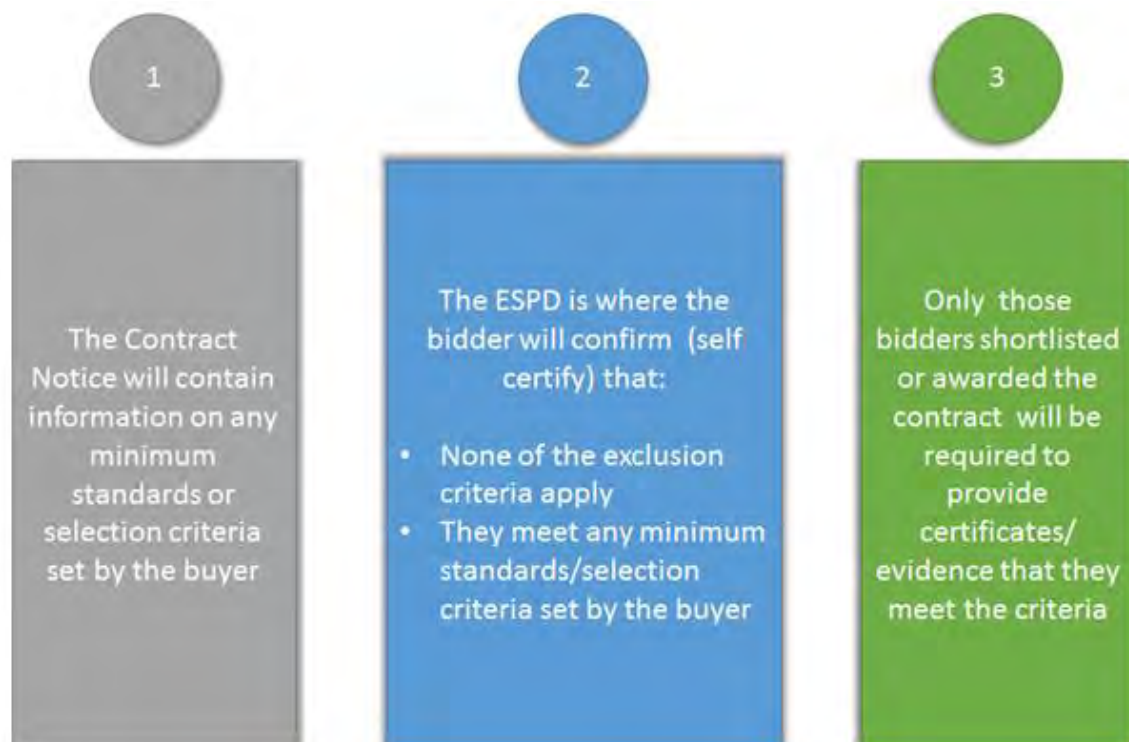
- the bidder is unable to submit the supporting documents.

More details on the circumstances when a bidder may be excluded due to the above and the possible justification by bidders is set out in the exclusion stage e.g. bidders must not be excluded if they have "self-cleansed".

Shortlisting

The objective and non-discriminatory criteria that will be applied to produce a 'shortlist' of bidders must be contained in the Contract Notice or PIN if that is used as a Call for Competition. This should include weights and scoring, where applied, with an explanation of the relative weighting and scoring methodology.

In summary:



3.5.5 Variants

If you intend to award a contract on the basis of the most economically advantageous tender you may consider variants on the requirements **as long as it has been specified in the**

contract notice. The minimum requirements to be met by the variant and how the variant will be evaluated must also be stated in the contract documentation.

3.5.6 Award criteria

CPS will work with the Service Area to agree appropriate award criteria, based upon their knowledge of the goods, works or services to be procured and the critical aspects of the requirement as identified in the Specification.

The criteria identified must relate directly to the goods, services or works to be provided and not focus the characteristics of the individual suppliers. Each award criterion should be clearly defined, so that there is a common understanding of what it means.

Good criteria will ensure that responses from suppliers clearly address the most critical aspects of the specification and allow the evaluation panel to make a fair and equal comparison of the bids received.

3.5.7 Most economically advantageous or lowest cost?

In general lowest cost will only be used for the evaluation of simple procurements of short-term, low-level services or goods or a standard specification. In determining the criteria for the award of contracts, generally the Council should rarely rely on price alone unless it is an input or conformance based specification where there is little room to depart from the requirements of the specification therefore less need to assess quality.

For more complex procurements, it will normally be appropriate to award on the basis of most economically advantageous tender “MEAT” based on providing the best Value For Money (VFM) Total Cost of Ownership (“TCO”) – i.e. total acquisition and operating costs. Awarding contracts on the basis of the most economically advantageous tender allows the Council to balance the quality of the goods, services and works against price and to frame specifications in a way which encourages innovation rather than defining the solution.

In determining the most economically advantageous offer the Council must use criteria linked to the subject matter of the contract which are likely to include quality, price, technical merit, aesthetic and functional characteristics, health and safety, environmental characteristics, running costs, cost effectiveness, delivery date or period of completion. In terms of value for money, this is also the best place to take into account relevant Council policies, such as sustainability (both in the specification and the evaluation criteria) into account.

In accordance with the Council’s obligations of transparency and fairness the weighting for each chosen criteria (or at least their order of importance where it has not been possible to weight them) must be specified in advance and notified to the tenders.

Some examples of award criteria are given below

- Quality/Technical Merit – Is the product or service proposed fit for purpose? How well does it perform?
- Design, functional characteristics and aesthetics – How should the product look and feel? How easy is it to use?
- Sustainability – i.e. social, economic and environmental considerations, community benefits.
- Innovation, where appropriate – e.g. new or novel concept?

- Maintenance, ongoing technical support or after sales service – What support is required and available?
- Delivery or period of completion – the guaranteed turnaround time from order to delivery or provision of service.
- Price – The whole life cost including the initial purchase price, operating costs, consumables and disposal costs. How cost effective will the goods/service prove to be?
- Approach to project management

Fair Work Practices

The relevance and proportionality to the contract of fair work practices must be considered for its inclusion in the award criteria. Fair work practices will be particularly relevant to consider where the quality of the services or goods to be delivered is directly affected by the quality of the workforce engaged in the contract.

In deciding whether or not fair work practices are relevant to the quality delivered under a contract, Procurement Officers should consider all relevant factors and be able to justify their inclusion in any decision making process. For a relevant contract Purchasing Officers should consider whether:

- There is any previous experience of poor quality practices, including pay and conditions, impacting on the quality of service to be delivered;
- There is any history of low pay or unequal pay in that sector;
- There is a risk that staff working on the contract might be subject to exploitative practices e.g. through the inappropriate use of zero hours contracts, through unnecessary distancing of the employer-worker relationship: by use of any “umbrella company” and through pay and hours arrangements that deny workers stability of employment or hours of work, by failing to pay wages for travel time within the working day,
- There is evidence that working conditions are making recruitment and retention problematic;
- Contractors are seeking to cut their costs through driving down staff terms and conditions, including pay;
- Workers will be required to interact directly with the organisation’s employees and/or members of the public and whether they will spend any time on the Council’s premises

In any of these circumstances, fair work practices are likely to be a relevant consideration for the contract in question. However this is not an exhaustive list and other factors may be relevant, depending on the specifics of an individual contract.

At the contract award stage you should ensure that the contract complies with the conditions, requirements and criteria set out in the Procurement Documents. In addition, you may decide not to award a contract to the winning tenderer, if its bid does not comply with the social, environmental and labour law.

Fair and Ethically Traded Goods

Award criteria can also relate to the supply or use of ethically or fairly traded products. Criteria and conditions relating to trading and its conditions can refer to the fact that the product concerned is of fair trade origin, including requirements to pay a minimum price and price premium to producers. Furthermore, environmental considerations can include the delivery, packaging and disposal of products and when looking at service contracts, this can refer to waste minimisation or resource efficiency. It is important to note however, that this excludes criteria and conditions relating to a bidder's general corporate social responsibility policy.

Equality Legislation

Equality legislation places duties on certain public bodies, in the exercise of their functions, to have due regard to the need to advance equality of opportunity. You should ask bidders to self-certify that they comply with all relevant equality legislation. Where evidence is provided of breaches to the equality legislation, you must take into consideration any remedial action that has been taken by the bidder in order to address these breaches. For organisations working outside of the UK these questions relate to equivalent legislation in the country in which the bidder is located / breach occurred. Effective contract management and monitoring should be undertaken to ensure that the assessment of equality continues to be applied throughout the duration of the contract.

3.5.8 Pricing

Your pricing/cost schedule should be set out in such a way as to allow easy comparison between tenderers. Market testing early on can help to tailor the pricing schedule if you are able to ask suppliers how they price their jobs. Whole life costing can allow a comparison of bids rather than just focusing on purchase price and should be used wherever practicable. The Regulations required to implement the new Directive within the next 2 years are likely to bring in requirements for whole life costing. A typical cost schedule might look like this. The Scottish Government also have a Total Cost of Ownership (TCO) [calculator](#) which you may wish to use.

Cost Category	Detail	Yr 1	Yr 2	Yr 3	Total
Acquisition	Purchase Price				
	Delivery				
	Any additional costs e.g. hardware/software				
Running	Consumables				
	Integration with current IT provider				
	Fuel/electricity costs				
	Set-up costs/Consultancy costs				
	Repairs and Maintenance				
	Training costs				
	Transition costs i.e. internal changeover or TUPE				
Disposal	Costs of Disposal				
Total Cost of Ownership (TCO)					


3.5.9 Price:Quality Ratio


For some procurements, it may be possible to provide for a simple pass/fail decision for the quality aspect of the bid based upon the offer meeting the specification. Then, for those passing the minimum criteria they may then be ranked according to lowest TCO. For the majority of tenders there will however require to be a degree of scoring of the technical quality of the goods, services or works offered. However awarding extra marks for superfluous quality which exceed the minimum requirements stated in the specification should be avoided e.g. gold plated taps

Crucial to any tender evaluation is the Price:Quality ratio used. The ratio will determine how much price and quality will influence the tender evaluation and should reflect the relative importance of either element to the Council. The weighting of each should reflect the business criticality/risk to the Council and the value of the goods, services or works being procured. CPS will work with the Service Area to decide upon an appropriate overall ratio or split between Price and Quality criteria and allocate weightings to any sub criteria as appropriate.

The table below provides some suggested criteria and ratios based on the best practice model used by the Scottish Government.

High Risk

	<p>Bottleneck</p> <p>Quality 60-90%</p> <p>Price 40-10%</p> <p>few sources of supply or alternatives available, specifications complex or if supply fails the impact upon the Council could be significant e.g. partnering arrangements, very few suppliers in the market, low value supply which is critical to frontline service</p>	<p>Strategic</p> <p>Quality 40-60%</p> <p>Price 60-40%</p> <p>Strategic or critical to Council services, few sources of supply, high value, large spend area, specifications may be complex e.g. ICT</p>
	<p>Routine</p> <p>Quality 10-30%</p> <p>Price 70-90%</p> <p>e.g. low value/ high volume supplies such as stationary, furniture, computer consumables etc</p> <p>where many alternatives exist</p>	<p>Leverage</p> <p>Quality 30-40%</p> <p>Price 60- 70%</p> <p>Where the Council might exploit its purchasing power e.g. high spend areas with many sources of supply, or collaborative corporate contracts, high volume routine items, frameworks such as Scotland Excel or Government Procurement Service</p>



Low Risk Low Value High Value

You may find it useful to refer to the [Scottish Government's slides](#) for more information.

Frameworks - When running a mini competition under a framework agreement let by another public body such as the Scottish Government, the Regulations prohibit any departure from the Quality: Cost ratio contained in the original OJEU notice or contract documents.

3.5.10 Scoring methodology for award stage evaluation

CPS will assist you in ensuring a robust methodology is developed to assist with the [evaluation](#) process and ensure the reasoning behind it is documented. This will minimise the risk of challenge.

You must always disclose your scoring methodology. The Council's standard methodology is provided below and should be used in conjunction with the evaluation matrix: this can be tailored to suit the specific requirements of your procurement exercise. Please note construction projects may use a different scoring methodology, but CPS will advise.

3.5.11 How should Cost be scored?

For each tender a mechanism to calculate cost and where practicable TCO (see above) should be established. CPS can assist as required. The TCO should aim to comprise all costs to the Council of acquiring, owning, maintaining, operating and disposing of the goods, services or works.

Having calculated the TCO of the tender a cost scoring methodology will need to be developed as simple aggregation will almost always distort the scoring. The scoring model, however simple, should be used to create some sort of comparable figure across bids. There are a number of different options but the most commonly used by CPS is:-

Award 100% to cheapest bid then compare that lowest figure as a percentage of the other bids e.g.

Lowest price/price being evaluated x 100 = price score for that bidder

Example 1, 3 bids A=£1.5M, B=£1.2M & C=£950K

$0.95/1.5 \times 100 = 63.3\%$ Bidder A

$0.95/1.2 \times 100 = 79.2\%$ Bidder B

100% Bidder C

Where the difference in the pricing elements of the bids is significant then this will have far more impact on the pricing percentage and hence the outcome. Where there is little difference in the bids e.g. for an hourly rates contract where rates may differ by 50p an hour the pricing percentage will have far less impact on the outcome.

Example 2, 3 bids A=£19 p/hour, B=£17p/hour and C=£17.50 p/hour

$17/19 \times 100 = 89.5\%$ Bidder A

$17/17.5 \times 100 = 97\%$ Bidder C

100% Bidder B

Another method of scoring, where affordability is an issue, is to disclose a threshold price to bidders which would score 0 then all bids under that threshold are scored comparatively e.g.

£1M is the threshold scoring 0, a bid of £700K scores 30% and a bid of £600K scores 40%. CPS will advise you which is appropriate.

This cost scoring methodology may be used in order to ensure that more expensive tenders, e.g. those with much higher Quality scores due to 'gold plating' the specification, do not end up with an excessively high combined score compared to the tender with the lowest price. The intention of moderation of this kind is to ensure that the best value tender is successful rather than the highest cost/highest quality tender. It should also assist in avoiding an unaffordable bid.

3.5.12 Abnormally low tenders

Where there is an abnormally low priced tender the Regulations permit this to be challenged. Failure to satisfy the Council that the requirements of the specification have been adequately understood or that delivery can be delivered for an unusually low price may result in exclusion.

3.5.13 How should Quality be scored?

As with Price there are a numerous ways that Quality can be scored. Perhaps the easiest is to mark all questions out of a set figure e.g. 4 then apply the relevant weighting for that criterion to obtain each score. This is the approach suggested by the Scottish Government so will generally be the approach that is adopted.

e.g.

Marking Range = 0 – 4

Marks	Description	Award
Unacceptable	No answer or unacceptable response. Fails to demonstrate an ability to meet the requirement	0
Poor/ Significant shortcomings	Poor answer - Response is partially relevant and poor. The response addresses some elements of the requirement but contains insufficient/limited detail or explanation to demonstrate how the requirement will be fulfilled	1
Acceptable	Response is relevant and acceptable. The response addresses a broad understanding of the requirement but may lack details on how the requirement will be fulfilled in certain areas	2
Good	Applicant proposal addresses ALL of the areas required. Response is relevant and good. The response is sufficiently detailed to demonstrate a good understanding and	3

	provides details on how the requirements will be fulfilled	
Excellent	Response is completely relevant and excellent overall. The response is comprehensive, unambiguous and demonstrates a thorough understanding of the requirement and provides details of how the requirement will be met in full	4

If a model such as the above is used then scope is allowed for the bidder to exceed the specification. If that is the case then it should be made clear to bidders that to receive the full allocation of points they are expected not just to meet the specification but exceed it.

In order not to award a further 25% for additions that are of no use to the Council those drawing up the tender documents should provide some guidance as to the added benefits it has in mind. This will also reduce the grounds for legal challenge when the relative advantages and disadvantages are compared at tender award stage on the basis that it could not reasonably have been envisaged by the tenderer that the Council would have awarded additional marks for such additional offerings.

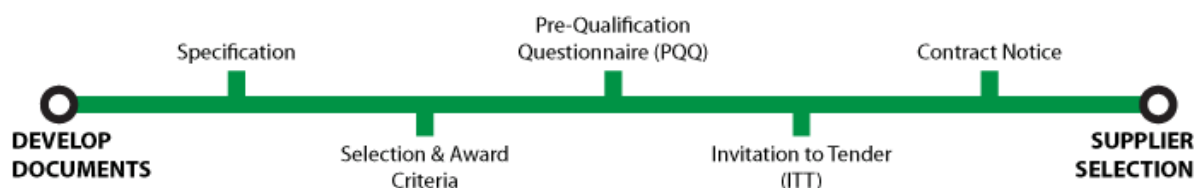
Where all that is required is the 'fit for purpose' specification then Council officers should avoid allocating scores for or scoring tenderers higher for quality which far exceeds the specified requirements.

3.5.14 Best Value

In order to ensure best value is achieved it is crucial that the evaluation process and model is tested as once the criteria are set they must be adhered to.

3.6 See ESPD above

3.7 Invitation to Tender



3.7.1. Overview

The Invitation to Tender (ITT) is ‘forward looking’ and assesses the **goods, services or works** to be delivered, how will the supplier do it, what can they supply and what will it cost.

The ITT documents should include comprehensive information for potential suppliers about the requirement being tendered. You may also wish to consider whether to allow potential service providers to set out options in relation to different TUPE scenarios within its tenders. If so, it should provide clear directions to tenderers to ensure that bids can be compared on a like-for-like basis. The content will be specific to each requirement but there are a number of generic documents that you should include in the ITT pack.

The documentation will be developed by CPS drawing on information from the Procurement Plan.

Where you choose to employ a two stage process, the documents will only be made available to the tenderers who have passed the selection stage of the procedure and these invitations to submit a tender should be issued simultaneously and in writing. However if you choose not to use a separate selection stage in the process, ITTs should be issued on request at any point prior to the date set for submission of tenders

A list of documents that will make up the ITT pack is provided below:

- It is good practice to issue an ESPD (Scotland) to tenderers.
- A reference to the relevant Contract Notice, previously published
- Instructions to tenderers:- timetable, submission deadline, e-tendering process, information about the Council
- Background and overview of the tendering and evaluation process including details of presentations and site visits, if applicable
- Terms and Conditions of contract which will apply to any resulting contract
- Specification and technical requirements
- Response requirements
- Quality questionnaire
- Sustainable Procurement requirements
- Community Benefit requirements
- Questions on Fair Work Practices should be considered where it has been assessed as relevant and proportionate to the subject matter of the contract

- Pricing schedule
- Form of tender
- For frameworks inclusion of mini competition guidance

CPS will have standard templates for most of the above documents, with the exception of the specification, which will be tailored to the individual procurement.

3.7.2 Evaluation criteria

The questions within the ITT must be consistent with the evaluation criteria and weightings which were published or referred to within the Contract Notice.

Tenders can no longer be evaluated on price alone. It now must be most economically advantageous. The quality element will be designed based on criteria linked to the subject matter of the contract to assess such things as the technical aspects, method statement, after care service, sustainability and key staff etc will be included.

Price/financial evaluation criteria should include:

- Whole Life Cost comparisons
- Quantifiable financial benefits arising from the technical evaluation (e.g. speed, fuel or electricity consumption, coverage, shelf life etc)
- Fixed or variable pricing
- Cost of components, spare parts, consumables and servicing
- Life Cycle costing where appropriate

If you have an output based specification which leaves a lot of discretion to the supplier as to how the works or services will be delivered then more points would normally be awarded for 'quality'. If on the other hand the design or specification is highly prescriptive then quality may be given less weight.

This is the best place to include sustainability, specific community benefits requirements and whole life costing where this is being used.

3.7.3 Frameworks – Mini-competition guidance

If you are letting a framework then details of how the framework will operate such as the process to be used for call offs and any mini-competitions from a multi-supplier framework need to be included.

3.7.4 Further inclusions for ITT documentation

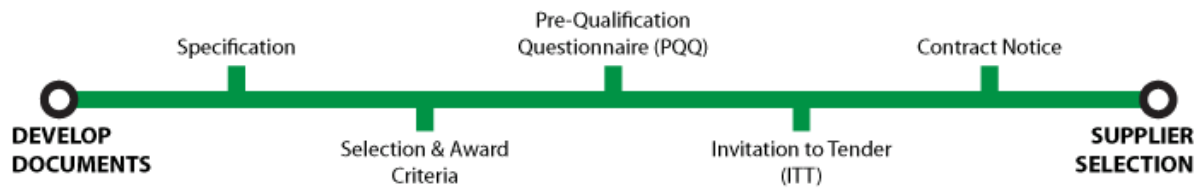
The [Scottish Government's Procurement Journey](#) suggests additional areas for inclusion within the ITT documentation.

3.7.5 'Bidders' Day'

It may be worth holding a 'Bidders' Day' at this stage: a meeting with suppliers together in one room to discuss the process, the timetable and review the specification/scope and approach to market. This can provide a very valuable two-way sharing of information process which helps to shape your procurement documentation or even overall strategy.

As a matter of practice the standard tender always states that the Council is in no way obliged to accept any tender.

3.8 Contract Notice



Note the PQQ has been replaced by the ESPD

Once your procurement documents are ready CPS can publish the Contract Notice on [Public Contracts Scotland](#) (PCS). PCS is the national portal which provides free access for suppliers to contract opportunities and guides purchasers through the process of creating a notice for publication on its website and the Official Journal of the European Union (OJEU).

Contract Notices must be used to advertise all procurement exercises above £50,000, other than for Care and Support contracts between £50,000 and €750,000, where an organisation has chosen to award a contract or framework agreement without seeking offers. However, a Prior Information Notice (PIN) can be used as a call for competition instead of a Contract Notice.

3.8.1 Using a PIN as an Advance Notice

An advance notice of planned procurements must be given through the publication of a PIN (when the PIN is not being used as a call for competition). This can allow potential bidders to prepare themselves to bid in time for the contracts announced.

- The PIN should contain details of supply and services contracts for which the Council expects to seek tenders during the forthcoming 12 months.
- The standard PIN form should be used.

3.8.2 Using a PIN as a Call for Competition

A PIN may be used as a call for competition. If so the PIN should:

- Refer specifically to the supplies or services that will be the subject of the contract to be awarded;
- Indicate that the contract will be awarded without further publication of a call for competition and invite bidders to express their interest;

The period covered by a PIN should be a maximum of 12 months from the date on which the notice is transmitted for publication.

3.8.3 Availability of Tender Documents when Publishing OJEU Notices

Regulation 54(1) of the new Public Contracts (Scotland) Regulations 2015 provides that “a contracting authority must offer on the internet unrestricted and full direct access free of charge to the procurement documents from the date of publication of a notice”. The Regulations define ‘procurement documents’ very widely meaning that the literal interpretation of this provision is that all documents related to the procurement, including technical specifications, terms and conditions and tender documents to be used at

subsequent stages must be available at the commencement of a procurement. From an operational perspective however, it is recognised that having all documents available at the commencement of the procurement is not always practical. In general, only in an Open Procedure is an organisation required to make the ITT available from the outset however, in all other procedures, the organisation must provide sufficiently precise information to enable bidders to identify the nature and scope of the requirement and decide whether to request to participate.

3.8.4 Contract Notices

Contract Notices must be published on Public Contracts Scotland (PCS). PCS is the national advertising portal which provides free access for suppliers to contract opportunities and guides Procurement Officers through the process of creating a Notice on its website. Contract Notices published via PCS will contain all of the mandatory information required.

For **Care and Support Services**, you may decide if you wish to advertise the requirement or not. In the case of:

- direct award without advertising the requirement: you only need to publish a Contract Award Notice on PCS, but not a Social and other Specific Services Contract Notice advertising the requirement;
- advertising the requirement: you need to publish a Social and other Specific Services Contract Notice advertising the requirement and also a Contract Award Notice on PCS.

The Contract Notice should contain the minimum and specific requirements for your procurement exercise, and should include statements relating to the relevant ESPD. You should include appropriate statements in the Contract Notice that are aligned to the relevant exclusion and selection questions that are being used in the ESPD (Scotland) for the particular procurement exercise.

Unlike the questions in ESPD, Procurement Officers can create new, or amend the statements in the Standardised Statements document which will be included in the Contract Notice. Any amended or additional statements must reflect the selection criteria and minimum standards of the particular procurement exercise.

It is important that the Contract Notice provides the scope of the requirement, either by volume or by value and, in the case of Contract Notices for Framework Agreements, that it clearly identifies the bodies which will be entitled to use it. If the proposed contract is to be a reserved contract the Contract Notice must state this.

It must also state if:

- the Council intends to hold an electronic auction (this cannot be used for **Care and Support Services**)
- presentation of tenders in the form of electronic catalogues is accepted or required
- whether or not variants will be allowed or required
- information in respect of any lots.

Your Contract Notice must state how the bidders will be able to access the Procurement Documentation e.g. if PCS Tender is used, it must provide the relevant reference numbers for the specific procurement.

3.8.5 Contract Notice Overview (for Non-Care and Support Services Procurements)

In some instances the Contract Notice does not specify the exact field where information should be added in line with legislation e.g. where to add text when lotting has been considered but it has been determined not to lot, and statements reflecting ESPD (Scotland) questions e.g. exclusion statement, quality management. The [Procurement Journey](#) provides a table setting out which fields should hold what information and also specifies the character limits in the Contract Notice.

Inaccurate framing of the Contract Notice can and does cause difficulties later on in the contract, if an increase in scope or duration is desired but has not been provided for. If it is not provided for in the Contract Notice then in line with the principles of transparency and fairness it is generally considered to be a new contract which requires to be advertised. Failure to do so can result in legal challenge. A bit of foresight can avoid the problems that this can create and having a governance board consider and review contract notices can assist. CPS will draft the Notice and guide you through this process **but please consider carefully what flexibility needs to be built in at this stage. See also [EU guidance](#)**

3.8.6 Number of suppliers

To ensure that value for money is achieved it is essential that a sufficient number of competent, financially sound suppliers with adequate capacity to undertake the work are identified.

If a purchase is above the relevant [EU thresholds](#), publication in OJEU is likely to be mandatory and a minimum of 5 applicants (3 for the competitive dialogue process) must be taken forward to the ITT stage (unless there aren't sufficient number who meet the criteria). Rather than stating a specific number to be taken forward it may be better to state a range e.g. 5-7. This can help address the situation where the scores are very close and you wish to make sure that there is a significant gap between the successful and unsuccessful applicants.

3.9 Supplier Selection

Note the PQQ has been replaced by the ESPD



The "Selection Stage" is where an ESPD is used in the tendering process to assess the resources and capability of suppliers who express interest in the published Contract Notice.

In addition to being able to employ a formal and separate two stage process, where you elect to use a one stage procurement exercise you should also use ESPD questions within tender documents as a means of assessing suppliers' capability. Where this approach is used, it is important to note that your procurement documents must make a careful and transparent distinction between the exclusion, selection, and award criteria – including information for bidders explaining how the different questions and sections of the process will be assessed.

3.9.1 Issuing the ESPD

ESPDs are sent out to suppliers who have responded to the contract notice. Minimum timescales in accordance with EU rules apply.

3.9.2 Assessing responses

[Statutory Guidance](#) has been published on [Selection of Tenderers and Award of Contracts](#).

The distinction between selection and award criteria is important. Selection criteria are focused on "the bidder" and award criteria are focused on "the bid". It is good practice that the Procurement Officer maintain a clear distinction between both throughout the procurement process. This means that issues/questions which are appropriate to the selection criteria should be addressed at the selection stage and should not form part of the award stage (even if they were omitted from the selection stage in error) and vice versa.

Examples of areas that are commonly known as "selection" and "award" criteria are listed in the table below:

Selection Criteria	Award Criteria
Technical and professional qualifications, capability including experience	Price
Economic and financial standing	Quality
	(Further examples provided below)

Minimum Standards

Where it has been determined that minimum standards are applicable either within selection or award criteria they must relate to and be proportionate to the subject matter of the requirement and be clearly detailed in the appropriate documentation. Standardised Statements have been developed to help you create your Contract Notice in a consistent manner. The selection statements you use in the Contract Notice must be aligned to a specific question in the ESPD (Scotland). Where you wish to apply minimum standards to limit the number of potential suppliers to be invited to tender, minimum standards or objective criteria must be specified or referred in the Contract Notice (or Prior Information Notice if used as a 'call for competition' by a sub-central organisation) and set out in the Procurement Documentation to allow the rejection of potential suppliers. Similarly if a pass mark can only be obtained by a response that meets the minimum requirement, it must be clearly stated within the scoring guidance provided to bidders. A sub-central Organisation is any Organisation which does not belong to Central Government or National Health Services.

Publication of Criteria

As a matter of procurement policy, and in order to meet obligations of transparency, organisations must publish details of the evaluation criteria to be used to either select the bidders to be invited to bid for the contract or the evaluation criteria to be used to identify the supplier to whom the contract will be awarded. It is best practice that evaluation criteria for both selection and award stages are agreed, along with respective weightings, by the UIG before the Contract Notice (or Prior Information Notice if used as a 'call for competition' if a sub-central organisation) is published and any documentation issued. The evaluation criteria will comprise of the selection or award criteria (depending upon the stage of the competition), sub-criteria, weightings, minimum standards, pass marks (if any) etc. If there is any doubt as to the level of detail that must be disclosed/published, you should seek specialist professional procurement or legal advice and guidance.

The agreed and advertised selection and award criteria and weightings **must not** be changed once they have been notified to the tenderers.

Selection Criteria

The selection stage, involves an examination of the suitability and capability of the potential suppliers to perform the contract that will be awarded at the end of the competition. The criteria used for selection must be appropriate, relevant and proportionate to the particular procurement.

The selection process should be a "backward-looking, not forward-looking" process. That is, the criteria for selection must concentrate on the general suitability and capability of the supplier for the project, their economic and financial standing and their technical and professional suitability, as opposed to the specific means by which the supplier would perform the contract.

To allow organisations to identify a number of suitably qualified and experienced businesses who will be invited to submit a tender, the European Single Procurement Document (ESPD) should be used. It should be used by the organisation as preliminary evidence that the bidder fulfils the selection criteria. A set of standardised statements has been developed to support you in preparing this aspect of the relevant Contract Notice (or PIN if that is being used as a Call for Competition).

A list and a brief description of the objective and non-discriminatory criteria that will be applied to produce a 'short-list' in a two-stage process must be contained in the Contract Notice (or Prior Information Notice if used as a 'call for competition' if a sub-central organisation) and relevant Procurement Documentation.

Suitability to pursue a professional activity

An organisation may require bidders to be enrolled in certain professional or trade registers in the country of the bidder's establishment. They may also require bidders to prove that they hold certain authorisation or memberships which are necessary for the bidder to be able to perform the service required in their country of origin

Economic and Financial Standing

In all cases, care should be taken not to set minimum standards that are disproportionate and/or which might exclude capable suppliers, especially SMEs and newly formed companies.

Turnover

The Public Contracts (Scotland) Regulations 2015 set out criteria in relation to economic and financial standing, such as the amount of turnover what the Organisation may ask for. To remove the obstacles to the involvement of SMEs in public procurement, the Organisation must not ask the bidders to have a minimum turnover which exceeds twice the estimated value of the contract. However, organisations can ask for a higher turnover in certain circumstances such as contracts with high risk or if the timely and correct performance of the contract is crucial.

Annual accounts

You may require bidders to provide certain information on their annual accounts, for example showing the ratio between assets and liabilities. You should be aware that not all bidders have an audited set of accounts, so you must consider on a case by case basis what is essential and you must specify the information to be provided in the contract notice.

You may only exclude bidders on the basis of ratios identified in the Contract Notice. Management Accounts can be asked to be supplied for evidence, however exclusions will only apply based on those ratios.

Insurance levels

Where relevant to the contract, you may require bidders to have an appropriate level of professional risk indemnity insurance in place, which is proportionate to the value of the contract and the level of risk. Organisations should consider what is required on a case by case basis and must specify what level of insurance is required of potential economic operators to perform the contract in the contract notice. It is a legal requirement that all companies hold Employer's (Compulsory) Liability Insurance of £5M as a minimum apart from sole traders. However, the bidder should not be required to have the relevant insurance in place at the time of bidding but should be asked to confirm that they either have the required level or would be willing to obtain the required level if successful. If at the selection stage a bidder cannot provide the level of cover required, an undertaking to secure the insurance should be sufficient. It is not, at this stage, appropriate to insist on the evidence

that cover already exists. You must check that any such commitment has been acted at the contract award stage.

Instead of the pound symbol, please use 'GBP' on PCS.

Technical and Professional Ability

Where relevant and proportionate to the contract, you can ask bidders to provide relevant examples that demonstrate they have a sufficient level of experience in order to deliver the contract. Bidders' examples must only be from experience over the previous three years for goods and services. The examples requested should be relevant and proportionate to the procurement exercise and be from a reasonable timescale. It is best practice to only request examples from bidders that are less than three years old in respect of procurement exercises for goods and services.

You may request evidence of the technical and professional ability of economic operators to perform the quality standards required for the effective delivery of the contract. This can include their skills, efficiency, experience and reliability. Where it is more appropriate for the qualifications and experience of the bidders' staff to be evaluated as part of the award criteria, for example, where there are particular aspects of technical or professional ability which are necessary to perform aspects of the particular contract, as a matter of good practice, these aspects should not also be assessed as selection criteria.

In establishing selection criteria to assess technical and professional ability you should be careful not to exclude bidders which can demonstrate that they have the capacity and capability to deliver the contract, but which may not have delivered exactly the same goods, works or services previously. This will ensure opportunities are provided to bidders to access new markets or provide innovative solutions, no matter their size or status.

Use of References

One way that suitable experience can be evidenced is through the use of references from contracts performed for goods and services.

Environmental Management Legislation

Where relevant and proportionate to the contract, you should clearly state what is required in the specification with regards to meeting all relevant environmental management legislation. Bidders may self-certify that they have complied with all relevant and current environmental legislation. Bidders should provide details of any remedial action that has been taken to address any breaches which have been committed. You should not select bidders that have been prosecuted or served notice under environmental legislation. You should not select bidders that have been prosecuted or served notice under environmental legislation.

Health and Safety Legislation

Any measure you take to ensure the promotion and compliance of health and safety in public procurements must be relevant, proportionate and not overly burdensome. The degree to which health and safety requirements are specified within procurement documentation will vary according to the goods and services being purchased.

Although in principle self-certification should be sufficient at the selection stage, where relevant you should ask bidders to provide evidence to demonstrate that they comply with the relevant and current health and safety legislation and actively promote and manage good health and safety practice. You should monitor contracts to ensure compliance with health and safety requirements.

You must not select any bidders if they do not meet the stated minimum requirements of health and safety legislation for qualifying to perform the contract.

Quality management procedures

Where relevant and proportionate to the subject matter of the contract, you should ask bidders to demonstrate how they have adopted quality management procedures; such as how do they manage communication with their clients to ensure continued delivery of a service or product that meets their needs.

More on economic and financial standing and technical and professional ability can be found under the Statutory Guidance for the Selection of Tenderers and Award of Contracts.

Scoring Methodology for Selection Stage Evaluation

You should ensure that a scoring methodology is developed to assist with evaluation at the selection stage. The evaluation criteria should be published under II.2.9 (Information about the limits on the number of candidates to be invited) of the Contract Notice or II.2.14 (Additional Information) of the Social and other Specific Services Contract Notice (if you decide to advertise your C&SS requirements) to allow bidders to clearly see how their responses will be evaluated. However, if you are unable to publish these criteria in the Contract Notice, as an absolute minimum, you must state them in the Procurement Documents.

An example of scoring methodology is provided below:

Evaluation Criteria for Selection Stage	
Score	Description
0 - Unacceptable	Nil or inadequate response. Fails to demonstrate previous experience/capacity/capability relevant to this criterion.
1 - Poor	Response is partially relevant but generally poor. The response shows some elements of relevance to the criterion but contains insufficient/limited detail or explanation to demonstrate previous relevant experience/capacity/capability.
2 - Acceptable	Response is relevant and acceptable. The response demonstrates broad previous experience, knowledge and skills/capacity/capability but may lack in some aspects of similarity e.g. previous experience, knowledge or skills may not be of a similar nature.

3 - Good	Response is relevant and good. The response is sufficiently detailed to demonstrate a good amount of experience, knowledge or skills/capacity/capability relevant to providing similar services to similar clients.
4 - Excellent	Response is completely relevant and excellent overall. The response is comprehensive, unambiguous and demonstrates thorough experience, knowledge or skills/capacity/capability relevant to providing similar services to similar clients.

Once completed ESPDs are received the evaluation panel must assess the responses in accordance with the scoring methodology which was drawn up before the ESPD was issued and the timetable issued. These issues cannot generally be revisited at the award phase. At this stage of the process supplier's suitability is being assessed on the basis of:

- Business probity and criminality
- Technical and professional ability
- Economic and financial standing

The technical aspects such as relevant experience and capacity will normally be assessed by the Service Area. The generic aspects such as financial health, business probity etc will generally be evaluated by CPS or the finance team.

The Council has introduced a Financial Probity Assessment which provides guidance on the various probity checks to be undertaken to establish the financial stability of tenderers.

The Council has an information sharing protocol in place with Police Scotland to cross check responses against police databases especially those services identified as vulnerable to infiltration by organised crime.

CPS will be required to produce an evaluation report that clearly identifies the reasons for rejecting suppliers to assist with debriefing. As such it is vital that sufficient and appropriate records are kept by the evaluation team so that scores can be adequately evidenced.

3.10 Issue ITT



3.10.1 Overview

This section covers the tender stage of the process. Timescales for each procedure differ and are outlined in [Choice of Procedures](#).

It is important that you maintain fairness and transparency during this stage, particularly when providing information to suppliers at meetings and/or following questions on the ITT documentation. This is the most common stage for challenge by unsuccessful tenderers and for that reason communications, where possible should be through CPS and care taken that all actions stand up to scrutiny.

ITTs normally go to all short listed companies at the same time, although the Open Procedure allows for ITTs to be issued on request at any point prior to the date set for submission of tenders. When an ITT is issued near to the closing date, the recipient should be made aware that the submission date is imminent.

3.10.2 Bidders' Day

You may wish to hold a suppliers conference or bidder's day where all tenderers are invited to attend at the same time and venue to discuss the ITT. This can happen before or after ITT is issued. The purpose of the meeting is to highlight and clarify aspects of the ITT. Care should be taken not to disclose commercially sensitive information such as the project budget.

Meetings should be opened by setting out the agenda and introducing the Council officers etc involved. This will generally be followed by a presentation, setting out the aims of the procurement process and expected business benefits. If appropriate, there can then be a walk round of any facilities/site, otherwise it is straight into a question and answer session.

The overriding principle that should be applied is equality of information. Questions raised and answers provided should be confirmed in writing and sent to all tenderers whether they were represented at the meeting or not. This information should be provided not later than 6 working days before the tender return date.

A suppliers' meetings will not always be necessary for every tender exercise. A judgement will have to be made, prior to the issue of the ITT, whether or not such a meeting is required, in order that it may be planned into the procurement timetable. Sufficient time should be allowed for tenderers to take account of outcomes from the suppliers' meetings.

3.10.3 Questions from suppliers

Once a procurement has commenced care must be taken and a process put in place to ensure that all correspondence between the suppliers and the Council are carried out in a fair and transparent manner. All correspondence should be made through CPS who will respond to questions by circulating the anonymised question along with the answer to all of the suppliers involved in the process. All questions must be responded to at least 4 days for Restricted procedure or 6 days for Open procedure prior to the date set for tender return. For other procedures CPS will advise.

In accordance with best practice CPS will provide details of the deadline for the submission of questions and the date by which all questions will be answered within the ITT documentation. These dates will be prior to the closing date for expressions of interest or tenders and allow sufficient time for all suppliers to consider information which may be relevant to their proposals.

3.11 Open and Evaluate Tenders



3.11.1 Overview

This section provides guidance as to maintaining transparency and impartiality throughout the process of tender evaluation. It is essential that the evaluation of tenders is robust and properly evidenced to minimise the risk to the Council of legal challenge and ensure fairness to those tendering.

3.11.2 Receipt of Tenders

The opening and evaluation of tenders for procurements in excess of £25,000 should always be carried out by CPS unless CPS has authorised otherwise. This is a requirement of the CSOs.

As PCS will in most cases have been used it is simply a case of “unlocking” the electronic postbox after the deadline has passed. If however, your process is an exception agreed by CPS and you are using a manual paper based process then the following process should be followed:-

1. Appoint Tender Opening Panel – minimum of 2 people, one being an officer from CPS;
2. Meet as soon as possible after tender submissions to open tenders- date stamp tenders and sign;
3. Complete ‘Tender Opening Form’ note price and whether form of tender is signed;
4. Return, unopened any late tenders

In a case where only one tender is received a decision will need to be taken whether to restart the competition or to proceed as a Non-Competitive Action (NCA). An NCA will require approval from the Commercial and Procurement Manager before the process can proceed.

It is the responsibility of all suppliers to ensure that their bid is submitted in accordance with the rules set out in the ITT and before the specified deadline. Failure to do so will almost certainly result in exclusion on the grounds of fairness to other bidders.

3.11.3 Tender Evaluation

Technical and quality evaluation is one of the most important stages of the Procurement Journey. This stage of the Journey ensures that:

- the contract award decision is objective

- the decision making process is fair, transparent and auditable
- the Council can demonstrate best value in the tender process

Tender Evaluation happens once the deadline for tender submissions has passed. An evaluation panel will require to be established comprising individuals with demonstrable technical ability to evaluate tenders: ideally those who have been involved in developing the procurement strategy and writing the ESPD and ITT.

A scoring guidance sheet, which sets out what you would expect to see or what 'good' looks like can be helpful but would need to be prepared in advance of tenders going out. The process to agree the final scores must be fully transparent and documented. CPS will evaluate the commercial aspects of the tenders separately such as price. **As a matter of good practice, no member of the evaluation panel should assess both the quality/technical elements and the commercial elements i.e. price of the tender.**

3.11.4 Roles and Responsibilities of the Evaluation Panel

The role of the evaluation panel is to evaluate, in an open, proportionate and transparent manner, the quality element of submissions from each tenderer and ultimately to determine which tender is the most economically advantageous.

There will normally be a minimum of 3 evaluation panel members and a representative from CPS acting as Chairperson.

Ideally the panel membership will be consistent throughout the entire process from pre-qualification to presentations and site visits. Panel members should therefore ensure early on in the process that they keep an appropriate number of days free in accordance with the project or Procurement Plan.

The evaluation panel should be able to withstand any scrutiny. Any connections between an evaluation panel member and a tenderer must be disclosed to the Chairperson of the evaluation panel at the outset so that an alternative panel member may be identified if necessary and to avoid prejudicing the process. Evaluation panel members must not accept gifts or hospitality from tenderers and should avoid contact with tenderers during the tender process.

Panel members will be required to read and evaluate responses individually using the agreed scoring matrix. Each panel member must ensure that their evaluation sheets contain the strengths and weaknesses for each question for each bidder as these will form the basis of discussion at the consensus meeting and assist in providing debrief information to unsuccessful tenderers.

These records will provide an audit trail leading up to the award decision and may require released following a freedom of information request or form the basis of any response to legal challenge. As such evaluation sheets submitted without sufficient detail as to strengths and weaknesses will be rejected by the Chairperson and returned to the panel member for elaboration.

3.11.5 Scoring

The tender evaluation process must not be based on irrelevant considerations or prior knowledge of the suppliers. Evaluation scores must be made on the basis of the information requested and included in the responses. To ensure fairness, the panel must not take into

account any personal knowledge when evaluating tenders. To ensure consistency, the evaluation panel must evaluate tenders according to the strictly defined scale of scores contained in the evaluation sheet. Tender responses must be evaluated against the published criteria and not against each other.

Price will be scored separately by CPS or Finance on an objective analysis and will not normally be disclosed to the panels until the qualitative assessment is finalised to avoid distortions in scoring.

3.11.6 Presentation / Site Visits

Presentations and site visits can be included as part of the evaluation process to offer the opportunity for the evaluation panel to gain a clearer and better understanding of the tenderers proposal.

The purpose and anticipated outcomes of the presentations and site visits must be made clear in the Invitation to Tender (ITT) documentation including details of how the visits will count towards the overall evaluation of the tender submissions.

The focus of these events must be on the specification and delivery of the product or service and not on the characteristics of the tenderer.

3.11.7 Consensus Meetings

Once the tenders have been individually scored a consensus meeting will follow to agree the final overall quality score.

At the consensus meeting questions with differences in scores will be discussed and if appropriate individual scores may be changed (if for example something has been missed). The consensus meeting will be conducted by a Chairperson from CPS, and the panel members will collectively come to a consensus as to the final agreed score. The Chairperson will ensure a formal record of the discussions and decisions taken at the meeting.

Averaging is generally not acceptable other than for low value low risk contracts e.g. Quick Quotes as it will not provide the necessary rigour or challenge to reach the best outcome for the Council.

Consistency of scoring may be improved where one question is scored for all tenders and then the panel move on to the next question, though care must be taken not to compare bids.

The evaluation process is concluded with the preparation and signing off by the Chairperson and individual panel members of the evaluation documentation including recommendations on the award.

Panel members may be required to assist with debriefing of unsuccessful tenderers.

3.11.8 Confidentiality & Conflict of Interest

All tender responses must be treated with utmost confidentiality by panel members. Panel members should ensure that tender responses are securely stored at all times. The evaluation panel should not discuss any element of the tender evaluation process with work

colleagues or any other party, unless it is in the context of seeking advice on a particular issue.

The role of CPS in the evaluation panel is to ensure an impartial and objective approach is taken to the evaluation of tenders. Some suggested "Do's and Don'ts" for panel members are listed below:

Dos and Don'ts of Tender Evaluation

Do	Don't
Make note of areas that are unclear for clarification with the bidder.	"Read between the lines" or make assumptions.
Read the submission at face value and score on the basis of the information provided	Collude with other panel members to agree scoring collectively.
Score tenders independently and discuss any irregularities at a Tender Consensus Meeting	Make changes to the evaluation criteria during this process - the criteria MUST be the same as that published in the ITT
Ensure full justification for scoring is provided and recorded for each question to assist with debriefing	Make comments such as 'ok' or 'average'.

3.11.9 Freedom of Information Requests

Anyone may make a Freedom of Information (FOI) request and information of any age and in any format can be requested, including word documents, emails, spreadsheets, databases, videos and hardcopy files.

Requests can be received anywhere within the Council and must be answered within 20 working days. Requests for information do not have to specifically mention FOISA and applicants do not need to explain why they want the information.

The [Scottish Government's Procurement and Freedom of Information Guidance](#) provides specific details of the type of information which should be released (see Annex A of the Guide) and also provides guidance as to when this information should be withheld and the reasons for this.

3.12 Post Tender Clarification



3.12.1 Clarification

Often there will be parts of the tender that are not clear or there is a concern that an error might have been made and clarification will have to be sought. For example, if a bid appears especially low, or especially high on price, it may be that an arithmetical error has been made.

Clarification may also be sought from tenderers on matters of quality performance or particular terms and conditions of contracts.

CPS will conduct the clarifications, following feedback from the evaluation panel where necessary, and give all tenderers who are able to meet the requirements of the specification the same opportunity to engage in tender/bid clarification so the process is fair and transparent.

In seeking clarification, all communications with tenderers must be properly recorded so that an audit trail is maintained. **Negotiations in relation to price or other areas where improvements may be possible are not permitted.**

3.12.2 Post Tender Negotiation

Post Tender Negotiation (PTN) should not be confused with "tender" or "bid clarification" which is purely for the purpose of clarifying aspects of the tender which are perhaps ambiguous or a minor error has been made.

PTN is conducted after the receipt of formal tenders with the preferred supplier before the award of any contract and with a view to improving or enhancing Value for Money (VFM). **CPS shall ensure that any PTN conducted does not distort competition by changing the outcome of the competition as this would carry a high risk of legal challenge.** Nor should any changes be made which would result in a contract being awarded on terms more favourable to the tenderer.

PTN as part of the competitive tendering process in the open and restricted procedures, may be used to refine and improve the bid(s) from the preferred supplier(s) in order to ensure that prices, delivery or associated terms of the contract are competitive.

The potential areas for negotiation will differ for every contract but typical topics might be the terms of payment; quality of goods or services; supply and cost of spare parts; earlier delivery or completion dates; warranties and guarantees; documentation requirements; compensation for failure to meet specified requirements (e.g. of delivery, quality etc); and procedures for remedial action for unsatisfactory service. The list is not meant to be exhaustive.

PTN must not become any form of "Dutch Auction": unfairly trading off one tenderer against another by using the lowest tender to seek a reduction in costs from the other tenderers.

It must be a controlled and documented process. It should not be used automatically on all procurements.

A clear "audit trail" must be available so that it can be seen that it was conducted in a fair manner. The file should show:

- the justification for PTN
- the approval for PTN (at a suitably senior level of management)
- the aim of the negotiation
- the precise record of all exchanges written and verbal
- the approval for the award of contract

If carried out appropriately negotiations can set the supplier relationship off on the right footing.

3.13 Contract Award



You should now be at a stage where you have identified the successful tenderer(s).

3.13.1 Committee Reports

Where required by CSOs a Committee report to the Finance and Resources Committee recommending contract award should be prepared by CPS and the Service area and signed off by the appropriate Service Area Management board/Director. In all other cases Tender Reports should be prepared and submitted to the relevant management committee/team.

Committee reports recommending award should be written in accordance with the Council's [report writing guidance](#) and follow the Corporate template which CPS have adapted to provide a template for the recommendation of contracts. The report should contain references and explanations as set out in the checklist which can be provided by CPS:-

- Summary of the process to date
- Recommendation of award & request for approval
- Technical & commercial evaluation including price /quality split and reasons for this
- Benefits and savings available including community benefits
- Details of any significant risks still present
- Sustainability considerations (social, economic and environmental)

3.13.2 Notification of Contract Award Decision

Once approval is obtained the successful and unsuccessful tenderers can be notified by CPS of the outcome. They should be notified as soon as possible. Where Committee approval is necessary and has not yet been granted the successful tenderer can be notified that the Council intends to award the contract to them but that this will be subject to Committee approval and the expiry of the standstill period (10 days from approval of the Finance and Resources Committee if no legal challenges are received).

Standstill notices will be sent out by CPS as soon as possible after the contract award decision has been made. The standstill period allows unsuccessful tenderers and candidates to receive feedback on their tender submissions and the opportunity to challenge and bring court proceedings to prevent a proposed contract or framework agreement being awarded if the tenderer believes and can establish a breach of the procurement rules has occurred.

While the mandatory standstill period **does not apply** to below threshold procurements, to procurements otherwise outside the full scope of the Directives or where there is only one tenderer as best practice the Council should follow the standstill period on a voluntary basis. **Where it does letters will state that it is doing so on a voluntary basis to avoid any legitimate expectation on the part of any aggrieved bidder that the full procedural**

requirements of the Regulations will apply and as such additional legal grounds for challenge.

3.13.3 Debriefing

Debriefing is a way of helping suppliers to improve their competitive performance, which in turn can have benefits for the Council in future. Unsuccessful suppliers and tenderers have a right to know the reasons for their rejection. Enough time and resource should be given by the evaluation panel to assist CPS in the debriefing process. Debriefing should cover the positive aspects and suggested areas for improvement of the unsuccessful bid.

3.13.4 Challenges during Standstill

If court proceedings are commenced during the standstill period then the Council cannot enter into the contract until the Court allows.

CSOs require Legal, Risk and Compliance to be informed when proceedings are served and that appropriate action is taken.

3.13.5 Award

Once the standstill period has passed and debriefs provided then, provided there has been no challenge from unsuccessful tenderers and any necessary approvals have been obtained in accordance with CSOs, the contract can be awarded. Contract Acceptance letters will be issued by CPS.

The contract documentation will be collated and finalised by CPS to reflect the successful tenderers submission and agreed terms and condition. See [Contract Implementation](#).

CPS will publish the Contract Award Notice in the Official Journal of the European Union (OJEU). This is a public announcement of the outcome of a public procurement exercise and is mandatory. It is mandatory for ALL procurement exercises exceeding the value of the EU advertising threshold, including those that did not require full advertising at the outset of the process e.g. Part B service contracts. The notice must be published within 48 days of the contract award date.

Pre Contract Award Checklist

Description	Y/N
Can all information provided to a supplier be justified in the event of a formal complaint and/or legal action?	
Was the standstill notice sent to all tenderers and candidates?	
Has the standstill period actually passed?	
Were any tenderers or candidates concerned not notified by fax or email?, If so 15 day standstill applies	

END OF ROUTES TWO AND THREE

4. The Contract Management Framework



4.1 Purpose and Scope

Having awarded a commercially sound, robust contract complying with the procurement rules it is then essential to contract manage the relationship with the supplier so that what has been contracted for is achieved and constructive relationships develop.

The purpose of this section of the Handbook is to introduce a consistent, Council wide, documented contract implementation and management process. Having a consistent, regularly monitored process will ensure better compliance with contract conditions and specified outcomes and improve our chances of delivering the contract objectives on time and within budget.

Contract Management is about ensuring all parties to a contract fully understand their obligations and responsibilities and perform them as efficiently and effectively as possible.

The function of Contract & Supplier Management is to:

- ensure a contract is successfully executed i.e. that the Council gets what it is paying for in terms of the specification, contract conditions, outcomes, KPIs etc
- provide a formal system for monitoring supplier performance against contract requirements
- ensure there is clarity of the roles and responsibilities (Council and supplier)
- monitor compliance with the terms of the contract, KPIs, and service delivery through open communication
- ensure planned savings are realised

- identify potential additional savings and benefits through proactive contract and supplier management
- mitigate risk and avoid disruptive events by proactively managing remediation programmes
- provide a focus for development of initiatives/innovation/embedding of sustainability e.g. new ways of working
- deliver learning and knowledge transfer
- drive continual improvement

The importance of effective contract and supplier management should not be underestimated. With around £593M spent in 2013 on contracts with third parties by this Council and increasing funding constraints getting value for money and ensuring that we deliver contracts successfully is critical. There is a continued need to drive on-going savings and studies suggest that effective contract management may deliver between 5-7% additional savings per year on top of initial procurement savings.

Supporting our local economy, local businesses and SMEs are also important as is ensuring quality and continuous improvement while meeting changing demands and expectations. If as a Council we ensure that we have strong contract management processes in place which are applied these will enable us not only to actively enforce compliance and improve the management of risks but will improve supplier relationships through increased effective engagement.

Please note that some of what follows is a draft process that we will be piloting before being fully rolled out across the Council such as the use of balanced scorecards. It is promoted as best practice by the Scottish Government and has been used successfully by a number of Scottish Councils with near immediate and demonstrable improvements. You are however encouraged to make use of the basic processes and templates such as supplier management plans and supplier review meetings.

Please also note that the intentions for contract and supplier management will require to be made clear in the tender documents.

4.2. Contract Implementation

4.2.1 Purpose & Scope

This is the part of the process which sets out the activities associated with implementing a new contract to ensure;

- supplier(s) have all the information they require to plan the delivery of the new works, services or supplies and the change-over of users from one contract to another; and
- users are informed about the new contract and have all the information they need to use the contract and get the best from it e.g. suppliers contact details, information on the goods/services available from the contract

CPS will work with the Service Area to ensure the following actions are carried out:-

- Updating the Contracts Register
- Communicating the new Contract
- 'Kick off' meeting with the Supplier
- Catalogue Management
- Handover Packs
- Supplier/Buyer Events

4.2.2 Updating the Contracts Register

An accurate contract register that documents what we are buying and from whom is essential for the Council to manage its contracts effectively. CPS hold the Council's contract register which for all contracts in excess of £25,000 sets out the contract owner, contract subject matter, name of contractor, estimated value, start and end date.

Some of the Contract Register information will shortly require to be made publicly available (a requirement of the Procurement Reform (Scotland) Act 2014) and reported to Committee so Directorates will require to assist in keeping this critical document up-to-date.

Where the contract has been tendered through PCS then CPS will enter the initial details. The contract owner (as required by CSOs) is responsible for keeping these details up-to-date and must notify CPS of any changes such as extensions or early termination.

4.2.3 Communication

Having completed all of the vital work to get the procurement to the point of award it is essential that it is then communicated effectively. Communication of the contract award to potential users and key stakeholders is essential to ensure awareness of the contract and address issues of non-contracted spend. Please work with CPS and Communications in determining the appropriate communications plan.

4.2.4 Post Award Supplier Meeting

A first meeting with the successful supplier should be held by the contract owner as soon as possible after the contract has been awarded. The purpose of this meeting is to discuss the contract implementation phase and agree roles, responsibilities, handover information from the out-going supplier and identify and agree activities and timescales as per the specification.

It is important to keep in regular contact with the supplier during the contract implementation phase and to arrange meetings or contact when required.

4.2.5 Catalogue Management

While contracts such as social care and construction projects are unlikely to involve catalogues, contracts for goods almost certainly will. Standardised catalogue content should be produced for commodities that are easily validated and published onto Oracle etc.

The process of catalogue management can be very time-consuming. It is therefore important that sufficient time is built in for Catalogue Management where required.

4.2.6 Handover Packs

Handover packs will be used to provide an easy to reference two or three page summary of the main provisions of the contract. These should be prepared by CPS with assistance from the Service Area and act as a guide for end-users and contract owners as to the key provisions of the contract. Handover packs should be in the form of the template provided by CPS. The key information will include:

- background to the contract and objectives
- details of the goods, services or works available
- prices
- contract owner/manager details
- supplier contact details
- ordering and invoice process
- returns/complaints/escalation process
- migration/transition process
- contract and supplier management process
- KPIs
- payment provisions i.e. 30 days or early payment discount
- community benefits deliverable

Any information pack should be proportionate to the contract, and should demonstrate how it delivers best value and provides information relating to the benefits of the contract (e.g. cost savings, KPIs, improvements in quality and service).

4.2.7 Supplier/Buyer Events

Depending on the size, value and risk level involved with the contract, a useful way to raise awareness of the contract amongst end users is to organising a Supplier/Buyer 'launch' event to give users who have yet to meet, the opportunity to meet each other, and for the supplier to present details of the contract. This is also an opportunity to distribute information packs/buyers guides. Where a large number of users are affected, it may be useful to publish a news item via the Orb.

Contract Implementation Checklist

Description	Y/N
Update the Contract Register	
Complete the lessons learned document with CPS	
Communicate and publicise the contract to key stakeholders	
Arrange 'kick off' meeting with the supplier to arrange next steps	
Arrange for e-Catalogue/punch-out/e-invoicing etc	
Handover pack for (1) end users and (2) contract owners	
Consider holding a supplier/buyers event where users can meet the suppliers and suppliers can demonstrate or introduce their products or services	

4.3 Contract Management – Segmentation of Risk

4.3.1 Level of Contract & Supplier Management – Assessment tool

It is important when developing the Contract Management Strategy at the Procurement Plan stage to determine the level of management required for the proposed contract once awarded, based on the risk to the Council as this will influence and determine the frequency and content of supplier review meetings.

These risks can be categorised as

- Financial Risks
- Risks to vulnerable children and adults
- Risks to Business Continuity
- Reputational Risks

Clearly, the higher the risk to the Council, the more important the financial probity assessment will be.

The following table will help you to assess the level of contract management required and that time and effort are proportionate to the value and risk related to the contract. The tool in 4.3.2 below together with this table and in the context of the value of the procurement can help to assess the level of risk.

	Low Risk	Medium Risk	High Risk
Costs arising from Supplier Failure (e.g. penalties, replacement services, re-procurement)	£0 - £100,000	£100,000-£500,00	£500,000 plus
Impact of Supplier Failure on Vulnerable Children and Adults	No impact	Minor impact; procedures are in place which would minimise distress	Potential to cause significant distress; could impact on safety of vulnerable individuals
Reputational impact on the Council of supplier failure	No or limited impact on stakeholders; no impact on stakeholder perception	Some impact on stakeholders; small to moderate negative impact on stakeholder perception	High impact on stakeholders; significant impact on public perception
Impact on Business Continuity	No impact	Minor service disruption; some disruption to non-critical services	Significant service disruption
Impact on Risk from supplier failure (e.g. loss of PI cover, reduction in risk mitigation activity etc)	No or limited increase in Council risk exposure	Some increase to Council risk exposure	Significant increase to Council risk exposure

4.3.2 Level of Risk

The Contract and Supplier Management Assessment tool below together with the above table and the [Council's Risk Management Policy and Framework](#) and sections on [Business Continuity](#) will assist you in determining whether the level of risk for a specific contract and supplier should be **HIGH / MEDIUM / LOW**. The assessment considers the potential impact on the Council's business or costs to the Council should the supplier's performance fall below expected standards or go out of business, based on criticality, dependency and the number of expected customers. Other factors such as value, length of contract, dependency, number of customers/end-users, public visibility, openness to complaints or challenges, risk, performance criteria and compliance with requirements of governing bodies (e.g. Care Inspectorate grades for care services) may need to be considered.

High

<p>Leverage Items (MEDIUM)</p> <p>Where the Council might exploit its purchasing power e.g. high spend areas with many sources of supply, or collaborative corporate contracts, high volume routine items, frameworks such as Scotland Excel or Government Procurement Service</p>	<p>Strategic Items (HIGH)</p> <p>Strategic or critical to Council services, few sources of supply, high value, large spend area, specifications may be complex e.g. ICT</p>
<p>Routine / Non- Critical Items (LOW)</p> <p>e.g. low value/ high volume supplies such as stationery, furniture, computer consumables etc where there are many existing alternatives</p>	<p>Bottleneck Items (MEDIUM)</p> <p>few sources of supply or alternatives available, specifications complex or if supply fails the impact upon the Council could be significant e.g. partnering arrangements, very few suppliers in the market, low value supply which is critical to frontline service</p>

Low →

Once the contract score as to level of Contract and Supplier Management has been calculated the appropriate level of management required for individual contracts should be determined using the table below.

Contract Management Level	Minimum Requirements
Low	<p>Basic Contract and Supplier Management Plan</p> <p>Annual Contract Review Meeting</p> <p>Basic monitoring - ensuring compliance with the contract by monitoring management information (MI) from the supplier / end-user feedback, and the delivery and compliance of the contract using 4 high level indicators i.e. cost, quality, delivery, service or basic balanced scorecard.</p>
Medium	<p>Basic Contract and Supplier Management Plan</p> <p>Quarterly Contract Review Meeting</p> <p>managing the performance of the contract and the supplier through monitoring MI / end-user feedback and by expanding the 4 high level indicators above/basic balanced scorecard, as appropriate, coupled with a minimum of one performance review meeting held per annum.</p>
High	<p>Contract and Supplier Management Plan</p> <p>Governance – Project Board</p> <p>Risk Register & Issues Log</p> <p>Full Balanced scorecard approach (to be piloted)</p> <p>Quarterly Contract Review Meeting at a minimum managing the performance of the contract and the supplier using a combination of MIS monitoring, and use of the full balanced scorecard (Appendix II) to monitor performance in support of quarterly meetings.</p>

4.3.3 The Contract & Supplier Management Plan

Once the appropriate level of Contract and Supplier Management has been assessed a plan for managing the contract, which includes the following points, should be put in place. This is the responsibility of the Service Area managing the contract (a requirement of the CSOs) but help can be obtained from CPS and CPO.

- The individual or team responsible for managing the contract (a requirement of the CSOs)
- The budget for contract management – for major contracts between 2 & 3% of the contract value based on government recommendations
- Whether training or business change will be required

An example is shown below:-

Example Contract and Supplier Management Plan

Key contact	Role	Responsibility
	City of Edinburgh Council representative	Name, email, address and phone number
	Supplier Contract Manager	Name, email, address and phone number
	Lead Customer Contact	Name, email, address and phone number
	Lead User Contact	Name, email, address and phone number
	Other Key contacts	Name, email, address and phone number
Review Meetings	Date of annual review meetings	
Contract Management Level	Determine contract management level required using tool above	High/Medium/Low
Contract Overview and Objectives	List key contract outcomes and objectives as per specification, KPIs etc	
Performance Management Framework (PMF)	Use of <u>balanced scorecard</u> (for High level) as adapted for level of contract management required and tailored to specific contract requirements	
Governance	Project Board/Sponsor – frequency of meetings etc	
Risk	Register – responsibility for owning, updating, reviewing and auctioning. How regularly will it be updated?	
Issue log	Log – who is responsible for maintain this and how regularly will it be updated	
Exit Strategy		
Escalation Process	First point of escalation in CEC	Name, email, address and phone number
	First point of escalation in supplier organisation	Name, email, address and phone number

The Plan will need to be agreed with your supplier.

Note – all of the above including the routes for escalation and the review meeting schedule should have been built into the initial Contract Management Strategy or Procurement Plan and tender, with reference to the fact that a Contract and Supplier Management plan will be developed.

4.3.4 Other Considerations

Especially important for long term contracts is the need to test value for money through benchmarking etc. The contractor needs to be incentivised to generate savings and deliver efficiently. Contract managers need to have a good understanding of the contract in order to challenge invalid claims.

It may be worth considering use of the 'Statement of Account' method' which requires a statement of intended charges supported by evidence of successful service delivery. Once agreed an order is raised. This method can remove disputed invoices and speeds up the payment process

Develop a monthly checklist which sets contractual and statutory responsibilities; client and contractor responsibilities and actions and monitors performance against objectives.

Customer Satisfaction - this should be an easily measurable KEY PERFORMANCE INDICATOR. regularly check customer satisfaction and conduct independent validation checks; use feedback to drive service user improvements

Health & Safety Compliance –regular inspection/audits may be necessary.

4.3.5 Performance Management Information

The Contract and Supplier Management process is supported by robust information relating to the performance of the contract and supplier. This information can be obtained from the management information provided by the supplier and feedback from the customers on how they feel the contract and supplier are performing. It is also useful to ask the supplier to provide feedback on their and the contracts' performance which is not captured through the management information. Examples of management information that might be usefully sought can be provided by CPS.

4.3.6 The Balanced Scorecard

The balanced scorecard can be a useful tool for ensuring that all feedback is consistent against pre-determined measurements. Its use is in line with best practice promoted by the Scottish Government and it can be used at a very simple level for example:-

Fig I Balanced Office Supplies Scorecard

<u>Quality</u>	<u>Service</u>
Fit for Purpose	Responsiveness
Returns	Complaints
Corporate Social Responsibility	Management Information
Continual Improvement/Innovation	Communication
<u>Delivery</u>	<u>Cost</u>
Lead Time/Delivery Time	Pricing Stability
On Time delivery against Objectives	Invoice Accuracy
Accuracy	Cost Reduction Initiatives

Within the 4 main criteria – **Quality, Service, Delivery and Cost** –sub-criteria are identified against which you score according to a range of 1-4 (Major Concerns (1) to Exceeding Expectations (4)). Guidance will need to be provided within the scorecard which identifies what the contract manager should consider when scoring. In addition to scoring the sub-criteria it is essential that comments are provided to help feedback to suppliers.

The level of management required will influence how the balanced scorecard is used i.e. the office supplies is likely to receive a low level assessment whereas care and support services a high level assessment potentially using the full **balanced scorecard**. The balanced scorecard can be tailored to the requirements of the contract with certain aspects weighted more heavily. **Note – consider what it is important to measure and tailor your balanced scorecard accordingly.**

The Invitation to Tender or specification will have identified how frequently the supplier has to provide the management information. To ensure there is consistency when scoring the balanced scorecard it is important to provide the scorers with some guidance as to what level of performance equates to a specific score.

It will not be possible for the contract manager to manage every aspect of the contract and deal with every problem relating to the performance of the contract and supplier e.g. a late delivery. As such it is useful to have an escalation model which identifies when a problem should be escalated and to whom which will be documented in your contract and supplier management plan.

4.3.7 Contract & Supplier Performance Review Meetings

Performance Review Meetings are an important part of the Contract & Supplier Management process and provide the contract management 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.

A standard template comprising a meeting agenda, minutes and action notes are available from CPS to assist in the management of performance review meetings.

Balanced scorecards can be used to gauge where performance is improving, remaining static or declining. Financial checks can also be made if required in advance, to affirm the suppliers current financial standing where this may have changed since contract award.

Meetings should focus on:

- Review of Actions and Minutes from previous meeting(s)
- Review of risks and Issues
- Supplier Business Review, with updates on new products / product developments, customer-affecting issues (e.g. product issues, recalls), complaints, value adds
- Council Business Review / Service Improvement Plan Update
- Scorecard review – (to determine current level of performance (Improving / Degrading))
- Contract performance against target / SLA / KEY PERFORMANCE INDICATOR's
- Issues for escalation
- Benefits Realisation (E.g. Community Benefits, sustainability)
- Financial Monitoring (Spend monitoring, P2P, Invoicing, Billing, financial stability).
- Process, Standards, Regulatory
- Areas of Improvement (e.g. Innovation, new process) and any need for a remediation plan
- Change Control

These are just suggested agenda topics for discussion and will need to be adapted for specific types of contract and/or suppliers.

The initial Performance Review or 'kick-off' meeting should also include a 'Lessons Learned' session with the supplier on the tendering and contract implementation process. and cover areas such as roles and responsibilities, performance levels, invoicing arrangements. Please feed this information back to CPS to enable future improvements.

Meetings should recur as agreed until the contract approaches its completion, and should be documented (minutes, actions, change in performance) throughout, with actions followed up as agreed. Minutes of Meetings, agreed actions and scorecard results should be communicated to all stakeholders following each meeting (supplier, CPS & Service Area management).

4.3.8 Change Control

Changes or variations to services, procedures or contracts are likely to occur during the contract period, especially lengthy and/or major, strategic contracts. These may include changes to:

- Service Delivery
- Scope of work
- Performance

- Costs
- Product availability / changes to specification / obsolescence / revision of rates
- Whether the Contract continues to represent value for money

Management of change (Change Control) is an important part of Contract Management. As such change control procedures should be included in the contract and discussed at the 'kick off' meeting as well as the roles and responsibilities of both parties in the change control process and procedures for raising, evaluating, costing and approving change requests.

If a specific change, or cumulative changes significantly increase or decrease the scale or scope of the services provided under the contract then this may not be permitted by EU rules. When this is in doubt, the change may be referred to Legal, Risk and Compliance for guidance.

4.3.9 Change Control Process

The Change Control Procedure should be used by the Council and supplier to effect changes to the contract, to provide documentary evidence of the change and agreed actions unless there is a specific procedure set out in industry standard contracts.

A Contract Change Notice (CCN), should be completed and signed by parties to the contract. Documenting the change in this manner will ensure that involved parties have clarity and visibility of the change, which can be readily communicated to stakeholders. The CCN should be given a sequential number, logged in a change control log and should detail:

- Contract Title, Originator of Change, Date Change Proposed
- Reference to any attachments or addenda
- The reason for the Proposed Change
- Full details of the Proposed Change
- Details of the Impact (financial / operational)
- Date of Agreement of the Change
- Name, Title, Date and Signature of contracting parties.

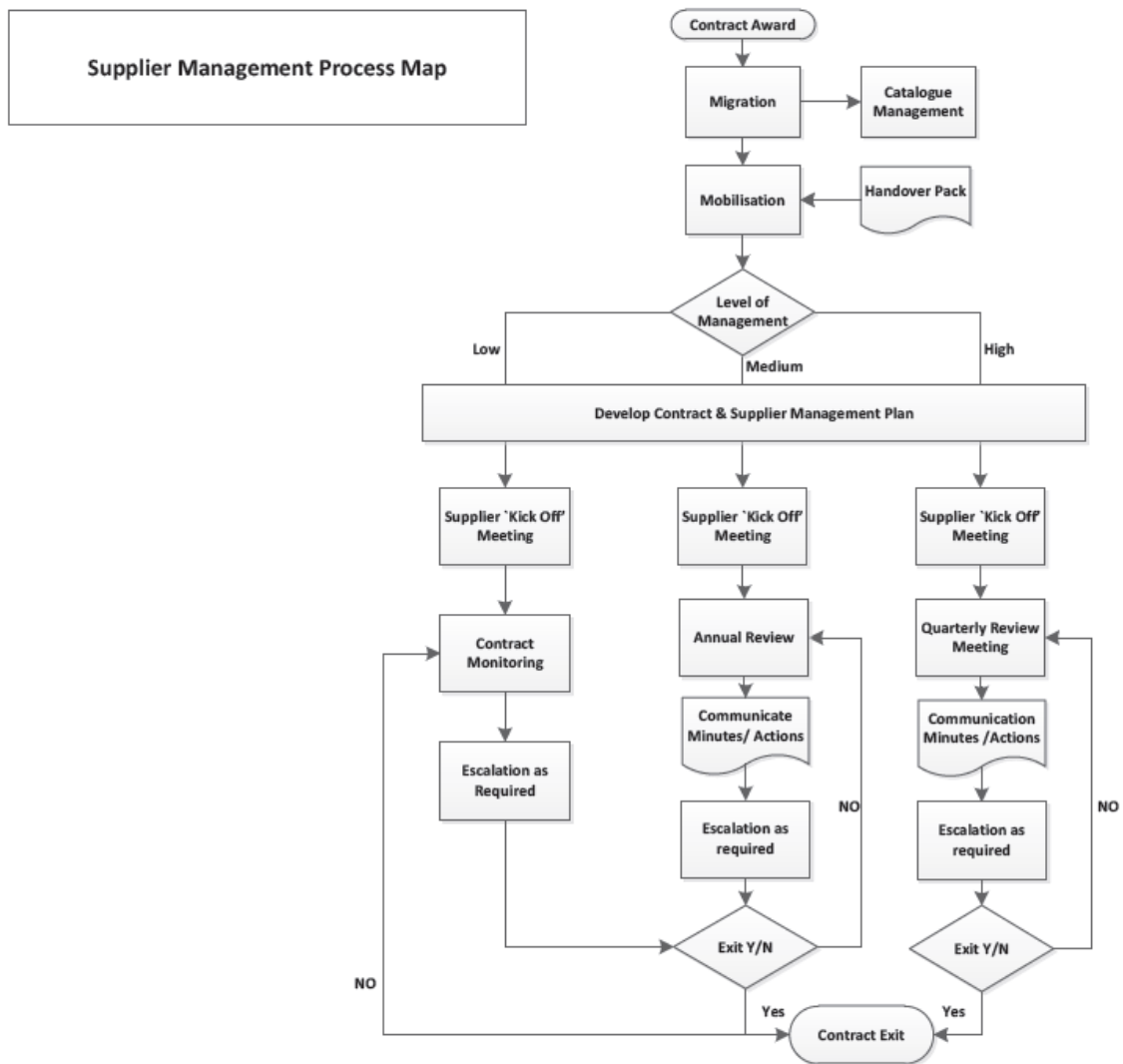
Until such time as the CCN is signed by contracting parties, it should be clarified to the supplier that they will need to continue to provide and make available to the Council the services as originally contracted. Once the CCN is agreed and signed, a signed copy of the change should be provided to the supplier, and a copy retained with the contract papers.

All stakeholders and end-users of the contract should be informed of the change

4.3.10 Exit Strategy

As a contract progresses, the contract manager will have responsibility for ensuring that both parties are working towards the planned fulfilment and exit of the contract, and a procurement process for securing future supply arrangements if required.

The Exit Strategy should involve a full review of the contract and supplier's performance. This should include a 'lessons learned' review which incorporates feedback from end-users and the supplier. The final review and lessons learned should be clearly documented and communicated to appropriate stakeholders, as it may inform any subsequent procurement in the future.



4.3.11 Dealing with Supplier Under performance

If there are areas of concern where the supplier is underperforming then the impact of underperformance and the remedial actions should be addressed using Improvement Notices, Action Plans, KEY PERFORMANCE INDICATORS and in extreme instances termination or penalty clauses (in accordance with the contract conditions).

Note – where issues of under-performance have not been addressed the cumulative effect may mean the severity of the actions may be higher: -

Level of action required to address under performance	Severity		
	Low	Medium	High
Low	Discussion with actions and timescales agreed and confirmed by email	Issue improvement notices setting out any restrictions e.g. no more referrals. Action plan required and agreed by set date. Failure may result in termination.	Issue improvement notices. Formal restrictions may apply e.g. no more referrals/new business. Action plan requested by a fixed date which may be accepted or rejected, if rejected then contract may be terminated if allowed for.
Medium	Issue improvement notices setting out any restrictions e.g. no more referrals. Action plan required and agreed by set date. Failure may result in termination.	Issue improvement notices setting out any restrictions e.g. no more referrals. Action plan required and agreed by set date. Failure may result in termination.	Issue improvement notices. Formal restrictions may apply e.g. no more referrals/new business. Action plan requested by a fixed date which may be accepted or rejected, if rejected then contract may be terminated if allowed for.
High	Issue improvement notices. Formal restrictions may apply e.g. no more referrals/new business. Action plan requested by a fixed date which may be accepted or rejected, if rejected then contract may be terminated if allowed for.	Issue improvement notices. Formal restrictions may apply e.g. no more referrals/new business. Action plan requested by a fixed date which may be accepted or rejected, if rejected then contract may be terminated if allowed for.	Consider termination of the contract – e.g. for material breach. Advice from Legal should be sought and approval by the Head of Finance and Service Area in Advance.

Contract Management - Checklist

Description	Y/N
Apply the Council's Governance Process	
Level of required Contract Management assessed (based on the Contract Management Assessment tool or other appropriate assessment)	
Complete Contract and Supplier Management plan based on the Contract Management Assessment tool	
Adhere to payment terms – validation and invoice terms	
Apply variation control	
Dispute resolution	
Risk management (Risk Log)	
Issues Logs	
Business Continuity Planning	
Document Management	

Template List

Template	Link
Roles & Responsibilities	http://www.scotland.gov.uk/Resource/Doc/116601/0101261.doc or this table
Escalation process	http://www.scotland.gov.uk/Topics/Government/Procurement/buyer-information/spdlowlevel/EscalationProcess
Balanced Scorecard	http://www.scotland.gov.uk/Resource/Doc/116601/0102274.xls
Review meetings	http://www.scotland.gov.uk/Resource/Doc/116601/0101357.ppt
Level of contract management to apply	http://www.scotland.gov.uk/Resource/Doc/116601/0100101.xls

5. Supplementary Guidance

5.1 Co-Production Guidance



Image from the Scottish Co-production Network

5.1.1 Co-Production in service provision for social care and community services

Aims and Vision

This Council believes that co-production is one of the key ways to achieve successful change and continuous improvement in the provision of Council services. The Council wishes to continue to build effective partnerships with citizens, people with lived experience, families, carers and service providers in shaping services so that shared decision making becomes the norm.

Principles

Input into all parts of the commissioning cycle by people with lived experience, carers and providers is widely recognised to deliver better outcomes overall. There is no 'one size fits all' for coproduction but a number of core principles underpin any coproduction process, centred around equality, diversity, accessibility and reciprocity. Three important principles are:

1. **Seeing people as experts**
Recognising the value in the skills, knowledge and experience that individuals and communities bring.
2. **Shared decision making**
Coproduction goes beyond consultation because it involves the sharing of decision making from the beginning of the process. It transforms people from passive recipients of services into equal partners in designing and delivering services.

3. **Developing more equal relationships**

Offering people a range of accessible ways in which they can contribute, enabling them to work in reciprocal relationships with professionals and with each other.

The Council are also committed to delivering [the National Standards for Community Engagement](#), which encompass inclusion, support, planning, working together, methods, communication and impact. These standards and coproduction are entirely complementary.

A commitment to coproduction is entirely compatible with the legislative duties of the Council, including the need to deliver best value and open, fair and transparent procurement processes. Co-production helps achieve best value by developing fit for purpose specifications, improving outcomes and reducing inefficiencies. By co-producing with people with lived experiences, the community and interested providers and by being inclusive the Council can deliver its commitment to openness and transparency.

5.1.2 Why we coproduce

The Christie Report (2011) recommended public service reform which “must aim to empower individuals and communities receiving public services by involving them in the design and delivery of the services they use. “

The Council wants the real and meaningful involvement of people with lived experiences, carers and providers in ensuring the most relevant services are delivered in the most effective way. By designing services with the people with lived experience rather than for them gives a sense of ownership over the services and is likely to improve service outcomes. A process of coproduction that builds on the knowledge of people with lived experiences can be more effective in identifying more nuanced preventative approaches and help to make better use of resources.

There are also a number of important pieces of legislation which strengthen the need for coproduction

The Public Bodies (Joint Working) (Scotland) Act 2014 which requires the integration of adult health and social care services and places a statutory obligation on our EIJB to create and deliver a strategic plan for the delivery of health and social care services. There is also a legal requirement for people who use services, carers, organisations which provide services – including the third sector – and professionals to be involved in the strategic planning and commissioning process.

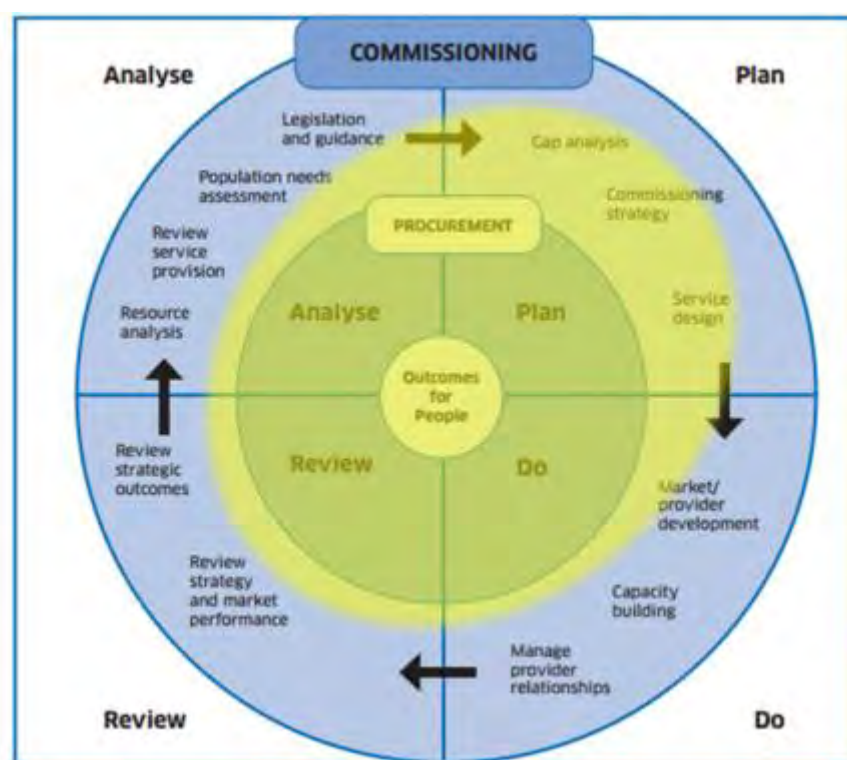
The Children and Young People (Scotland) Act 2014 covers a range of issues but has the primary goal of supporting the Scottish Government’s ambition “for Scotland to be the best place to grow up in” and for children and young people to be “at the heart of planning and delivery of services and ensuring their rights are respected”. The Act places the UN Convention of the Rights of the Child on a statutory footing in Scotland and seeks to create the conditions for children and young people to know about and exercise their right to have a say in decisions which affect them. With a strong focus on person-centred care and

designing and delivering services to meet the needs of children and young people, rather than services which they need to fit into, there is a strong emphasis on co-production principles within this legislation.

The Community Empowerment (Scotland) Act 2015 - this Act specifically focuses on promoting effective engagement and participation to help communities achieve greater control and influence in the decisions and circumstance that affect their lives. Provides a mechanism for community bodies to put forward their ideas for how services could be changed to improve outcomes for their community. This could include community bodies taking on delivery of services.

5.1.3 When we coproduce

Coproduction should feature in all four sections of the commissioning cycle, although there will be areas where it will be more or less intensive as is illustrated by the bulge emphasising the need for greater co-production at the planning stage.



The Scottish Government Commissioning Cycle adapted from a model produced by the Institute of Public Care

We are in a period of transition, and as such coproduction is most often initiated when there is an intention or need to make significant changes to a service, or introduce a new service. From this point, onwards these relationships should be maintained, such that relevant partners remain involved in the review and analyse sections of the cycle. For example, involvement at the analysis stage should assist in defining a shared understanding of the

need for change. This in turn will make developing a commissioning strategy much easier – if the right people are already engaged and involved then in time this will become a more streamlined process.

Intensity of involvement should be roughly proportionate to the degree of change anticipated in service provision. If significant changes are potentially going to be made to services, the level of involvement of people with lived experience, carers and providers should be accordingly significant. If the process is a lighter touch review to check if anything can be improved, the level of involvement would correspond. These levels of involvement may change particularly as views are sought and as such the need for flexibility should be built in to any timetable.

Key points where involvement of partners would be particularly important might include:

- Commissioning strategy – gap analysis, identification of needs and how these might be met
- Development of the service specification according to the commissioning strategy
- Determining most appropriate approach to procurement – including grant or contract provision
- Evaluation – people with lived experiences may be used as subject matter experts to inform quality assessments

Review – review how well the strategy and contract have performed and identify specific areas for improvement in future

5.1.4 Who we Co-Produce with

In conversation with partners, identify at the outset the key groups that should be involved in the co-production process, and appropriate processes. This will most often consist of the following groups:

In all cases

- Potential recipients (future, current and former) of service – as diverse groups as possible
- Carers/close family of people with lived experience
- All potential interested providers

In some cases, where relevant

- The wider community with a valid interest - requirement of the Community Empowerment Act
- Relevant partners – e.g. GPs, other referring organisations etc.
- Elected members.

It is important to note that some stakeholders will require support in order to participate. This may necessitate additional resources and longer timescales. The National Standards of Community Engagement provide useful guidance in this context. In particular consideration should be given to venue, timing, sufficient notice, access, physical support, reimbursement

of expenses. There are relevant organisations that can help support participation in co-production.

5.1.5 How we Co-Produce

Coproduction is not just consultation. Consultation tends to come later in a process, when many of the key decisions have been made, and there is therefore often less potential for influence. Co-production requires sharing decision making in context i.e. transparency about budgets, Council priorities and future need. As sharing of decision making is fundamental to coproduction, involvement needs to take place at the earliest possible point - before any key decisions are made.

A more detailed pack on coproduction is in development, and will outline examples of successful processes, and more detailed guidance on how to go about it. In the meantime, please contact maggie.deane@edinburgh.gov.uk for more information or if you have useful examples you would like to share. There are also many good examples of co-production happening elsewhere such as:-

<http://www.voicescotland.org.uk/> see the examples given in the National Standards)

<http://www.coproductionscotland.org.uk/resources/resource-case-studies/>

<http://www.scie.org.uk/publications/guides/guide51/practice-examples/index.asp>

<http://www.n8research.org.uk/research-focus/urban-and-community-transformation/co-production/>

There is no set process to be applied, it must depend on the process in question and the people involved. However, there are several things which are useful to consider:

- It is vital from the outset to establish a clear understanding from all involved about scope, timescales, budget, governance, and when key decisions will be made and by whom. Ideally all partners should be involved in defining many of these parameters.
- Thinking about representation is important in terms of making sure people with lived experiences, carers and providers can be influential in decision making. These groups should be meaningfully represented on any core decision making groups.
- Time and resource demands made on partners should be considered and discussed upfront. A careful balancing act is required to make sure that time is used wisely and that contributions are valued.
- Avoid a long and drawn out co-production process which may be unduly onerous on people with lived experiences. Plan it well, give people plenty of notice and keep interactions focused and effective.

The early stages of planning should involve time set aside for co-production and practicalities such as arranging meetings, pre-booking appropriate rooms and arrangements for facilitating the involvement of people with lived experiences and their carers should be addressed early on.

Council officers should ensure they have sufficient delegated authority to explore options and be open to suggestions about how the Council's systems or approach could be

improved and resources best used. An absence of delegated authority or ownership can hamper the progression of ideas and lead to frustration for those who are giving up their time. Similarly, people with lived experience, carers and providers should be open to considering changes in approach and be given the appropriate authority to influence.

5.2 Risk Management



Risk Management is a critical and continuous process which should be carried out throughout the Journey. This is a general approach to risk management.

For each procurement, other than those that are very low value and low risk, risks and issues identified should be documented in a Risk & Issue Register. All risks and issues should have clear mitigating actions, appropriate owners and a review date. Risks and issues may need to be fed into the relevant service area or service Risk Register so that any overlap can be recognised.

A risk is an uncertain outcome (positive or negative) that may affect the course of a procurement in the **future**.

An issue is a factor that will affect the development or implementation of the supply strategy at the **moment**. Actions therefore need to be put in place now to resolve the issue.

To prevent a risk becoming an issue which impacts on the procurement, risks need to be identified and assessed at the outset.

5.2.1 Risk Management Process

The Risk management process consists of 4 defined stages:

1. Identification: - What are the risks?
2. Assessment: - What is the likelihood of the risk occurring?
3. Control: - What can we do to reduce the impact and likelihood of the risk occurring?
4. Monitoring: - Has the situation changed? Have new risks emerged?

To help identify risks and issues with the potential to impact on your procurement it is essential to understand the objectives of your procurement.

5.2.2 Identification of Risk

Sources of risk can be divided into 4 categories:

- Strategic / Corporate – e.g. reputational, commercial, financial etc
- Programme – procurement, funding, provider failure, safety etc
- Project – technical, cost schedule etc
- Operations – technical, quality, operational support

While many of the risks will be the same for all procurement exercises e.g. the insolvency of a supplier or the risk of a legal challenge, there will also be project specific risks that you must consider e.g. loss of registration with the Care Inspectorate or a change in law which impacts on funding.

Once risks are identified they should be documented in the risk register for your procurement.

5.2.3 Risk Assessment

The purpose of risk assessment is to assess the probability of risks occurring and their potential impact.

Probability (or likelihood)	Impact
The evaluated chance of a particular outcome actually happening (including a consideration of the frequency with which the outcome may arise).	The evaluated effect or result of a particular outcome actually happening (usually considered in terms of effect in cost, scheduling and quality).

The assessment of current risk can be assisted by the Council risk assessment table below:

-

Current risk is what we estimate the current likelihood of the risk occurring and the current impact its occurrence would have on achieving our objectives - given the controls we already have in place.

Likelihood		Score	Impact	
Hard to imagine it happening. If it does then >10 years.	Rare	1	Negligible	Minimal effect. Easily recoverable.
Not expected but might occur. If it does: 5-10 years.	Unlikely	2	Minor	Minor short term effect. Recoverable.
May occur. If it does then within 3-5 years.	Possible	3	Moderate	Part failure to achieve objectives. Recoverable at cost.
More likely to occur than not. Likely within 1-3 years.	Likely	4	Major	Significant failure to achieve obligations/plans.
Hard to imagine it not happening. Likely <1 year.	Almost certain	5	Catastrophic	Unable to fulfil obligations/ plans. Major failure/damage.

The impact of the risk can be assessed using a risk probability framework by the Scottish Government found [here](#) and the Scottish Government's [Risk Pack](#)

5.4 Business Continuity

5.4.1 Overview

The Council defines business continuity as the maintenance of its essential activities during a disruption, to pre-determined levels.

The Council holds corporate registration to the International Standard for business continuity (ISO22301). This Standard requires that the Council evaluates **key** suppliers' business continuity arrangements.

5.4.2 Business Continuity Management and the Supply Chain

As part of its business continuity management, the Council has identified approximately 150 essential activities. These essential activities have been identified through assessment against the following criteria:

- whether it is a life and limb service
- the financial impact should the service be disrupted
- whether it is a legislative requirement
- the reputational damage should the service be disrupted

The loss of a supplier is identified as a key risk on the Corporate Resilience Risk Register as the ability to maintain these essential activities may depend on the continuation of suppliers, services and products. The Risk Register also identifies a number of additional risks to the Council which could also be considered risks for our supply chain including loss of premises, loss of ICT, fuel shortage, severe weather, loss of key staff and disruption to critical infrastructure.

If a supplier is unable to provide its contracted service or product to the Council, this may have an impact on the Council's delivery of its own services. Therefore, ensuring that these suppliers have their own effective business continuity arrangements in place is an important step in helping to ensure that they have considered incidents which could impact their service provision and have put contingencies in place to mitigate any potential disruption.

Appendix: Reference Materials, Related documents, Guidance and Tools

Key Links:-

Quick Quotes

<http://www.publiccontractsscotland.gov.uk/>

<http://www.scotland.gov.uk/Resource/Doc/1265/0083387.pdf>

The Procurement Journey

<http://www.scotland.gov.uk/Topics/Government/Procurement/buyer-information/spdlowlevel>

The Procurement Construction Manual & Review of Procurement in Construction

<http://www.scotland.gov.uk/Topics/Built-Environment/Building/Building/procurement-manual>

<http://www.scotland.gov.uk/Resource/0043/00436662.pdf>

Social Care

Procurement Reform (Scotland) Act 2014

http://www.scottish.parliament.uk/S4_Bills/Procurement%20Reform/b38bs4-aspassed.pdf

Key Documents:

Finance

Financial Probity Assessment in Procurement Policy

Sustainability

[Council's Sustainable Procurement Policy](#)

[Guidance on Implementing the Council's Sustainable Procurement Policy](#)

Guidance on procurement and the public sector equality duty

<http://www.equalityhumanrights.com/scotland/public-sector-equality-duty/procurement-guidance-for-scottish-public-authorities/>

Contract Award letter & Unsuccessful letter

Standard Meeting Agenda & Actions Template

All Scorecards

Example contract supplier management plan

Committee Report & Checklist

Contract Management

Contract Change Note

Example contract supplier management plan

Glossary

CPS	Commercial and Procurement Services
CSOs	Contract Standing Orders
PCS	Public Contracts Scotland

The following definitions extracted from the Institute of Public Finance Glossary of Best Value

<i>Abnormally low tender</i>	An offer where the price is so low that it raises suspicion that the supplier will not be able to supply at the stated terms & conditions (must request explanation and consider merits of explanation then consider whether to accept or reject the bid)
<i>Aggregation</i>	The adding together of the estimated value of different procurement requirements by the same contracting authority in order to ascertain whether notices (adverts) have to be placed in OJEU in accordance with the directives.
<i>Applicants</i>	Respondents to contract adverts who ask to be invited to tender (also referred to as candidates or tenderers)
<i>Audit Trail</i>	Sufficient record keeping to be able to evidence the procurement process so enabling a third party to see why a certain decision was made.
<i>Award</i>	A decision to accept a tenderer's offer to supply / provide specified goods/services/works according to agree terms & conditions thereby creating a legally binding contract.
<i>Award Notice</i>	A compulsory notice in OJEU, to provide information on the award of a contract, for procurements above the EU Thresholds.
<i>Best Value</i>	The duty under the Local Government Act in Scotland 2003 to secure continuous improvement in the economy, efficiency and effectiveness with which they exercise their functions.
<i>Bid</i>	Another word for a tender submission. Can also mean an in-house tender.
<i>Bill of quantities</i>	List of items with quantities, against which tenderers insert their prices or rates. Similar to schedule of rates or pricing schedule.

<i>Block contracts</i>	Lump sum contracts normally for health care or social care Maximum available budgets are stated in the tender document and the bids are assessed principally on quality.
<i>Budget based tendering</i>	Similar to quality only tenders.
<i>Call-off contracts</i>	Agreements, sometimes called framework contracts, without full commitment. The undertaking is that all requirements of the specified nature which are required during the duration of the agreement, will order from these contracts / agreements.
<i>Candidates</i>	Also known as preferred supplier list. Respondents to OJEU notices who ask to be invited to tender. Also known as applicants.
<i>Commodity Strategy</i>	A document that shows the preparatory thinking that is done about a procurement process, including sustainability considerations, stakeholders to be involved, risks etc
<i>Contract award notice</i>	A notice in OJEU that a previously advertised opportunity has been awarded.
<i>Contract Notice</i>	Advert to invite applicants to express interest & apply to tender, or to be pre-qualified.
<i>Contractor</i>	The provider of any supplies, services or works under contract. Or, in the context of works at any stage of the process.
<i>Evaluation</i>	Simple tabular model for comparing different tenders. Each criterion is scored, e.g. out of 100, and this score is multiplied by the weighting of that criteria. A total score is then obtained.
<i>Firm price</i>	A price tendered or quoted which is not subject to any provision for variation.
<i>Fixed price</i>	A price tendered or quoted which is subject to price variation, the basis of variations should be stated e.g. in accordance with the RPI.
<i>Fixed price contracts</i>	Contracts with prices which are not subject to price variation, even for inflation.
<i>Framework agreements</i>	Arrangements (sometimes referred to as standing offers) in which terms & conditions are agreed, and the client may or may not subsequently place orders (no commitment). Also a consortium can agree terms & conditions and the members may subsequently place orders.
<i>Framework contracts</i>	Agreements (sometimes called call-off contracts) in which clients accept some commitment without immediately placing orders, e.g. by undertaking to order, later, all jobs of a specified type from that contract.
<i>ITT</i>	Invitation to Tender

<i>Lots</i>	Subdivisions of a contract so that providers can tender for one or more lots.
<i>Market Testing</i>	The testing of in-house costs against external contractors' costs by direct comparison or benchmarking rather than by competition.
<i>MEAT</i>	Most economically advantageous tender. Common phrase used to indicate that the tender will not be only based on lowest price.
<i>Method Statements</i>	Tenderer's proposals for dealing with aspects of the work being procured.
<i>Negotiated Procedure</i>	An EU procedure, only available in limited circumstances, under which contracting bodies can negotiate with 3 eligible applicants who meet their selection criteria.
<i>Non-compliant tender</i>	A tender that fails in one or more respects to satisfy requirements or contract conditions. Also called non-conforming tender.
<i>Notice</i>	Advert
<i>OJEU</i>	Official Journal of the European Union
<i>Open Procedure</i>	An EU procedure whereby anyone can tender. A one-step process.
<i>Performance bonds</i>	Bonds given to clients by specialist insurers, on behalf of contractors and at their expense, binding the insurers to compensate clients in the event of default.
<i>Pre-qualification</i>	The selection process of suitably qualified and experienced applicants from which a short-list is obtained and then invited to tender. Used in the restricted process.
<i>Presentations</i>	Interviews at which tenderers expand on their tender submission and ask and answer any questions.
<i>PIN</i>	Prior information Notice. Early notices in OJEU to advise of the intention to advertise later in the OJEU.
<i>Qualified tender</i>	A tender made subject to some unsolicited condition, e.g. acceptance by a certain date.
<i>Quality-only tender</i>	A competition to provide the greatest quality or quantity for a pre-stated sum.
<i>Restricted procedure</i>	An EU procedure whereby there are 2 steps: selection of suitable candidates, and then evaluation of tenders from the short-listed tenderers.
<i>Social enterprises</i>	Businesses whose primary objectives are social or "more than profit"
	<u>The part of the invitation to quote or invitation to tender which</u>

<i>Specifications</i>	details the nature and quality of the goods, services or works
<i>Technical capacity</i>	One of the tenderer selection criteria provided for by the EU procurement directives, tested for example by number of employees, qualifications, equipment, experience.
<i>Tender</i>	An offer, or bid, by a tenderer in response to an invitation to tender (ITT) or a mini-tender in a framework agreement
<i>Term Contract</i>	A contract to provide specified services, goods or works for a specified term, or indefinitely as distinct from a contract for a discrete one-off purchase.
<i>User Intelligence Group (UIG)</i>	A group of people who have a stake in the success of the procurement outcome. May comprise procurement professionals, service or product users, internal customers, IT,HR, legal or finance (as examples).
<i>Variants</i>	Alternatives offered by tenderers to the goods, services or works as specified by the client. The client will state whether they will accept variants.
<i>Variations to contract</i>	The contract terms should allow for the client or contractor to request a variation, post -award. This could be a variation to the specification, core list, price etc. It is good practice to have a "Variation to Contract Form" which is the only means by which the contract can be varied.
<i>Whole-life costs</i>	The full cost to the client, whenever incurred, attributable to a contract of purchase, often referred to as cradle-to-grave and lifecycle costs. Includes cost of acquisition, set-up, development, maintenance, training, management, operational costs, documentation, decommissioning and disposal.
<i>Works</i>	The term used in the EU Regulations for a building or civil engineering project or piece of work.
