

Construction Procurement Handbook

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Construction Procurement Handbook

Chapter 1

Introduction and Procurement Overview

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Introduction

1.1 The Construction Procurement Handbook is the first issue in a suite of handbooks to provide guidance for public sector construction clients in developing and delivering their construction projects. The handbooks provide guidance on the processes and governance as well as policy direction and legislation. The other handbooks include The Project Initiation and Business Case Handbook, The Contract Management Handbook and The Asset Management Handbook. The Construction Procurement Handbook focuses on the procurement of the contractors and consultants who support the contracting authority in delivering their projects. Collectively these handbooks form the Construction Procurement Manual and are mandatory guidance for all organisations to which the Scottish Public Finance Manual is directly applicable.

1.2 This section provides an introductory overview to the processes and the various procedures to be followed in developing and delivering a construction project. It is not intended to be comprehensive and should be read in conjunction with the detailed guidance provided in the other chapters of the Construction Procurement Handbook.

Overview

2.1 The purchase of all goods, services and works by public bodies is subject to a legal framework designed to encourage free and open competition and deliver value for money, in line with internationally and nationally agreed obligations and regulations. The following are the key pieces of legislation relating to public procurement in Scotland:

- The [Public Contract \(Scotland\) Regulations 2015](#) (*The 2015 Regs*).
- The [Procurement Reform \(Scotland\) Act 2014](#) (*The Act*)
- The [Procurement \(Scotland\) Regulations 2016](#) (*the 2016 Regs*). These regulations give effect to the Act.
- This guidance focuses on the legislative aspects and administrative process for purchasing construction works and should be read in conjunction with the [Guidance under the Procurement Reform \(Scotland\) Act 2014](#) (*The Guidance*)

2.2 The project delivery process will normally start with the identification of a need, which is then developed, through a business case and the procurement of designers and constructors to the delivery of the built asset, *Figure 1* describes this graphically. The procurement of construction contracts is complex and, if it is to be carried out effectively, the appropriate level of required expertise must be identified and engaged. This handbook deals with the middle stage “*Procure the contractors and consultants*”.

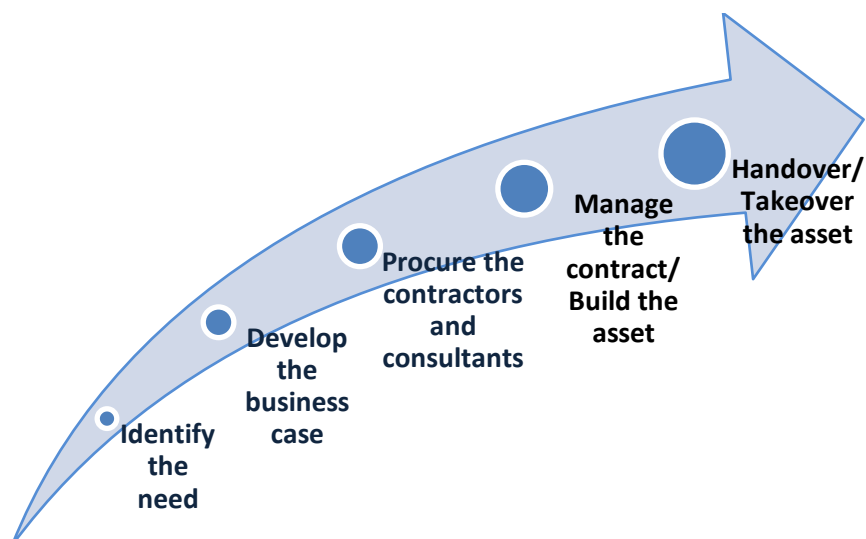


Figure 1: Construction project overview

Procurement Principles

3.1 The award of public contracts must comply with the principles of the *Treaty on the Functioning of the European Union (TFEU)*. These include the principles of equal treatment, non-discrimination, mutual recognition, proportionality and transparency. Procurement policy and legislation aims to underpin adherence to these principles as well as supporting the delivery of value for money when awarding public contracts. [The Scottish Model of Procurement](#) promotes value for money as being an appropriate balance between cost or price, quality and sustainability and is at the heart of all public procurements conducted in Scotland.

Procurement Thresholds

4.1 The system in Scotland for public sector procurement identifies two categories of procurement, regulated procurement and non-regulated procurement. Whether a procurement is considered to be *regulated* or *non-regulated* is determined by whether the estimated contract value is equal to or exceeds thresholds set out below in *Figure 2*. Where contract estimated values breach the thresholds the procedures prescribed by the requirements of the relevant legislation must be followed. The thresholds applicable to the 2015 Regs are adjusted every two years.

		Works	Services, Supplies & Design Contracts
Procurement Reform (Scotland) Act 2014		£2m	£50k
Public Contract (Scotland) Regulations 2015	Central Government	£5,336,937 thresholds	£138,760 thresholds
	Other Contracting Authorities	£5,336,937	£213,477
	Small Lots	£884,720	£70,778

Figure 2: Procurement Thresholds – thresholds are correct at 1 January 2022, for the latest thresholds please see [procurement thresholds webpage](#)

4.2 The above table is a summary of the thresholds relevant to construction contracts, consequently it does not include those for utilities and concession contracts.

4.3 Generally, all contracts with values over the thresholds will be subject to one or other of the pieces of legislation referred to above. There are some exceptions; for example some defence and security contracts, which are regulated by the *Defence and Security Public Contract Regulations 2011*, are specifically excluded where they are classified as secret and where this is determined to be in the national interest. Property contracts for the acquisition or rental of land or existing buildings and employment contracts are also excluded as are some research and development contracts, subject to certain qualifications.

Classification of Contracts

5.1 As noted in *Figure 2* contracts fall into one of three types; those for works, those for goods and those for services. Assuming a contract is not out with the scope of, or exempt from procurement legislation, it is important to establish if the contract is for work, services or goods. For most of the time this should be obvious from the subject matter. Sometimes, though, it is less clear and a contract may be for more than one type of requirement, for example works and services, works and goods or perhaps services and goods. Generally speaking, the following will assist in determination of contract type. However, where there is doubt appropriate professional advice should be sought. [Chapter 3 of this handbook](#) provides guidance on selecting the correct route for the procurement value and type.

- Where the contract covers both goods and services, the part with the highest value will dictate what type of contract it is;
- If it covers works and goods or works and services, it should be classified according to its predominant purpose;

Estimating the Value of Contracts

6.1 The estimated value of the contract must be established in order to determine the relevant threshold and legislation which is to be applied.

6.2 Splitting up contracts in order to keep them below the threshold values is strictly prohibited. Where a contract is divided in to lots, it is the aggregate value of these lots that must be taken into account. This is particularly important when setting up a framework, where it is the total value of contracts envisaged under the framework and over the term of that framework that must be taken into account.

6.3 In the case of a works contract, the value will include the estimated value of any goods and services that are necessary for executing the works. For example, a works contract may primarily be for the construction of an office block but the contract will include the provision of materials for the construction and services in the shape of architects, cost consultants and engineers. The individual elements should be considered against each other with the overall classification being determined by the element which forms the greater value of the contract. For certain goods and services

contracts that are regular in nature and are intended to be repeated in a given time, the total value of all the contracts must be aggregated. For example, a series of contracts to provide architectural, engineering, landscaping and acoustician consultancy services for the same project but over a period of time, should be aggregated and if the aggregate total is equal to or more than the threshold, then the relevant procedures must be applied.

Contract Briefs and Technical Specifications

7.1 For a procurement to be successful in delivering the output and outcomes required, it is essential to ensure that a proper analysis of the requirement is undertaken by the client. This will allow unambiguous, appropriate and sufficient information to be provided in a brief to allow the prospective suppliers to accurately price and plan the job and will be informed by the business case. Preparing this analysis/requirement is the responsibility of the client and it is important that adequate time is allocated for forming the brief. This should include the development and formulation of any technical specifications; any ambiguity or lack of clarity about the client's requirements may lead to poor contract relations and a poor quality output.

7.2 A contracting authority should make available, as part of the procurement documents, any technical specifications that define what is being procured. These must not distort or restrict competition, for example, by specifying trade names or patents. An exception to this is where these are essential to describe what is required, but in this case, it should be accompanied by the words *or equivalent*. Regulations 43(11) and 43(12) of the 2015 Regs, as follows, cover this:

(11) Subject to paragraph (12), technical specifications must not, with the effect of favouring or eliminating certain undertakings or certain products, refer to

- (a) a specific make or source;*
- (b) a particular process which characterises the products or services provided by a specific economic operator; or*
- (c) trade marks, patents, types, or a specific origin or production.*

(12) Reference of a kind referred to in paragraph (11) is permitted in any of the following circumstances

- (a) where justified by the subject-matter of the contract;*
- (b) on an exceptional basis, where a sufficiently precise and intelligible description of the subject-matter of the contract pursuant to paragraph (10) is not possible, in which case the reference must be accompanied by the words "or equivalent".*

7.3 Specifications can relate to contractor performance, functional requirements or require the adherence to relevant standards. In summary, a contract specification must be developed which provides sufficient information to allow bidders to show they can meet the contract requirement and deliver the client's output.

7.4 In the case of a public works contract, technical specifications can include, for example:

- Environmental and climate performance levels;
- Design requirements and performance conformity, for example accessibility for disabled persons;
- Critical dimensions, performance requirements, and safety requirements, including the procedures concerning quality assurance;
- Material/component specifications;
- Methods or techniques of construction; and,
- Requirements relating to design and costing, and test and acceptance conditions for the works.

Pre-market consultation

8.1 There may be occasions when it is beneficial to undertake consultations with the market before going out to tender for example, to gauge the capacity of the market to deliver a type of contract. This is recognised in the 2015 Regs, particularly where the requirements to be procured are complex and early consultation may assist with planning the procurement.

8.2 This is considered in more detail later in Chapter 4 of this handbook. In outline though, the legislation permits clients to seek advice from independent experts or market participants, provided that it does not have the effect of distorting competition and does not result in a violation of the principles of non-discrimination and transparency.

Procurement Procedures

9.1 The 2015 Regs set out six procurement procedures, that is methods of advertising contracts and selecting the companies which will perform them, for use in all procurements which are subject to the regulations. These are:

- Open;
- Restricted;
- Competitive dialogue;
- Competitive procedure with negotiation;
- Innovation partnership; and

- Negotiated procedure without prior publication.

9.2 The majority of procurements for construction will be taken to the market using either the *open* or *restricted* methods. Contracting authorities will wish to ensure that the most appropriate method is used according to the complexity, outcomes and values of their job.

9.3 The use of the *competitive procedure with negotiation* and *competitive dialogue* are more appropriate for complex procurements where, for example, readily available solutions need to be adapted or the contract requires innovative design solutions. Their use will be following careful consideration of the advantages and disadvantages of them in the context of the project at hand.

9.4 The *innovation partnership* procedure is aimed at the development of innovative solutions not available on the market and which will require a commitment to research and development in order to deliver them.

9.5 The Act and 2016 Regs provide the regulatory framework for the conduct of procurements below the thresholds set out by the 2015 Regs. The Act does not mandate any particular procurement procedures. However, we suggest that procurements below 2015 Regs thresholds should follow similar procedures proportionate and appropriate to the contracts being awarded. Regardless, they *must* adhere to the principles of equal treatment, non-discrimination, transparency and proportionality.

9.6 Procurements below the thresholds established by the Act are not regulated by any of the legislative measures mentioned in this guidance. Contracting authorities have more discretion below these thresholds around how such procurements are conducted and the guidance at Chapter 6 provides information on how to take works contracts below £2m and construction goods and services contracts below £50k to market. This is known in this guidance as *Construction Procurement Route 1 (CPR1)*. The guidance sets out that whilst there are no mandated procedures below those values, similar processes to those for above threshold procurements should be followed, proportionate to the complexity and value of the contract. This should ensure an efficient and auditable approach which is understood by the market and client alike. *Construction Procurement Route 2 (CPR2)* applies to procurements above the Act's threshold.

Frameworks

10.1 *Regulation 34* of the 2015 Regs covers the procurement and establishment of framework agreements.

10.2 A framework is basically an agreement where all (or at least some) of the terms and conditions on which parties will enter into future contracts (call offs) have been established. Some restrictions exist as to their use, for example:

- The framework must not exceed 4 years save in exceptional cases duly justified by the subject of the framework agreement;

- The framework must identify those contracting authorities who will be entitled to use it at the outset.
- Substantial changes must not be made to any of the terms of the framework agreement

10.3 Where a firm has a place on a framework agreement, the client will seek to place a contract by a process known as “calling off”. This can be achieved by one of the following two methods:

- Holding a mini competition among the suppliers on the framework
- Applying the terms of the framework itself. For example, the framework may provide for contracts to be allocated on strict rotation between the suppliers or it may identify contracts of a certain type to a certain supplier on the framework

Publishing and Advertising Contracts

11.1 When it has been established what type of contract is being procured, i.e. unregulated or regulated subject to the Act or the 2015 Regs, consideration must be given to the method of informing the market of the opportunity.

11.2 Contract notices for regulated procurements must be published on the national portal, [Public Contracts Scotland \(PCS\)](#). The guidance on *CPR1* (Chapter 6 of this manual) notes that it is good practice to advertise some unregulated procurements and in these cases *PCS* should also be used.

11.3 Procurements regulated under the 2015 Regs must also be published in the the UK e-notification system called [Find a Tender Service \(FTS\)](#) . The *PCS* system automatically generates the FTS Notice assuming that the contracting authority has set out the required information correctly. The principal means of making a call for competition, that is advertising the procurement, is by a contract notice.¹ However a *Prior Information Notice (PIN)* can also be used as a call for competition by *sub-centra*² contracting authority in some circumstances.

Prior Information Notices

12.1 A *PIN* has two functions. Firstly, it can be used as a way of giving advance notice of forthcoming procurements. For supplies and services this could be the estimated requirements for the financial year, while for works projects the total requirements for the project would apply. This allows suppliers to ready themselves for the procurement, but also may reduce the timescales for the procurement exercise. Secondly a *PIN* can be used by sub-central contracting authorities as a call for competition.

Timescales

¹ There are bespoke notices for design competitions, concessions and other specific services. These are beyond the scope of this guidance.

² All contracting authorities listed in schedule 1 of the 2015 Regs are termed central contracting authorities. Any public body not listed in schedule 1 is termed sub-central contracting authorities.

13.1 The prescribed timescales for publishing contract notices for the various procedures are considered under the guidance for *CPR2* (Chapter 7) which is also good practice for *CPR1* (Chapter 6).

Selection

14.1 Selection is the process by which contracting authorities assure themselves that the company, which has either requested to be considered for a tender process or has submitted a tender, can be assessed for suitability to compete. Under the *Open Procedure*, any supplier may submit a tender. This, however, does not preclude the use of selection criteria to ensure that the successful tenderer meets the minimum standards, and should otherwise not be excluded from the competition.

14.2 The other procedures are all *two stage procedures*, where a contracting authority can shortlist a restricted number of bidders that will be invited to tender. The shortlist must provide genuine competition and the 2015 Regs stipulate that under the *restricted procedure* a minimum of five bidders are invited to tender although they allow for fewer when fewer bidders qualify. However, the number invited to tender must be sufficient to allow genuine competition. Under the more complex procedures of *competitive dialogue*, *competitive procedure with negotiation* and *innovation partnership* a minimum of three tenderers is stipulated.

14.3 The initial part of a selection process confirms that potential tenderers should not be excluded from the competition. The 2015 Regs set out mandatory grounds for exclusion which are: having been convicted of serious offences such as fraud, corruption, organised crime and terrorism offences, money laundering or excluded for blacklisting. However, these exclusions are only valid for five years from the date of the conviction; three years in the case of blacklisting.

14.4 The 2015 Regs also allow the contracting authority to set discretionary exclusion criteria. These can include bankruptcy or insolvency and specified grounds such as grave professional misconduct or poor prior performance of a contract that led to a contract being terminated early or damages awarded as a result of that poor performance.

14.5 The second part of the selection process involves an evaluation of the suppliers' economic and financial standing as well as their technical capacity and ability. The minimum financial standards and technical capacity that a contracting authority is looking for must be stated within the contract notice, as well as guidance on the relevant experience being sought and how it will be evaluated.

14.6 Where suppliers are not selected to be invited to tender they have a right to be advised. There are rules covering this for all regulated contracts that are considered in the detailed advice. However, under the 2015 Regs where a supplier is not informed of the reasons for failing the selection process, they must be sent letter at the appropriate standstill period providing them with those reasons.

Self-Cleansing

15.1 Where a bidder is, or may be, excluded on any of the grounds for exclusion above, the 2015 Regs introduced a concept of self-cleansing. This allows a bidder, which may otherwise be excluded, to provide evidence to the client, that it has taken measures that prove it is reliable, despite the existence of a relevant ground for exclusion. For example the bidder may prove that they have paid fines and taken measures to prevent further criminal offences or misconduct.

Single Procurement Document (SPD)

16.1 The 2015 Regs introduced *the European Single Procurement Document (Scotland) (ESPD)* this has been renamed the Single Procurement Document (SPD). It must be accepted for all 2015 Regs regulated procurements and should also be used for regulated contracts below the EU contract threshold values. The *SPD* is essentially a form that sets out the questions that are permitted to be asked by the client of the tenderer when undertaking a selection process. These questions cannot be amended or added to, although questions can be omitted by the contracting authority. Some of the prescribed questions will require the contracting authority to provide further explanation as to what it is seeking. This explanatory information must be made available at the time of the publication of the contract notice.

16.2 Further guidance on the use of the *SPD* can be found in Chapter 7.

Award – Invitation to Tender

17.1 The Scottish Model of Procurement promotes value for money as being an appropriate balance between cost or price, quality and sustainability, all being factors that should be taken into account when establishing the contract award criteria.

17.2 Award criteria are set by the client and used to determine which bidder is best placed to deliver the contract and consequently whether a contract can be awarded to it.

17.3 The contracting authority must use criteria linked to the subject matter of the contract, and should not include matters that have been assessed as part of the selection criteria. The selection stage assesses suppliers on their suitability, ability and capacity to be able to undertake the contract; not how they will actually perform the contract, which is considered and assessed at the award stage. The award criteria can relate to, for example, the price and quality of the proposal. In the case of the quality of the proposal, this can comprise many factors but typically it is technical merit, the aesthetic and functional characteristics, the environmental characteristics, the after-sales service, delivery dates or delivery date for completion. Where the quality of staff assigned to delivering a contract is important, a contracting authority may evaluate a bidder's general staff qualifications and experience at the selection stage. As part of the award stage evaluation, the contracting authority may seek information from the bidders confirming the precise make-up, experience and qualifications of the team that will be delivering the contract. In short, the selection part looks back at the ability of the company to deliver a contract whereas the award evaluation looks forward to the ability of the contractor to deliver the specifics of *the* contract.

17.4 A contract must be awarded on the basis of the best price/quality ratio, based on the *most economically advantageous tender* (MEAT) and 2015 Regs regulated contracts must not be awarded on price alone. This approach should also be adopted for contracts regulated under the Act.

17.5 The criteria to be used and any weightings attached to the criteria must be disclosed in the procurement documents. Where weightings are not attached to criteria, the contracting authority must list the criteria in descending order of importance.

Award Decision

18.1 As soon as the contracting authority has decided which tender will be awarded the contract, they must inform all tenderers of the result in writing. This *Decision Notice* is sometimes known as a standstill letter. If the contracting authority has not already informed those parties who were unsuccessful at the selection process of that outcome, they should do so now. This Notice should include the reasons why they were unsuccessful.

18.2 A *Decision Notice* must include:

- The criteria used for the award of the contract;
- A summary of the reasons why the supplier was unsuccessful and the relative merits of the winning bid;
- Where practicable, the score achieved by the supplier as well as the score obtained by the winning bidder;
- The name of the winning bidder;
- A precise statement of the standstill period, this is a period during which the contract will not be formally awarded.

Standstill Period

19.1 The standstill period is a time period that opens the award decision for review before concluding the contract. During the standstill period the full range of pre-award remedies are available to aggrieved parties to challenge the decision. This could lead to the setting aside of the contract and/or damages. Challenges may still be raised after standstill but they may not necessarily result in the suspension of the contract until the final decision of the court is determined.

19.2 If a supplier formally challenges an award decision by commencing legal proceedings, the contract may not be concluded until the court permits it.

19.3 The standstill period begins the day following the issue of the award notices and will last for 10 days if the notices have been issued electronically, or 15 days if sent by other means. The final day must fall on a working day and, if it doesn't, the standstill period will be extended until the next working day.

Contract Award Notices

20.1 For 2015 Regs procurements, the contracting authority must send a *Contract Award Notice* to the FTS within 30 days, Notices submitted to PCS will be forwarded to the FTS.

20.2 For contracts regulated under the Act a contract award notice must be published on the PCS portal. This is also true for all mini competitions under a framework agreement where the value awarded is above the Act thresholds.

Feedback to bidders

21.1 Providing feedback to both successful and unsuccessful bidders is an important element of the tendering process. Besides being a courtesy, which breeds good relationships and trust, it helps suppliers to improve their competitive performance, which in turn improves the quality of future bids for public sector work. Unsuccessful suppliers for procurements regulated by the Act and the 2015 Regs have a legal right to know the reasons for their rejection, while successful bidders are also entitled to seek feedback in order to understand any improvements that they could have made, even though they won the bid.

Keeping Records

22.1 Contracting authorities are obliged to hold detailed records of the process and decisions reached for at least three years from the date of the award of the contract. *Regulation 83* of the 2015 Regs provides details of the reporting and documentation requirements.

Conclusion

23.1 Detailed guidance on the application of the various processes and procedures outlined in this introduction can be found elsewhere in the *Construction Procurement Handbook* and should be referred to as appropriate. In summary, however, there are a number of guiding principles which contracting authorities should have regard to in order to assist them successfully procure construction projects.

- Bidders are treated equally and fairly;
- The process is transparent and well managed;
- There is a genuine intention by the client to proceed;
- All bidders are provided with the same, relevant and up to date information which is sufficiently detailed to enable them to prepare proper and realistic bids;
- No bidder is provided with information that puts them at an advantage, or could be seen to put them at an advantage, over the other bidders;

- Bidders are given sufficient time to participate properly in the process and prepare bids;
- The information required from bidders is proportionate to the risk and size of the contract;
- All bidders are fully informed of the process, or processes, to be followed and the required procedures to be adhered to;
- The process is open to scrutiny;
- The reasons given for the award of the tender must be transparent and can be justified;
- All bidders, whether successful or unsuccessful, are given feedback.

Construction Procurement Handbook

Chapter 2

Creating the Project Brief

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Introduction

1.1 A project brief formally defines the client/user's requirements and objectives, in sufficient detail to enable the proposed facility to be designed and specified. Creating a project brief is one of the most important responsibilities of a client. It is developed over a period of time, starting as a statement of need which develops into a strategic brief and finally into the project brief. A good brief ensures clarity for the design team, other consultants and the contractors and creates a sound foundation for the successful delivery of the construction element of the project. The brief is separate from the business case, but is developed in parallel to it and is both informed by and informs the business case development.

Overview

2.1 There are three stages to the creation of the project brief - these are shown below and coincide loosely with the four stages of the development of the Full Business Case. The relationship between the development of the project brief and the evolution of the business case varies according to the complexity and scale of the project. *Figure 1*, below, illustrates the typical relationship when developing both the project brief and business case.

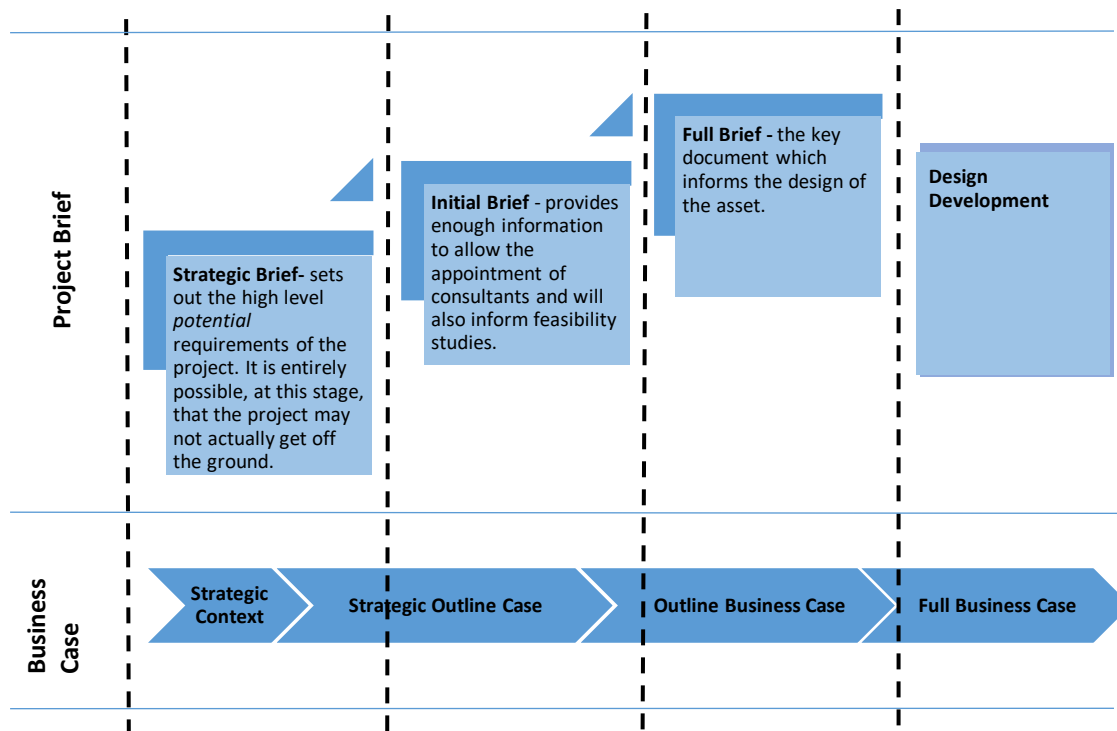


Figure 1: Project Brief and Business Case Development

Ownership

3.1 The brief, regardless of stage, belongs to the client and is the specific responsibility of the Project Sponsor. It is likely that the project sponsor will be assisted in this work by the client adviser and the design team as they come on-board. However, it is imperative that the brief sets out the client's requirements and not the design team or client adviser's view or interpretation of the client's requirements.

Scale

4.1 Whilst the process of developing the brief is important, it must be proportionate to the scale and complexity of the project. Some small, low risk and low value projects will not require the same degree of briefing as others. In these cases, a brief may be based on an established design or perhaps performance specifications. For major and more complex construction projects, the briefing process is likely to be more detailed and will be developed and tested through various iterations until it is finalised.

4.2 It must be understood that the Project Brief is not simply for use at the inception of the project, but is a live document that should be referred to throughout, as it provides a benchmark against which project delivery and success can be measured.

Strategic Brief

5.1 The strategic brief or statement of need/requirement is the first stage in the development of the project brief, although at this stage there may not actually be a project which has been formally approved. It provides sufficient information to assist the appointment of the early client team and to obtain agreement and buy in from key stakeholders, not least the end users. It is developed loosely in parallel to the Strategic Outline Business Case and is a high level statement which may include the following key pieces of information:

- A description of the need identified by the client
- How the need contributes to the client's corporate strategy
- High level options for satisfying the need
- Specific requirements
- A description of the client and its business
- How the need relates to existing and future provision
- Assumed budgets
- Assumed programme
- Likelihood of change

Initial Brief

6.1 The initial brief takes the briefing process a step further, building on the strategic brief and begins to shape the detail of exactly what the project will deliver and how it will be delivered. It will involve wide engagement of stakeholders and research of similar facilities and lessons learned from other projects and will include an analysis

of the options available unless a separate options appraisal is to be undertaken. The following sets out some of the areas which the strategic brief may cover:

- The client organisation and context, vision and aims of the project
- Project philosophy including quality standards and management
- Stakeholders and relationships
- Existing facilities
- Information about site or options for site
- Design approach
- Functional requirements
- Technical requirements
- Statutory requirements
- Relevant policy statements and guidance, for example: [Scottish Government, Creating Places: A policy Statement on architecture and place for Scotland](#)
- Sizes, outline room data and adjacencies
- Building Information Modelling, quality standards and design quality indicators
- Environmental and sustainability standards including British Research Establishment Environmental Assessment Method (BREEAM)
- Known constraints including physical, operational and planning
- Whole life costing and management
- Procurement strategy assumptions
- Security and information handling
- Health and safety and the Construction (Design and Management Regulations) 2015
- Transport planning
- Programme including phasing, milestones and critical activities
- Related projects

- Budgets
- Project management procedures
- As built quality assurance procedures
- Evaluation

6.2 This list is not exhaustive, neither is it prescriptive. What is included will depend on the project at hand. Neither will it necessarily be the case that all this information will be available at one fell swoop. Therefore, it is likely that each brief will be built up in layers. It is important that the brief identifies all areas where the design advisor and the client want to set the standards of performance, appearance and design quality or specify particular items which must be provided. Early briefing and project definition take time and should not be rushed, as they are an early and essential investment in the assurance of successful project delivery.

Full Brief

7.1 This is the final iteration and follows on from the strategic brief. Whilst it can be revised as appropriate, revision should be minimised as the brief is used by the design team to develop the detailed design. The full project brief may cover the following areas as appropriate (these are indicative rather than definitive and are not comprehensive):

- **The Client** – organisational and project management structures, vision, mission and purpose, relevant policies, other allied projects and programmes, assurance and audit, client requirements such as sustainability, design quality and principles etc.
- **Site Information** – any constraints or requirements associated with the site.
- **Functional requirements** – adjacencies, accommodation schedules, user numbers and breakdown, specialist areas.
- **Technical requirements** – flexibility, Information and Communication Technology (ICT), services, performance, whole life management, facilities management, security, sustainability and energy use targets, waste and water management.
- **Project requirements** – information handling and security, project execution, procurement strategy, consultation, budget, risk, programme, change control, commissioning, quality control and inspection, use of clerks of works or resident engineers, handover and post occupation evaluation.

7.2 The project brief will become increasingly detailed throughout its life and the concept design stages and may ultimately include very specific information, such as room data information. The project brief should always reflect the requirements of

the client, not what the design team has assumed or taken it upon itself to decide what the client wants. It should be frozen at the end of the concept design stage and a change control system introduced to prevent unjustified change without authorisation.

Building Information Modelling

8.1 On projects which utilise Building Information Modelling (BIM), the employer's information requirements may be set out in a parallel document to the project brief. Whilst the project brief notes the requirements for the physical built asset, the employer's requirements define the information the employer needs to procure to enable them to develop and operate the built asset.

Summary

9.1 The brief is a critical document which develops as the project grows and sets out clearly the client's philosophy and requirements for their project. It must be a real live document and not simply an exercise in box ticking.

Construction Procurement Handbook

Chapter 3

Construction Procurement Route Selection

Contents:

Section	Subject
1.	<u>Introduction</u>
2.	<u>Thresholds</u>
3.	<u>Procurement Routes</u>
4.	<u>Decision Matrix</u>
Annex A	<u>Construction Procurement Route Selection Matrix</u>
Annex B	<u>Decision Matrix Explanatory Notes</u>

Introduction

1.1 This guidance is designed to assist contracting authorities in selecting consistent and appropriate procedures for procuring construction and construction related services. It applies to the award of public contracts and not to concessions or utilities contracts.

1.2 The purpose of a tender exercise is to identify the bid that is most likely to “meet the tender requirements and which represents the best value for money for the public sector”. There are several different procedures available which should be chosen according to the specific requirements of the project. This guidance aims to help contracting authorities select the most appropriate route for taking their contract to market. [The Review of Scottish Public Sector Procurement in Construction](#), acknowledged the increasing expense involved in preparing procurement competitions and encouraged, where appropriate, the use of the simpler process, for example the Quick Quote process offered through the Public Contract Scotland portal and in Chapter 6 of this handbook.

1.3 Regardless of what process is used to procure the contract; the common requirements of all public purchasing must be followed:

- All bids must be treated equally and without discrimination - bidders must be given the same opportunity, based on the same information and criteria, and bids must be evaluated in a non-discriminatory manner.
- Authorities must act in a transparent and proportionate manner – Bidders must be informed in advance of any evaluation criteria and scoring method to be used in the procurement process. The evidence sought from bidders must be proportionate to the requirement being tendered.

1.4 The Procurement Reform (Scotland) Act 2014 introduced a sustainable procurement duty whereby the contracting authority must consider how procurements above defined thresholds can:

- Improve the economic, social and environmental wellbeing of the authority’s area,
- Facilitate the involvement of Small and Medium Enterprises (SMEs), third sector bodies and supported business in the process, and
- Promote innovation.

Thresholds

2.1 The Public Contracts (Scotland) Regulations 2015 and the [Procurement Reform \(Scotland\) Act 2014](#) set thresholds above which certain procedures must be followed. Construction is subject to these rules exactly as for any other procurement. The thresholds are shown in the table at *Figure 1*. This guidance includes a decision matrix to assist in determining the most appropriate way to take a contract to market.

		Works	Services, Supplies & Design Contracts
Procurement Reform (Scotland) Act 2014		£2m	£50k
Public Contract (Scotland) Regulations 2015	Central Government	£5,336,937 thresholds	£138,760 thresholds
	Other Contracting Authorities	£5,336,937	£213,477
	Small Lots	£884,720	£70,778

Figure 1 – Public Contract Procurement Thresholds as at 1 January 2022 (see [procurement thresholds webpage](#))

2.2 There are no mandated procedures below the thresholds set out in the Procurement Reform (Scotland) Act 2014 and those required by the Public Contract (Scotland) Regulations 2015 do not apply below the 2015 Regs thresholds. That said, we recommend that the use of similar processes for all below 2015 Regs threshold procurements is good practice, as they provide a consistent approach and ensure open competition in keeping with the common procurement principles of equal, fair and transparent processes.

Procurement Routes

3.1 There are a number of procedures which must be used above 2015 Regs thresholds and which we recommend should inform the basis for the design of all procedures below those levels. The Procurement Reform (Scotland) Act 2014 requires all procurements above the regulated procurement threshold to be advertised. Subject to the guidance given below, procurements below the thresholds set out in the PR(S)A do not require to follow any particular procedure and may be taken to market without advertising for example using systems such as the Public Contract Scotland Quick Quote system. Contracting authorities should note that where there is a likely cross border interest in a procurement then a degree of advertising must take place. Given the relatively large sums of money which can be expended on works contracts below the Procurement Reform (Scotland) Act 2014, risk, value and complexity should be considered in determining whether a contract should be openly advertised or not. We have defined four procurement routes; two below the regulated procurement threshold and two above.

3.2 The following table, *figure 2*, describes, in outline, the two main routes and their sub-routes for construction contracts.

		Construction Procurement Route 1		Construction Procurement Route 2	
		A	B	A	B
Thresholds	Goods and Services	Below £50k	Below £50k	£50k – 2015 Regs thresholds	Equal to and above 2015 Regs thresholds
	Works	Below £500k	Between £500k and £2m	£2m - 2015 Regs thresholds	2015 Regs threshold

	Works	Below £500k	Between £500k and £2m	£2m - 2015 Regs thresholds	2015 Regs threshold
Risk		Low	Medium and High	Low, Medium and High	Low, Medium and High
Notes		This route is designed to reflect the legal requirement to ensure all Scottish public sector procurement is undertaken in an open, objective and equitable manner	As for Route 1A, but with the additional requirement of advertising the contract on PCS. This is not a legal requirement but good practice to achieve wide coverage. Used where Route 1A is not appropriate.	Must be advertised and comply with the requirements of Procurement Reform (Scotland) Act 2014.	Must fully comply with the relevant regulations including Public Contract (Scotland) Regulations 2015.
Procedures		No requirement to advertise. PCS Quick Quote provides an online system for taking this type of procurement to market.	This will most likely be openly advertised and it should be conducted in a fair, open, objective and equitable manner akin but <i>not</i> subject to the same rules as procurements conducted above Procurement Reform (Scotland) Act 2014 thresholds.	None specified but a full and formal fair, open, objective and equitable tender process must be followed. Where appropriate and proportionate to the specific case we believe that following <i>similar</i> procedures to those required for 2015 Regs procurements is advisable.	Open, Restricted, Competitive procedure with negotiation, Competitive dialogue, Innovation Partnership, Negotiated procedure without prior publication.

Figure 2: Main and sub-routes for construction contracts

Decision Matrix

4.1 It is essential that the most appropriate route is used to take work to the market and we would encourage contracting authorities to use Construction Procurement Route 1A for all contracts below the Procurement Reform (Scotland) Act 2014 thresholds where appropriate. To assist contracting authorities in determining which of the routes shown in Figure 1 is appropriate, we have developed a decision matrix (Annex A) which, along with helping authorities to choose the appropriate route, will also assist in providing an audit trail of decisions made.

4.2 This [matrix](#) sets out a decision process for determining which of the routes to use. Specific guidance on route 1A and open and restricted procedures is also provided.

4.3 The decision matrix starts with a presumption that:

- All non-construction related procurements should use the [Procurement Journey for Good and Services](#);
- All construction works contracts with an estimated value of under £2m and all construction supplies & services contracts estimated at less than £50k may be procured, where appropriate by using either Construction Procurement Route One A or B (CPR1A or CPR1B); and

- All construction works contracts estimated at £2m or more and construction supplies & services contracts with an estimated value of £50k or more must be procured using either Construction Procurement Route Two A or B (CPR2A or CPR2B).

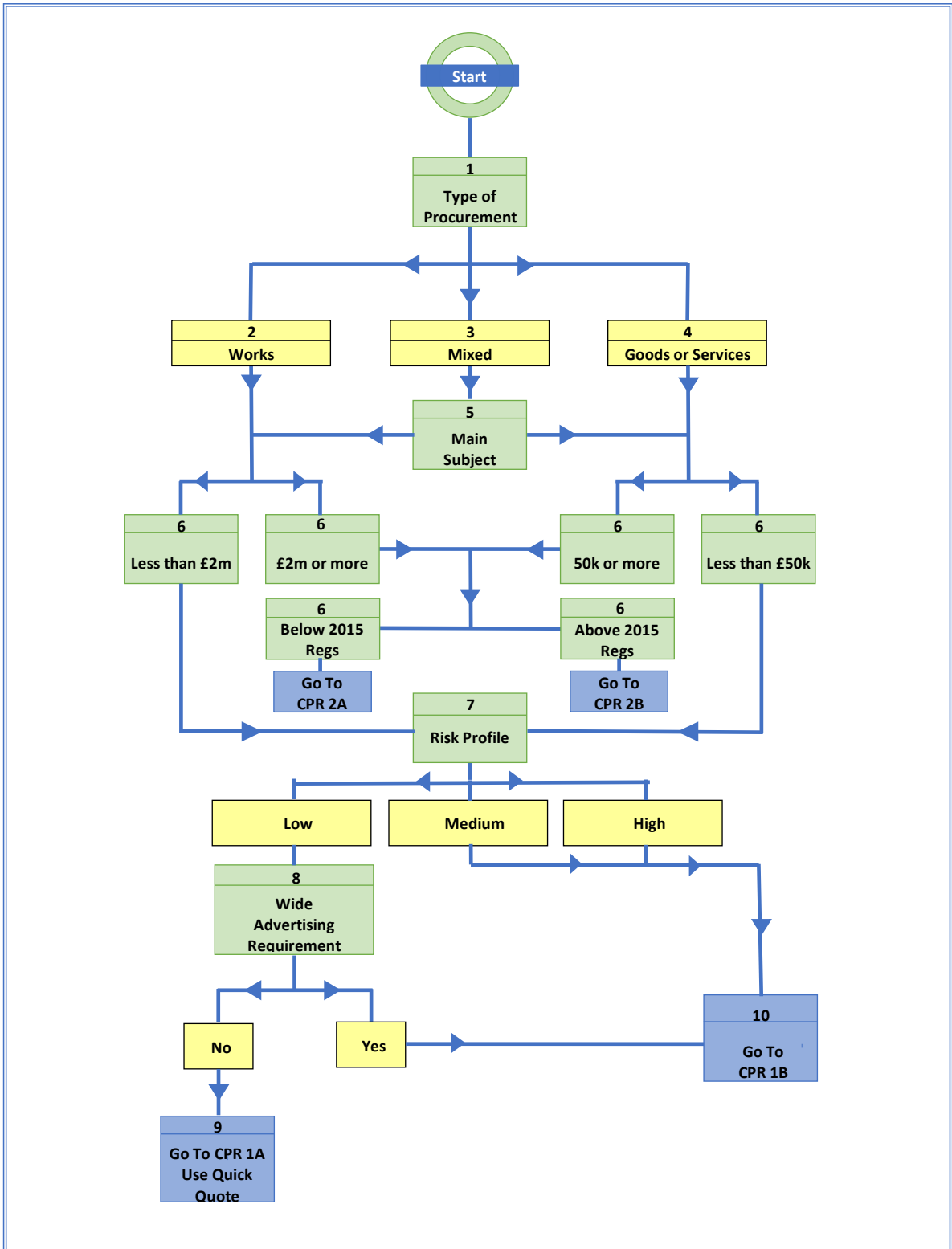
4.4 The use of CPR1A or B does not relieve contracting authorities of the responsibility to carry out a fair and transparent procedure or to maintain an accurate record of the process. Nor is it a substitute for robust and open procedures. Contracting authorities should be able to provide evidence that the award of any contract and the processes leading up to award were scrupulously carried out. The matrix provides links to explanatory notes at each stage and its use combined with good record keeping of decisions made and the thought behind them will provide a robust audit trail.

4.5 The decision matrix is a flow chart which asks three key questions around contract type, complexity and market conditions leading the user to one of four outcomes:

1. **“Use CPR1A”** An unregulated, low or medium risk procurement below Procurement Reform Act (Scotland) 2014 thresholds with no requirement to advertise;
2. **“Use CPR1B”** An unregulated high risk procurement below the Procurement Reform Act (Scotland) 2014 thresholds where wider advertising may be appropriate.
3. **“Use CPR2A”** A Procurement Reform Act (Scotland) 2014 regulated procurement not above 2015 Regs thresholds.
4. **“Use CPR2B”** Procurement value is above OJEU threshold. In practice, for consultants this will most often be either the Open or Restricted procedures, or in exceptional circumstances Competitive Dialogue or Competitive Procedure with Negotiation. For contractors, this will include the full range listed at figure 1.

4.6 [Explanatory notes](#) (Annex B) provide further detail on the completion of each stage.

Construction Procurement Route Selection Matrix¹



¹ Numbers in boxes relate to explanatory notes in Annex B.

Annex B

Decision Matrix Explanatory Notes

Note 1. Type of Procurement?

Construction is subject to the same regulatory regime as goods, services and supplies. However, the processes relating to construction are sufficiently specialised to require specific handling. This decision matrix is intended for construction works or construction related goods and services contracts only. If the contract is for non-construction related contracts, then the procurement journey for goods and services should be used.

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Note 2. Is the Contract for Works?

Works, services and goods are defined in Regulation 2 of the Public Contracts (Scotland) Regulations 2015 as follows:

‘public contracts’, means contracts for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities and having as its object the execution of works, the supply of products or the provision of services;

‘public works contracts’ means public contracts having as its object one of the following:

- (a) the execution or the design and execution of works related to one of the activities within the meaning of Schedule 2;*
- (b) the execution or the design and execution, of a work;*
- (c) The realisation, by whatever means, of a work corresponding to the requirements specified by the contracting authority exercising a decisive influence on the type or design of the work;*

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

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

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

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Note 3. Is This a Mixed Contract of Works, Services and/or Supplies?

In order to determine whether Quick Quote is appropriate, contracting authorities should estimate the value and risk profile of the procurement.

Some procurements may be for a mix of goods, works and services. A mixed contract is defined in Regulation 4 of the Public Contract (Scotland) Regulations 2015. Whilst this definition only applies to contracts above the 2015 Regs thresholds and is not a legal requirement for below 2015 Regs thresholds procurements, it is, nevertheless, a useful definition and one which could be applied, for consistency, to below 2015 Regs threshold procurements (it should in any case be applied in this matrix as procurements going through the flow chart may be subject to 2015 Regs procedures). This sets out in paragraph (3) that:

“The application of these Regulations to a procurement which has as its subject a mixed contract, other than one to which paragraphs (1) and (2) apply, shall be determined by that part of the mixed contract that characterises the main subject of the contract in question....”

For example, if a procurement has elements of both works and services in it and the main focus of the contract is works, the procurement should be treated as works.

The regulations also set out in paragraphs 5 and 6 of Regulation 6 that it is not permissible to subdivide procurements or estimate their value in such a way as to deliberately exclude it from the scope of the Regulations.

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Note 4. Is the Contract for Goods or Services?

If a contract is part services and part goods, then the main subject is determined by value only. However, for the purposes of this matrix the appropriate route is the same for both goods and services.

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Note 5. What is the Main Subject of the Procurement?

As described in note 3, procurement procedures are determined by the nature of the main subject of it. In terms of thresholds these are for either works, goods or services.

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Note 6. Does the Contract Estimate Amount Fall Below the Relevant Threshold?

Paragraph 3.1 and Figure 1 of this guidance sets out the thresholds applicable to procurements. If the estimated value of your contract exceeds these thresholds, you should go to Construction Procurement Route 2. Specific guidance on the procedures of route two are provided in Chapter 7 of this handbook.

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Note 7. What is the Level of Risk Associated With This Contract?

Contracts which are assessed as being of high risk should not be procured using CPR1A. Risk associated with the contract should be assessed in the context of the contract itself, the authority's financial standing orders and the nature of the project including any potential controversy attached to it.

Contracts assessed as being of low or medium risk can proceed to the final test on the matrix towards determining whether CPR1A is appropriate for this contract.

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Note 8. Does This Contract Require to be Advertised Widely?

CPR1A is by definition a reduced process which restricts not only the process, but the number of quotes required. If you need to advertise widely, e.g. to attract contractors and consultants from a wider supply base or perhaps to satisfy internal policy procedures or specific requirements of the Public Contract (Scotland) Regulations 2015, CPR1B should be used.

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Note 9 Use CPR1.

The decision matrix indicates that the use of CPR1A is appropriate for your procurement. Guidance on CPR1A is provided in chapter 6 of this handbook.

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Note 10 Use CPR1B.

Construction Procurement Route 1B should be used where CPR1A is not appropriate and the procurement is below the PR(S)A14 threshold. In practice the procedure for procuring such a contract is likely to be similar to that for above PR(S)A14 procurements, although this must be proportionate to the size and complexity of the work being tendered.

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Construction Procurement Handbook

Chapter 4

Preliminary Market Consultation

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Annex A	Case Study One : Principal Contract for the Design, Construction and Completion of the Forth Replacement Crossing	
Annex B	Case Study Two: Questionnaire Released at Industry Day	

Introduction

1.1 The procurement of construction related contracts is often complex but, regardless of complexity, its aim is to get the best product available while achieving the best value for money. This process and the outcomes of it can often be improved by consulting with the market prior to a formal procurement process being commenced. This is not a substitute for and should not be confused with additional commissioned work required as part of the project including during the design or construction phases. How much information a client can reasonably expect to receive from the market, without payment, is a grey area and CAs should be aware of the risks to their procurement should they stray into areas of work that should reasonably be paid for as this might raise an expectation from participants in the consultation of favour or unfair advantage.

Objectives

2.1 The objective of undertaking pre-market engagement is:

- To understand the potential options available to achieve the project outcomes;
- To engage with partners and potential suppliers as early as is practicable and appropriate;
- To clearly identify and articulate the required outputs having taken into account market conditions and available offers;
- To properly refine the business case and budget; and,
- To select the most appropriate procurement route to best deliver the defined outcomes

Legislation

3.1 Paragraph 2.1 of *Chapter 1: Introduction and Overview* of this handbook sets out the relevant pieces of primary and secondary legislation which govern public sector procurement in Scotland. These are the [Public Contract \(Scotland\) Regulations 2015 \(the 2015 Regs\)](#), the [Procurement Reform \(Scotland\) Act 2014 \(the Act\)](#) and the [Procurement \(Scotland\) Regulations 2016 \(the 2016 Regs\)](#) are also relevant to this chapter of the handbook.

3.2 The principal regulations for pre-market consultation are Regulations 41, 42 and 58(8)(f) of the 2015 Regs and Regulation 9(5)(f) of the 2016 Regs. Regulation 41 of the 2015 Regs allows a contracting authority (CA) to “...conduct market consultation with a view to preparing the procurement and informing economic operators of the authority’s procurement plans and requirements.” before commencement of a procurement. It notes that advice received “...may be used in the planning and conduct of the procurement procedure, provided that it does not have the effect of

distorting competition and does not result in a violation of the principles of non-discrimination and transparency.”

3.3 Regulation 42 of the 2015 Regs provides safeguards by setting out that CAs must take appropriate measures to ensure that competition is not distorted by the participation in the competition of a candidate or tenderer which has provided advice to the CA or has otherwise been involved in the preparation of the procurement. It also sets out measures which must be taken and arrangements where exclusion may be appropriate. In essence this requires that no party should have any information or other knowledge, as a consequence of dealings with the client, which is not available to others and which could provide it with an unfair advantage in any public procurement.

3.4 Regulation 58(8)(f) of the 2015 Regs and 9(5)(f) of the 2016 Regs allows for the exclusion of economic operators from participation in a procurement procedures regulated by the Act where a distortion of competition may arise from the prior involvement of the economic operator in a procurement procedure as per Regulation 42 of the 2015 Regs.

Specific Requirements

4.1 As a minimum, the measures that the CA takes must ensure that any relevant information exchanged in preliminary market discussions is shared with all parties interested in bidding and adequate timescales are set to ensure all bidders have sufficient time to consider that information in advance of submitting their bid/tender.

4.2 The CA must also detail the measures that they have taken to ensure that the competition is not distorted. This is to be set out in the written report that [the CA] is required to be produce on each procurement process, see Regulation 83 of the 2015 Regs.

4.3 A company which has provided advice or which has been involved in the preparation of a procurement, either as part of any preliminary market consultation or not, should only be excluded where their continued participation in the procurement would distort the competition and provide them with an unfair advantage over other participants and compliance with the principles of procurement – that is to treat all bidders equally and without discrimination and to act in a transparent and proportionate manner – cannot be assured by any other, less intrusive, measures.

4.4 CAs should not rely on a single supplier to form a specification, as this could potentially lead to a conflict of interest where that specification suits the particular supplier's bid to the detriment of others. If the contracting authority is considering excluding a supplier due to their involvement in preparing the procurement procedure on this basis, the supplier must be given the opportunity to prove that their involvement will not distort the competitive process.

When to Consult

5.1 During the life of a project there may be a number of opportunities to engage with the market, this will depend on the scale of the project and the maturity of the design.

It follows that a large project will have more opportunities to engage with a wide range of stakeholders including suppliers. A design which is far advanced will have less scope for change and therefore the benefit of consultation will be reduced and the cost of implementing any suggested changes increased. This is not though to say that in these circumstances that pre-market engagement will not be appropriate, however it is clear that the earlier that market consultation is undertaken the greater the value to the project.

5.2 Early on in a project, when outcomes are still being established, holding a design charrette (workshop) allows the participation of a wide range of stakeholders including community representatives, suppliers and other interested parties. This not only helps to develop design concepts and tease out practical issues but also brings about early engagement with stakeholders and creates a strong foundation for the delivery of the project. As plans develop consultation may focus on design issues relating to the output, i.e. the physical project/building, as well as improving understanding of the best route to market.

5.3 Later, when a client has established what, in broad terms, it is seeking to procure, there may remain some uncertainty or questions regarding the exact nature of what is to be bought. This could, for example, relate to the most practical solution, specifications of materials, the best procurement and contractual route and whether the market has the capacity to deliver it. Further consideration may be enhanced by the involvement of suppliers in providing some of the missing detail to allow a final plan to be developed by the client. This could be achieved by, for example:

- Talking to suppliers about new or emerging technologies.
- Investigating available innovative construction techniques and materials.
- Splitting contracts into lots that align with current market capacities.

5.4 The engagement process could also include a technical dialogue to inform a specification, although clearly not to the extent of following a formal procedure such as a competitive dialogue.

5.5 There are many advantages to both the purchaser and potential bidders/tenderers in participating in such a process. The table at *Figure 1* sets out some of the benefits of engaging in preliminary market consultation.

Advantages of preliminary market consultation
<ul style="list-style-type: none">● Assists in defining the requirement, by better informing the business case and helping to identify or develop the requirements.● Stimulates and encourages interest from potential bidders / tenderers and thus increases competition which can reduce dependency on a limited number of suppliers.● Helps to provide a better understanding of the feasibility of the requirement which can result in a clearer specification and consequently more appropriate and better refined bids during the tender stages.● Tests the capacity of the market to deliver the outcome

- Gives greater understanding of the risk environment.
- Informs the procurement strategy and approach.
- Minimises the need for using complex and costly procedures such as Competitive Dialogue.
- Encourages a more responsive market – by giving the market sufficient time to prepare to meet demand e.g. by ensuring the right skills and resources are in place.
- May inform the approach to procurement, including for example what construction contract to adopt, the procurement procedure to follow, the selection and award criteria to adopt when setting the procurement and how to achieve sustainable outcomes.

Figure 1: Advantages of preliminary market consultation

Specific Preliminary Consultation

6.1 There can be a fine line between what is preliminary market consultation and what is more appropriately early or advanced work. It is essential that contracting authorities do not seek to get something for nothing. The difference could be defined as:

- preliminary consultation assists the CA in understanding the requirement and the art of the possible; whereas
- activity which is legitimately part of the scope of the design and construction of the asset should be properly commissioned and paid for

6.2 In construction, preliminary market consultation aims to minimise risk and there are a number of instances where seeking information from the market may assist with this. It should also be borne in mind that information received may be superficial in nature and, consequently, its usefulness may be limited. Examples of where information may be useful include:

- Assessing site constraints – this may inform the client if there are obvious constraints (physical, technical or logistical), that may affect the proposed project – for example, the requirement for a tower crane to have over-sailing rights may need to be addressed.
- Buildability – engaging with consultants and contractors to understand if design proposals have any particular issues with regards to construction methods.
- Market capacity, including sub-contract market capacity – for example, there may be constraints in the market, or shortages in certain trade packages, leading to a requirement to consider alternative building methods.
- Testing of construction programme assumptions with contractors.
- Researching price assumptions, particularly in a volatile market – although any discussions must be purely indicative and not aimed at learning what a particular party may bid.

6.3 All of these areas are the primary responsibility of the design team and other design consultants as part of their normal activity. For example, cost consultants will base cost plans on market intelligence gathered from other projects. However, that may be enhanced by consultation with the market.

6.4 The purpose is to gather general market intelligence and must not be about how a particular supplier would deliver the requirement or shape the requirement such that it would favour a specific supplier. There will be occasions when to reduce project risk it would be more appropriate to commission discrete packages of work to fully consider items such as those above, to allow informed decisions to be made. This information would then be owned by the client and can be released to bidders as part of the procurement process. This would not be considered as preliminary market consultation. Examples of such work may for example include:

- Site investigations
- Condition Surveys
- Traffic impact reports
- Outline planning applications
- Environmental impact reports

6.5 Prior to undertaking preliminary market consultation, a CA should analyse their project and understand where such action may be of benefit. Following this a plan should be prepared setting out how it will be undertaken, including ensuring that sufficient time is set aside to conduct a meaningful consultation. The plan must also safeguard against an issue occurring with the procurement procedure or the exclusion of a supplier from the competition who has voluntarily engaged with the preliminary market consultation. The plan should record the approach to be taken and may include the following:

- Engaging with a number of suppliers – this leading to greater market intelligence while reducing the risk of being accused of creating unfair advantage to a particular supplier.
- Explaining to those suppliers consulted that any information received from them may be published and used as part of the procurement process. For this reason any commercially sensitive or confidential information should not be discussed.
- Records of all discussions / meetings should be kept and relevant information received must be made available to all bidders, with sufficient time allowed within the process for all bidders to consider and react to such information. All records must be kept for a minimum of three years from the date of the award of contract.

- A separate statement regarding this information should be included in the procurement documents and form an annex to the contract notice

Case Studies

7.1 The case study at annexes A and B sets out some of the consultation conducted during the project to construct the Forth Crossing.

7.2 Two case studies are attached at annexes A and B. The first was included in Chapter 6 of the Review of Scottish Public Sector Procurement in Construction and shows how consultation was applied in the preparation of a framework and the second sets out some of the consultation conducted during project to construct the Forth Crossing.

Summary

8.1 The potential value of preliminary market consultation has been recognised by explicitly allowing for it in the 2015 Regs. It will not be appropriate in all situations and its use will be largely related to the complexity of the contract being procured. Care should be taken when using it, ensuring equal treatment of bidders / tenderers, ensuring transparency and proportionality, and not providing information in a discriminatory manner which may give some bidders an advantage over others. The CA must ensure that there are no conflicts of interest. However, if proper processes are put in place, CA should not fear its use and indeed should undertake this as a normal activity as it can enhance the quality of the procurement information leading to better tenders being submitted.

Case Study One:

Transport Scotland: Principal contract for the design, construction and completion of the Forth Replacement Crossing

Background

Despite significant investment and maintenance since it opened in 1964, the Forth Road Bridge had shown signs of significant deterioration in the recent years. It was no longer deemed viable as the long-term main crossing of the Firth of Forth.

In 2006-7, Transport Scotland carried out the Forth Replacement Crossing Study - part of the wider Strategic Transport Projects Review - to examine a wide range of options for replacing the existing road bridge.



Computer Image of the new bridge and the existing Forth Road Bridge

Responding to the study in December 2007, Scottish Ministers announced their intention to build a new bridge to the west of the current Forth Road Bridge. A challenging timescale was set due to the potential need for future restrictions to Heavy Goods Vehicles using the existing bridge. The new bridge – the Queensferry Crossing - opened to traffic in the summer of 2017.

Following this bridge building announcement, Transport Scotland immediately began on the fast tracked scheme – appointing Jacobs/Arup as joint venture design consultants in January 2008.

In tandem with the design, various other work streams were established comprising a number of related projects. As well as delivering a new bridge, associated projects included upgrading the connecting road network on both sides of the Firth of Forth and the development of an Intelligent Transport System.

The preliminary design work for the bridge proposed a three tower cable-stayed bridge to be situated to the west of the existing bridge. Although the detailed design and construction of the bridge represented significant engineering challenges, the challenges of the project were not confined to just engineering. Others included - obtaining the requisite consents, acquiring the necessary land, mitigating environmental impact, working to a tight programme and ensuring value for money for Scotland's largest infrastructure spend to date.

Pre-market Engagement

The tight timescales coupled with the scale and complexity of the project, meant that statutory work and procurement had to be commenced in tandem to the design.

Transport Scotland recognised the advantages of engaging with the market early to identify market participants and to benefit from their knowledge. They followed a structured process that allowed them to engage in discussions with world class bridge contractors and consortia. The knowledge gained provided better understanding of the market, particularly the risk appetite of market participants, their preferred procurement route and confirmation that the proposed form of contract, the International Federation of Engineers 'FIDIC - silver book' form of construction contract was the most appropriate. It also allowed consideration of the appropriate allocation of risk and the resultant amendments to the contract that would be acceptable to bidders.

Industry Day

The initial part of this pre-market engagement process was the holding of an *Industry Day* event in March 2009. The event was attended by 140 delegates from 60 industry companies, as well as Transport Scotland's integrated team. This audience included leading bridge contractors, responsible for projects around the world.

Members of the Transport Scotland team outlined the works content, the policy and statutory environment, and the procurement expectations, as well as confirming the Scottish Government's commitment to the project.

Participants were provided with information on the background to the project, the designs as they had thus far developed, and other proposals including the proposed procurement route and contract choice.

Delegates were invited to respond in writing to a structured questionnaire covering thirteen issues. These questions are reproduced at Appendix 1.

The questions focussed broadly on three main topics - route to market, risk apportionment and buildability.

The route to market questions considered topics such as, the splitting of the overall project into different packages (bridge and road connections) or releasing as one procurement, whether bidders were likely to be single entities or consortiums and the number of bidders that should be invited to tender following the selection procedure. Risk apportionment sought industry views on key contract risks, price hedging and

applicability of performance bonds. Buildability sought opinions on the programme, site requirements for set -down / fabrication and also views on the availability of local labour.

Bilateral Discussions

Following receipt of the *Industry Day* responses, a number of parties were selected to participate in bilateral discussions. These were structured around this same question set and sought to better explore and expand on the responses. Restricting the agenda to these questions ensured transparency and maintained a proper process throughout thereby reducing the risk of challenge to the conduct of the procurement procedure. Records of the meetings were kept and responses to the questions were analysed and summarised.

Through these discussions the participants provided further feedback on the extent of risks that they may be asked to assume, and the process that would allow them to quantify those risks.

Transport Scotland continued and extended their bilateral discussions in a controlled manner over the period before the publication of the Contract Notice. Beyond this point such communication would compromise the procurement process.

Importantly, Transport Scotland ensured that the information received through the pre-market engagement process was collated and fully articulated in their procurement and contract proposals as constructively as possible, by developing a project philosophy and timeline.

Project Philosophy and Timeline

Following analysis of feedback, coupled with Transport Scotland's own research, a tender process timeline was developed to accompany the project philosophy. These documents provided clarity for the development of the project and how *Transport Scotland* anticipated the project progressing, with regard the programme associated with prequalification, tendering and award of the contract.

These documents were issued to potential contractors/consultants, requesting further feedback and meetings to discuss the philosophy proposed. Again records of all responses were maintained and any new relevant information was provided to bidders in the contract notice.

Buildability

The various discussions confirmed, for example, that *Transport Scotland* should be responsible for securing land for site offices and compound, on both the north and south side of the Firth of Forth. This commitment was confirmed in the procurement documents that were released at the selection stage.



Construction of the Queensferry Crossing

Form of Contract

The form of contract was based on the FIDIC silver book form of contract, this being a contract suitable for turnkey bridge projects. The contract transfers significant risk to the contractor who is responsible for the majority of the design, effectively a design and build form of contract. There were amendments to the contract, many as a result of the pre-market engagement, to reflect the particular requirements of the project, including appropriate risk allocation, but also to reflect Scots Law. These changes were detailed as part of the procurement documents released at the selection stage, allowing bidders to fully consider their implications at this early stage.

Procurement Procedure

Pre-market responses also confirmed the choice of Competitive Dialogue as the correct procedure to follow. This was due to the complexity of the project coupled with the costs associated with bidding for a project of this magnitude. This procedure allowed design and construction methodology to be developed, as well as continuing contractual dialogue on commercial and risk apportionment associated with the chosen form of contract.

Notice Publication

The procurement process was governed by EU Public Procurement Directives implemented for Scotland by the Public Contracts (Scotland) Regulations 2006. In order to stimulate the market further Transport Scotland issued a Prior Information Notice (PIN) in the Official Journal of the European Union (OJEU) on 9 April 2009. This provided early notice of the procurement to the wider market.

Subsequently, Transport Scotland published a Contract Notice, calling for expressions of interest from competent contractors on 1 July 2009. At the start of the pre-qualification process, Transport Scotland used the information gained in the pre-market engagement to explain the basis on which they would contract, in a draft

'Heads of Terms', to ensure that intending bidders were fully aware of contractual expectations from the outset.

Information from the pre-market engagement exercise had highlighted that bidders were concerned over the level of costs associated with bidding for such a complex project. This was in part a nervousness from bidders that the Scottish Government wouldn't commit to the project. To counter this Transport Scotland and the Scottish Government agreed to pay a proportion of "Participation Costs", if the Scottish Government didn't award the contract, or they couldn't - if they failed to get the necessary Royal Assent. It was also agreed to pay a proportion of under bidders' costs, capped at a pre-agreed level, ensuring that there would be bids. This demonstrated the very firm commitment that the Scottish Government was making to the project.

Conclusion

The Queensferry Crossing and the associated works represent a project complexity and scale that is highly unusual in the Scottish Public Sector Procurement landscape. However, the process that Transport Scotland followed offers valuable lessons for projects of a lesser scale.

The most important aspect was the structured nature through which information from contractors was captured, Transport Scotland seeking initial responses using a questionnaire and thereafter holding bilateral conversations but keeping these to those same questions, expanding on the information received. Detailed records from both parts of the exercise were kept. As the case study demonstrates, the information received helped shape aspects of the procurement procedure, including contract details and the employer's requirements. Transport Scotland followed best practice ensuring any relevant information gained was shared openly with all parties as part of the procurement process. This ensured that no bidder would have unfair advantage and thus there was no distortion of the competition.

**Transport Scotland Questionnaire Released at Industry Day Event.
The Questions Were Used as the Basis of Follow Up Bilateral Discussions with Suppliers.**

<p>Q1. Project role In what role would you like to be involved in the project?</p> <p>A1. Main Contractor Consortium member Subcontractor (or Supplier) >£10m Subcontractor (or Supplier) >£1m-£10m Subcontractor (or Supplier) <£1m Designer</p> <p>Q2. Procurement packaging Transport Scotland may wish to process the project as more than one contract e.g. advance works or Junction 1a. Please set out your views on the potential packaging of the different aspects of the project.</p> <p>Q3. Procurement contract/risk It is currently intended that the whole scheme (whether procured as one or more packages) will be procured using an adaptation of the FIDIC silver book contract form. Please set out your views on the risk allocation of that form and any aspects of shared risk you feel it may be appropriate to amend. Please also give your observations on the key risks involved during the procurement and construction of the project.</p>	<p>Q4. Do you believe that an extra and non-contractual Project Partnering Protocol to provide co-operation and mutual assistance which would give further definition to process control would aid the effective management of the contract? If so should there be a protocol heads of terms developed prior to tender submission.</p> <p>Q5. Risk hedging What do you see as the opportunities for hedging risks and price fluctuations and how do you consider the cost of hedging compares with that bearing the risks directly?</p> <p>Q6. Programme The provisional outline procurement programme, which is running in parallel with the parliamentary approval process, is given in Section 6.1 of the Industry Briefing brochure. Please set out your views on both the length of the procurement and the time distribution for each stage. Please also set out whether you would be willing if selected following the pre-qualification stage to undertake some advanced investigation work (such as ground investigation proving surveys) prior to the formal invitation to engage in the tender process.</p>
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Q7. Maintaining competition

The Scottish Government would be grateful for your views on whether Tendering bonds (to ensure that invited participants submit a bona fide tender) and Tender Bonds (to ensure that the winning tender is converted into a contract) are constructive devices in the management of an orderly competition, and on whether you have any alternative proposals that would achieve the same end?

Q8. Do you have a view on the appropriate number of bidders to secure the most focused competitive tender process, bearing in mind that the limit in invitations could leave you as the highest qualified contender that has not been selected to bid?

Q9. Parallel Process

Transport Scotland recognises that tender costs for bidders will be substantial. Please set out your views on an appropriate strategy for managing tender cost risk in taking forward the project procurement in parallel with the statutory process.

Q10. Funding

Do you foresee any difficulties in securing internal funding to cover your cost up to and between interim payments, based on the delivery of milestones and/or awaiting the release of retention during an extended defects liability period? Are there any advantages in providing a Performance Bond to allow the earlier release of client payments?

Q11. Constructability

It is envisaged that a key issue will be the need to identify and acquire bridge assembly areas close to the bridge crossing site. Please set out your views on whether it would be advantageous for Transport Scotland to acquire such areas or whether this is best left to the contractor.

Q12.

It is our intention to provide land for a main landward construction compound situated adjacent to the roadworks to the south of the new crossing. Is there a requirement for a satellite compound to be secured by Transport Scotland to the North of the Forth?

Q13. Having regards to our obligations to ensure transparency and non-discrimination in relation to the employment of staff and operatives, what steps could the Scottish Government take to ensure that local labour was best prepared to support and learn from the challenges of delivering this project?

Construction Procurement Handbook

Chapter 5

Contract Selection and Procurement Strategy

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21. [Risk Apportionment](#)
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23. [Amendments to Standard Form Contracts](#)
24. [Selecting a Form of Contract](#)
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Introduction

1.1 The [Review of Scottish Public Sector Procurement in Construction](#) noted that a wide range of contract forms were being used by public sector clients for the procurement of construction works. In some cases, a clear selection process had been applied to the choice of contract which was appropriate for the nature of the work, the procurement method and the risks lying within the project. However, in other cases, it appeared that much less thought or planning had been given to the form of contract used where there was a reliance on historic practice regardless of whether the contract type was the best fit or approach for the project in question.

1.2 This Chapter of the Construction Procurement Handbook provides an overview on the relative merits of a range of procurement strategies and forms of contract. This will help to inform a contracting authority's decision on the procurement strategy and form of contract it wishes to adopt for the delivery of its desired project outcomes.

Summary of Generic Procurement Strategies

2.1 There are five generic procurement strategies:

- Integrated
- Traditional
- Design and Build
- Management
- Revenue Financed

2.2 Each has variants, and further options can be applied to some of the variants:

- Frameworks
- Two Stage Tenders
- Target Cost Contracts

2.3 In addition, there are a number of **forms of construction contract** which can be used with each variant and/or option which reflect differences in risk allocation between the contracting parties and differences in the mechanisms for payment, for variations to the contract required by the client and for resolution of disputes.

2.4 The two forms of contract most commonly used for construction works in Scotland are:

- The Joint Contracts Tribunal (JCT) as amended for use in Scotland by the Scottish Building Contract Committee Ltd.; and,

- The New Engineering Contract (NEC).

2.5 Two standard forms of contract which, historically, were widely used (The Institution of Civil Engineers, ICE Contract and the Government Conditions of Contract, GC Works) are no longer maintained by their publishers and were withdrawn from sale in 2011. While some procuring authorities continue to use these on a regular basis, those authorities not familiar with them may wish to consider other, more contemporary forms of contract.

2.6 Other forms of contract such as the FIDIC suite published by the International Federation of Consulting Engineers, and the ICC Conditions of Contract, published by the Association of Consulting Engineers (ACE) and the Civil Engineering Contractors Association (CECA), are available. However, these are not in common use and are not considered in detail in this chapter.

2.7 A summary of the generic procurement strategies and associated forms of contract and their potential applicability is contained in *Figure 1*.

Procurement Strategies	Integrated		Traditional	Design and Build		Management		Revenue Financed	
	Early Integrated Team	Hub Design and Build		Design and Build	Design, Develop and Construct	Management Contracting	Construction Management	Hub DBFM	NPD
Option for Cost Reimbursable Target Cost	✓	✓	✓	✓	✓	✗	✗	✗	✗
Option for Two Stage Tendering	✓	*	✓	✓	✗	✗	✗	✗	✗
Option for Framework	✓	✗	✓	✓	✓	✓	✓	✗	✗
Available forms of Contract	SBCC Constructing Excellence NEC 3 Option C with Secondary Partnering Option X12 PPC 2000	Standard hub Design, Build, Development Agreement	SBCC Various NEC 3 Options A and B	SBCC Design and Build NEC 3 – Various Options Combinations	SBCC Design and Build NEC 3 – Various Options Combinations	SBCC/JCT Management Contract NEC 3 Option F	SBCC/JCT Management Contract NEC 3 Option F	Standard hub DBFM Model Form	Standard NPD Model Form

Figure 1: Summary of Generic Procurement Strategies

* The hub programme pricing mechanism is very similar to a 2-stage tendering approach.

Common Procurement Strategies and their Characteristics

3.1 In this section, the key characteristics of a range of commonly used procurement strategies are described. Each description is accompanied by an assessment, in matrix form, of the relative impact (from low (1) to high (10)) of a set of twelve specific characteristics may have on the particular procurement strategy; for example, what level of client expertise is required in its application or is it suitable for simple or more complex projects. The twelve characteristics are described in *Figure 2*, along with a description of what each characteristic assesses.

Characteristic	What the Characteristic Assesses
Expert client involvement needed	The degree of expertise, low-high, needed by the client body
Client control over design and specification solutions	The amount of control afforded to the client in selecting a design solution, rather than simply testing if the specified project benefits are achieved.
Needs the client to produce an output performance specification. Often called “Employers Requirements” or “Accommodation Requirements”	The extent to which the procurement strategy is reliant on a detailed set of client technical requirements. For each design element this is normally expressed as achieving a minimum performance level.
The ease of implementing change during construction	The ease of instructing a change and of agreeing any implications of cost and time
Supports the early appointment of an integrated team	The extent to which the strategy enables contractors and designers to work collaboratively from an early stage of the project
Single point design and construction responsibility	The extent to which responsibility for both design and construction is contractually combined.
Cost and time certainty after contract execution	Measures the degree to which construction phase risks are typically able to be transferred to the contractor
Speed of development	A measure of the relative speed from project inception to start of construction
Suitable for simple projects	Low resource levels and limited expertise needed – low client administration
Suitable for complex projects	Supports a high level of client involvement, specialist contractor design, optional supply chain intervention by the client, complex risk management
Suitable for a target cost approach	The extent to which the strategy supports the use of a collaborative approach to procure to a cost target
Suitable for 2-stage tendering	The extent to which the strategy supports a 2-stage tendering approach

Figure 2: Characteristics of Common Procurement Strategies

3.2 Selection of the most appropriate strategy should be undertaken following a project specific analysis of the relative characteristics of each option. As a first step in the selection process, all the procurement strategy options should be sifted by means of simple pass/fail criteria to identify those most suitable for the project in question. The remaining options should then be assessed using a more rigorous weighted score analysis to help inform the choice of the optimum project specific strategy. This process is described in more detail from section 15 onwards.

3.3 The following procurement strategies are considered:

- Early Integrated Team/Partnering
- Scotland's hub Programme
- Traditional Lump Sum
- Design and Build Strategies
- Management Strategies

Along with the following variants:

- Two Stage Tendering
- Target Cost Contracts
- Frameworks

Early Integrated Team/Partnering

4.1 The benefits of developing projects collaboratively between the various parties to a project is well established – working together as a team, for the mutual benefit for all, minimises wasteful activities. For example, the hub programme (further details below) has been developed in Scotland on these principles. However, it is important to note that the approach does not replace formal contracts of engagement between parties or proper and appropriate management structures and procedures. It is a pragmatic way of working together to find ways of delivering the project to the required quality within budget and within programme. Three forms of standard contract that have been developed to facilitate partnering approaches include:

- JCT Constructing Excellence;
- NEC suite of contracts (e.g. NEC 3 and NEC4 with appropriate collaboration and partnering options); and
- PPC 2000 with PPC(S)2000 (a supplement containing alternative attestation clauses and amendments to PPC2000 in accordance with Scots Law).

4.2 The first two rely on a series of bilateral contracts between the client and each supplier. PPC 2000 provides for a multilateral partnering agreement.

4.3 Although a number of operating models exist for partnering, most embody the following principles:

- The client develops a functional, outcome focussed brief with specific requirements covering budget, sustainability criteria and community benefits;

- An integrated team of designers, contractors (including specialist design contractors if appropriate) and facilities managers is assembled;
- In collaboration with an informed client, the team develop the most appropriate design solution, normally based upon open-book cost management and transparent risk identification, mitigation and allocation;
- The subsequent construction contract can be based on a variety of approaches but will be characterised by fairness in risk allocation and payment mechanisms;
- Key performance measurements are used to drive improvement and include reviews of behaviours as well as hard processes.

Partnering is often used in framework arrangements where the long-term benefits of teams who work together regularly can be realised.

4.4 The potential benefits are;

- Maximises the opportunities for innovation in developing the optimum solution.
- Provides very good risk management.
- Strong alignment with client objectives and outcomes.
- Strong basis to develop continuous improvement in long term relationships.
- Potential to minimise claims during construction because of better risk identification, mitigation and allocation.

4.5 The potential risks are;

- Requires strong client leadership and experience.
- Disputes between partners can be more difficult to resolve using contractual remedies - instead resolution relies on the operation of mutual trust and respect between parties, and escalation if necessary to senior management.
- Care and diligence is needed to understand the final risk allocation and its management in the construction contract.
- Relies on good benchmarking and cost data to establish a cost ceiling in order to demonstrate value for money, especially if competitive tendering is not used for all packages of works.

Strategy: Early Integrated Team/Partnering		Low								High	
Characteristics		1	2	3	4	5	6	7	8	9	10
1	Expert client involvement needed										↔
2	Client control over design and specification solutions									↔	
3	Needs Client production of an output performance specification									↔	
4	Ease of implementing change during construction									↔	
5	Supports early appointment of an integrated team										↔
6	Single point design and construction responsibility									↔	
7	Cost and time certainty after contract execution									↔	
8	Speed of development									↔	
9	Suitable for simple projects									↔	
10	Suitable for complex projects									↔	
11	Suitable for a target cost approach									↔	
12	Suitable for 2-stage tendering									↔	

Figure 3: Characteristics of Early Integrated Team/ Partnering

Scotland’s Hub Programme

5.1 The Scotland-wide hub programme is an integrated procurement strategy based on a partnership between the public and private sectors to deliver new community facilities that are built by five hub companies spread across Scotland. It is designed to provide the public sector with a mechanism to deliver and manage buildings more effectively. The hub companies (hubCos) are jointly owned - 60% by a competitively procured private sector development partner (PSDP) and 40% by the public sector. Each hubCo can undertake project development work, strategic support services (professional consultancy services) or facilities management services. Further details about the hub programme can be obtained from [Scottish Futures Trust](#).

5.2 Public bodies wishing to participate (Participants) with their local hubCo are required to sign a Territory Partnering Agreement (TPA). Having signed a TPA, Participants with a project meeting the original procurement criteria – essentially a project delivering community services – can issue a ‘New Project Request’ (NPR) to the hubCo. This consists of a project brief and an associated budget which, if accepted by the hubCo, means that an Integrated Team, consisting of a Tier 1 contractor, designers and other consultants as appropriate, is then selected from the hubCo supply chain in consultation with the Participant. A proposal for delivering the project, based on a scheme design, is then developed collaboratively over a period of approximately three months.

5.3 Design development is a joint exercise between the Integrated Team and the Participant. Risks are jointly identified, surveys and investigations carried out and options considered. A project development fee is only payable by the Participant if the proposal meets the project brief and budget criteria set out in the NPR (and can also demonstrate value for money). All components of the project development fee are subject to percentage fee caps set at the time of the original, competitive PSDP procurement.

5.4 Once the initial (“Stage 1”) proposal is accepted, the hubCo develops the design and, via its Tier 1 contractor, competitively tenders a minimum of 80% of the prime cost of the project on a transparent open book basis to establish a “Stage 2” proposal. The Tier 1 contractor’s overheads, preliminaries and profit are subject, again, to percentage caps of the prime cost. The “Stage 2” proposal is presented to the Participant and if this is accepted, a development contract is entered in to between the Participant and hubCo.

5.5 A “back-to-back” construction contract (where the contract between the hubCo and the Tier 1 contractor mirrors the obligations of hubCo to the Participant), is let at the same time between the hubCo and its Tier 1 contractor. The standard hub terms are based on those of a design and build contract. Recognising the period during which the Integrated Team has identified, mitigated and priced risks, the terms include for the risks on ground conditions, weather, utilities and contamination (with exceptions for areas not able to be surveyed) to be transferred to the hubCo and in turn to its Tier 1 contractor.

5.6 Each hubCo has an initial 20-year term. The performance of each hubCo is monitored by a Territory Partnering Board, with a representative from each Participant, against both project Key Performance Indicators (KPIs) and continuous improvement KPIs.

5.7 The potential benefits are;

- Significant time and resource is saved by the client not needing to advertise or competitively tender for designers or a main contractor, as these steps have already been undertaken for the appointment of the PSDP.
- Embraces all the benefits of Early Integrated Team working.
- Provides very good risk management.
- Provides benefits of a long-term relationship with the hubCo.
- Provides very good time and cost certainty in the absence of variations.

5.8 The potential risks are;

- Relies on clients being able to identify well defined project outcomes (a Brief) and to have a good understanding of the likely outturn cost.
- Relies on robust interrogation of the hubCo proposals by the client.
- Choice of contractors and consultants are mostly restricted to members of the hubCo supply chain, although there is a requirement for this to be refreshed regularly in accordance with the relevant Territory Partnering Agreement.

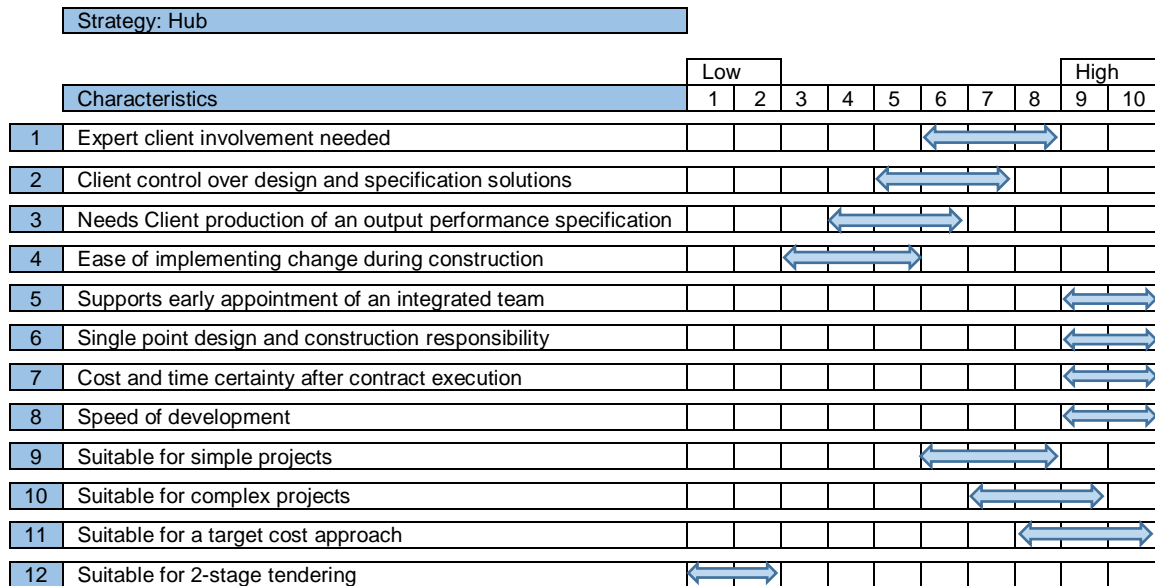


Figure 4: Characteristics of Hub

Traditional Lump Sum Strategy

6.1 With this type of contract, the design team are employed directly by the client to fully develop the design prior to going out to tender. Suitable contractors are then invited to submit a tender priced against the client’s requirements. Traditionally, this can comprise a Bill of Quantities. However, it is becoming increasingly common for contracts to be based on drawings and specifications, or activity schedules with contractors needing to satisfy themselves as to the quantities of material required.

6.2 The construction contract is with a main contractor who has responsibility only for the construction works. If the design has been fully thought out, developed and frozen, this type of contract should provide a reasonable degree of cost certainty at tender stage, subject only to client risk events, such as unforeseen ground conditions. However, by their nature, Lump Sum Contracts may be less appropriate where the timescales for delivery of the project may mean that a fully developed design cannot be prepared in advance of tendering; in which case subsequent design development changes will usually lead to cost and, possibly, time escalation. Typically, this procurement strategy also uses forms of contract where the client generally retains the risk of, for example, unexpected ground conditions, adverse weather and utilities. The client should also ensure the project budget includes an appropriate contingency allowance to cover such risks – for example, an allowance of approximately 10% on cost and 10% for extensions of time is typical, but the precise level will depend on the level of complexity and uncertainty of the project

6.3 The potential benefits are:

- Price certainty and transfer of risk to the main contractor is achieved at contract award, provided no subsequent changes are instructed to the design, and no client held risk events occur.

- A high level of quality in design and construction is achievable as the scope of the work is prescribed on an input specification basis by consultants reporting directly to the client.
- The client retains individual direct contractual relationships with the design team, cost consultant and main contractor.
- Changes to the works can be simply instructed and then evaluated on the basis of known prices obtained in competition without necessarily excessive cost or time implications.
- Tender pricing can be achieved based on a comprehensive bill of quantities which is attractive to the contracting market.

6.4 The potential risks are:

- The overall development programme may be longer due to the need to produce a fully detailed design before the project goes out to competitive tender and work starts on site.
- The Client must have the resources and access to the expertise necessary to administer the contracts of consultants as well as the main contractor.
- The consecutive timing of design and construction results in a lack of continuity between the designer and the builder (and hence little opportunity for input on 'buildability').
- Not all project risk is transferred to the contractor and some is retained by the client. Claims for delay and disruption can arise if the design is not fully detailed prior to agreeing the contract sum; if the Client varies the design afterwards; if outstanding design information is late; or if the issued design contains errors or omissions.
- Defects, where there is a dispute over whether the cause is design or workmanship, can prove difficult for the client to identify the party responsible and secure rectification.

Strategy: Traditional		Low								High	
Characteristics		1	2	3	4	5	6	7	8	9	10
1	Expert client involvement needed	←→									
2	Client control over design and specification solutions								←→		
3	Needs Client production of an output performance specification	←→									
4	Ease of implementing change during construction					←→					
5	Supports early appointment of an integrated team	←→									
6	Single point design and construction responsibility	←→									
7	Cost and time certainty after contract execution		←→								
8	Speed of development	←→									
9	Suitable for simple projects								←→		
10	Suitable for complex projects			←→							
11	Suitable for a target cost approach	←→									
12	Suitable for 2-stage tendering					←→					

Figure 5: Characteristics of a Traditional Strategy

Design and Build

7.1 In a “Design and Build” contract, a single supplier is appointed by the client to undertake both the design and construction of the facility. Typically, the client’s own design team (either in-house or outsourced) develop a concept or scheme design to RIBA Stage 2 along with an output performance specification. Together these form the “Employer’s Requirements” or “Works Information” depending on the form of contract chosen. The client then invites competitive tenders in accordance with the guidance set out and relevant procurement legislation referred to in Chapter 7 of this handbook, covering “Procurement Route 2”.

7.2 The contractor is likely to deliver the greatest performance benefits to the client through innovation and standardisation, where appropriate output specifications are produced by the client. Where an output specification is insufficiently well developed, there is a risk that the quality, design and performance of the completed facility may be compromised by a contractor pursuing the lowest cost material specification or design solution. Careful attention to the output specification is required to achieve the required outcome. Often the client retains the services of the original design consultants to scrutinise the contractor’s developing design and to confirm it is compliant with the Employers Requirements.

7.3 There may be some circumstances where it may be beneficial for the design and build procurement option to be extended to cover maintenance and also possibly operation of the facility for a substantial period known as Design, Build, Finance & Maintain (DBFM) or Design, Build, Maintain & Operate (DBMO). By including the maintenance and operation requirements within a design and construction contract, the supplier has an increased opportunity for adopting innovative solutions that provide greater value for money when considering whole life costs.

7.4 The potential benefits are:

- Low tendering and preparation cost to the client.
- Single point responsibility for design and cost risks, including design errors and omissions.
- Statutory Approvals are the responsibility of the contractor

- Potential for more economical construction due to earlier consideration of building methods ('buildability').
- Could result in a shorter overall design and construction period.

7.5 The potential risks are:

- The client's requirements must be properly specified prior to signing the contract as client changes to the scope of the project, once let, can be expensive.
- The client has little control over design once the contract is let, as the building is specified on a performance basis with output specifications.
- Design and build is unsuitable for complex, challenging projects which benefit from a developed design prior to pricing.

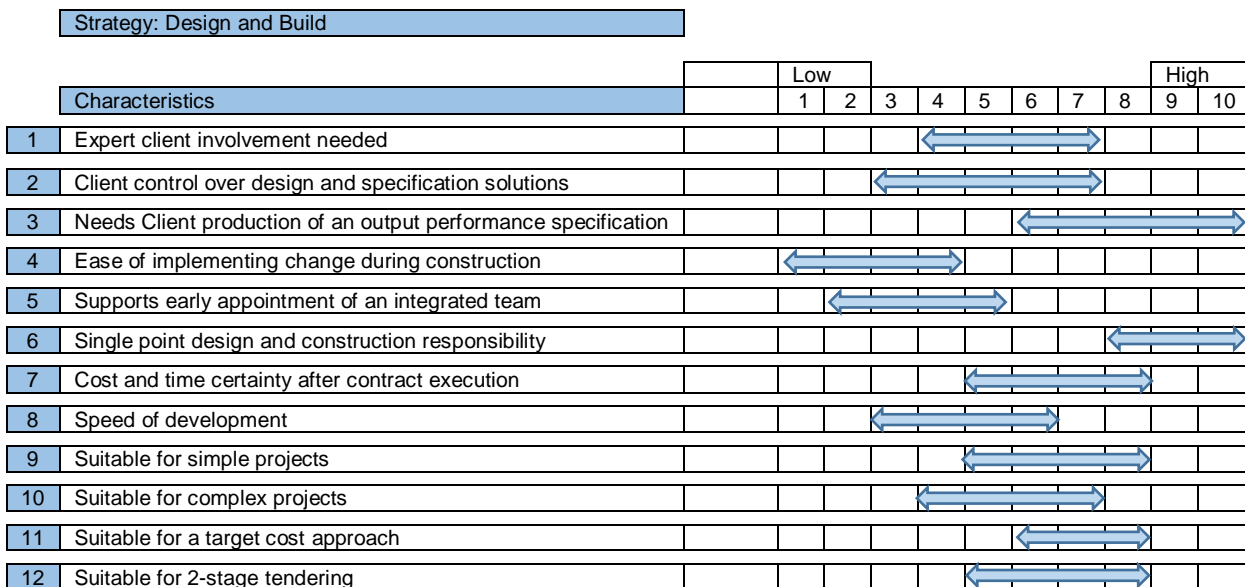


Figure 6: Characteristics of Design and Build

Design Develop and Construct

8.1 Just as in a design and build contract, a single supplier is responsible for both the design and construction of the facility. However, in the case of Design Develop and Construct, the client's own design team (either in-house or outsourced) develop the design to a much greater level of detail than in a simple Design and Build strategy. Typically, this will be to RIBA Stage 3 and will include both fully designed input specifications as well as output specifications for those elements of design being left to the successful contractor to complete. Together these form the "Employers Requirements" or "Works Information" depending on the form of contract chosen. Commonly, Planning Consent is secured by the client in advance of the tender, leaving the contractor to comply with any Planning Conditions and to secure Building Warrants and other statutory approvals. The client then invites competitive tenders in accordance with the guidance set out in Chapter 7 of this handbook, covering "Procurement Route 2".

8.2 The successful contractor will either employ their own design team or, more commonly, have the client's team novated to them. The contractor is then required to complete the outstanding design – often integrating many specialist contractor elements such as cladding, steelwork, building

services – all of which must comply with the relevant output specifications contained in the Employers Requirements.

8.3 Where an output specification is insufficiently well developed, there is a risk that the quality, design and performance of the completed facility may be compromised by a contractor pursuing the lowest cost material specification or design solution. Careful attention to the output specification elements is required.

8.4 There may be some circumstances where it may be beneficial for the design and build procurement option to be extended to cover maintenance and also possibly operation of the facility for a substantial period. By including the maintenance and operation requirements within a design and construction contract, the supplier has increased opportunity for adopting innovative solutions that provide greater value for money when considering whole life costs.

8.5 The potential benefits are:

- Single point responsibility for design and cost risks, including design errors and omissions.
- Greater control of the design and specification compared to a simple design and build.
- Some, if not all, Statutory Approvals are the responsibility of the contractor.
- Potential for more economical construction due to early consideration of building methods ('buildability').
- Could result in a shorter overall design and construction period compared with a traditional strategy.

8.6 The potential risks are:

- The client's requirements must be properly specified prior to signing the contract as client changes to the scope of the project, once let, can be expensive.
- The client has little control over the outstanding design and quality standards once the contract is let, other than to issue variations to their Employers Requirements.
- Design coordination issues can arise between the Employer Requirements and those elements still to be designed by the contractor.

Strategy: Design Develop and Construct

Characteristics	Low								High		
	1	2	3	4	5	6	7	8	9	10	
1 Expert client involvement needed			←————→								
2 Client control over design and specification solutions			←————→								
3 Needs Client production of an output performance specification					←————→						
4 Ease of implementing change during construction	←————→										
5 Supports early appointment of an integrated team		←————→									
6 Single point design and construction responsibility								←————→			
7 Cost and time certainty after contract execution				←————→							
8 Speed of development			←————→								

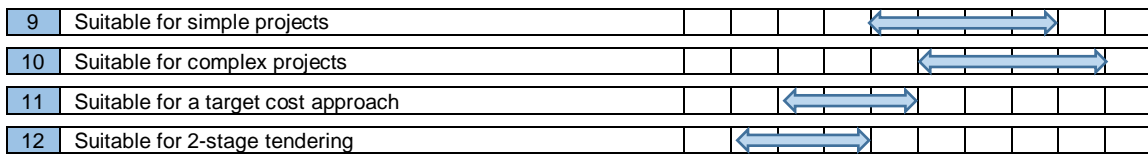


Figure 7: *Characteristics of Design, Develop and Construct*

Management Contracting

9.1 This is a ‘fast track’ strategy which overlaps the design and construction stages and enables contracts for early work packages, for example groundworks and steelwork, to be placed before the overall design is complete.

9.2 A management contractor is appointed by the client to manage the overall construction contract in return for a management fee. The design team, however, is not part of the management contractor’s team and are either the client’s own in house design team or appointed separately by the client as appropriate. That said, if appointed before the design is complete, the management contractor, can advise on buildability, programming, sequencing and the procurement of the various works packages.

9.3 The contracts for the various works packages are between the management contractor and the individual trade contractors. Costs are controlled by the development of a cost plan in which estimates of the costs of works packages are initially used for budgeting purposes prior to being replaced with actual costs obtained in open book competitive tenders. The projected final cost (still subject to risk events) will only be known once the final works package has been awarded and hence management of the cost plan focussing on risks and contingencies is extremely important.

9.4 The potential benefits are:

- Early completion is possible due to a shorter overall development period achieved by overlapping design and construction activities, even with complex buildings.
- While the client maintains direct control over the design team, the management and trade contractors can contribute to design development and improve the management and buildability of the construction process.
- Particularly suitable where there is complex design from specialist works package contractors to be incorporated
- The management contractor assumes some risk for the performance of the trade contractors.
- Changes can be accommodated more easily than in other forms of contract in both let and unlet packages provided there is little or no impact on the overall project timetable.
- Achieves good alignment of objectives between client and management contractor.

9.5 The potential risks are:

- The final price and timescale are not fixed at the commencement of the works and do not become so until the last work package has been let, and even then, are subject to the risks that lay with the client under the form of contract chosen.
- If the management contractor fails to organise and coordinate the various works packages it could result in claims from package contractors that the client could become responsible for.
- The client must have the resources and access to the necessary expertise to deal with separate design consultants and the management contractor and the scrutiny of each of the works package tenders.
- Management Contracting is unsuitable for an inexperienced and/or hands-off client as there is a risk of increased costs and delays arising from ineffective administration.

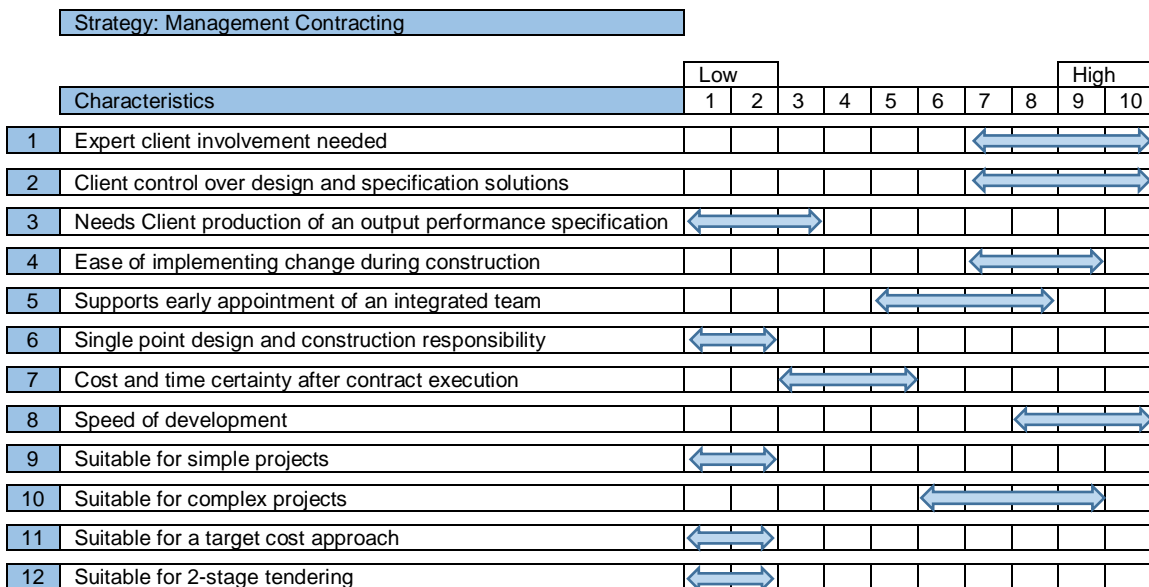


Figure 8: Characteristics of Management Contracting

Construction Management

10.1 This is also a ‘fast track’ strategy where works packages are let before the design of later packages has been completed. A construction manager is appointed by the client to manage the overall contract in return for a management fee and, as with management contracting, the project can benefit from the early involvement of the contractor. The main, and very significant, difference from management contracting is that the contracts for the works packages are placed directly between the client and the trade contractors. As with management contracting the projected final cost (still subject to risk events) will only be known once the final works package has been awarded. Costs are controlled by the development of a cost plan in which estimates of the costs of works packages are initially used for budgeting purposes prior to being replaced with actual costs obtained from open book competitive tenders. The management of the cost plan focussing on risks and contingencies is, therefore, extremely important.

10.2 Construction management was largely devised for use in the commercial development market and, where there are examples of public sector projects being successfully procured via this route, this approach is generally unlikely to represent an appropriate option for public sector

procurers other than in exceptional circumstances and where the client has the necessary resources and experience. While the use of construction management is not ruled out entirely, it should only be adopted following full consideration of the risks and benefits and an assessment of the management team's level of resource and expertise. Finally, in the case of clients subject to the requirements of the [Scottish Public Finance Manual](#), the choice of this route must be approved by the responsible Minister.

10.3 The potential benefits are:

- Construction management should reduce the overall project timescale by allowing procurement and construction to proceed before the design is completed.
- The client controls the design and changes can be accommodated in let and unlet packages provided there is little or no impact on the overall project timetable.
- It can be applied to a complex building and has opportunity to allow good buildability input.
- Achieves good alignment of objectives between client and the construction manager.
- Particularly suitable where there is complex design from specialist works package contractors to be incorporated.
- The client contracts directly with trade contractors, which could result in lower prices and allows poor performance to be dealt with directly.

10.4 The potential risks are:

- The final design, price and timescale are not fixed at the commencement of the works and do not become so until the last work package has been let, and even then, are subject to the risks that lay with the client under the form of contract chosen.
- The client bears most of the total risk including delays, disruption, design and its coordination with construction; there must be a robust process for instructing and approving changes.
- The construction manager commonly does not assume any risk other than negligence, is not contractually responsible for achieving programme and cannot instruct third parties.
- The design team must envisage both the totality and detail of the design at the outset, accommodating uncertainty, procuring long lead-time items early and avoiding retrospective change.
- Clients need to be experienced, informed, decisive, and have the necessary expert resources to administer the contracts of the separate design team members, the construction manager, and many trade contractors.
- Construction management contractors must be sufficiently incentivised to avoid fee escalation; they should be experienced in construction management and have very good leadership skills.

- The client must place an even greater premium on risk management in construction management than under other procurement strategies and needs to ensure that roles and responsibilities are well defined at the outset.
- The construction manager can build better team relationships with trade contractors and hence potentially resolve disputes swiftly in the absence of a direct commercial relationship.

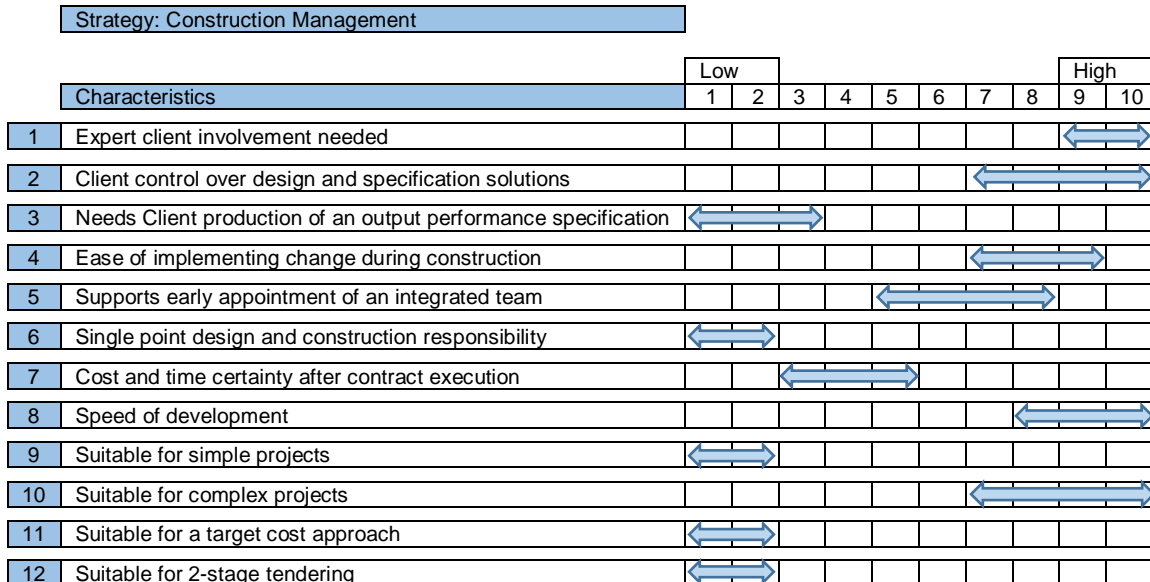


Figure 9: Characteristics of Construction Management

Revenue Financed

11.1 Revenue financed solutions, are created for the provision of services and not specifically for the exclusive provision of capital assets such as buildings. For this reason, it is preferable to investigate revenue financed solutions as soon as possible after a user need has been identified rather than leaving it until a conventional construction project has been selected as the solution. It is possible that a revenue financed solution using such a model may result in a provision of services to meet the user need that does not require a construction project.

11.2 Due to the complexity of the contractual structure of a revenue financed project, it should be noted that the tendering process can be expensive for both potential service providers and the client, as this usually requires the negotiated or competitive dialogue procedure to be followed.

11.3 Use of a revenue funding model requires that the private sector assumes the risk and responsibility for both performance and availability of the contracted services – which may include the delivery of the building. The public sector sets out its service requirements in the form of an output specification which prescribes the level and quality of service required. This is normally done through a long-term contract and the standard of delivery is monitored by the public sector throughout the contract period, with deductions made from the monthly service payment where the specified outputs and standards are not delivered. Value for Money is achieved through private sector innovation, effective use of the competitive process, incentivisation of performance and appropriate allocation of risk to the party best able to manage it.

11.4 Where a revenue financed solution is being considered by the contracting authority, it is important that further advice is sought from Scottish Futures Trust at the earliest opportunity.

11.5 The potential benefits are:

- The process is service rather than project focused and concentrates on the whole life of the service and associated assets, rather than the construction phase alone.
- Avoids the use of a procuring authority’s capital finance.
- There is a single point of responsibility for service delivery.
- There is an opportunity to draw on a wider range of management and innovation skills.
- Appropriate risk transfer to the private sector partner for construction maintenance and lifecycle performance.

11.6 The potential risks are:

- The benefits of the contractual process will be at risk without a long-term commitment and monitoring from both the client and “service providers”.
- The process leading up to contract completion for the project can take a long time and needs an extensive and fully refined brief at the outset.
- There is a significant cost to bidders in tendering which may limit the level of interest in a project.
- Changes to existing contracts can be difficult to achieve after contract signature. In addition, changes to existing requirements can be time consuming and potentially expensive.

Strategy: Revenue Financed		Low								High	
Characteristics		1	2	3	4	5	6	7	8	9	10
1	Expert client involvement needed										↔
2	Client control over design and specification solutions				↔						
3	Needs Client production of an output performance specification										↔
4	Ease of implementing change during construction	↔									
5	Supports early appointment of an integrated team			↔							
6	Single point design and construction responsibility										↔
7	Cost and time certainty after contract execution										↔
8	Speed of development	↔									
9	Suitable for simple projects	↔									
10	Suitable for complex projects							↔			
11	Suitable for a target cost approach			↔							
12	Suitable for 2-stage tendering	↔									

Figure 10: Characteristics of Revenue Financed Procurement Strategies

Variant: Two Stage Tendering

12.1 Two-stage tendering is used to allow early appointment of a contractor, prior to the completion of all the information required to enable them to offer a fixed price.

12.2 In the first stage, a limited appointment is agreed allowing the contractor to begin work and in the second stage a fixed price is negotiated for the contract. It can be used to appoint the main contractor early or more commonly as a mechanism for early appointment of a specialist contractor such as a cladding contractor. A two-stage tender process may also be adopted on a design and build project where the employer's requirements are not sufficiently well developed for the contractor to be able to calculate a realistic price. In this case, the contractor will tender a fee for designing the building along with a schedule of rates that can be used to establish the construction price for the second stage tender.

12.3 The basis of the appointment for the first stage may include:

- A pre-construction and construction programme.
- Method statements.
- Detailed preliminaries including staff costs.
- Agreed overheads and profit.
- A schedule of rates to be applied to the second-stage tender.
- Agreed fees for design and other pre-construction services.
- CVs for proposed site and head office staff.
- Tendering of any packages that can be broken out and defined.
- Agreed contract conditions to be applied to the second-stage construction contract.

12.4 It is important that this appointment is based on as much information as possible and that requirements are well defined; as subsequent changes could prove expensive.

12.5 The first-stage appointment might be made on the basis of a bespoke agreement, a consultancy agreement or a pre-construction services agreement (PCSA), with an appendix setting out all tender items to be applied to the construction contract, with a clause that makes it clear there is no obligation to proceed to the construction contract, and in such circumstances the pre-construction fee would be full and final settlement of the contractor's costs.

12.6 The pre-construction services carried out by the contractor in the first phase might include:

- Helping the consultant team to develop the design, or the contractor undertaking all design development themselves.
- Helping the consultant team to develop the method of construction, or the contractor developing the method of construction themselves.

- Obtaining prices for work packages from sub-contractors or suppliers on an open book basis.

12.7 In theory, this early involvement of the contractor should improve the buildability and cost-certainty of the design as well as creating a better integrated project team and reducing the likelihood of disputes.

12.8 Ideally the second-stage negotiation is a mathematical exercise using the pricing criteria agreed in the first stage agreement. In reality however, there will be some items not previously considered, around which negotiations will ensue. In the case of sub-contractors, the second stage construction contract is negotiated by the main contractor subject to the approval of the design team.

12.9 Two-stage tendering enables the client to transfer design risk to the contractor, however the client inevitably loses leverage as the contractor becomes embedded in the team and competition is less of a threat. However, whilst tender prices for two-stage contracts may initially be higher than single-stage tenders, which are subject to full competition, the final account tends to include fewer variations and fewer claims. A longer period of familiarity with the project creates better relationships as well as a reduction in learning curves and programme performance.

12.10 It is in the client's interests to try to include some packages in the first phase, and to ensure that they have some means of securing an alternative bid if negotiations with the preferred contractor fail, albeit this is likely to result in delays and difficulties regarding design liability. However, the client may find that alternative contractors lose interest once they find out that another contractor has been awarded the first stage tender.

12.11 The potential benefits are:

- Early appointment of the contractor, potentially bringing forward the completion date of the project;
- Second stage tender should be based on more complete information and a better understanding of the scope of works, so the final account should be closer to the contract sum;
- Improved identification of project risks within a timescale where action can be undertaken;
- Ability to procure specialist design contractor packages ahead of a first stage main contract tender that can then be incorporated into the second stage via novation;
- Client has no commitment beyond the preconstruction services agreement governing the first stage of the tendering process and through to the completion of stage two.

12.12 The potential risks are:

- Temptation to go to market with incomplete information;
- Can be used to mask the inadequacy of design development;
- Additional cost of a preconstruction fee;
- The cost of second stage tenders may be higher than predicted at Stage 1 leaving the client with difficult decisions on how to deliver within budget.

- Does not eliminate many sources of scope change;
- Increased input from client and consultants during the second stage tender;
- Difficulties in verifying the transparency of main contractor allowances and subcontractor costs;
- The contractor is able to walk away at any time.

Variant: Target Cost Contracts

13.1 Target Cost Contracts provide employers with a contractual mechanism to incentivise contractors to deliver projects within a specified budget. However, while this route may offer some advantages – for example, where a contract must be let before design development is sufficiently advanced to permit a lump sum price to be fixed – employers need to be aware that they are sharing a greater degree of risk in respect of a contractor’s performance under a target cost contract than they would under a fixed price contract. Therefore, it is important that employers considering using target cost contract approach have full regard to [Scottish Procurement Construction Policy Note CPN 5/2017](#) – *“Guidance on the operation of target cost contracts and pain share/gain share mechanisms”*. This guidance provides an overview of the operation of target cost contracts and identifies a range of issues that need to be considered if such a strategy is to be adopted.

13.2 The basic principle underpinning this approach is that a “target cost” for the works is agreed between the employer and contractor, with the contractor then paid for the work undertaken on a cost reimbursable basis. The payments to the contractor are made on the basis of the contractor’s accounts and records, provided to the employer for inspection on an “open book” basis.

13.3 At the end of the project, the final target cost – which is the original target cost plus the effect of any changes and risk events the contracting authority is responsible for – is compared to the actual cost expended by the contractor. If the actual cost is lower than the target cost, a saving has been made, and this is shared between the parties on a pre-agreed percentage basis – referred to as “gain-share”. Conversely, if the actual cost is higher than the target cost there is an over-spend, again shared between the parties on a pre-agreed percentage split – referred to as “pain-share”.

13.4 The principal benefit of target cost arrangements is their ability to align the objectives of the parties, which helps to create a partnering environment. The contractor and contracting authority are both encouraged to work together to control costs, sharing the risk of over or under spend through the gain-share/pain-share mechanism. The open book approach helps to build trust between the parties, through the sharing of sensitive information by the contractor and the visibility to the contracting authority of the true cost of the project to the contractor.

13.5 However, one issue that often occurs is that target cost arrangements are entered into without fully understanding how the process works – in particular the additional risk that the contracting authority takes compared to a fixed price contract. It is vital that this risk is effectively managed. Too frequently there is insufficient control of the target cost value, so the contract becomes little more than a cost reimbursable arrangement with limited incentive for the parties to perform efficiently.

13.6 There are many examples where the actual cost has far exceeded the target cost, yet it appears there are few examples of contractors suffering from pain share. In most cases the gain-share/pain-share calculation results in a neutral or positive gain share.

13.7 Value for money will only be secured if the contract is let with a well-defined target cost and is thereafter very actively managed. Therefore, when considering a target contract, it is important the contracting authority recognises that it is carrying a larger degree of risk than a fixed price contract and therefore requires a greater resource to manage it.

13.8 Care is also needed when reporting likely outturn costs. It is not uncommon for a contractor, due to poor cost management of their supply chain, to under-estimate their final costs during the construction period only for a large amount of “actual cost” to come to light at the end of the project as sub-contractors present final account information. This can result in the contracting authority needing to secure approval for additional funding beyond the budget to cover the incurred costs.

13.9 In summary, target cost contracts will only deliver value for money when:

- The target cost is set at a level which requires the contractor and the contracting authority to work together to create efficiencies beyond those normally expected
- The target cost is actively managed and maintained so as to remain valid and to continue to drive performance
- The gain-share/pain-share mechanism is carefully chosen to drive the right behaviours in the parties to seek savings and thus avoid pain
- The contractor performs in an efficient manner, mitigating risk, and not incurring excessive actual cost

13.10 The potential benefits are:

- Provides contractors and subcontractors with an incentive to improve performance.
- Encourages active and equitable risk sharing, based on a clearly defined allocation of risk agreed at the outset of the project.
- Can incorporate both lump sum and prime cost-reimbursable subcontracts under a single target price.
- Target costs provide incentive for the timely administration of change control mechanisms.
- Provides an accountable mechanism to enable public sector clients to use incentives.

13.11 The potential risks are:

- The contracting authority and contractor must share “gain” and “pain” if the full benefits are to be secured. This exposes the employer to greater risk.
- Potential for failure on insufficiently defined projects owing to complexities in the operation of the incentive mechanism.
- Complex target price, gain/pain-share and change controls may not easily be understood by all parties.

- The separation of target and actual costs before completion creates the potential for loss of control in predicting the final cost to the employer.
- Requires best practice in project administration and a suitably skilled project manager.
- Disputes and adversarial behaviours can occur when the employer scrutinises the contractor's cost records to ensure they are valid.

Variant: Frameworks

14.1 Framework agreements provide an option for contracting authorities which are procuring construction works on a regular basis and want to reduce procurement timescales, learning curves and other risks; in addition, a further benefit is the ability to build stronger long term working relationships between the client and contractor. Using a framework agreement allows the contracting authority to invite tenders from contractors and/or consultants over a period of time on a "call-off" basis as and when required.

14.2 The framework contract documents should define the scope and possible locations for the works or services likely to be required during the defined time period. They should describe the contract conditions that will be used for pre-construction services (such as design) and/or the contract conditions that will be used to execute the works. In addition, the contract documents should also identify the organisations permitted to use the framework.

14.3 Depending on the size and complexity of the anticipated projects, the supplier might provide a pricing mechanism or risk adjustment mechanism for different types of contract that might be used, for example, but not limited to, a minor works contract, a cost reimbursable contract or a design and build contract.

14.4 Framework tender documents might include:

- The starting and completion dates of the agreement.
- Requirements and obligations regarding insurance, bonds and warranties.
- A description of the contract conditions to be used and assumptions regarding preliminaries.
- A description of how the project will be managed in its various stages and the basis of remuneration.
- A description of the tender selection procedure and assessment procedure to be employed by the client.
- A description of inflation, interest and retention percentages to be applied.
- A description of incentive mechanisms to be applied.
- A description of dispute resolution procedures.
- Rates for travel and subsistence expenses.

- A request for schedules of rates and time charges to be submitted and a breakdown of resources and overheads to be applied to design, or manufacture and installation (including any proposed subcontractor or sub-consultant details).
- Any other criteria required from tenderers in order that the client can properly assess their suitability.

14.5 Following a competitive tendering process, one or more suppliers are then selected and appointed to the framework. When specific projects arise, the contracting authority is then able to simply select a suitable framework supplier and instruct them to start work.

14.6 Where there is more than one suitable supplier available, the contracting authority may introduce a secondary selection process to assess which supplier is likely to offer best value for a specific project. The advantage to the contracting authority of this process is that they are able to instigate a selection procedure for individual projects without having to undertake a time-consuming pre-qualification process. This should also reduce tender costs.

14.7 The advantage to the supplier is that the likelihood of them being awarded a project when they are already on a framework contract should be higher than it would be under an open procurement process. Some suppliers, however, complain that having already been appointed on a framework agreement, they may still have to bid for individual projects, with a result that the potential efficiency gains of this process are lost.

Selecting a Procurement Strategy and a Form of Contract

15.1 A suggested approach to assist in the selection of an appropriate procurement strategy and a form of contract is shown diagrammatically below in *Figure 11* and each step is then described in later sections of this guidance. Contracting authorities should also take advice from their professional advisers.

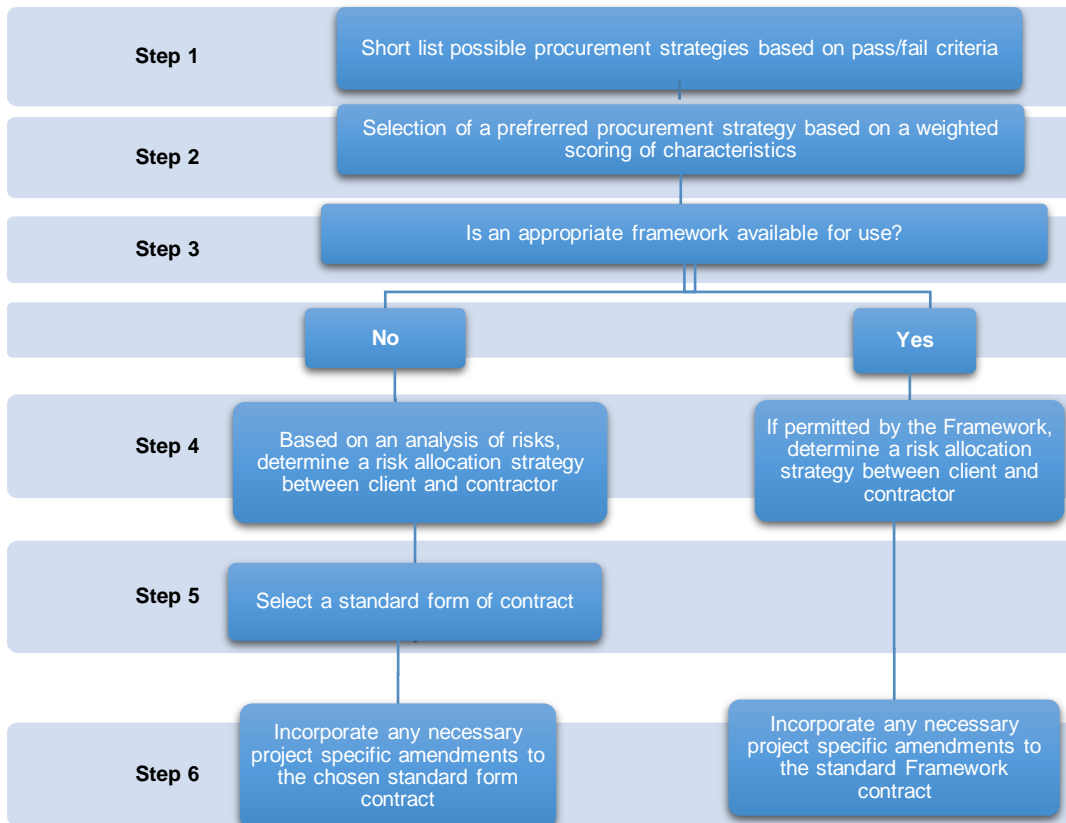


Figure 11: A Suggested Approach for selecting a Procurement Strategy and Form of Contract

Short List Procurement Strategies Based on Pass/Fail Criteria

16.1 Some procurement strategies are only suitable for certain types of project, and for contracting authorities with expert and experienced construction procurement resource availability. It is therefore important that contracting authorities undertake a project specific analysis of the relative characteristics (as described previously in this chapter) of the various procurement strategies to help inform their decision on which strategy they should adopt for the project in question.

16.2 As a first step in this analysis, it is suggested that an initial short list of possible procurement strategies is drawn up by testing 6 of the characteristics listed in *Figure 12* against a simple pass/fail process. The criteria recommended for this process are:

- Is expert client involvement needed due to the complex nature of the strategy? (Shown as Characteristic No 1 on *Figure 12*)
- If required, does the strategy support the early appointment of an integrated team? (No 2 on *Figure 12*)
- Is the strategy suitable for low value, simple projects? (No 3 on *Figure 12*)
- Is the strategy suitable for complex projects? (No 4 on *Figure 12*)
- If required, does the strategy support the operation of a target cost approach? (No 5 on *Figure 12*)

- If required, does the strategy support a two-stage tender approach for the main contractor? (No 6 on *Figure 12*)
- In addition to the above, a further test (No 7) is recommended as follows:
- Is the contracting authority a Participant in the hub programme?

16.3 Two worked examples are shown below to demonstrate the process

- Example 1, a simple project for a contracting authority not possessing expert construction procurement professionals; and,
- Example 2 – a complex project for a contracting authority which possesses expert knowledge and wants to develop a design solution collaboratively with an integrated team.

To assist, *Figure 12* sets out how each of the various procurement strategies meet the pass/fail criteria listed in paragraph 16.2 above.

Pass/Fail Criteria	Procurement Strategies							
	Early Integrated Team	Traditional	Design & Build	Design Develop & Construct	hub	Construction Management	Management Contracting	Revenue Financed
1. Expert contracting authority involvement needed	Yes	No	No	No	No	Yes	Yes	Yes
2. Supports the early appointment of an integrated team	Yes	No	Single Stage – No Two Stage - Yes	No	Yes	Yes	Yes	No
3. Suitable for simple projects	Yes	Yes	Yes	Yes	Yes	No	No	No
4. Suitable for complex projects	Yes	Yes (if two stage)	No	Yes	Yes	Yes	Yes	Yes
5. Suitable for a target cost approach	Yes	Yes	Yes	Yes	Yes	No	No	No
6. Suitable for 2-stage tendering	Yes	Yes	Yes	No	Consider ¹	No	No	No
7. The contracting authority is <u>not</u> a hub participant or shareholder	Yes	Yes	Yes	Yes	No	Yes	Yes	Not Applicable

Figure 12: Pass/Fail Criteria

¹ * The hub programme contains many of the characteristics of 2-stage tendering.

Example One

17.1 A simple project for a contracting authority not possessing expert construction procurement professionals. Only three strategies are considered suitable non-expert contracting authorities, which are:

- Traditional;
- Design and Build; and,
- Design, Develop and Construct.

17.2 A weighted, project specific scoring analysis of the options will help the client to select the most appropriate strategy for the project in question. Where the contracting authority has signed a Territory Partnership Agreement with its local hubCo, the further option of a hub procurement strategy is available to it.

17.3 Finally, if the contracting authority has some expertise in this area, it may also wish to consider using a target cost approach or a 2-stage tendering approach.

Example Two

18.1 A complex project for a contracting authority which possesses expert knowledge, and which wants to develop its design solution collaboratively with an integrated team. Only five strategies are suitable for integrated teams, and of these four are suitable for complex projects:

- Early Integrated Team;
- Hub (where the contracting authority has signed a Territory Partnership Agreement);
- Construction Management; and,
- Management Contracting.

18.2 Once again, a weighted, project specific scoring analysis of the options will help the client to select the most appropriate strategy for the project in question.

Select from Short List Based on a Weighted Scoring of Characteristics

19.1 Earlier in this chapter, each procurement strategy description ends with a matrix of 12 characteristics, scored as a range from 1 (low) to 10 (high). This matrix can be used as a tool to help inform a contracting authority's decision making process as to which procurement strategy might be appropriate for its particular needs as follows:

- Six of these characteristics have been used for the pass/fail criteria in order to develop a strategy short list. The other six can now be used as part of a weighted scoring system to select the best fit strategy for the particular project.
- It will be for the contracting authority to determine the weighting of these six criteria, and subsequently the score to be applied to each short-listed strategy. The individual scores should not sit outside of the ranges suggested earlier in this chapter.

19.2 To illustrate the process, a suggested weighting split for each for each of the 6 characteristics of three generic project types is shown in *Figure 13*. However, the contracting authority should select their own weightings based on the specific circumstances of the project. Finally, template for the weighted scoring exercise is shown at *Figure 14*.

19.3 Once a procurement strategy has been selected, the contracting authority should then give consideration to whether it is eligible to use an existing appropriate framework which uses the same strategy. If it does not, a new contractor procurement exercise must be undertaken.

Characteristic	Description	Example Weightings			Project Score
		Simple project, low value and risk, no expert client availability	Complex, high value and risk, expert client available	Speed essential, comfortable with higher risk, expert client available	
Client control over design and specification solutions (Shown as Characteristic No 1 on <i>Figure 14</i>)	The amount of control afforded to the client in selecting a preferred design solution rather than simply testing if the specified outcomes are achieved by a proposed design.	20	25	20	
Needs contracting authority production of an output performance specification (Shown as No 2 on <i>Figure 14</i>)	The extent to which the procurement strategy is reliant on a detailed set of client technical requirements expressed as achieving minimum performance levels.	0	10	10	
Ease of implementing change during construction (Shown as No 3 on <i>Figure 14</i>)	The ease of instructing a change and of agreeing any implications of cost and time	15	10	10	
Single point design and construction responsibility (Shown as No 4 on <i>Figure 14</i>)	The extent to which responsibility for design and construction is contractually aligned	15	20	20	
Cost and time certainty after contract execution (Shown as No 5 on <i>Figure 14</i>)	Measures the degree to which construction phase risks are able to be transferred to the contactor	35	25	15	
Speed of development (Shown as No 6 on <i>Figure 14</i>)	A measure of the relative speed from project inception to start of construction	15	10	25	
		100	100	100	

Figure 13: Example Procurement Strategy Characteristic Weightings

		Procurement Strategies															
		Early Integrated Team		Traditional		Design & Build		Design Develop & Construct		hub		Construction Management		Management Contracting		Revenue Financed	
Characteristic	Weighting	Score	Weighted score	Score	Weighted score	Score	Weighted score	Score	Weighted score	Score	Weighted score	Score	Weighted score	Score	Weighted score	Score	Weighted score
1. Contracting authority control over design and specification solutions																	
2. Needs client production of an output performance specification																	
3. Ease of implementing change during construction																	
4. Single point design and construction responsibility																	
5. Cost and time certainty after contract execution																	
6. Speed of development																	
	100																
Total weighted score																	
Ranking	1.					2.					3.						
Evaluation Panel Members Name:																	
Signature:																	

Figure 14: Example weighted scoring. Note: Only those procurement strategies remaining after the pass/fail test should be scored.

Introduction to Risk Management and Apportionment

20.1 The recommendations of the Review of Scottish Public Sector Procurement in Construction made clear that risk should lie with the party most able to understand and manage it. If that is the contractor, it should have an opportunity to understand and price the risk. In this context, “risk” should be understood as relating to the procurement process itself or specific contracts within it, considered as a sub-set of the overall project/programme risk.

20.2 If risks do materialise, and they have not been adequately priced, this can result in undesirable behaviours between the contracting parties and a breakdown in the partnering relationship. In a more extreme situation, especially where risks have been forced down the supply chain, this could result in insolvencies, the impact of which could create a significant disruption to the planned programme.

Risk Apportionment

21.1 The following diagram *Figure 15* illustrates the principles of risk apportionment between client and contractor. Note that the primary purpose of the form of construction contract is to define risk apportionment.

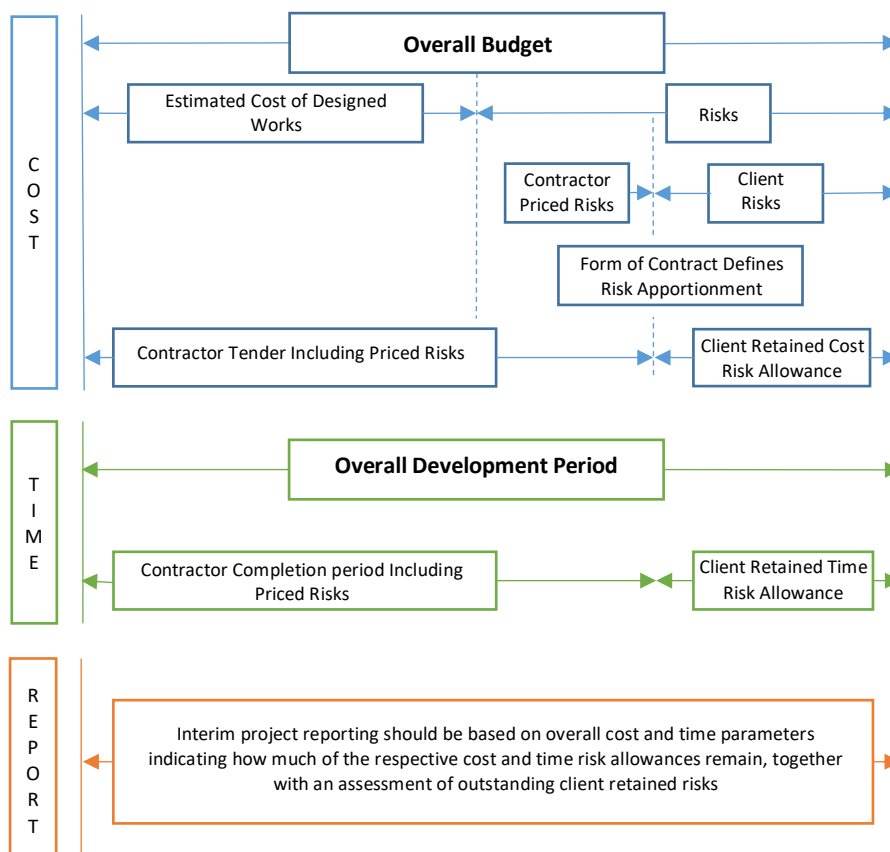


Figure 15 – Principles of risk apportionment

Risk Management

22.1 The key to successfully managing design and construction risks is to adequately determine and implement mitigation strategies from the earliest point in a project.

22.2 Examples include:

- The earliest commissioning of comprehensive surveys (with optional transferable warranties in favour of a future contractor) including, but not limited to, ground conditions, contamination, utilities, ecology and archaeology.
- Establishing a coherent strategy for design coordination between client employed consultants and specialist contractor designed elements.
- Establishing a strategy for the responsibility for securing statutory consents.
- Where it is planned to place responsibility on a design and build contractor for previous design work carried out by others, how this can best be de-risked from the contractor’s perspective.

22.3 The following, *Figure 16*, is an example of a template which a contracting authority can use as a tool to address these issues. In the case of an actual project, the contracting authority should start with a blank template.

Example of a risk	Example of a possible mitigation strategy	Consider Client Owned? Contractor Owned? Insurance?	Information needed to price the risk, whomever owns it
Ground Conditions, Contamination	1. Commission comprehensive surveys with transferable warranties of duty of care	contracting authority or contractor depending on form of contract chosen	1. Results of surveys 2. Copies of warranties 3. Possible follow up surveys
Piling Obstructions	1. Ground radar survey 2. Ground probing exercise	To be priced by contractor. Then consider value for money.	Results of surveys and probing exercise
Utility Connections	1. Ground radar survey 2. Hand dug trial holes 3. Early client application for supply infrastructure	To be priced by contractor. Then consider value for money.	1. Information from surveys. 2. Quotations from utility infrastructure providers
Design is in insufficient detail to price works accurately	1. Define level of detail in consultant services 2. Monitor a detailed design and coordination programme 3. Review detail two weeks before tender 4. For specialist contractor designed elements, consider 2-stage tenders	Contractor owned (preferred) contracting authority owned if a traditional, re-measured procurement strategy.	1. Review available design information – assess for level of detail and evidence of coordination 2. Review forms of consultant appointments, check liability obligations and scopes of service.
Damage to adjoining properties	1. Dilapidation surveys to establish condition	Insurance taken out by client.	Results of surveys.

Figure 16 – Worked example of a risk mitigation and pricing template.

22.4 Where it is considered desirable to transfer such risks to the contractor, contracting authorities should preferably establish the cost of doing so. This can be done by seeking provisional prices at tender stage for the effect of transferring each risk. The more successful each mitigation strategy has been, the lower the price should be.

22.5 Dialogue with all of the tendering contractors, or prior to tender with the market more generally, will inform contracting authorities on how best to present tender information such that risks are priced as economically as possible.

22.6 Contracting authorities should take appropriate legal advice to ensure such pre-tender dialogue with contractors complies with the relevant procurement regulators.

22.7 On more complex projects, contracting authorities may wish to make the process of risk apportionment a negotiation with each tendering contractor prior to submission of their final offer. The OJEU Competitive Procedure with Negotiation or, exceptionally, the Competitive Dialogue procedure can be used in these circumstances.

Amendments to Standard Form Contracts

23.1 The Review of Scottish Public Sector Procurement in Construction noted with concern the prevalence of wholesale amendments introduced by public bodies to standard form construction contracts. The Review concluded this practice is often intended transfer more risk on to the contractor. While in some situations this may be appropriate, this is not always the case. Risk should lie with the party most able to understand and manage it; and if that is with a contractor, they should be afforded the opportunity to price the work accordingly. If contractors are having to carry risks without being able to factor them into their prices, there is a very real danger of these driving undesirable behaviours, such as cutting corners on quality in order to recoup the cost back from elsewhere.

23.2 The Review noted that amendment of contracts presents two further main risks. Firstly, that additional clauses may be incompatible with the remainder of the contract. This may lead to contractual disputes, or to clients being liable for costs which they thought they had passed to the contractor. Secondly, as the complexity of the contract increases, parties to it face increasing legal costs. The additional of inappropriate or unnecessary amendments simply exacerbates this problem.

23.3 Therefore, it is recommended that any variations to standard forms of contract should be kept to a minimum and used only when absolutely necessary to take account of the particular circumstances of a project. It is also recommended that where a contracting authority considers that amendments may be required, it should consult with its legal advisers to understand the likely consequences and impact of its proposed amendments to the parties to the contract and the contractor's supply chain.

23.4 Finally, it is also recommended that any amendments introduced should be clearly highlighted within the contract documentation so that both client and contractor are clear on the variations being made to the standard terms. The original text of a clause should be typed with any deletions struck through, and any additional text highlighted. Also, a schedule should be prepared which explains why the amendments are required. This will help contractors by significantly reducing the amount of time and additional cost they will incur in considering the effect of the amendments.

23.5 A contracting authority must be mindful that the greater the number of amendments made, the greater the risk of disputes arising. This is due either to differences in interpretation or to the amendments being incompatible with the remainder of the contract. There is also a danger that the personnel administering the

contract, for both parties, are not intuitively aware of, or understand, the effect of the amendments.

23.6 *Figure 17*, below, provides examples of the type of amendments which should not normally be considered as appropriate along with reasons not to amend the standard form of contract.

<u>Proposed Amendment</u>	<u>Reasons not to Amend</u>
Different or more onerous payment or retention arrangements	The payment terms in standard contracts are fair and comply with the requirements of the Procurement Reform Act. Authorities must recognise their responsibilities for maintaining a sustainable industry and understand the importance of cash flow to contractors and sub-contractors. The Procurement Reform Act also requires authorities to introduce measures to ensure maximum 30-day payments throughout the supply chain.
Different or more onerous periods for the issue of contract notices	The periods in standard contracts are fair and are familiar to contractors and sub-contractors. Amendments present the particular risk that tier 2 and 3 contractors may miss notice dates and become unfairly and disproportionately penalised.
Different or more onerous dispute resolution procedures	Any amendments which extend periods for dispute resolution, or present barriers to its access, are disproportionately unfair to small businesses - particularly in securing payments.
Responsibility for the consequences of changes in law or statutory regulations after a contract is executed.	Such an amendment presents a risk that cannot be either understood or priced at the time of tender. The consequences will likely be stepped down the supply chain to businesses that are not equipped to take such risks.

Figure 17. Examples of contract amendments for risk transfer which should not normally be considered.

23.7 *Figure 18* provides examples of common amendments which should only be introduced if information is provided at the time of tender to allow the main contractor and its sub-contractors to both understand and price the risk being transferred from the authority.

<u>Proposed Risk Transfer</u>	<u>Considerations</u>
Ground conditions, contamination, archaeology	Each tendering contractor should be given sufficient time to study site investigation reports and have an opportunity to request further investigations. Pre-market engagement recommended. Dark ground risk, e.g. under existing buildings, should always remain with the authority.
Effect of adverse weather conditions	If standard terms are proposed to be amended – for example to introduce a 1:10 year weather event test – there should always be a backstop after which the authority retains the risk.
Establishing specific completion criteria	Any amended criteria for determining when completion is achieved should be clear and objective such that disputes on interpretation are avoided.
Availability of utilities	Such risk transfer should only be considered if quotations for supply are available from utility providers at the time of tender. Pre-market engagement recommended.
Securing statutory approvals, other than planning consent	Pre-market engagement recommended. For a conventional design, this may be a reasonable risk transfer. If, however the design is complex, or will rely on relaxations to regulations - perhaps with cost implications - it should be avoided.
Compliance with Planning Conditions	Risk transfer should only be sought for those conditions which can be delivered by the contractor without reliance on the actions of the authority. Pre-market engagement recommended.
Responsibility for previous design work	This is common in the case of an authority's design team being novated to a design and build contractor. In other circumstances, it should only be considered for conventional designs and with sufficient time for the contractor to carry out due diligence.
Compliance with 3 rd party contract obligations e.g. covenants, wayleaves, rights of way	Such obligations should always be referenced by a detailed schedule at the time of tender and not by simple notification of the existence of a 3 rd party contract.

Figure 18: Examples of contract amendments for greater risk transfer – but only with an opportunity for the contractor and its supply chain both to understand and to price the risk at the time of tendering.

Selecting a Form of Contract

24.1 Once a procurement strategy is selected and a risk allocation strategy is prepared, the final step is to choose a form of contract. *Figure 1*, earlier in this chapter, notes of variety of forms of contract which might be selected for a particular procurement strategy. Contracting authorities are encouraged to consider all available forms, not relying solely on familiarity or previous use, and to take advice from their professional advisers in arriving at the most appropriate selection.

Standard Form Construction Contracts

25.1 There are many different standard form construction contracts available for use in the UK market. This guidance note only considers those most often used. These are contracts published by:

- The Joint Contracts Tribunal (JCT), one of whose members is the Scottish Building Contract Committee (SBCC) which produces equivalent, very similar, contracts for use in Scotland.
- The NEC, which is a division of Thomas Telford Ltd, a wholly owned subsidiary of the Institution of Civil Engineers.
- The Association for Consultancy and Engineering (ACE) and the Civil Engineering Contractors' Association (CECA) which jointly publishes the Infrastructure Conditions of Contract (ICC). These are effectively re-prints of the now abandoned ICE Conditions of Contract.
- The Association of Consultant Architects (ACA) publishes contracts specifically drafted for integrated team/partnering arrangements.

Other Contracts

26.1 Other, less often used, contracts are published by:

- The Institution of Chemical Engineers produces a suite of contracts used mostly in process industries.
- FIDIC (International Federation of Consulting Engineers) publishes a suite of contracts used internationally, and by the World Bank. If contemplating use in the UK, amendments would be needed to comply with UK legislation requirements.
- The Institution of Mechanical Engineers and the Institution of Engineering and Technology produce contracts for electrical and mechanical work.
- The Chartered Institute of Building has launched a contract for use with Complex Projects – CPC 2013.
- Scottish Futures Trust publishes contracts for use on revenue financed schemes, and for design and build projects using the hub programme.

Commonly Used Contracts

27.1 The most commonly used contracts for each type of procurement strategy are listed in turn in the following paragraphs.

27.2 Traditional Contracts:

- JCT (SBCC) Standard Building Contract 2011 (in versions of with quantities, without quantities, and with approximate quantities)
- JCT (SBCC) Intermediate Building Contract 2011
- JCT (SBCC) Minor Works Building Contract 2016
- JCT Measured Term Contract
- NEC 3 ECC Option A (lump sum) or Option B (with quantities)
- ICC Minor Works 2011
- ICC Measurement Version 2011
- ICC Crown Investigation Version 2011

27.3 Design and Build:

- JCT (SBCC) Design and Build Contract 2016
- JCT Major Project Construction Contract 2011
- NEC3 ECC Options A-E
- ICC Design and Construct Version 2011

27.4 Management Forms:

- JCT Management Contract 2011
- JCT Construction Management 2011
- NEC3 ECC Option F

27.5 Integrated Team (Partnering):

- PPC 2000 (2013 edition)
- NEC3 ECC with Option X12
- JCT Constructing Excellence 2014
- ICC Partnering Addendum

27.6 Cost Plus/Cost Reimbursable/Prime Cost:

- JCT Prime Cost 2011

- NEC ECC Option E

27.7 Target Cost

- NEC 3 ECC Options C and D
- ICC Target Cost

JCT (SBCC) or NEC?

28.1 For building projects, unless an Integrated Team or Revenue Financed procurement strategy has been chosen, the procuring authority will mostly find it needs to choose between a JCT (SBCC) or a NEC form of contract. Advice should always be sought from professional advisers to assist in making that decision, however care should be taken to ensure such advice is impartial, avoiding any consultant self-interest.

Choosing from the Differing Forms of Contract

29.1 The JCT provides a wide range of different forms depending on the procurement route – traditional contracting, design and build, management contracting, etc. – and the size and complexity of the project. The NEC starts from the reverse position: there is a single common form of main contract and flexibility is obtained by selecting one of the main pricing ‘Options’ (lump sum, target cost, etc.) and then from an extensive range of secondary clauses dealing with matters such as delay damages, sectional completion, limitation of liability and key performance indicators.

Management of the Contract

30.1 With the JCT form, management is the responsibility of the leader of the Design Team, which is normally the Architect, whilst in the NEC form the management is carried out by the Project Manager (PM) and is more onerous than those required by the JCT form. Therefore, the costs to manage an NEC project will be more than those required for a JCT contract of similar size and complexity. The overriding logic is that by increasing resources during construction, problems and issues can be dealt with as and when they occur at a time when the outcome can still be influenced. This should assist in completing the project on time and within budget and should reduce uncertainty for all parties. Compliance with the contractual procedures should also create an excellent set of records of project activities. Therefore, if claims or disputes are raised later, both parties will have access to these records and enable agreement of any dispute.

Dealing with Claims

31.1 The NEC Contracts promote the compilation of a ‘risk register’ and risk reduction meetings to manage the consequences. There is a strict eight-week cut-off period for the contractor to notify that a compensation event has occurred, after which the right to compensation is lost.

31.2 Even shorter timescales are fixed for the contractor to submit quotations to deal with the event. A failure by the PM to respond to a notification or quotation within

equally short periods will lead to its deemed acceptance, binding the employer and potentially exposing the PM to a claim by the employer. The quid-pro-quo for the NEC's pro-active approach is that it requires a heavy resource commitment from all sides to administer the project.

31.3 In contrast, the JCT standard forms give the parties greater freedom to put contractual claim issues to one side before completion and focus on delivering the project. The downside of this, which the NEC strives to avoid, is the greater possibility that claim issues will then fester over time, ultimately to the detriment of the project and the parties' relationships. Before opting for either suite, it is important that adequate resources are available to meet all the relevant contractual obligations.

Design Responsibility

32.1 The JCT forms provide for partial design by the contractor through the use of a 'design portion supplement' and for full design, via a range of 'design and build' forms. NEC approaches the issue in a rather more flexible way: the amount of any contractor's design is set out as part of the 'works information', a schedule to the contract containing technical information relating to the scope of work. Under the JCT design and build forms, the standard design warranty expressly restricts the level of duty owed by the contractor to one of reasonable skill and care. In contrast, under NEC the parties must expressly agree a secondary option clause (X15) to have this effect. Without such an agreement, a fitness for purpose obligation will normally be implied by law as part of the design and build contractor's responsibilities. It is interesting to note that under this clause, where a defect arises in the works due to the design, the contractor has the burden of proving they used reasonable skill and care.

Insurance Arrangements

33.1 Whereas the JCT forms require insurance of the works to be maintained until practical completion is certified, under the NEC the contractor's obligation to arrange insurance extends to issue of the defects certificate.

Dispute Resolution

34.1 JCT and NEC forms provide an automatic right to adjudication as provided for by the Construction Act. Under NEC there is a further opportunity to challenge the decision of an adjudicator by arbitration or through the courts. The dissatisfied party must give notice to the other side within four weeks of that decision. After that, the decision becomes final and binding on the parties. Both forms of contract will provide the client with the protection that they require albeit in different ways. As noted above, all Design Teams and Contractors are familiar with the JCT Contracts and possibly less so with the NEC contracts. However, the pros and cons of each form of contract should be considered in relation to the procurement strategy to make the best decision for the delivery of the Project.

Other Useful Sources of Advice and Guidance

35.1 The following may be of help:

- The NEC publisher's website: <https://www.neccontract.com>
- The SBCC website: <http://www.sbcconline.com/>
- A comprehensive guide to choosing the most appropriate contract from the JCT suite: <http://www.jctltd.co.uk/docs/Deciding-on-the-appropriate-JCT-contract-2011-Sept-11-version-2.pdf>
- A flowchart for choosing from the JCT suite: <https://www.jctltd.co.uk/docs/Guide-to-selecting-the-appropriate-JCT-main-contract-Sept11.pdf>

Construction Procurement Handbook

Chapter 6

Construction Procurement Route One

Contents:

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3.	<u>Background</u>
4.	<u>Guidance</u>
Annex A	<u>Quick Quote Process Chart</u>
Annex B	<u>Quick Quote Explanatory Notes</u>

Introduction

1.1 This guidance covers both options of *Construction Procurement Route One (CPR1)*; that is, *CPR1A* where no advertising is indicated and *CPR1B* where the contract complexity or risk indicate a requirement to advertise. Both are used where the contract value is below the thresholds set out in the [Procurement Reform \(Scotland\) Act 2014 \(The Act\)](#). The key difference between *CPR1* and *CPR2* is that *CPR1* procurements do not, by law, need to be advertised while those conducted through *CPR2* must be advertised and are subject to certain legislative requirements through either the Act and/or the [Public Contract \(Scotland\) Regulations 2015 \(the 2015 Regs\)](#).

1.2 *CPR1* is a procedure aimed at providing a quicker and more simplified means of procuring low value, low risk contracts. The *Quick Quote* facility provided through the [Public Contract Scotland \(PCS\)](#) portal allows this to be conducted online. While the use of PCS Quick Quote is not mandated, we would always encourage its use where appropriate, as it provides a start to finish online and auditable record. *CPR1B* is for below Procurement Reform (Scotland) Act 2014 thresholds where *CPR1A* is not appropriate, mainly because the nature of the contract requires wider advertising or that it carries higher risk. The *Construction Procurement Route Selection Matrix* [in chapter 3](#) should be used to identify the most appropriate route.

1.3 Many tender processes, due to the specialist nature of the contract subject or due to value and public or risk profiles, require to be extensively advertised and subjected to more rigorous procedures. Those which have been adjudged suitable for *CPR1A* are of low or medium risk and by their nature do not require to be advertised, whilst those earmarked for *CPR1B* are higher risk and need wider marketing. Whatever the means of conducting a *CPR1* exercise, it must be conducted in a fair and transparent manner, with suppliers who are invited to quote being treated equally and without discrimination. To this end, authorities should keep robust records of the entire process.

1.4 In this guidance we have provided a process chart to take the user through both *CPR1* options and follows on from the *Construction Procurement Route Selection Decision Matrix*. It consists of a flow chart (Annex A), similar in design and concept to the decision matrix, setting out the stages of the procedure and explanatory notes (Annex B) giving details of actions to be taken at each stage. It follows a logical process from business case through to award and management of the contract. Guidance is available showing how to use the online [Quick Quote](#) facility

Use of CPR1

2.1 There are times when it is a distinct advantage to be able to award a contract quickly and get the contractor started on site or consultants working on the project as soon as possible. This could be because of an emergency requirement or perhaps because of a need to stimulate the economy by bringing work out more rapidly than normal. Urgency is not a reason or excuse to ignore the need for proper considered

procedure and the quick quote system and others like it allow CAs to carry out a reduced procedure whilst maintaining due process and governance.

2.2 Contracting Authorities should encourage the use of CPR1A as a default position for all contracts under the thresholds set out in the Act with CPR1B only being used where the decision matrix [in chapter 3](#) indicates that CPR1A is not appropriate.

Background

3.1 [SPPN 4/2009](#) set out "...that all public contract opportunities for *goods and services* with an anticipated value of £50,000 or more should be advertised on the Public Contract Scotland website...". This has been superseded by the requirements of the Act which requires all *regulated* contracts to be advertised on PCS. [The Review of Scottish Public Sector Procurement in Construction](#) recommended that Quick Quote should become the norm for all works contracts worth less than £500,000 and that its use should be considered for all construction related contracts worth less than the thresholds in the Act. It also recommended that public bodies using *Quick Quote* should be able to demonstrate a clear audit trail to contract award when using quick quote, in order to ensure transparency and accountability. The use of this guidance, which promotes the recording of decisions and actions against each stage, will assist in providing that audit trail.

3.2 [Section 23\(1\)](#) of the Act requires all works contracts worth at least £2m and all other goods or services contracts estimated at £50k and above, to be advertised on the *PCS portal*. The EU threshold is higher than that; therefore, any contract of a value less than the Act thresholds may be procured through the *CPR1* process. *CPR1A (Quick Quote)* allows contracting authorities to procure lower value contracts much more quickly than would be the case for above threshold procurements.

Guidance

4.1 This guidance aims to assist contracting authorities to come to a decision about the appropriateness of *CPR1* for their construction procurements and can be used for procurement of contractors, consultants and materials for construction projects. It consists of the decision matrix described in the guidance on route selection [in Chapter 3](#) of this Handbook and the following guidance on the process of tendering through *CPR1*. Procurement processes remain the responsibility of the contracting authority; however this guidance will assist in coming to the decisions that need to be made to ensure appropriate procurement procedures are adopted. A flow chart showing the *CPR1* process is given at Annex A and explanatory notes are shown at Annex B.

4.2 [Business Case/Justification](#) Everything should be proportionate and, whilst it is essential to properly justify the business case for a project and contract, we would not expect the same level of detail and analysis on a *CPR1* procurement as, for example, for a £100m project. Appropriate consideration should though be given to all the factors which will influence the outcome. This should include whether the project is necessary in the first place, what effect is to be achieved and the desired outcome, whether the authority has the necessary internal resource with suitable expertise to

deliver the project, if finance has been secured and whether the model of financing matches the expected delivery programme for the project.

4.3 Selection Process While the *Quick Quote (CPR1A)* process is intended to reduce the tendering timescales, it does not excuse the contracting authority from demonstrating a compliant and auditable process. It is therefore recommended that contracting authorities create and publish a formal policy setting out how they will undertake their quick quote process. The policy statement should reflect the CA's corporate processes for complying with procurement legislation and must include as a minimum:

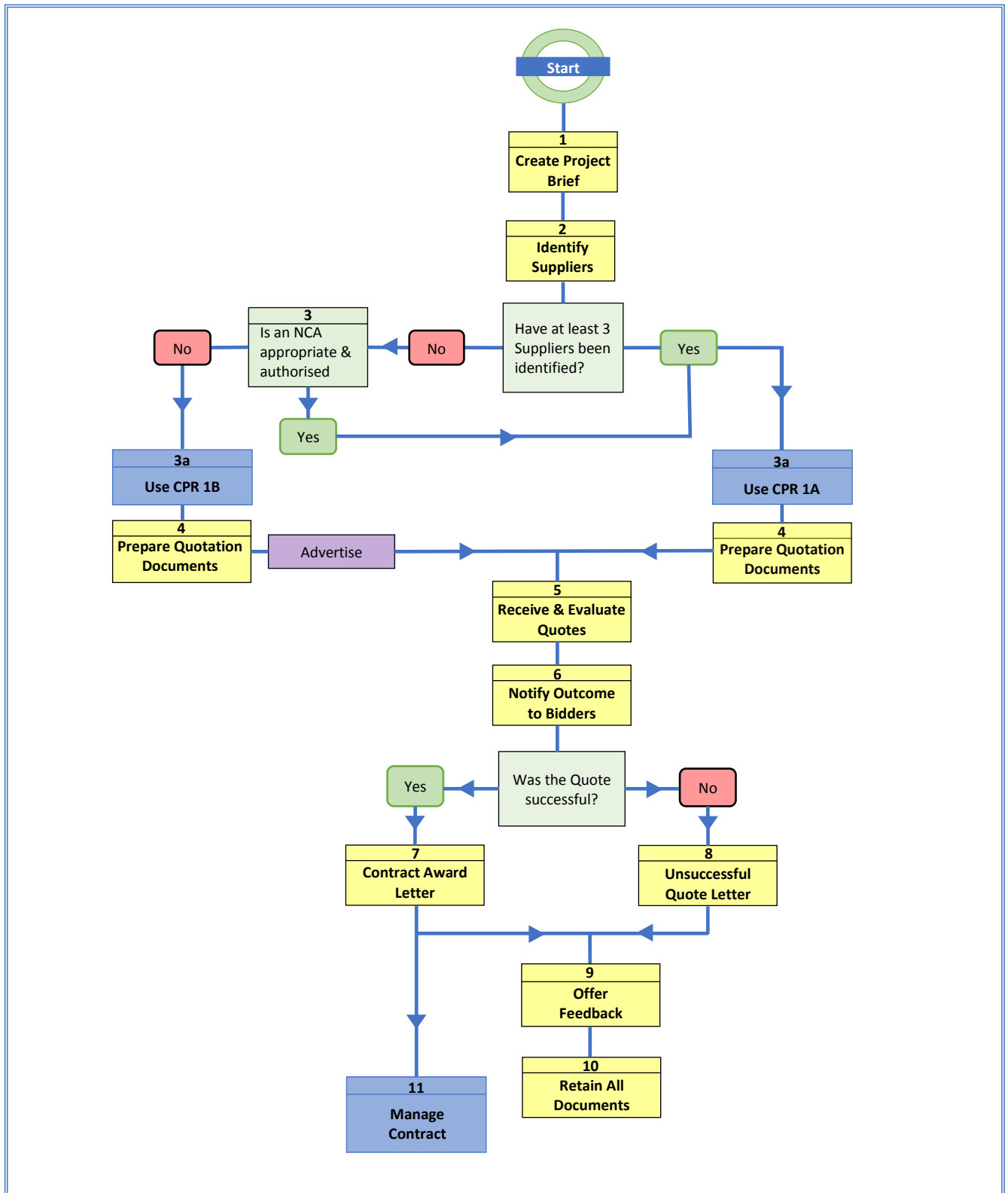
- A statement on the contracting authority's financial thresholds in relation to the use of *Quick Quote*.
- A statement on how the contracting authority will use the process to improve the economic, social and environmental wellbeing within its area reflecting the sustainable procurement duty.
- A statement on how the contracting authority will identify suppliers for the process including organisations new to the authority, to ensure that competitive bids are achieved.

4.4 Compliant and effective use of *Quick Quote* depends on the ability of the CA to draw up a list of businesses to be invited to provide a quote. If a CA cannot obtain the necessary market insight to ensure potential bidders are capable of, and available, to perform the contract, then the use of quick quote for sourcing a supplier is unlikely to be appropriate. In which case the contract should be advertised openly using *CPR1B*.

4.5 The *Quick Quote* strategy will be subject to examination as part of the *Construction Capability Assessment (CCA)* which is currently in development and which will form part of the *Procurement and Commercial Improvement Programme (PCIP)*.

4.6 Explanatory notes provide further detail on each stage of the flow chart.

Construction Procurement Route 1 Process Chart



Quick Quote (CPR1) – Explanatory Notes

Note 1. Create Project Brief.

The brief will be informed by the procurement strategy which is covered [in Chapter 5](#) of this handbook. The brief must be a bespoke document providing the prospective suppliers with sufficient detail to allow them to understand the requirements of the job and provide an appropriate quotation. It should be no different, apart from in scale, to a brief that you would provide for a construction procurement route 2 process. Bear in mind that it will form part of the formal contract.

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Note 2. Identify Suppliers.

You should seek quotations from a minimum of three suppliers who have the experience and expertise to meet your requirements. To receive three quotes back from suppliers you may wish to approach four or five suppliers, in case not all respond. It is good practice both in terms of being open and fair and in ensuring competition, to vary the suppliers who are invited to quote for similar work. The organisation's procedure for identifying suppliers in CPR1 should be clear to all suppliers and should be set out in your Procurement Policy.

Suppliers may be identified by searching the register of suppliers on [Public Contracts Scotland](#) (PCS). This website offers a 'Quick Quote' system to seek quotations from suppliers registered on the website.

If your Organisation does not use PCS, suppliers may be identified by other means. For example, using internet searches, trade publications or phone directories. If you are unable to identify three suppliers and non-competitive action is not appropriate, Construction Procurement Route 1 should not be used. If you need to request clarification, seek further guidance from your local construction procurement team or Centre of Expertise (CoE). When using CPR1, you should endeavour not to restrict your selection to suppliers you have prior experience of. This will help suppliers who have not previously bid for Scottish public sector work, gain access to opportunities and experience working for the public sector. This will also facilitate competition, encourage innovation and ensure best value in future service delivery.

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Note 3. If Only One Supplier, has a *Non-Competitive Action* been authorised?

In processes where the CPR1 route is appropriate but where insufficient providers who can undertake the work required have been identified, you should either advertise the contract as per an open or restricted procedure, or if a single supplier has been identified, seek approval for a Non-Competitive Action from your local procurement team or from senior management in your organisation. If you are opting

for an NCA you should then follow the remainder of this process. For commercial reasons, you should not inform the supplier that they are the only suppliers involved in the process.

If an NCA has not been approved, you should follow CPR1B to procure the contract. If an NCA has been approved, continue as for CPR1A to prepare tender documents and invite one bidder to tender.

Note: A Non-Competitive Action should be the exception rather than the norm and should be fully documented for audit purposes

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Note 4. Prepare Quotation Documentation

Other than not requiring advertising, the CPR1 procedure should follow the same processes as CPR2, albeit at a scale appropriate to the contract being procured. Suppliers may ask questions about the quotation documentation 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 who were invited to quote. 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 the original timescales identified in your quotation documentation, however, in exceptional circumstances you may choose to consider extending the deadline for receipt of quotations. Remember to communicate this to **all** suppliers if you do so. It is advised that you consult with your local Procurement Function/CoE for further guidance.

The time limit for quotation responses should reflect the complexity of the contract being procured.

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Note 5. Receive and Evaluate Response

Quotation responses should be received through the [Quick Quote](#) system where possible. This provides a secure receipt mechanism and is considered best practice. Where organisations do not use Quick Quote, quotation responses may be received in hard copy or by email. 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 prior to your deadline. Where an alternative to PCS is used, it is essential to maintain a robust control measures and an audit trail at all times to ensure that access to tenders is controlled and recorded to reduce the risk of fraud or collusion entering the procedure.

Quotation responses should be opened in line with your organisation's governance arrangements. If your organisation does not use Quick Quote, you should formally record the quotation responses received using a [Record of Quotations Received form](#) similar to the example shown below. If less than three quotation responses were returned, reasons why 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 your local procurement team/Centre of Expertise (CoE) for advice on how to proceed.

Any quote which shows a potential “abnormally low price” should be queried with the supplier to identify the reasons for this. See the guidance on Abnormally Low Tenders, [in Chapter 8](#) of this Handbook

If responses are received with proposed alternative Terms and Conditions of contract, the supplier must be informed in writing that the Terms and Conditions of Contract as originally identified will apply. If the supplier continues to challenge the Terms and Conditions, you should seek advice from your procurement or legal services team, or, in their absence, your relevant Centre of Procurement Expertise. In no circumstances should any proposed changes be accepted without seeking specialist assistance.

You must use the evaluation process and guidance as set out in your quotation documentation and contract brief.

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.

Where appropriate, you may wish to consider interviewing/inviting presentations from suppliers to assist in the evaluation process. This requirement, together with the scoring criteria, should be identified in the tender documents. If you decide to request supplier interviews/presentations, you should provide details of the time, place and format in the documents. 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. A record of the interview should be made for audit purposes and to assist the feedback process.

Record of Quotations Received Document

Quotation Title:

Department: Office:

Requirement Owner: Buyer:

Quotation Issued Date: Quotation Return Date (QRD):

Reference:

The above information, together with the names of all suppliers, is to be completed before the opening of quotations.

	Quotes Invited By	Quotes Received by QRD – Yes/No	Late Quote Yes/No
1.			
2.			
3.			
4.			
5.			
6.			

Quotations opened in the presence of		
Signatures	<input type="text"/>	<input type="text"/>
Names (Block Caps)	<input type="text"/>	<input type="text"/>
Date	<input type="text"/>	<input type="text"/>

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Note 6. Notify Outcome to Bidders

Identify the successful supplier from the “Receive and Evaluate Responses” process and seek approval to award the contract in line with your Organisation's governance arrangements.

The successful supplier should be notified of their success in line with note 7 below, unsuccessful suppliers should also be notified.

All bidders are entitled to ask for the reasons why their quotation was unsuccessful. See note 9.

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Note 7. Contract Award Letter

Contract award for construction related projects must include written notification of the bidder's success and may include the signing of a construction contract. Notification should be in the form of a letter accepting the supplier's offer and must be signed by a person with the delegated authority to procure and commit your organisation to the contract.

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Note 8. Unsuccessful Quotation Letter

Unsuccessful bidders should be informed at the same time as the successful bidder, the following suggested letter may be used by authorities:

Add date Dear **"insert supplier name"**

INVITATION TO QUOTE FOR:

"add contract name here and contract reference number"

Thank you for your quotation dated **"(insert date)"**. On behalf of **"add organisation name"**, the evaluation of all the quotations received for this contract has been completed, however on this occasion your quotation has not been successful.

The quotation submitted by **"insert supplier name"** and provide brief reasons **why the supplier was unsuccessful.**

On behalf of **"add organisation name"**, I would like to thank you for the time and effort taken by **"insert supplier name"** when submitting this quotation.

Please do not hesitate to contact me directly should you have any questions about the content of this letter.

Yours faithfully

Add name here

Add job title

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Note 9. Offer Feedback

Procurements by this route (CPR1) are not regulated procurements under the Procurement Reform (Scotland) Act 2014 therefore the provisions of that Act do not apply to them. It is however in the interest of both buyers and suppliers to ensure feedback is available to both successful and unsuccessful bidders. Feedback should help to improve future bids which in turn will improve competition and outcomes for the contracting authority. We therefore recommend that feedback, along the lines of the process set out in [Section 33](#) of the Act, is made available. Guidance on feedback to bidders is included later [in Chapter 9](#) of this Handbook.

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Note 10. Retain documentation

All documentation relating to this quotation process must be retained to ensure a full audit trail, and in line with your organisation's governance arrangements. If you are using the Quick Quote facility, a full audit trail will have been maintained by the system.

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Note 11. Manage Contract

The Managing the Contract handbook will provide guidance on operating the contract.

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Construction Procurement Handbook

Chapter 7

Construction Procurement Route Two

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Introduction

1.1 The Construction Procurement Route Selection guidance (Chapter 3 of this handbook) sets out that there are two main procurement routes and provides a matrix for determining which one is most appropriate for individual procurements. Construction Procurement Route One (CPR1) is for procurements below the Procurement Reform (Scotland) Act 2014 thresholds and the other, Construction Procurement Route Two (CPR2) should be used for procurements above those thresholds. Figure 1, below, provides a description of each route and their sub-routes.

		Construction Procurement Route 1		Construction Procurement Route 2	
		A	B	A	B
Thresholds	Goods and Services	Below £50k	Below £50k	£50k – 2015 Regs thresholds	Equal to and above 2015 Regs thresholds
	Works	Below £500k	Between £500k and £2m	£2m – 2015 Regs thresholds	Equal to and above 2015 Regs thresholds
Risk		Low	Medium and High	Low, Medium and High	Low, Medium and High
Notes		This route is designed to reflect the legal requirement to ensure all Scottish public sector procurement is undertaken in an open, objective and equitable manner	As for Route 1A, but with the additional requirement of advertising the contract on PCS. This is not a legal requirement but good practice to achieve wide coverage. Used where Route 1A is not appropriate.	Must be advertised and comply with the requirements of Procurement Reform (Scotland) Act 2014.	Must fully comply with the relevant regulations including Public Contract (Scotland) Regulations 2015.
Procedures		No requirement to advertise. PCS Quick Quote provides an online system for taking this type of procurement to market.	This will most likely be openly advertised and it should be conducted in a fair, open, objective and equitable manner akin but not subject to the same rules as procurements conducted above Procurement Reform (Scotland) Act 2014 thresholds.	None specified but a full and formal fair, open, objective and equitable tender process must be followed. Where appropriate and proportionate to the specific case we believe that following <i>similar</i> procedures to those required for 2015 Regs procurements is advisable.	Open, Restricted, Competitive procedure with negotiation, Competitive dialogue, Innovation Partnership, Negotiated procedure without prior publication.

Figure 1: Construction Procurement Routes

Legislation

2.1 Construction procurement, like all other procurements in Scotland are governed by legislation and case law. The principle pieces of legislation are the [Procurement Reform \(Scotland\) Act 2014 \(The Act\)](#) the [Public Contract \(Scotland\) Regulations 2015 \(the 2015 Regs\)](#) and the [Procurement \(Scotland\) Regulations 2016 \(the 2016 Regs\)](#) Other related legislation can be found on the [Procurement legislation from 18 April 2016](#) web page. The [Guidance under the Procurement Reform \(Scotland\) Act 2014](#) is statutory guidance issued following the enactment of *the Procurement Reform (Scotland) Act 2014*.

Applicability

3.1 This chapter of the *Construction Procurement Handbook* focuses on the advertising, selection and award of contracts under CPR2B which is specifically for those procurements which have an anticipated contract value that is equal to or above 2015 Regs thresholds. Procurements above 2015 Regs thresholds are regulated by the *2015 Regs*. There are no mandated procedures below the thresholds set out in the Act and those required by the 2015 Regs are not mandated below the those thresholds. That said, we recommend that the use of similar processes for all below 2015 Regs threshold procurements is good practice as they provide a consistent approach and ensure open competition in keeping with the common procurement principles of equal, fair and transparent processes.

Procurement Thresholds

4.1 These are covered in more detail in Chapter 3, about route selection. For ease these are reproduced here in *Figure 2*:

		Works	Services, Supplies & Design Contracts
Procurement Reform (Scotland) Act 2014		£2m	£50k
Public Contract (Scotland) Regulations 2015	Central Government	£5,336,937 thresholds	£138,760 thresholds
	Other Contracting Authorities	£5,336,937	£213,477
	Small Lots	£884,720	£70,778

Figure 2 – Public Contract Procurement Thresholds as at 1 January 2022 (see [procurement thresholds webpage](#))

Procedures

5.1 **Procurement Procedures** When conducting a procurement either equal to or above the 2015 Regs thresholds; contracting authorities (CAs) must apply a procedure which complies with those Regs. The Regulations provide for six procedures. These are:

- [Open](#) Regulation 28;
- [Restricted](#) Regulation 29;
- [Competitive procedure with negotiation](#) Regulation 30;
- [Competitive dialogue](#) Regulation 31;
- [Innovation partnership](#) Regulation 32; and
- [Negotiated procedure without publication](#) Regulation 33

5.2 The majority of procurements for supplies, services and works will follow either the *Open* or *Restricted* procedures; which one is followed will be dependent on the specific nature and requirements of the project and contract. The use of the *Competitive Procedure with negotiation* and *Competitive Dialogue* are more appropriate for complex procurements, for example, where readily available solutions need significant adaptation or the contract requires innovative design solutions. *Innovation Partnerships* are more appropriate where the development of innovative solutions not available on the market is required and will normally require a commitment from the supplier to conduct substantial research and development to arrive at a solution. This guidance focuses on the use of the Open and Restricted procedures.

5.3 Open and Restricted procedures consist of three parts – advertising, selection and award of contract. Although open and restricted procedures are distinct, the rules and manner by which those three parts are carried out are similar. The main difference is that for the open procedure, selection and award are carried out simultaneously whereas for the restricted procedure, this is separated into two distinct stages carried out consecutively.

5.4 There are advantages to both procedures, however for most construction contracts to engage both contractors and consultants, the restricted procedure will normally be the most suitable. The following sets out the characteristics of these:

- Open Procedure This allows anyone to submit a tender to supply, goods, services or works in response to an advert being placed by a client. The supplier submission includes two parts, the selection information and the tender. Each is evaluated separately. Because both elements are submitted at the same time, it does not restrict the number of tender submissions and may result in a large number of submissions, including those from suppliers who are entirely unsuitable for the delivery of the contract and can, consequently be a slow and costly process. It is though considered to offer the greatest competition and can allow new or emerging suppliers to try to secure work.
- Restricted Procedure This is very similar to the Open procedure but separates the pre-qualification or selection stage from the consideration of the tender evaluation. An advert is published and suppliers respond to this by completing a pre-qualification questionnaire (in Scotland this is done on the Single Procurement Document (Scotland)¹ (SPD) or European Single Procurement Document where the contract is EU funded). This is considered by the client and a short list of those suppliers who meet the requirements (or qualify) is drawn up and those on it invited to tender for the contract. This procedure has the advantage of reducing the number of tenders which are submitted and consequently reducing the amount of speculative work required by suppliers in preparing full tender submissions and the number of submissions which require to be evaluated by the client. Generally a short-list will consist of a minimum of five suppliers.

¹ The SPD replaces the ESPD. Note that where contracts are funded through the EU, the ESPD Scotland will still require to be used.

5.5 Restricted procedures are often referred to as two stage processes. This refers to the selection and award ‘stages’. This should not be confused with *two stage tendering*, which is used, generally in construction, to allow the early appointment of a contractor, prior to the completion of all the information required to enable them to offer a price. In the first stage, a limited appointment is agreed allowing the contractor to begin work and in the second stage a fixed price is negotiated for the contract. Both open and restricted procedures can be used in two stage tendering.

5.6 Design Contests [Section 8 of the 2015 Regs](#) covers the rules for Design Contests

Timescales

6.1 Procurements regulated under the 2015 Regs allow certain minimum timescales for the completion of various elements of the processes. Procurements regulated under the Act do not have the same fixed minimum timescales imposed, but contracting authorities must adopt timescales that are proportionate to the complexity of the procurement. For many procurements these may be the same as those set out in the 2015 Regs.

6.2 *Regulation 48* of the 2015 Regs requires contracting authorities to take account of the complexity of the contract and the time required for drawing up tenders, without prejudice to the minimum time limits which are shown in *Figure 3* below. For example, the regulations cite that where tenders can only be made after a visit to the site or after an on-the-spot inspection of the procurement documents, time limits must be fixed so that all economic operators may be aware of the information need to produce tenders.

Choice of procedure and stage	Standard timescales	Tenders submitted electronically	Requirement is extremely urgent and longer time limit is impractical as a result	PIN published no more than 12 months and no less than 35 days from despatch of contract notice ²
Open procedure				
Despatch of contract notice to receipt of responses	35 days	Period Reduced to 30 days	Period reduced to 15 days	Period reduced to 15 days
Standstill Period	10 days*			
Publication of contract award notice	Not later than 30 days after contract award			
Restricted procedure				
Selection				
Despatch of contract notice to receipt of responses	30 days		Period reduced to 15 days	
Award				
ITT to receipt of bids	30 days	Period Reduced to 25 days	Period reduced to 10 days	Period reduced to 10 days
Standstill Period	10 days*			

² Provided that the PIN contains all the information required of a contract notice.

Publication of contract award notice	Not later than 30 days after contract award
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* 10 days is the minimum standstill period where award notice is sent out electronically otherwise it is a minimum of 15 days.

Figure 3: Procurement Timetable - Open and restricted

6.3 Time Limits (Reg 48) The time limits set for receipt of tender submissions from bidders should be proportionate to the contract complexity and the time required to prepare and submit a bid (bearing in mind minimum requirements). Setting too short a timescale for bidders to respond is counter-productive and may lead to poorly formed requirements and contracts, leading to contractual issues and poor outputs later in the project.

6.4 Where additional information is requested by a bidder in good time and this cannot be not supplied at least six days before the tender receipt date (or four days in accelerated procedures), the CA must extend the time limits for the receipt of tenders. An extension to the timescale must also be given where there are significant changes to the procurement documents. Bidders must be given sufficient time to consider any changes or additional information. The length of extension of a tender deadline should be proportionate to the complexity of the change and/or the additional information being provided. To proceed with a tender extension the necessary approval should be obtained in accordance with internal governance procedures. If the date is amended, the new date should be notified to all tenderers (in the case of an open procedure this will require an amendment to the notice to be issued), and if any tenderer indicates that they have already submitted a tender then they should be given the opportunity of withdrawing the original tender and submitting a revised one in line with the extended tender deadline. Consideration should also be given to whether, as a result of the requirement having changed sufficiently, the contract should be restarted in order to ensure that companies which had already discounted the opportunity are given the chance to re-consider in light of the amended requirement.

6.5 Issuing Documents (Reg 54) Procurement Documents should be available at the time of publishing the Contract Notice. The term *Procurement Documents* is defined by Regulation 2 of the 2015 Regs and includes:

“...any document produced or referred to by the contracting authority to describe or determine elements of the procurement, including the contract notice, the prior information notice (if used), the technical specifications, the descriptive document, proposed conditions of contract, formats for the presentation of documents by bidders, information on generally applicable obligations and any additional documents. Technical specifications are further defined in Regulation 43.”

6.6 It is acknowledged that having a complete suite of information is not always possible, for example, a works contract using a design and build form of contract, will require the successful tenderer to produce the design. All information that is ready must be made available and should be clear to enable competent tenders to be submitted.

6.7 For a consultant appointment, the procurement documents may include a detailed 'scope of services', project timescales, and a draft of the form of the appointment contract.

6.8 For a works appointment, procurement documents will comprise any design information available, including specifications, performance specifications, employer's requirements and timescales of the project. That is, sufficient information to allow an informed bidder to understand the works to be tendered. The information should also include the form of construction contract and any proposed amendments to the standard form of the chosen contract.

6.9 **Publication** All Procurement Documents should be made available via the internet, with free and unrestricted access. If exceptions apply, which mean that the Procurement Documents cannot be issued electronically, the contract notice must detail how this will be done instead.

6.10 **Clarification of Bids** Negotiation on fundamental aspects of contracts (especially price) which is likely to distort competition, is not allowed in either the open or restricted process. Dialogue with bidders should be limited to requests for clarification on the process or specification. By definition, Competitive dialogue procedures included extended dialogue with bidders but this is strictly defined and controlled.

6.11 Any discussions with bidders should be properly recorded and meetings which discuss proposals/requirements in any detail should generally be avoided and any clarification given must be shared with all bidders.

6.12 **Value for Money** Scottish Government policy is that all procurement should be conducted on the basis of value for money (VFM) and not lowest price alone. This is a legal requirement for all procurements above 2015 Regs thresholds. The selection of the most appropriate procurement strategy, and the appointment of consultants and contractors, should therefore be on that basis. Regulation 67 of the 2015 Regs requires that *CAs must base the award of public contracts on the most economically advantageous tender assessed from the point of view of the contracting authority and may not use price only or quality only as the sole award criteria.*

6.13 **Advertising/Contract Notice** All contracts above or equal to the Act thresholds must be advertised electronically on PCS, those above the 2015 Regs thresholds must also be advertised in the UK e-notification system called [Find a Tender Service \(FTS\)](#). The content of the above FTS notices is set by Regulation 50 of the 2015 Regs, these are reproduced at Annex A. Timescales are given in figure 3 above. PCS automatically notifies FTS where appropriate.

6.14 The main difference in advertising between Open and Restricted procedures is that in open tendering economic operators are invited to submit a an SPD(S) along with their tender; whilst in restricted tendering, the notice only invites the submission of the SPD containing selection and exclusion information, with the invitation to tender being sent out later to only those who have been selected.

Selection of Candidates and Award of Contract

7.1 **General** Contracting authorities may award a contract or conclude a framework agreement provided it has verified that:

- the tender complies with the requirements, conditions and criteria set out in the contract notice and
- the tenderer is not excluded and meets the selection criteria set out by the authority.

7.2 Exclusion grounds, selection and award criteria must be clearly defined in the procurement documents to ensure a common understanding of the requirements by all economic operators. These criteria must not be changed or waived during the procurement process.

Selection and Exclusion

8.1 **Introduction** Selection (sometimes known as pre-qualification) is the process by which economic operators are tested against a set qualification criteria to identify that they can be selected and should not be excluded from the competition. It looks at their general experience, probity as well as the ability and capacity of the company to perform the contract as opposed to the tender evaluation which looks at the bidder's specific proposal to deliver the contract. The statutory guidance requires the SPD (Scotland) to be used for all procurements above the Act thresholds. An economic operator which fails the selection process cannot be awarded the contract. Regulations 57 to 66 of the 2015 Regs cover the selection of candidates to be invited to tender.

8.2 Selection in *open procedures* may be conducted either before or after the evaluation of the tender has been carried out. If it is carried out before tender evaluation only those tenders which have been selected need to be evaluated. It may, for example, be desirable to assess the tenders (award stage) prior to checking that the minimum criteria are met when only a small number of bids have been received. Where this is done, the absence of grounds for exclusion and of fulfillment of the selection criteria must still be verified prior to award of contract.

8.3 Selection in *restricted procedures* is carried prior to tender evaluation. Economic operators submit their SPD (Scotland) which is assessed and scored then the contracting authority invites qualifying candidates to tender for the contract.

8.4 **Exclusion** There are two main categories of exclusion - *mandatory grounds* and *discretionary grounds*. In outline these two categories are defined as follows, a fuller list of these grounds is given at Annex B:

		Exclusion Criteria	Legislation Reference
Mandatory	<i>Must</i> be applied in all regulated procurements	Grounds relating to criminal convictions	Regs 58(1) & 58(3) of the Public Contract (Scotland) Regulations 2015 and Regs 8 & 9 of the Procurement S(Scotland) Regulations 2016
		Grounds relating to the payment of taxes or social security contributions	
		Blacklisting	

Discretionary	<i>May</i> be applied in regulated procurements	Grounds relating to insolvency, conflicts of interests or grave professional misconduct	Regs 59(4) & 58(8) of the Public Contracts (Scotland) Regulations 2015 and Regs 9(2) & 9(5) of the Procurement (Scotland) Regulations 2016
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Figure 4: Exclusion criteria definitions

8.5 All exclusion 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.

8.6 Candidates are required to disclose whether any of the discretionary or mandatory exclusion grounds apply to them in the SPD (Scotland). Candidates will be excluded from the competition if they cannot provide suitable evidence that the grounds no longer apply, for example, because they have taken suitable action to ‘self-cleanse’ and may be barred from competing for up to three or five years dependent on the grounds. Economic operators must not be excluded indefinitely from participating in a procurement exercise. In all cases, a bidder should be allowed to provide evidence that they have taken remedial action to demonstrate their reliability (self-cleansing).

8.7 **Blacklisting** The Scottish Government regards blacklisting or the compiling of a blacklist as unacceptable. This is the practice of systematically denying individuals employment, who would otherwise be able to be employed, on the basis information, accurate or not, held in some type of database. An economic operator which has breached the relevant legislation is required to disclose full details of the breach including any successful action against it.

8.8 **Selection** The selection criteria for 2015 Regs procurements are set out at Regulation 59 of the 2015 Regs and for regulated procurements at Regulation 10 of *the 2016 Regs* and are replicated in section IV of the SPD (Scotland) standard form.

SPD (Scotland)

9.1 The 2015 Regs introduced the European Single Procurement Document (Scotland) (ESPD) this has been renamed the Single Procurement Document (SPD). The statutory guidance requires its use for all regulated procurements conducted in Scotland. This section of the guidance relates to the use of SPD (Scotland) for construction related procurements. It includes the procurement of goods and services within the construction sector as well as works contracts. Services will generally be the appointment of professional advisers, for example members of a design team.

9.2 The SPD (Scotland) is a formal, self-declaration by bidders providing preliminary evidence that they should not be excluded from the process. It also seeks to demonstrate that they meet the relevant selection criteria and where applicable they fulfil the objective rules and criteria that have been set limiting the otherwise qualified bidders to be invited to tender (short listing criteria).

9.3 It includes mandatory exclusion criteria required in Scotland, such as those for blacklisting. A copy of the SPD (Scotland) standard form is available online. Bidders

and buyers should take care to download the latest version when using this document to ensure that the most current version is used. This can be downloaded from: <https://www.procurementjourney.scot/node/134/>

9.4 The contract notice (or PIN if being used as a call for competition) is integral to the use of the SPD (Scotland). The content is discussed at paragraph 6.13. This should include all information the Contracting Authority has available that may assist bidders to understand the project and allow them to decide if they wish to participate in the competition.

9.5 The contracting authority must set and publish exclusion grounds (mandatory and discretionary), together with selection criteria to allow a bidder’s capability, experience and capacity to be assessed. This is done by the setting of minimum standards (pass / fail questions), as well as seeking qualitative information that can be evaluated and scored. It is important that the number and complexity of questions being asked reflects the scale and complexity but should also consider and be proportionate to the contract value. Figure 5 sets out the sections of the ESPD which are evaluated.

	SPD Part	Scoring Method
Suitability to pursue a professional activity	Part 4A	Not generally scored in UK Construction
Economic and financial Standing	Part 4B	Pass / Fail
Technical and professional ability	Part 4C	Weighted and Scored

Figure 5: SPD, evaluated Sections

9.6 **Requesting information about others** Part II C of the SPD requires the bidder to confirm if they rely on the capacities of other parties, this will normally be sub-contractors, in order to meet part of the selection criteria – refer to *example 1* below. This can be through a variety of relationships for example partners, however in construction this would generally be by subcontracting, where the other party perhaps offers specialist skills or services that the bidder doesn’t possess. If the answer to this question is yes, the bidder must provide a separate SPD (Scotland) from those other parties, each party completing Part II and III, confirming their identity and that they do not breach any of the grounds for exclusion. All parties must individually demonstrate that they do not breach any of the exclusion criteria. The selection criteria within part IV of the SPD– see below) are those criteria set by the contracting authority specifically for the subject contract. Their purpose is to provide assurance to the contracting authority that the bidder and those entities it is relying on collectively have the capacity and capability required to deliver the contract. Sub-contractors will be allowed to demonstrate that they have self-cleansed, in a similar way to the main contractor, however **should a sub-contractor, which is relied upon by the bidder to meet selection criteria, fail any of the pass fail criteria, the whole bid will be deemed to be non-compliant and will be rejected.**

9.7 Part II D is an optional requirement for the contracting authority and is not generally recommended to be included for construction contracts. It asks bidders to confirm if they intend to subcontract any share of the contract. If they do, the

contracting authority may ask the identity of those parties, but only as far as they are known, and for the relevant questions in Part II and all of Part III of the SPD(S) to be submitted by those sub-contractors. Sub-contractors identified, may be required to complete. **As in 9.6 above, should a sub-contractor fail any of the pass/fail criteria the whole bid will be deemed to be non-compliant and will be rejected.**

9.8 The following example describes how this might apply in terms of a relied upon sub-contractor.

Example 1

Tender for the construction of an office block which is adjacent to an electrified railway line.

The contracting authority (CA) has identified the additional risk attached to working close to a live electrified railway and therefore seeks to appoint a contractor that can both demonstrate experience and expertise of general building contracting and of dealing with the exceptional circumstances that may result from the adjacency of the railway line.

The contracting authority should set selection criteria, within the contract notice, against which bidders would have to demonstrate how they intend to satisfy both these requirements, and any others they deem appropriate.

Not all contractors would necessarily have the in house experience of working adjacent to railways and thus may bring in other parties such as partners or specialist sub-contractor(s) as part of their bid, to allow them to satisfy this specific criterion.

In this circumstance an SPD (Scotland) would be required from the sub-contractor(s) who provide this specialist expertise, and in the SPDs submitted the parties would have to establish what expertise and experience each party contributes to the bid, this being an example of the bidder's "reliance on the capacities of other entities" – to meet the selection criteria.

The contracting authority may also seek information about those sub-contractors that the bidder does not rely upon to satisfy the notice criteria. *(This should not be the default position and given the time and cost to both the CA and the bidders, CAs should consider if there is any actual improvement to the selection process before adding this requirement.)*

This relates to those sub-contractors that will form the rest of the supply chain. Depending on the scale and complexity of a project this could include a significant number of separate trade/work packages.

9.9 **Suitability to pursue a professional activity.** This allows a contracting authority to require bidders to be enrolled in certain professional or trade registers.

This has very limited use for UK based bidders as the only recognised register in the regulations for the UK is the register of companies held by Companies House.

9.10 Economic and financial standing. This allows the contracting authority to undertake a degree of financial due diligence on the bidder, including setting the levels of insurance that a bidder must be able to provide on appointment. It is not acceptable to simply ask for company accounts, the contracting authority must establish criteria, such as financial ratios, that the bidder must meet. In particular, a contracting authority cannot ask bidders to have a turnover greater than twice the annual value of the contract, except in duly justified cases.

9.11 Regulation 59(8)(a) and (9) of the 2015 Regs refers. When setting financial criteria, assistance must be sought from financial professionals to ensure the criteria reflect the industry bidders will come from. For example, the financial profile of construction contractors is likely to be very different from consultants. **Again, criteria should be proportionate and appropriate to the scale and complexity of the project and different for consultants and contractors. The review of economic and financial information must be undertaken by individuals with suitable financial expertise.**

9.12 Insurances. Insurance criteria should be set at levels that reflect the contract in relation to risks, but also relative to the value of the contract being tendered, for example, the level of cover of Professional Indemnity Insurance cover required of, say, an engineer may be high in relation to their fee due to the consequence of a defective design. These should not be at levels that would act as artificial barriers to entry. The main types of insurance are noted below:

- **Public Liability Insurance.** PLI indemnifies the insured party against their legal liability for accidental death, disease, injury and damage to property caused to third parties (that is, non-employees) and arising out of the insured party's activities. Claims arising out of a breach of professional duty (professional negligence) may not be covered, therefore it may also be necessary to require the successful bidder to provide a professional indemnity policy. In general, the levels suggested for public liability are £10m for construction works and services contracts and £1m for supplies and services contracts.
- **Professional Indemnity Insurance.** PII indemnifies the insured party against claims for loss caused by alleged breach of professional duty/negligence in the exercising of a professional skill. This is usually taken out by architects, consulting engineers and quantity surveyors or building contractors (if they have a design input or responsibility, usually under a design and build contract). In the supplies and services sector, it could include management consultants, and legal and financial advisers. Unreasonably high levels of PII can act as a barrier to small and medium sized enterprises (SMEs) tendering for contracts. Levels of such insurance should be proportionate to the risks associated with the project and may be lower or higher than the value of the project.

9.13 Contracting authorities should carefully consider the levels of PII cover they require and make an informed decision as to the appropriate level for each project and each of the disciplines they require to have PII cover for. They should note that they may have to pay a premium for unnecessary cover and that they may also be excluding competent small and medium size organisations from participating in their tender process.

- **Employers Liability Insurance.** ELI indemnifies the insured party against their legal liability for death, disease or injury caused to employees (there can be a wide definition of employee - it can include labour only subcontractors, students on work experience, etc.) arising out of their employment. Legally the minimum to be insured is £5m, but most companies are insured for at least £10 million. See [Employers Liability Insurance](#).
- **Contractors' All Risks Insurance.** CAR indemnifies the insured against claims for loss of or damage to the contract works (that is, works undertaken in the performance of a contract including temporary works and materials and including free issue materials) on or adjacent to the site of any contract, both before and after they are incorporated into the contract works, during the period of the works. Cover is normally provided during transit to and from the site, other than by sea or air. Cover is also usually provided on an 'All Risks' basis to include Fire and Specified Perils as well as Accidental Damage, Malicious Damage and Theft. The policy can be extended to cover Own Plant, Site Huts, Temporary Buildings, and Hired-In Plant as well as Employees' Tools. The suggested levels are project cost plus 15% to allow for consequential costs and inflation.

9.14 **Technical and Professional ability.** The aim of the process is to have bidders demonstrate they have the capacity and a sufficient level of experience in order to deliver the contract. This allows criteria to be set that can be scored and evaluated, as distinct from simply pass or fail.

9.15 Bidders will be tested against these criteria using standard questions within the ESPD (Scotland). The standard questions cannot be amended or added to, however the contracting authority may omit questions if they are not deemed appropriate to the specific project. The contract notice should make clear:

- what the subject matter of the contract is;
- the scope of the requirement; and
- any contract specific criteria required.

9.16 This information will allow bidders to understand the skills, capabilities and capacity that the contracting authority has identified as necessary to deliver the contract, and to reflect this in their request to participate. The contract notice together with the SPD (Scotland) sets out the specific requirements of the contract, the relevant exclusion grounds and the minimum standards relevant for the procurement exercise. When setting criteria in the notice and choosing which questions of the SPD (Scotland) to use, a contracting authority must take account of the following:

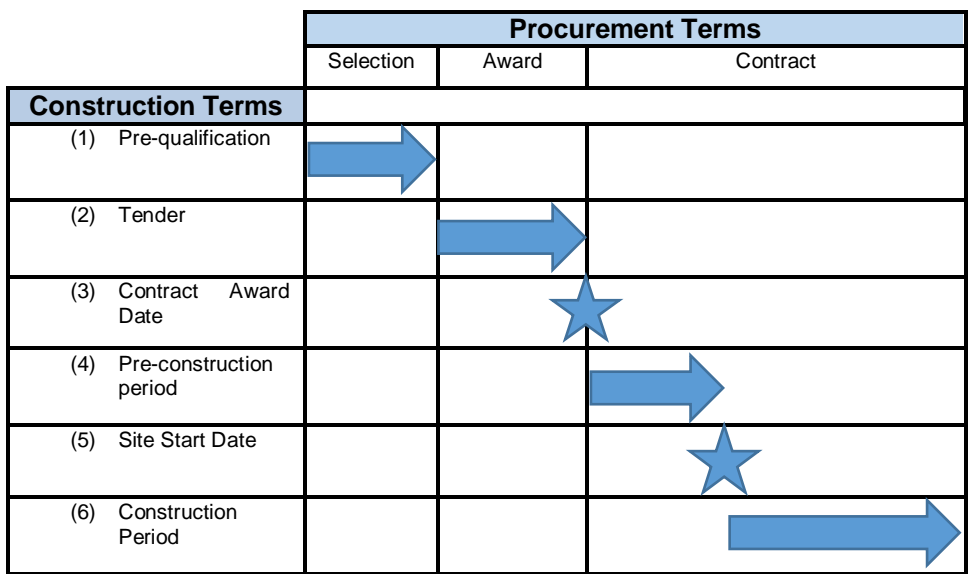
- Criteria should be proportionate in their number and complexity, relevant to and focused on the particular requirements of the subject contract.
- Quality criteria must be determined by the requirements of the project.
- The number of questions must be proportionate to the scale and complexity of the project, i.e. the same number of questions for a £0.5m and a £5m category value contract may not be appropriate.
- Both the creation of criteria and the assessment of ESPD (Scotland) returns for construction contracts must be undertaken by a panel consisting of construction professionals with the appropriate breadth of skills and experience to professionally assess and evaluate returns.
- Scoring methodology must be established and published as part of the contract notice.
- Any weighting given to each question must be agreed and published as part of the notice.

9.17 Qualifying period for experience Questions 4C.1 and 4C1.2 ask for the economic operators to provide relevant examples of experience they have had in the last five years for contractors and three years for consultants. These periods may be extended where the contracting authorities feel that adequate competition may not be achieved by limiting the period of experience.

9.18 Selection Scoring For those elements which are subject to scoring, as opposed to those which are pass/fail, the contracting authority should ensure that a scoring methodology is developed to assist with evaluation at the selection stage. The evaluation methodology must be published in the contract notice to allow bidders to clearly see how their responses will be evaluated. An example of a scoring methodology is provided below in Figure 6:

Figure 6: Scoring system for selection

9.19 It is likely that each question asked will be weighted, and this must also be published as part of the evaluation. Weighting is an important part of ensuring that the correct consultant/contractor is selected, therefore time spent on consideration of the value of each part of the criteria and the importance of each question relative to the others is critical. For example, in general terms it is likely that the SPD (Scotland) question relating to relevant past experience and examples of works undertaken (or services for a consultant appointment), will carry a greater weighting than other questions posed. This weighting should also be published as part of the notice. The objective of the selection part is twofold, firstly, to identify and remove bidders who don't meet the selection criteria. Secondly, and if necessary to generate a shortlist of bidders that best demonstrate the stated requirements in terms of being eligible and



having the experience and capability that will enable them to deliver the contract.

9.20 Figure 7, below, shows the selection and award process in terms that are common in construction:

Evaluation Criteria for Selection		
Score	Classification	Definition
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

Figure 7: Selection and award process

Award

10.1 The award part is distinct and separate from the selection part. For above 2015 Regs threshold procurements, the tender evaluation must identify the most economically advantageous tender on the basis of price/quality ratio and must not be based on price or cost only. The statutory guidance requires this approach to be applied to any award criteria for regulated procurements below the 2015 Regs contract threshold values.

10.2 **Invitation to Tender (Award)** In a restricted procedure, (in open procedures, there is no invitation to tender as the notice invites tenders from all who are interested) the invitation to tender and tender documentation (including a Pre-Interview Questionnaire, where appropriate) should be sent simultaneously in writing to each tenderer. They should be accompanied by "Instructions to Tenderers". These should describe clearly how the tender is to be completed and submitted. Care should be taken to ensure that they only contain instructions and do not include any contractual information that should be included in the contract documents. The following information should be included:

- date and time of submission
- the award criteria
- the essential requirements of a compliant tender (including the information necessary to evaluate the tender in line with the award criteria)
- details for the submission of variant bids, if applicable (including the essential minimum requirements)
- instructions to visit site, where appropriate
- tender return labels (although the default position is that submissions will be made by e-communication)
- method of completing and submitting the tender
- explanation of the two-envelope system (if appropriate)

10.3 The golden rules of tender documentation are transparency, clarity, consistency and completeness. Tenderers will have limited time to carry out a lot of work and therefore the client should make the contract documents clear and as easy to understand as possible. As noted above the presumption is that submissions will be made by e-comms however where hard copies are used all documents should be typed with no manuscript amendments or inserts, all pages should be numbered and there should be a comprehensive index. Tenderers may want to split the documents into elements for response by different people.

10.4 All tenderers should be given identical information. Any clarification given to a tenderer during the tender period must be sent to all the others.

10.5 **Tendering System** There are a number of tendering systems available, the two envelope system allows the quality element of a bid to be evaluated without influence of price and requires tenders to be submitted in two envelopes, one being the qualitative section of the bid, the other the price. A minimum acceptable score for the quality element can be set with only those tenders achieving this having their price considered. This means that an unacceptably poor quality proposal cannot win the tender simply by virtue of having the lowest price.

10.6 Whether the two envelope procedure is used should be determined by the requirements of the project. There may be less need for the two envelope procedure where there is little room for variation in the quality elements of bids, (e.g. where the bid is based on detailed design, full specification and bills of quantities). But where there is scope for variation (e.g. Design and Build, partial design and build, or contracts based on performance specifications) a significant element of the bidders' proposals will be subject to detailed evaluation, and where a two-envelope system is not used, it may be difficult to show that a quality evaluation has not been influenced by consideration of price.

10.7 The evaluation of the award is a forward-looking process and addresses how a bidder intends to deliver the contract with the contracting authority assessing the merits of the bids. The aim of the evaluation is to identify which of the eligible tenders will deliver the best value for money on the price quality ratio set out in the contract notice. Evaluation is conducted on the price and quality of the submission.

10.8 The process must involve a fair, transparent and accountable method of evaluating tender submissions. The invitation to tender must include a clear and unambiguous explanation to bidders on how tenders will be evaluated.

10.9 It should focus on the tenderer's proposals for the delivery of this specific contract and must not consider any other factors out with the scope of the tender. The contracting authority must establish the substantive criteria against which they will evaluate the tenders. These criteria must be specific to the particular project and relevant to assessing whether tenders represent value for money (VFM). The criteria must be established before tenders are invited and notified in the initial advertisement or subsequently in the instructions to tenderers, contained in the procurement documents. Regulation 67 of the 2015 Regs defines the Contract Award Criteria, these may include:

- Quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, social, environmental and innovative characteristics and trading and its conditions;
- Organisation, qualifications and experience of staff assigned to performing the contract, where the quality of the staff assigned can have a significant impact on the level of performance of the contract; or
- After-sales service and technical assistance, delivery conditions such as delivery date, delivery process and delivery period or period of completion.

10.10 Award criteria must:

- not have the effect of conferring an unrestricted freedom of choice upon the contracting authority;
- ensure the possibility of effective competition; and
- be accompanied by specifications that allow the information provided by the tenderers to be effectively verified in order to assess how well the tenders meet the award criteria.

10.11 In terms of construction-related contracts a list of examples of subjects that may be used as the listed criteria is provided in Annex C.

10.12 Qualifications and Experience of Staff Assigned to Performing the Contract For construction-related contracts the quality, experience and qualification of staff is likely to play a major part in the delivery of the project. At the selection stage where bidders are asked about experience, this will relate to the general experience of the bidding organisation, whereas at the award stage, and if important to the tender, this will relate to the staff specifically assigned to the contract and who will actually perform the contract. Within the pricing section of the tender it may be appropriate to seek a breakdown of the roles that the bidder proposes for delivery of the contract and the time allocation for each role against a project programme.

10.13 It is not unusual to seek hourly rates for each staff member, even if the bid is on a fixed sum basis. If there is just cause during the contract to extend the level of services, (not an unusual occurrence in construction) this will allow a basis for such an eventuality. Care must be taken to ensure that any necessary extension would not materially increase the scope of the contract to an extent that would require the contract to be retendered. If the quality of the staff assigned has a significant impact on the level of performance of the contract there should be a mechanism for the successful tenderer to change staff only with the prior approval of the contracting authority.

10.14 **Weightings for award criteria** Bids are assessed on how well they satisfy the award criteria (including any mandatory components). The relative importance of each award criterion should be established by giving it a weighting, based on the requirements of the specific project.



10.15 Quality / Price Ratio The tender should be evaluated on the basis of a best price quality ratio, which will be assessed on the basis of criteria linked to the subject matter of the contract and which must include the price or cost using a cost effectiveness approach. A cost effectiveness approach may include life cycle costing.

10.16 The price/quality ratio appropriate to the type and stage of the project should be established. When setting the appropriate ratio, the Scottish Government encourages the promotion of quality in bids, however contracting authorities should consider the following aspects before setting a ratio appropriate to their tender, further information on these is provided in the section in this handbook on *Contract Selection*:

Contract type:

- Works
 - Design & Build
 - Traditional
 - Design, build, finance & maintain
 - Frameworks
- Consultants
 - Designer
 - Non-designer
- Contract Value
- Project complexity
 - Number of sub-contracts
 - Simple single contractor
- Requirement for innovation
 - Design
 - Construction techniques
- Repeat projects
 - Framework call offs
 - Maintenance

10.17 Ratios are determined by the balance required to be struck between price and quality taking into account the factors described in paragraph 11.2. Each part of the ratio sits on a sliding scale proportionate to its relative importance. *Figure 8* shows this relationship graphically, 0% and 100% are shown to describe the inter-relationship between price and quality, **however it should be noted that it is not permissible to score on the basis of price or quality alone.**

Quality	100%		0%	Quality	
Complexity	Very Complex		Moderate complexity	Very Simple	Complexity
Price	0%		100%	Price	

Note that although the table shows 0% on the scale, this is illustrative only and ratios may not be zero% on either price or quality.

Figure 8: Price/Quality ratio.

10.18 **Award Mechanism** The award mechanism, scoring and weighting ratios, provides a structured approach to evaluating bids. The mechanism must be published in either the notice or the ITT documents; therefore, it must be established before inviting expressions of interest, placing advertisements and/or issuing the ITT documents.

10.19 **Quality Scoring** When scoring individual questions at the award stage, a similar scoring methodology to that for the selection stage could be adopted. There has been some criticism from the industry suggesting scoring bands are too narrow, leading to a clustering effect when marking. Simply put the view is that following a selection process where all short listed parties should be capable of delivering the contract, most bids will cluster round the good / acceptable range. This will lead to greater reliance on the price scoring no matter what price/quality ratio is adopted. For this reason, it is recommended that a scoring system with a wider quality range be adopted, which would allow a greater separation between bids. The table at **Annex C** sets out a 10 point (0 – 9) scoring range. The use of this allows greater definition of bids in relation to each other and therefore a greater ability to separate bids which are relatively close in quality.

10.20 When scoring Contracting authorities must do so accurately and resist inappropriate banding around the middle range. Using the wider range (0-9) should assist in differentiating quality between bids rather than diluting differences. Using such an evaluation scoring system may require more considered marking than the narrower 0-4 system as detailed at table 5 above which is appropriate for selection but less so for tender evaluation. It requires those evaluating to record and justify their scoring and to be prepared to explain the score should a challenge be raised. However, if the marking has been carried out by experienced professionals with knowledge of the commodity being tendered, this should not present an additional risk of challenge for the contracting authority.

Pricing Scoring

11.1 Considering the prices returned as part of a tender requires that these are converted to scores. The scoring model should create figures that are comparable

across the bids and the price scoring and quality scoring systems should be compatible with each other.

11.2 There are a number of different models that can achieve this, and the contracting authority should select an approach that meets their requirements. The following example, in paragraph 12, evaluates MEAT, based on the highest combined technically and financially scored tender. This method is where the technical mark and the price are allocated a score depending on the percentage difference from the highest technical mark and the lowest price.

Most Economically Advantageous Tender (MEAT) Evaluating Technical and Price using a Percentage Score³

12.1 The method used in the following example is appropriate for use in the majority of requirements.

12.2 **General comments** If the Contracting Authority intends to have a minimum pass mark it must state in the tender documentation that the quality element is a simple PASS / FAIL test with regard to whether the tender meets the minimum quality requirements as was stated in the tender documentation. This minimum standard will generally be around 70%.

12.3 The technical elements are marked against the individual award criteria and totalled. Anything below the minimum total technical mark (in the example 140) will be considered technically non-compliant and will not be allocated a technical score. The technical score is the score given to the best compliant technical tender.

12.4 The evaluation is out of 100 (this representing 100% of the total score) and in this example the split is 40/60 price/quality. A score of 60 is allocated to the best technically compliant tender and the technical (quality) scores of the other tenders are calculated as a percentage difference in relation to the best one. Similarly, a score of 40 is allocated to lowest price and again a percentage difference is used to calculate the other tenders. This ensures that the technical (quality) and price scoring are treated in the same way to produce a consistent result.

12.5 The contracting authority must ensure that the scoring method is fair and reasonable, proportionate and does not discriminate in favour of any tenderer.

12.6 The following boxes show the scenario and an example of one method of price and technical scoring using that scenario:

Scoring Example

Scenario:

Five bids have been received by the contracting authority, a price/quality ratio of 40/60 has been set and the bids are as follows:

³ Source – MOD Tender Evaluation

Tender	Technical Mark	Technically Compliant	Price	Commercially Compliant
A	176	Yes	£1,235,732	Yes
B	112	No	£950,000	Yes
C	153	Yes	£1,356,721	Yes
D	151	Yes	£1,189,621	Yes
E	196	Yes	£1,798,598	No

Price Scoring

The formula for calculating the price score is:

Total available marks × (lowest priced technically and commercially compliant price ÷ tender price)

The price score for tender C is calculated as follows:

$$40 \times (\text{£}1,189,621 \div \text{£}1,356,721) = \mathbf{35.07}$$
 (35.1 rounded up to nearest one decimal place)

Technical Scoring

The formula for calculating the technical score is:

Total available marks × (tender technical mark ÷ highest technical mark)

The technical score for tender C is calculated as follows: $60 \times (153 \div 176) = \mathbf{52.16}$ (52.2 rounded up to nearest one decimal place)

12.7 Based on that example the following two tables show the scoring against each bid and the final outcome:

Tender	Technical Mark	Technical Score	Commercial Compliance	Price	Pricing Score
A	176	60	Yes	£1,235,732	38.5
B	112	0	Yes	£950,000	Not scored, technically non-complaint
C	153	52.2	Yes	£1,356,721	35.1
D	151	51.5	Yes	£1,189,621	40

E	196	0	No	£1,798,598	Technically compliant but not allocated a score as commercially non-compliant
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12.8 The technical and pricing score are added together to give a total score that takes account of all award criteria. The successful tender is the one with the highest complaint total score.

Tender	Technical Score	Price	Pricing Score	Total Score	Outcome
A	60	£1,235,732	38.5	98.5	Successful Tender Technically and commercially compliant. Highest total score
B	0	£950,000	0	0	Unsuccessful Tender, technically non-compliant so cannot be awarded contract
C	52.2	£1,356,721	35.1	87.3	Unsuccessful Tender Technically and commercially compliant. Lower total score
D	51.5	£1,189,621	40	91.5	Unsuccessful tender, technically and commercially compliant lower total score
E	0	£1,798,598	0	0	Unsuccessful tender Commercially non-compliant so cannot be awarded the contract

Tender Evaluation - Quality

13.1 Each compliant bid will be evaluated according to the advised quality scoring system. This may include the completion of a questionnaire by each bidder and, where appropriate, a tender interview. The questionnaire and any subsequent interview must be structured in advance to permit evaluation against the pre-determined award criteria. Quality and price should be evaluated separately and one should not be allowed to influence the other.

Tender Evaluation - Price

14.1 Each bid should be evaluated using a price scoring system. Lower than expected price tenders should be reviewed to ensure that they are deliverable and sustainable and do not reflect a failure to understand the contract requirements. Where the 2015 Regs apply, abnormally low tenders should be dealt with as prescribed by Regulation 69 and tenders should only be rejected as abnormally low where the tenderer has been given an opportunity to explain why its bid was low. Chapter 8 of this handbook provides guidance on dealing with abnormally low tenders.

Tender Evaluation - Whole Life Cost

15.1 Price or cost is clearly an important part when identifying the most economically advantageous tender on the basis of the best price quality ratio. Under the 2015 Regs this can include a whole life costing approach taking account of all aspects of cost from the cradle to the grave, including acquisition costs, operational costs such as energy consumption, maintenance and end of life costs such as decommissioning and demolition. For works contracts, particularly major contracts, this should be a consideration.

15.2 Costs can include those that are not directly attributable to the project such as the cost of emissions of greenhouse gases or other pollutant emissions, provided their monetary value can be determined and verified. The method used to assess the costs of environmental externalities must be objectively verifiable.

15.3 Where an authority intends to use a life-cycle approach to evaluate tenders they must include within the tender documents:

- the data they require bidders to provide with their bids
- the method by which the contracting authority will determine the life-cycle costs based on that data.

15.4 Scottish Futures Trust has produced a [Whole Life Appraisal Tool for the Built Environment](#) that contracting authorities should refer to when considering life cycle costing in construction projects. This consists of guidance and a support tool for the development and reporting of whole life outcomes within projects. The key output for the tool is a new whole life dashboard that provides a consistent method of reporting and will support the decision making process. The tool promotes a whole life outcome approach through the assessment of costs, environmental and service delivery performance.

15.5 Discussion with Tenderers Contracting authorities must exercise great care when entering into discussions with candidates or tenderers in procurements subject to the open or restricted procedures. In particular, any such discussions must not amount to negotiation which might distort competition. Discussion with tenderers should generally be limited to requests for clarification (by the tenderer or by the Contracting Authority). Even where discussion does not in fact constitute negotiation, it can be perceived as such. Care should therefore be exercised as to the nature and extent of discussion with tenderers. For example, open days where candidates' or tenderers' questions are answered in open forum and confirmed by way of identical notes sent to all potential bidders will usually be acceptable. Bilateral meetings which discuss individual proposals/requirements are not appropriate and could result in challenge.

Notification of Award, Debriefing and Mandatory Standstill Period

16.1 The bidder offering the "Most Economically Advantageous Tender" and therefore receiving the highest score, is judged as the competition winner. Before proceeding the Contracting Authority must confirm that any information provided by bidders at the selection stage through the SPD is correct and up to date.

16.2 The successful and unsuccessful bidders should be informed of the contracting authority's intention to award the contract and commencement of the standstill period. It is prudent to await confirmation of acceptance from the successful bidder before advising those who were unsuccessful.

16.3 The standstill period is a defined period between the notice of the contract award decision and the award of the contract. The purpose is to enable unsuccessful tenderers to consider the feedback on their submissions and to allow them an opportunity to seek further information or call for a review of the decision.

16.4 The standstill period where the standstill notice is sent electronically is 10 calendar days, ending at midnight at the end of 10th day, after the last notice has been sent.

16.5 If sent by post, or other means, the standstill period is 15 calendar days.

16.6 If unsuccessful tenderers have any concerns with regard the process and/or its outcome, they may be raised during this period. Before approaching the court seeking legal remedies, a tenderer must inform the contracting authority, explaining the basis for its application to the court.

16.7 If an action is raised in court within the standstill period the contract cannot be awarded, unless the court gives its authority. It should be noted that, even after the award of the contract, a supplier can approach the court seeking damages for inappropriate processes.

Feedback to Bidders

17.1 **Introduction** Providing feedback to both successful and unsuccessful bidders is an important element of the tendering process. Besides being a courtesy, which breeds good relationships and trust, it helps suppliers to improve their competitive performance, which in turn improves the quality of future bids for public sector work. Unsuccessful suppliers for 2015 Regs and PRA regulated procurements have a legal right to know the reasons for their rejection, while successful bidders are also entitled to seek feedback in order to understand any improvements that they could have made, even though they won a bid.

17.2 **Statutory Requirements** The Act and the 2015 Regs provide the timings and the information that must be supplied to bidders when advising them of decisions made by a contracting authority for regulated and 2015 Regs regulated procurements respectively. This is the minimum information that should be made available to bidders. Notwithstanding this we believe that below threshold, unsuccessful bidders should also be offered feedback on their bids.

17.3 **Objectives** In order to be successful, a debrief should have the following objectives and the contracting authority must allow sufficient time and resource to achieve them:

- Assist suppliers in improving their performance. Feedback should cover the positive aspects and suggest areas for improvement of the unsuccessful (or successful) bid. Suppliers will then have the opportunity to address these issues in any future bids.
- Offer tenderers the opportunity to provide feedback to the Contracting Authority on the tender process, to assist with continuous improvement of the process.
- Establish and maintain a reputation as a fair, honest and ethical customer.
- Help ensure that qualified suppliers will be encouraged to submit high quality, compliant tenders in the future.

17.4 Timing The point at which debriefing takes place is determined by the 2015 Regs for above OJEU threshold contracts and the Act for regulated contracts.

2015 Regs Regulated Contracts

- a. Candidates eliminated at the Selection (pre-qualification) Stage
 - Legal requirement to notify candidates eliminated at the selection stage “as soon as reasonably practicable” (based on commercial judgement)
 - Candidates are entitled to receive feedback on request.
 - If candidates make a written request, debrief information, including reasons for rejection, must be provided within 15 days
- b. Unsuccessful tenderers
 - All tenderers must receive a standstill notice with the required information as soon as possible after the contract award decision has been made, including a summary of the reasons why they were unsuccessful. This summary to include reasons if they failed to meet technical in an equivalent manner.
 - If tenderers make a written request, additional de-brief information including reasons for rejection

Regulated Contracts

- a. Candidates eliminated at Selection Stage
 - Requirement to notify candidates eliminated at the selection stage “as soon as reasonably practicable”
 - candidates are entitled to receive feedback on request.

- If candidates make a written request, feedback information must be provided within 30 days
- b. Unsuccessful tenderers
- As soon as reasonably practicable after deciding to award a contract notify all unsuccessful tenderers
 - If tenderers make a written request, de-brief information must be provided within 30 days

17.5 Feedback Meeting Where a formal feedback/debriefing meeting is considered appropriate this may include both procurement professionals and technical professionals to ensure that the debriefing is carried out by experienced and fully trained personnel. It is recommended the following suggestions are followed:

- The meeting must not be viewed as a forum for debate as to the validity of the tender.
- It must be made clear to each tenderer that only their tender will be discussed in relation to the successful tender. Under no circumstances will such things as commercial terms or innovative ideas put forward by another tenderer be disclosed.
- If reasons have been given in writing previously by the contracting authority, new or conflicting reasons for the decision should not be introduced as part of the debriefing.
- At the end of the interview, suppliers should be asked if they have any constructive comments on the tender documentation and the tendering process generally.
- A record of the debriefing meeting should be made and retained on file.

17.6 The point at which a debriefing takes place should be determined by commercial judgement and certainly within a reasonable timescale of the award decision.

17.7 More in depth guidance on giving feedback can be found in Chapter 9 of this handbook.

17.8 Audit Trail Records should be kept of the selection and award process, for audit purposes or in the event of a challenge to any decision made. These records should be retained for at least five years or the duration of the contract if longer.

Contract Notice Content

Information to be included in contract notices

1. Name, identification number (where provided for in national legislation), address including Nomenclature of Territorial Units for Statistics (NUTS) code, telephone, fax number, email and internet address of the contracting authority and, where different, of the service from which additional information may be obtained.
2. Email or internet address at which the procurement documents will be available for unrestricted and full direct access, free of charge. Where unrestricted and full direct access, free of charge, is not available for the reasons set out in the second and third subparagraphs of Article 53(1), an indication of how the procurement documents can be accessed.
3. Type of contracting authority and main activity exercised.
4. Where appropriate, indication that the contracting authority is a central purchasing body or that any other form of joint procurement is involved.
5. Common Procurement Vocabulary (CPV) codes; where the contract is divided into lots, this information shall be provided for each lot.
6. NUTS code for the main location of works in case of works contracts or NUTS code for the main place of delivery or performance in supply and service contracts; where the contract is divided into lots, this information shall be provided for each lot.
7. Description of the procurement: nature and extent of works, nature and quantity or value of supplies, nature and extent of services. Where the contract is divided into lots, this information shall be provided for each lot. Where appropriate, description of any options.
8. Estimated total order of magnitude of contract(s); where the contract is divided into lots, this information shall be provided for each lot.
9. Admission or prohibition of variants.
10. Time-frame for delivery or provision of supplies, works or services and, as far as possible, duration of the contract.
 - In the case of a framework agreement, indication of the planned duration of the framework agreement, stating, where appropriate, the reasons for any duration exceeding four years; as far as possible, indication of value or order of magnitude and frequency of contracts to be awarded, number and, where appropriate, proposed maximum number of economic operators to participate.
 - In the case of a dynamic purchasing system, indication of the planned duration of that system; as far as possible, indication of value or order of magnitude and frequency of contracts to be awarded.

11. Conditions for participation, including:

- where appropriate, indication whether the public contract is restricted to sheltered workshops, or whether its execution is restricted to the framework of protected job programmes,
- where appropriate, indication whether the provision of the service is reserved by law, regulation or administrative provision to a particular profession; reference to the relevant law, regulation or administrative provision,
- a list and brief description of criteria regarding the personal situation of economic operators that may lead to their exclusion and of selection criteria; minimum level(s) of standards possibly required; indication of required information (self-declarations, documentation)

12. Type of award procedure; where appropriate, reasons for use of an accelerated procedure (in open and restricted procedures and competitive procedures with negotiation);

13. Where appropriate, indication whether:

- a framework agreement is involved,
- a dynamic purchasing system is involved,
- an electronic auction is involved (in the event of open or restricted procedures or competitive procedures with negotiation).

14. Where the contract is to be subdivided into lots, indication of the possibility of tendering for one, for several or for all of the lots; indication of any possible limitation of the number of lots that may be awarded to any one tenderer. Where the contract is not subdivided into lots, indication of the reasons therefor, unless this information is provided in the individual report.

15. In the case of a restricted procedure, a competitive procedure with negotiation, a competitive dialogue or an innovation partnership, where recourse is made to the option of reducing the number of candidates to be invited to submit tenders, to negotiate or to engage in dialogue: minimum and, where appropriate, proposed maximum number of candidates and objective criteria to be used to choose the candidates in question.

16. In the case of a competitive procedure with negotiation, a competitive dialogue or an innovation partnership, indication, where appropriate, of recourse to a staged procedure in order gradually to reduce the number of tenders to be negotiated or solutions to be discussed.

17. Where appropriate, particular conditions to which performance of the contract is subject.

18. Criteria to be used for award of the contract or contracts. Except where the most economically advantageous offer is identified on the basis of price alone, criteria representing the most economically advantageous tender as well as their weighting shall be indicated where they do not appear in the specifications or, in the event of a competitive dialogue, in the descriptive document.
19. Time limit for receipt of tenders (open procedures) or requests to participate (restricted procedures, competitive procedures with negotiation, dynamic purchasing systems, competitive dialogues, innovation partnerships).
20. Address to which tenders or requests to participate shall be transmitted.
21. In the case of open procedures:
 - time frame during which the tenderer must maintain its tender,
 - date, time and place for the opening of tenders,
 - persons authorised to be present at such opening.
22. Language or languages in which tenders or requests to participate must be drawn up.
23. Where appropriate, indication whether:
 - electronic submission of tenders or requests to participate will be accepted,
 - electronic ordering will be used,
 - electronic invoicing will be accepted,
 - electronic payment will be used.
24. Information whether the contract is related to a project and/or programme financed by European Union funds.
25. Name and address of the body responsible for review and, where appropriate, mediation procedures. Precise information concerning deadlines for review procedures, or if need be, the name, address, telephone number, fax number and email address of the service from which this information may be obtained.
26. Date(s) and reference(s) of previous publications on the UK e-notification service (within the meaning of the Public Contracts (Scotland) Regulations 2015 relevant to the contract(s) advertised in this notice.
27. In the case of recurrent procurement, estimated timing for further notices to be published.
28. Date of dispatch of the notice.

29. Indication whether the contract is covered by the GPA.
30. Any other relevant information.

Mandatory and Discretionary Grounds for Exclusion

Exclusion Ground	Mandatory exclusion ground	Discretionary exclusion grounds
Conviction by final judgment of any of the following criminal offences: <ul style="list-style-type: none"> • Participation in a criminal organisation or serious organised crime, • Bribery or Corruption, • Fraud, • Terrorism offences or offences linked to terrorist activities, • Money laundering, • Slavery, compulsory labour (including in respect of children) or human trafficking, or • Offences in connection with the proceeds of drug trafficking 	x	
Breach of The Employment Relations Act 1999 (Blacklists) Regulations 2010	x	
Breach of tax and social security obligations <ul style="list-style-type: none"> • established <i>by judicial or administrative decision having final and binding effect</i> 	x	
Breach of tax and social security obligations <ul style="list-style-type: none"> • established <i>by any appropriate means</i> 		x
Breach of environmental, social and labour laws		x
Bidder: <ul style="list-style-type: none"> • Subject to bankruptcy or insolvency or winding up proceedings, • Has its assets being administered by a liquidator or court? • Is in an arrangement with creditors, • Has suspended its business activities, or • Is in any analogous situation. 		x
Grave professional misconduct, which renders the bidder's integrity questionable		x
Where the organisation has sufficiently plausible indications that the bidder has entered into agreements with others to distort competition		x
Conflict of interest which cannot be effectively remedied by other less intrusive measures		x
Distortion of competition from the prior involvement of the bidder in the preparation of the procurement exercise, that can't be remedied by other less intrusive measures		x
Bidder has shown significant or persistent deficiencies in the performance of a substantive requirement under a previous public contract, which led to early termination of that contract, damages or other comparable sanctions		x
Bidder is guilty of serious misrepresentation in supplying the information required for the verification of absence of grounds for exclusion or fulfilment of the selection criteria or has withheld this information or is not able to submit the ESPD supporting documents		x
Bidder has or has undertaken to unduly influence the decision making process of the organisation, to obtain confidential information that may confer undue advantages or to negligently provide misleading information that may have a material influence on decision concerning exclusion, selection and award		x

Annex C

Award Criteria

The following is a non-exhaustive list of some of the factors which should be considered when developing award criteria. These must be considered within the overall context of appropriateness and proportionality.

Technical merit:

- appropriate to the client's needs and constraints
- degree of flexibility in carrying out the contract
- method of carrying out contract
- approach to Construction Design and Management Regulations
- how health and safety issues will be identified, assessed and managed during the design and construction stages (see CDM Regulations)
- quality of documentation
- method of presenting information
- standards of materials, checks and independent inspections

Aesthetic and functional characteristics:

- design
- operating costs
- ease of use
- adaptability for changes in use
- demonstration of innovation in proposals
- maintainability

Accessibility design all users

- including compliance with disability and discrimination legislation

Social, environmental and innovative characteristics

- Compliance with BREEAM, WRAP etc
- Innovative construction techniques, use of new technology

Organisation - proposals for managing the contract:

- procedures for planning, programming and management
- programme for completing contract, including milestones for achieving objectives
- risks identified and proposals for their management
- communication arrangements
- quality plan

Team working arrangements:

- partnering with client
- partnering with sub-contractors and suppliers

Project team organisation:

- qualifications and experience of team members, relevant to the project
- appropriately experienced senior managers/partners
- responsible senior managers
- qualifications
- length of service
- directly relevant experience
- quality of other senior personnel:
- suitably qualified
- position within the organisation
- amount of time devoted to the project
- resources

Services provided from external sources

- joint-venture arrangements proposed
- if so, are responsibilities of the joint venture parties clear
- arrangements made for sub-contracting:

- proposals for managing the delivery of any sub-contracted services successfully

Ten Point Tender Scoring Range

Score	Classification	Definition
0	No response (non-compliance)	No response at all or insufficient information provided in the response such that the solution is totally un-assessable and/or incomprehensible. Would represent an unacceptable risk solution for the contracting authority.
1	Unsatisfactory response (potential for some compliance but very major areas of weakness)	Substantially unacceptable submission which fails in most areas to set out a solution that addresses and meets the requirements. No detail has been provided and, where evidence is required or necessary, no evidence is provided to support and demonstrate that the tenderer will be able to provide the services requested. Considerable reservations as to the tenderers proposals in respect of relevant ability, understanding, expertise, skills /or resources to deliver the requirements. Would represent a very high risk solution for the contracting authority.
2		Substantially unacceptable submission which fails in several significant areas to set out a solution that addresses and meets the requirements. Little or no detail has been provided and, where evidence is required or necessary, little or no evidence is provided to support and demonstrate that the tenderer will be able to provide the services requested. Significant reservations as to the tenderers proposals in respect of relevant ability, understanding, expertise, skills and/or resources to deliver the requirements. Would represent a high risk solution for the contracting authority.
3	Partially acceptable response but with significant areas of weakness	Weak submission which does not set out a solution that fully addresses and meets the requirements. Little or poor detail has been provided and, where evidence is required, or necessary, little or poor evidence is provided to support and demonstrate that the tenderer will be able to provide the services requested. Some reservations as to the tenderers proposals in respect of relevant ability, understanding, expertise, skills and/or resources to deliver the requirements. Would represent a medium risk solution for the contracting authority.
4		Unconvincing submission which struggles to set out a solution that fully addresses and meets the requirements. Poor detail has been provided and, where evidence is required, or necessary, poor evidence is provided to support and demonstrate that the tenderer will be able to provide the services requested. Lack of clarity as to the tenderer's proposals in respect of relevant ability, understanding, expertise, skills and/or resources to deliver the requirements. May represent a medium risk solution for the contracting authority.

Construction Procurement Handbook: Chapter 7, *Construction Procurement Route Two*

5	Satisfactory and acceptable response (substantial compliance with no major concerns)	<p>Submission sets out a solution that largely addresses and meets the requirements.</p> <p>Some detail has been provided and, where evidence is required or necessary, some evidence is provided to support and demonstrate that the tenderer will be able to provide the services requested.</p> <p>Minor reservations or weakness in a few areas of the solution in respect of relevant ability, understanding, expertise, skills and/or resources to deliver the requirements.</p> <p>Represents a low risk solution to the contracting authority.</p>
6		<p>Submission sets out a solution that addresses and meets the requirements.</p> <p>Significant detail has been provided and, where evidence is required or necessary, some significant evidence is provided to support and demonstrate that the tenderer will be able to provide the services requested.</p> <p>Some weakness in a few areas of the solution in respect of relevant ability, understanding, expertise, skills and/or resources to deliver the requirements.</p> <p>Represents a low risk solution to the contracting authority.</p>
7	Fully satisfactory /very good response (fully compliant with requirements).	<p>Submission sets out a robust solution that addresses and meets the requirements.</p> <p>Details have been provided and where evidence is required, or necessary, full and relevant evidence is provided to support and demonstrate that the tenderer will be able to provide the services requested.</p> <p>Solution provides confidence as to the relevant ability, understanding, expertise, skills and/or resources to deliver the requirements.</p> <p>Represents a minimal risk solution for the contracting authority.</p>
8		<p>Submission sets out a robust solution that fully addresses and meets the requirements.</p> <p>Full details have been provided and where evidence is required, or necessary, full and relevant evidence is provided to support and demonstrate that the tenderer will be able to provide the services requested.</p> <p>Solution provides confidence as to the relevant ability, understanding, expertise, skills and/or resources to deliver the requirements.</p> <p>Represents a minimal risk solution for the contracting authority.</p>
9	Outstanding response (fully compliant, with some areas exceeding requirements)	<p>Submission sets out a robust solution, as for an 8 score and, in addition, provides or proposes additional value and/or elements of the solution which exceed the requirements in substance and outcomes in a manner acceptable to the contracting authority.</p> <p>Solution provides full confidence as to the relevant ability, understanding, expertise, skills and/or resources not only to deliver the requirements, but also exceed it as described.</p> <p>Represents a minimal risk solution for the contracting authority.</p>

Construction Procurement Handbook

Chapter 8

Abnormally Low Tenders and Sustainable Tender Pricing

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Introduction

1.1 Regardless of economic cycle, competitive market conditions and tight margins within the construction industry create a difficult trading environment for bidders. As a result, some firms are prepared to submit uneconomic or unsustainable tender prices. Such practices significantly increase the risk of poor contract performance, create difficulties within supply chains, have a damaging effect on the industry and contribute to the creation of an adversarial claims culture.

1.2 The public sector is also subject to significant financial pressure with reduced budgets leading to greater pressure to ensure that finances stretch further and a natural, but misplaced, presumption that tender price is the most important factor in determining suitability of tenders for public contracts. This may be a false economy as there could be an attempt by the bidder to regain their income through claims, contract delivery and the final account. It may also be the case that the impact of an abnormally low bid is not suffered by the main contractor but is felt further down the supply chain by suppliers and sub-contractors less able to absorb any financial reduction. Sub-optimal prices may also lead to reduced quality which, in the long term, will cost the client more to fix and may disrupt the service intended to be delivered from the asset.

1.3 There is no legal definition of what can be regarded as an abnormally low tender. However, it is generally recognised that the term 'Abnormally Low tender' refers to a situation where the price offered by the bidder raises doubts as to whether the offer is economically sustainable and will properly deliver the contract requirements.

1.4 Abnormally low tenders benefit neither the public sector, the Scottish construction industry or the public users of those assets and all parties should strive to prevent them from occurring. A culture of acceptance of low bids inevitably encourages under-pricing of tenders and is counterproductive in terms of the contribution of public procurement to the sustainability of the Scottish economy and, in this case, the construction industry. They stifle innovation and are damaging to productivity and growth in the industry, all of which in the longer term have an impact on the economy and the ability of contracting authorities to get the best contractors to bid for work. The situation is, in short, perpetuated by an industry that is willing to submit unsustainable bids and a client body which is willing to accept them. Both sides must recognise the damage they do to everyone's interests.

1.5 While it is recognised that bidders may, on occasion, choose for commercial reasons, to submit a sub-economic tender, contracting authorities (CAs) must set policies and engage with the market to discourage bidders from submitting prices that are so low that they put the delivery of the contract at risk.

1.6 It is important to differentiate between a *low* tender and an *unsustainably low* tender. It is perfectly acceptable for a contractor to seek to gain a commercial advantage over its competitors by offering a lower price and for a client to seek to gain maximum stretch for their budget. But, that price must be fully deliverable both for the contract and the future viability of the contractor and the industry. Similarly, clients must not encourage contractors to submit unsustainable bids. Bids are therefore, in

simplistic terms either sustainable or unsustainable and both contractors and clients have a responsibility to ensure that all tenders are sustainable.

Sustainable Tender Pricing

2.1 [CPN 1/2021 Sustainable Tender Pricing](#), notes that unsustainable pricing benefits no one and that it is the responsibility of contractors and clients to end this corrosive practice and incorporate the culture that such practices are unacceptable.

2.2 Chapter 3 of the Construction Phase Handbook provides a definition of quality and notes:

“The purpose of any construction project is to deliver an output which contributes to one or more outcomes. In order to do this, the output, a physical built asset – whether a road, a hospital, a school or other public structure - must meet the requirements of the client in all respects.”

2.3 The delivery of that quality, however the client specifies it, must be paid for and it is a false economy to expect the contractor to deliver that quality at unsustainable prices. To do so may result in a number of outcomes, including but not restricted to:

- contractor claims;
- unacceptable pressure on supply chains to cut their prices;
- extensive snagging and latent defects;
- poor payment practice by the contractor to its supply chain
- difficult contract management
- use of inferior materials, poor work practices and failure to adhere to the specification
- short terms solutions
- contractor insolvency (either direct or supply chain)
- reduced economic multiplier gain
- inability of the asset to deliver the services it is designed for

2.4 It is therefore essential that clients properly estimate the cost of the job and set the specification according to what is affordable within current and future budgets for the delivery of the built asset and its whole life management and do not put unfair demands on the contractor by squeezing more out of the contract than is reasonably deliverable.

2.5 Similarly, contractors must ensure that their submissions accurately reflect what they are contractually bound to deliver in accordance with the client’s specification and for the price at contract award.

Purpose and outline

3.1 This guidance is designed to give CAs the ability to objectively review whether tenders are potentially abnormally low and to take action to exclude or accept them. Following the guidance will also allow CAs to demonstrate before, during and after

award that, in doing so, the process was open, fair and impartial. The process should be applied after arithmetical checking and bid clarification. It is a two stage process.

- **Stage One** is the identification of potential ALTs through the application of an objective formula. Where potential ALTs are identified, Stage One must not be used on its own; it is an indication of a potential ALT not confirmation of an actual ALT. Therefore, where a potential ALT has been identified, it must be followed up by dialogue with the bidder to seek an explanation for the bid.
- **Stage Two** is a dialogue with relevant bidders to seek their explanation of the price and costs of potential ALTs. The crux of this stage is that the bidder must assure the evaluation panel that there is a correlation between the price and the proposal and that the bidder can deliver the proposal for the price offered. For below 2015 Regs threshold procurements, it need only be carried out in the case of a bid which has been identified as being potentially abnormally low and which is selected as the Most Economically Advantageous Tender (MEAT)¹ bid. Bidders may have valid reasons which explain why a bid is not abnormally low and is therefore sustainable, presenting no additional risk to the successful completion of the contract. For example, a bidder who has a yard full of lamp posts unused from a previous contract may decide to discount the cost of material in their bid in order to reduce a book loss and therefore may choose to submit a bid which is lower than others but not abnormally low. This is quite distinct to the situation where a bidder submits a bid that is non-sustainable for the delivery of the contract. This can often be enabled by bidders making entirely arbitrary and speculative reductions to their bids with the intention of driving discounts from their suppliers and sub-contractors in order to secure an award. Bidders should not be given the opportunity to re-value or amend their bids as part of this evaluation process. All bids, which are part of an above 2015 Regs regulated procurement and which are identified as potentially abnormally low must be investigated.

3.2 The use of this process can help inform but does not replace the need for sound and appropriate consideration of tenders by construction professionals. Indeed, the use of appropriate professional expertise is essential throughout the whole procurement process. It is based on the Northern Ireland Finance Department, Construction Works Procurement, Guidance on Abnormally Low Tenders published in 2013 and updated in 2016.

Legislation

4.1 The Public Contract (Scotland) Regulations 2015 set out a number of rules which are relevant to abnormally low tenders.

- Regulation 69 of the Public Contract (Scotland) Regulations 2015. This sets out that *“A contracting authority must require a tenderer to explain the price and costs proposed in the tender where the tender appears to be abnormally low in relation to works, supplies or services.”*

¹ MEAT - See paragraph 5.7.1 of the Guidance under the Procurement Reform (Scotland) Act 2014

- Regulation 67(1) directs that “A contracting authority (a) must base the award of public contracts on the most economically advantageous tender assessed from the point of view of the contracting authority; and (b) may not use price only or cost only as the sole award criteria.”
- Regulation 67(2) directs that “A contracting authority must identify the most economically advantageous tender on the basis of the best quality/price ratio, which must be assessed on the basis of criteria linked to the subject matter of the public contract in question and must include price or cost, using a cost effectiveness approach.”
- Regulation 67(3) sets out that “A cost effectiveness approach referred to in paragraph 67(2) may include life-cycle costing in accordance with regulation 68...”

Application

5.1 The regulations apply specifically to above [2015 Regs](#) thresholds. The Scottish Government’s intention is that this guidance should be applied as good practice for all relevant procurements, including those below those thresholds.

5.2 The formula contained within this guidance is provided for use by contracting authorities on applicable construction contracts to assist them in identifying potential ALTs. It acts as an indicator of ALT, rather than a determinant and must not be used as the sole evidence in determining whether a bid is abnormally low. Note, though, that the formula included in this guidance may not be as applicable for procurements below £30,000 or where there are fewer than four tenders. The CA should decide prior to inviting tenders whether it is going to apply the procedure in the event that fewer than four tenders are received and notify tenderers accordingly in the contract notice and ITT. Where the formula is not deemed to be appropriate, the contracting authority should still assess the tenders using appropriate professional advice to determine whether any are abnormally low and record their deliberations in reaching their conclusion. If any tender is identified as being potentially low then stage two of this process must be applied.

5.3 The application of this ALT process does not remove the need to undertake the normal tender assessment process, including preparation of a detailed tender report and scrutiny of individual rates, and so on, before awarding a contract.

Bid Clarification

6.1 Scrutiny of a potential ALT is not part of bid clarification, neither does it offer the bidder a second chance to make a bid or correct it. Therefore, it is essential that any clarification of bids is conducted prior to the ALT process set out in this guidance. CAs should ensure that the same tender prices are used for the identification of potential ALTs and for the assessment of the tender.

Bid Rigging

7.1 The purpose of this process is to identify potential ALTs, but it can also contribute to identifying and combating bid rigging. For example, it can assist in defeating cover pricing schemes by ensuring that objective consideration of bids is conducted in order to identify the true level of pricing for a contract and through stage two scrutiny of low bids. It is, though, not in itself designed to identify bid rigging and CAs should remain alert and guard against the efforts of unscrupulous elements to rig tender processes. The following are some characteristics of suspicious bidding patterns:

- Bids received at the same time or containing unusual wording;
- Different bids with identical prices;
- Bids containing less detail than expected;
- The likely bidder failing to submit a bid;
- The lowest bidder not taking the contract;
- Bids that drop on the entry of a new or infrequent bidder;
- The successful bidder later sub-contracting work to a supplier that submitted a higher bid;
- Expected discounts suddenly vanishing or other last minute changes;
- Suspiciously high bids without logical cost differences;
- A bidder that betrays discussions with others or has knowledge of previous bids.

7.2 Further information is available from the [Competition and Markets Authority](#).

Stage One - Identifying Potential ALTs

8.1 **Overview** The aim of Stage One of this process is to identify any *potential* ALTs. The identification of a potential ALT can be difficult and whilst it is essential that professional construction expertise be applied at this stage; the use of a formula can assist by assuring an objective assessment of tender prices. The formula does not look at the financial standing of the bidder it is based solely on the tender price. Financial standing of the bidder is examined elsewhere in the tender process. However, accounts showing a strained relationship between the assets and liabilities of a bidder which has submitted a potentially abnormally low tender may be indicative of the bidder attempting to buy in work to keep the company afloat. Stage One is a process designed solely to flag up what *might* be an abnormally low tender. It identifies a lowest boundary below which bids may potentially be considered as being abnormally low tenders. This is shown schematically in *Figure 1*. Throughout both Stage One and Stage Two CAs should seek the advice of construction professionals with knowledge of the sector when considering the evidence presented.

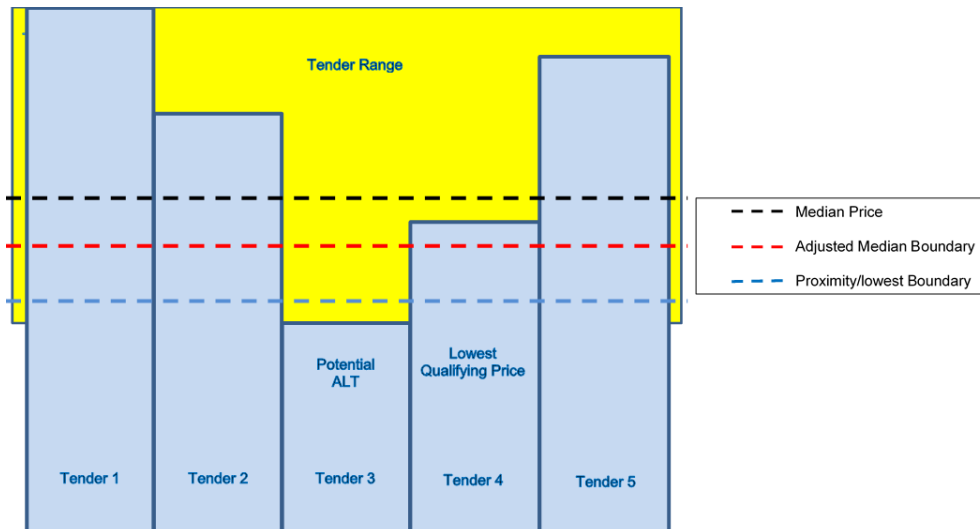


Figure 1: Stage 1 review of Potential ALTs.

8.2 **Transparency** Contracting authorities should ensure that all potential bidders are aware, through the contract notice and procurement documents, of their intention to use this process and that it may result in bidders being subject to further scrutiny. Where a bidder is unable to explain, to the satisfaction of the authority, the reason for a low level of price or costs proposed it should be made clear that they may be excluded from the tender process.

8.3 **The Formula** An online calculator which automatically applies the formula is available *as a supporting document to this guidance*. The formula calculates a low boundary based on a median price against which all bids are measured. Any bid which falls below the lowest boundary is considered to be a potential abnormally low tender.

8.4 There are a number of elements to the formula:

- **Median Price (MP)** is the median of all the tender prices provided. That is, it is the price which represents the middle price of all the bids. For example, if there are five bids, £1,000, £1,200, £1,300, £1,400 and £1,500, the median price is £1,300.
- **Median Boundary (MB)** is a figure of 85% of the Median Price. This allows a bracket within which a bid may reasonably be considered to be in keeping with the other bids for the contract. The 85% boundary has been set following research conducted across other policy including the Northern Ireland policy referred to earlier and it is recommended that this is the figure used by CAs.
- **Lowest Qualifying Price (LQP)** is the lowest price submitted that is more than or equal to the Median Boundary.
- **Proximity Margin (PM)** This provides a margin below the lowest qualifying price calculated on the basis of 1% of the lowest qualifying price, with a minimum value of £1,000 and a maximum value of between £100,000 and £1m dependent on the value of the MP. Figure 2 shows the value bands and maximum proximity margins. The band is selected according to where on the range the MP of the tenders sits.

Value Band	Median Price Range £	Max Proximity Margin £
A	0 - 10m	100,000
B	10m – 50m	300,000
C	50m – 100m	500,000
D	>100m	1,000,000

Figure 2: Value bands and maximum proximity margins

- **Proximity Boundary (PB)** is the lowest qualifying price minus the proximity margin.
- **Lowest Boundary (LB)** is the lower figure of the proximity boundary and the median boundary.

8.5 The lowest boundary is relative to the submitted bids which in turn represent the market at that point in time. By definition therefore, the majority of bids will fall within the acceptable bracket. However, CAs should also consider the relationship between the lowest boundary, the QS's cost plan/estimate and the submitted bids. If there is a significant deviation, then a review should be conducted.

8.6 A full analysis of the tender identified as potentially abnormally low to identify specific areas of concern should be conducted. This will form the basis of the letter seeking an explanation from the bidder.

Stage Two – Scrutiny of Potential ALT

9.1 It is a requirement of Regulation 69 of the Public Contracts (Scotland) Regulations 2015 (PCSR15) that “A contracting authority must require a tenderer to explain the price or cost proposed in the tender where the tender appears to be abnormally low...”. The regulations only apply to procurements above the [2015 Regs](#) thresholds. However, as noted in paragraph 2.1 above, this guidance has been written to be applied as good practice for all procurements including those below those thresholds. For above 2015 Regs threshold procurements all bids identified as potentially abnormally low must be scrutinised to comply with Regulation 69. It makes sense though, for below threshold procurements that stage 2 scrutiny is only carried out where a bid is identified as potentially abnormally low and is the Most Economically Advantageous Tender.

9.2 Stage 2 is a consultation and verification process and must be carried out prior to the rejection of any bids. It is designed to protect bidders from arbitrary assessments by CAs by giving them a chance to demonstrate the bid is genuine and capable of delivering the requirement. This is not an error rectification process and bidders are not to be given the opportunity to amend any element of their submission at this stage except to clarify what is already included. For example, if a bidder has misinterpreted the design information this would represent a material deficiency in the proposal and the bid should be scored accordingly or rejected as non-compliant. Under the terms of the Trade and Cooperation Agreement (TCA) with the EU, the contracting authority

may ask the supplier if the price takes any subsidies into account. This is not stated in the 2015 Regs and these are to be treated as if they had been amended to reflect this right.

9.3 Regulation 69(2) of the 2015 Regs sets out “...*explanations given in accordance with paragraph (1) may, in particular, relate to-*

- *the economics of the manufacturing process, of the services provided or of the construction method and costs;*
- *technical solutions or exceptionally favourable conditions available;*
- *originality of the proposed solution or methods;*
- *compliance with environmental, social and labour law (Regulation 57(2));*
- *subcontracting arrangements (Regulation 71); and*
- *state aid provided*
- *Whether the price or costs takes into account the grant of subsidies*

9.4 Contracting authorities should be alert to the impact of a potentially low tender on the supply chain of a bidder. It is feasible that a bidder may demonstrate that the bid is either not abnormally low or that there is a valid reason for it being low at main contractor level. This may though hide the fact that the impact of the low element has been passed on to the supply chain. This therefore requires CAs to ensure they are fully conversant with the proposal for delivery of the contract and where potentially low elements may manifest themselves.

9.5 **Risk Assessment** In essence the CA must look for a justification of the reasons why the bidder can deliver the contract for the price. However, in considering responses to the letter, the CA should have regard to the full facts and carry out a risk assessment of the deliverability of the contract on the terms proposed by the bidder. For example, lack of a profit in a price may not be indicative of an unsustainable abnormally low tender where the bidder is a not for profit company. Similarly, a company may be looking to gain experience in a particular sector and therefore may be prepared to accept a low profit or even a loss in order to gain that experience. A full risk assessment considering all the facts of the bid against the project will assist the CA in determining whether a bid is truly an abnormally low tender and unsustainable and will provide the evidence to support the decision should a challenge be made. CAs should be cautious of sweeping statements made by contractors “...we undertake to perform the contract for the tender price..” without there being solid evidence to support that they will.

9.6 **Rejection of Bid** The following regulations apply for over 2015 Regs thresholds procurements:

- **Regulation 69(4)** “*The contracting authority may only reject the tender where the explanations given and any evidence supplied do not satisfactorily*

account for the low level of price or costs proposed, taking into account the elements referred to in Regulation 69(2).”

- **Regulation 69(5)** *“The contracting authority must reject the tender where the authority has established that the tender is abnormally low because it does not comply with applicable obligations referred to in Regulation 57(2) (general principles).”*

- **Regulation 69(6)** *“Where the contracting authority establishes that a tender is abnormally low because the tenderer has obtained State aid, the tender may be rejected on that ground alone—*

(a) after consultation with the tenderer; and

(b) where the tenderer is unable to prove, within a sufficient time limit fixed by the contracting authority, that the aid in question was compatible with the internal market within the meaning of Article 107 of the TFEU.”

- **Regulation 69(7)** *“Where the contracting authority rejects a tender in the circumstances referred to in regulation 69(6) it must inform the commission.”*

9.7 **Award of Contract** There will be occasions where a bid that has been identified as a potential abnormally low tender is awarded the contract. Whilst the steps taken in following this procedure should have adequately reassured the project team of the viability of the bid, there may be occasions where the bidder has explained special circumstances which may require bespoke arrangements for management and supervision of the contract. These may include those which may have been highlighted in the risk assessment of the bid discussed at paragraph 7.5. A signed undertaking (see Annex C) from the Chief Executive/Managing Director/Senior Partner of the bidding company should be sought to the effect that the price offered is a true and genuine price and that the signatory guarantees the delivery of the contract under the terms proposed. It is also good practice to ensure that the Investment Decision Maker and other project officers are fully informed of and involved in the circumstances for the award of the contract.

Further Advice

10.1 Worked examples are provided at Annex D to illustrate the application of the processes within this guidance.

10.2 A decision flow chart is provided at Annex E to assist in the application of the process detailed within this guidance.

10.3 To assist in the identification of ALTs, a spread sheet calculator is provided as *a supporting document to this guidance*. Whilst every effort has been made to ensure that this calculator is accurate and up to date, we cannot accept any liability for the use of this tool. We recommend that all calculations are independently verified.

10.4 The decision process set out in the flow chart in Annex E should only be run once for each procurement and not rerun after any exclusion of an abnormally low

tender. The process should be completed in full, that is all suspect bids reviewed before any tender is excluded.

Text For Inclusion In Contract Notice And Tender Documentation

Abnormally Low Tenders

Any tender price that:

- is more than 15% lower than the median price (MP); and
- exceeds the proximity margin, that is, is more than 1% lower than the lowest qualifying price.

will be deemed to be potentially abnormally low, and will be excluded from this competition unless the tenderer satisfactorily explains the aspects that appear abnormally low.

The median price is the median of all the tender prices provided.

The proximity margin shall be calculated on the basis of 1% of the lowest qualifying price, with a minimum value of £1,000 and a maximum value of between £100,000 and £1m dependent on the value of the AAP.

The table below shows the value bands and maximum proximity margins. The band is selected according to where the MP sits on the range.

Band	Tender Range £	Max Proximity Margin £
A	0 - 10m	100,000
B	10m – 50m	300,000
C	50m – 100m	500,000
D	>100m	1,000,000

The lowest qualifying price is the lowest price submitted that is more than or equal to 85% of the median price.

Where fewer than four tenders are received, the contracting authority will not apply the formula but bids will be reviewed by a construction professional to identify whether it is potentially abnormally low. *[Delete as appropriate]*

Tenderers deemed to have submitted a potentially low bid, which is subsequently included in the competition, will be required to submit a declaration to the effect that:

- The tender and price submitted includes for all the works/services and associated deliverables pertaining to the tender as detailed in the tender package; and
- They have considered the contract provisions in respect of liquidated and unliquidated damages in their decision to stand by their tender price; and

- They understand that the tender price will be treated as a 'high risk' item and recorded accordingly within the risk register; and
- They understand that their arrangements for the appointment and payment of sub-contractors may be subject to scrutiny by the employer

Letter Template

Dear [Name],

The test outlined in the contract notice has identified that the price that you submitted in your tender dated [date] amounting to [£] may be an abnormally low tender. I am therefore required to ask you to provide the following details to demonstrate your ability to complete the works for your tender price of:

[Insert request for information on any particular aspects of the tender that appear low or if the entire tender appears low ask for details of]:

- economics of the construction method/detailed cost breakdown;
- technical solutions or exceptionally favourable conditions available;
- proposals for compliance with contractual and legislative requirements.
- compliance with environmental, social and labour law (Regulation 57(2));
- subcontracting arrangements (Regulation 71); and
- state aid provided.

The median price for this competition is calculated at £[value].

As advised in the Invitation to Tender, any tender price that:

- is more than 15% lower than the median price; and
- exceeds the proximity margin, that is, is more than 1% lower than the lowest qualifying price; or

will be deemed to be potentially abnormally low and may be excluded from this competition if adequate information to justify the price tendered is not provided.

If you would find it helpful to meet to discuss this, please contact me to arrange a suitable time. In the meantime, I would be grateful to receive your response to this request for explanation by no later than [date]

Yours etc.

Tenderer's Declaration

Tenderer's Declaration

I (as CEO/Managing Director/Owner of the firm) have reviewed the tender for [contract] submitted by my firm [firm] dated [date].

I hereby declare that the tender I have submitted, [tender sum], includes for all the works/services and associated services pertaining to this tender as detailed in the tender package.

I have also considered the contract provisions in respect of liquidated and un-liquidated damages in my decision to stand by my tender price.

I understand that my/our tender price will be treated as a contract 'high risk' item and recorded and managed accordingly within the Risk Register.

I understand my/our arrangements for the appointment and payment of sub-contractors will be subject to scrutiny by the Employer.

Signed
[CEO/Managing Director/Owner]

Worked Examples

Some worked examples of the calculation for Abnormally Low Tenders.

Example 1

In this example, as shown in Figure 1 below, seven bids have been submitted. No bids have been adjudged to be below the lowest boundary and, consequently, none will be scrutinised under stage 2.

Figure 1

		Tender Value	Is tender below the Median Boundary?	Is tender below Proximity Boundary?	Is tender below Lowest Boundary?	Further Scrutiny Required?
Tenders	A	£75,000,000	Yes	No	No	No
	B	£80,000,000	Yes	No	No	No
	C	£82,000,000	Yes	No	No	No
	D	£83,000,000	No	No	No	No
	E	£84,000,000	No	No	No	No
	F	£90,000,000	No	No	No	No
	G	£93,000,000	No	No	No	No
	H					
	I					
	J					
Median Price. The price lying at the midpoint of the tender price range.						£83,000,000.00
Median Boundary. 85% of the Median Price						£70,550,000.00
Lowest Qualifying Price. The lowest tender above the Median Boundary						£75,000,000.00
Proximity Margin.						£500,000.00
Proximity Boundary. The lowest Qualifying Price minus the proximity margin.						£74,500,000.00
Lowest Boundary. The lower of the Median Boundary and the Proximity Boundary.						£70,550,000.00

Figure 1

Example 2

In this example, shown at Figure 2, ten bids have been received and two have been shown to be potentially abnormally low and will require to be scrutinised under stage two.

		Tender Value	Is tender below the Median Boundary?	Is tender below Proximity Boundary?	Is tender below Lowest Boundary?	Further Scrutiny Required?
Tenders	A	£12,000,000	No	No	No	No
	B	£8,000,000	Yes	Yes	Yes	Yes
	C	£10,000,000	Yes	No	No	No
	D	£8,500,000	Yes	Yes	Yes	Yes
	E	£13,000,000	No	No	No	No
	F	£12,000,500	No	No	No	No
	G	£9,500,000	Yes	No	No	No
	H	£10,500,000	No	No	No	No
	I	£10,000,500	No	No	No	No
	J	£9,750,000	Yes	No	No	No
Median Price. The price lying at the midpoint of the tender price range.						£10,000,250.00
Median Boundary. 85% of the Median Price						£8,500,212.50
Lowest Qualifying Price. The lowest tender above the Median Boundary						£9,500,000.00
Proximity Margin.						£95,000.00
Proximity Boundary. The lowest Qualifying Price minus the proximity margin.						£9,405,000.00
Lowest Boundary. The lower of the Median Boundary and the Proximity Boundary.						£8,500,212.50

Figure 2

Example 3

In Figure 3 below, there are five tenders all under £300,000. The calculator indicates the two lowest bids as being potentially abnormally low; however it will be noted that Bid A is only £40k lower than the median price the same amount by which Bid E is higher than the median price. This presents a dilemma and whilst it might be reasonable to scrutinise the bids further it would be difficult to justify excluding either Bid A or Bid B unless the scrutiny flags up compelling evidence.

		Tender Value	Is tender below	Is tender below	Is tender below	Further Scrutiny
Tenders	A	£150,000	Yes	Yes	Yes	Yes
	B	£160,000	Yes	Yes	Yes	Yes
	C	£190,000	No	No	No	No
	D	£200,000	No	No	No	No
	E	£240,000	No	No	No	No
	F					
	G					
	H					
	I					
	J					
Median Price. The price lying at the midpoint of the tender price range.						£190,000.00
Median Boundary. 85% of the Median Price						£161,500.00
Lowest Qualifying Price. The lowest tender above the Median Boundary						£190,000.00
Proximity Margin.						£1,900.00
Proximity Boundary. The lowest Qualifying Price minus the proximity margin.						£188,100.00
Lowest Boundary. The lower of the Median Boundary and the Proximity Boundary.						£161,500.00

Figure 3

Example 4

Figure 4 is a low value procurement and only three bids have been received. Note that the calculator has flagged up that ideally a minimum of four tenders is required in order to use the calculator. The calculator has indicated that Bid A is potentially abnormally low and whilst there is a significant gap between the median and that bid it would be

worthwhile reviewing the bid against the cost estimate before deciding to take action under stage two.

		Tender Value	Is tender below the Median Boundary?	Is tender below Proximity Boundary?	Is tender below Lowest Boundary?	Further Scrutiny Required?
Tenders	A	£72,000	Yes	Yes	Yes	Yes
	B	£90,000	No	No	No	No
	C	£92,000	No	No	No	No
	D					
	E					
	F					
	G					
	H					
	I					
	J					
Note: A minimum of four tender values is recommended						
Median Price. The price lying at the midpoint of the tender price range.						£90,000.00
Median Boundary. 85% of the Median Price						£76,500.00
Lowest Qualifying Price. The lowest tender above the Median Boundary						£90,000.00
Proximity Margin. Band A. 1% of the Lowest Qualifying Price with a minimum value of £1,000 and a maximum of £100,000.						£1,000.00
Proximity Boundary. The lowest Qualifying Price minus the proximity margin.						£89,000.00
Lowest Boundary. The lower of the Median Boundary and the Proximity Boundary.						£76,500.00

Figure 4

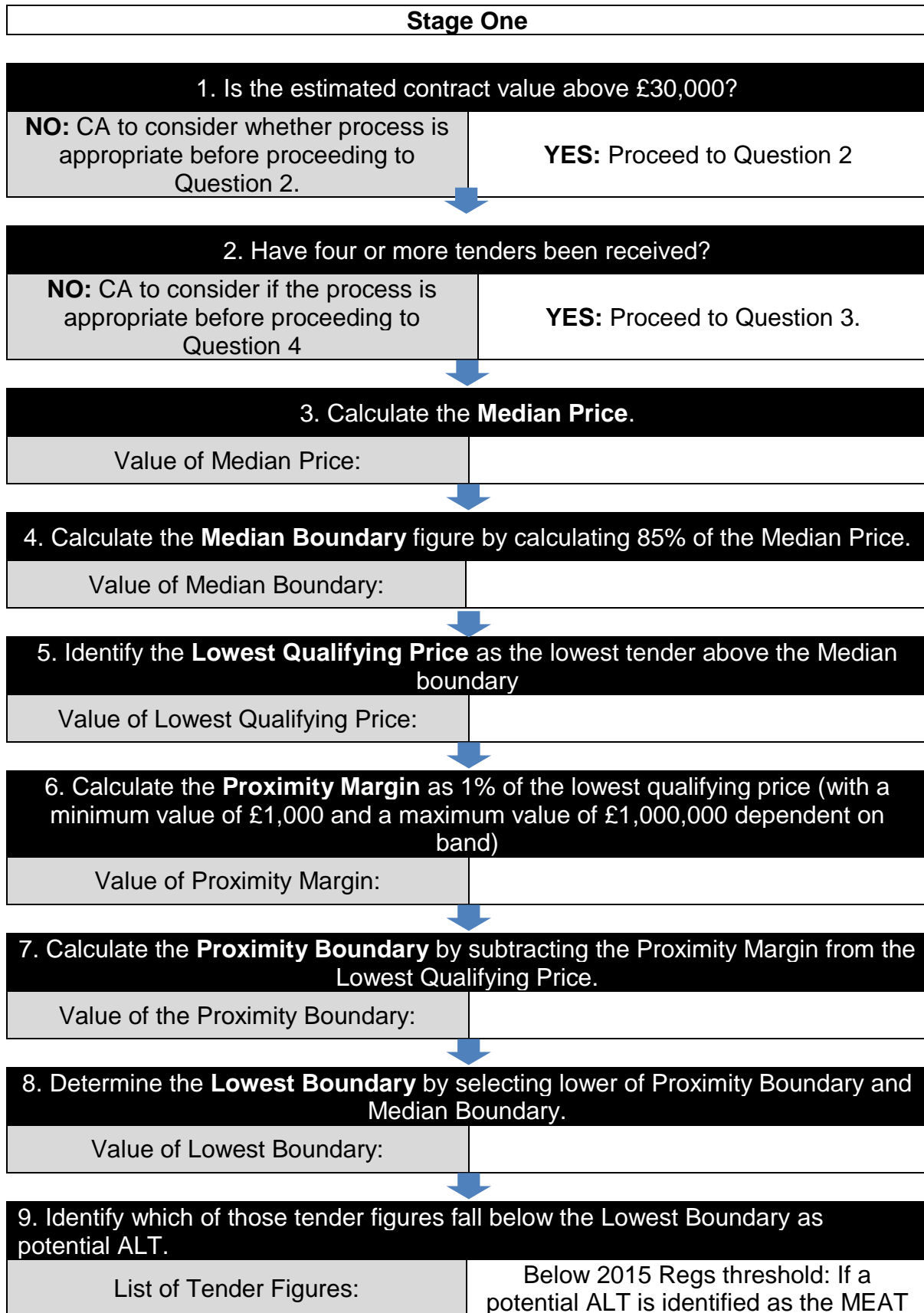
Example 5

In this final example no tenders have been identified for further scrutiny.

		Tender Value	Is tender below the Median Boundary?	Is tender below Proximity Boundary?	Is tender below Lowest Boundary?	Further Scrutiny Required?
Tenders	A	£100,000,000	Yes	No	No	No
	B	£110,000,000	Yes	No	No	No
	C	£115,000,000	No	No	No	No
	D	£120,000,000	No	No	No	No
	E					
	F					
	G					
	H					
	I					
	J					
Median Price. The price lying at the midpoint of the tender price range.						£112,500,000.00
Median Boundary. 85% of the Median Price						£95,625,000.00
Lowest Qualifying Price. The lowest tender above the Median Boundary						£100,000,000.00
Proximity Margin. Band D. 1% of the Lowest Qualifying Price with a minimum value of £1,000 and a maximum of £1,000,000.						£1,000,000.00
Proximity Boundary. The lowest Qualifying Price minus the proximity margin.						£99,000,000.00
Lowest Boundary. The lower of the Median Boundary and the Proximity Boundary.						£95,625,000.00

Figure 5

Decision Flow Chart



	<p>then proceed to stage 2 for that tender only.</p> <p>Above OJEU threshold: All bids which are identified as being potentially abnormally low should be scrutinised under stage 2.</p>
--	--



Stage Two

10. Write to bidder of potential ALT seeking explanation for the potential ALT, offer meeting if appropriate.

Areas to be examined	
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13. Conduct Risk Assessment using factors identified in bidder response against requirements of the contract.

Reject	Allow
--------	-------



14. Inform bidder of outcome and reasons for decision.

Reject	Allow
--------	-------



Record decision and carry on with tender evaluation without the excluded bid(s)	Continue with tender evaluation as normal once assurance from bidder is received including completion of the form at Annex C.
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Chapter 9

Feedback to Candidates

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Introduction

1.1 The Review of Scottish Public Sector Procurement in Construction noted that a source of great frustration for the construction industry is what is often perceived as a lack of meaningful feedback on the merits of tenders submitted. The Review suggested this was because contracting authorities had a general fear that any feedback provided could be used to challenge the procurement process, as well as a lack of time.

1.2 Providing meaningful feedback to both successful and unsuccessful candidates is an important element of the tendering process. Besides being a courtesy, which breeds good relationships and trust, it helps suppliers to improve their competitive performance, which in turn, improves the quality of future bids for public sector work. Moreover, participation in a feedback meeting can be useful for the contracting authority in gaining a better understanding of the marketplace and those operating within it.

1.3 Unsuccessful candidates do, in certain circumstances, have a legal right to know the reasons why their tender has not been accepted; while successful bidders can also be entitled to seek feedback in order to help them identify any improvements that could be made to future bids.

1.4 Within this chapter, reference is made to *candidates*, that is any individual or organisation that takes part in a procurement process and *bidders*, that is any individual or organisation who submits a tender within a procurement process.

Legislation

2.1 The Procurement Reform (Scotland) Act 2014 (*The Act*) and The Public Contracts (Scotland) Regulations 2015 (*The 2015 Regs*) include provisions on giving feedback to bidders and advising them of decisions made by a contracting authority for procurements regulated by both. The legislation prescribes the minimum information that should be made available to bidders as well as the point at which any debriefing takes place.

2.2 The relevant parts are [Regulations 56](#) and [84 – 86 of the 2015 Regs](#), for contracts equal to or above the 2015 Regs thresholds, and [sections 32 – 34 of the Act](#), for contracts worth at least the Act thresholds, but less than the 2015 Regs thresholds. Thresholds are published by the Scottish Government and can be accessed at: <https://www.gov.scot/Topics/Government/Procurement/policy/10613>

2.3 The type of feedback required is dependent on the point at which a candidate leaves the selection or tender process. If a candidate is eliminated from the process prior to submitting a tender, then the level of debrief legally required can be different from what is required for a bidder who submits an unsuccessful tender. In all cases where feedback is required, this should be provided as “*soon as reasonably practicable*” after the decision to award the contract has been made, or after the point at which they were eliminated from the process, if this was prior to contract award. Any candidate can, however, request additional feedback which the contracting authority is statutorily required to provide within **15 days** for contracts regulated by the 2015

Regs and **30 days** for those regulated by the Act. This feedback is required to be of a more in depth nature than any previously given to that bidder. This will be explained in more detail in the rest of this chapter.

2.4 Withholding Information. Under Regulation 85(5) of the 2015 Regs and Section 34 of the Act, the contracting authority can, in giving feedback, withhold information, the release of which would:

- impede law enforcement or otherwise be contrary to the public interest;
- prejudice the commercial interests of any person; or,
- prejudice fair competition between economic operators.

2.5 Under Regulation 85(4) of *the* 2015 Regs a **standstill notice is not legally required** in the following circumstances:

- the only bidder to submit a tender is the one awarded the contract (or to become a party to the framework agreement) and there are no remaining candidates who have not already been notified that they have been unsuccessful in the process, and the full reasons for that;
- the contract is awarded under a framework agreement or a dynamic purchasing system; or
- the contract or framework agreement is exempt from the requirement for prior publication of a contract notice.

Feedback – Contracts Regulated by the 2015 Regs

3.1 When awarding a tender for a contract regulated by the 2015 Regs, all those candidates who have taken part (but who have not been informed of the full reasons for their exclusion) in the procurement process must be notified of the outcome, as soon as reasonably practicable, by standstill notice, after the contract award decision. (This gives any unsuccessful parties sufficient time to raise a challenge before the contract is finalised) The standstill notice will contain a written summary of the award and other information as described in the following paragraphs.

3.2 Successful bidders are to be informed that they have won the contract, along with:

- details of the criteria for the award of the contract; and
- where practicable the score they were awarded.

3.3 Unsuccessful bidders are to receive:

- details of the criteria for the award of the contract;

- the name of the winning bidder;
- where practicable, the scores they and the winning bidder were awarded;
- a summary of the reasons they were unsuccessful, including reasons why they failed to meet the technical specification, or if they did not meet any performance or functional requirements; and,
- the characteristics and relative advantages of the successful tender over theirs.

3.4 **Candidates eliminated at the selection** (pre-qualification) **stage** are legally entitled to receive a standstill notice, unless they have previously been informed of the decision to remove them from the process and the reasons for this. They should, as a matter of best practice, receive the same information (where applicable) as set out for unsuccessful tenderers above.

3.5 If any candidate who has taken part in the process makes a written request for more detailed information, then the contracting authority has to provide this within **15 days**. This should be in writing, although the contracting authority may decide that they wish to conduct a *feedback meeting* as well. (See section 7 of this guidance) The information is to include:

- **Successful bidders** – a description of any improvements that could have been made to the tender
- **Unsuccessful bidders/ candidates eliminated at the selection stage** – a detailed description of the reasons that they were unsuccessful.

Feedback – Contracts Regulated by the Act

4.1 In comparison to contracts regulated under the 2015 Regs, whilst there is a requirement to notify both the successful and unsuccessful tenderers as soon as reasonably practicable after deciding to award a contract, under the Act, the level of feedback detail to bidders required is lower. Bidders can, within **30 days** of being informed that they have been either unsuccessful or successful, request additional feedback. The following paragraphs detail how to deal with each type of bidder in the process:

4.2 **Successful bidders** need only be informed that they have won the contract. Should further information be requested, then the contracting authority must, within **30 days** provide a written description of any improvements that could have been made to the tender.

4.3 **Unsuccessful bidders** are to be informed of:

- the name of the successful bidder;
- the criteria on which the contract was awarded; and,

- the scores of the both the successful bidder and the unsuccessful bidder against this criteria.

4.4 As matter of best practice, it is advised that you also provide reasons for the rejection the tender, including any decision that the goods or services do not meet the performance or functional requirements.

4.5 If further feedback is requested, then within **30 days**, they must receive a written summary of the reasons their tender was unsuccessful along with the characteristics and relative advantages of the successful tender.

4.6 Any candidate **eliminated at the selection stage** (prior to submitting a tender) must, as soon as possible following the decision to eliminate them, be informed of:

- the criteria used to exclude that candidate;
- the contracting authority's scoring of that candidate (if any), against those criteria; and
- the names of any candidates who have not been excluded.

4.7 Any written requests for further information must be answered within **30 days**, and should include a written summary of the reasons why they were excluded from the process.

Feedback – Unregulated Contracts

5.1 Contracts where the value is below the thresholds set out in the Act are known as unregulated contracts. In their case, there is no legal requirement to share feedback with bidders. However, as a matter of good practice, and for the reasons already stated, feedback should still be given in accordance with the above guidance.

Objectives of Providing Feedback Information

6.1 As stated in the introduction, beyond the legal requirements, the giving of feedback should be seen as advantageous to both parties. Therefore, when preparing feedback, it is highly recommended that the following objectives are considered, to ensure that any feedback given is worthwhile:

- Assisting bidders in improving their performance. Feedback should cover the positive aspects and suggest areas for improvement, which can be in terms of individual parts of the bid, or the bid as a whole. Bidders will then have the opportunity to address these issues in any future bids.
- Offering bidders the opportunity to provide feedback to the contracting authority on the tender process, to assist the authority to continually improve their process.
- Establishing and maintain a reputation as a fair, honest and ethical customer.

- Helping ensure that qualified bidders will be encouraged to submit high quality, compliant tenders in the future.

6.2 In preparing their bid, bidders, and particularly those who have submitted tenders will have spent a considerable amount of time, effort and money. It is recommended that this is reciprocated by the contracting authority investing sufficient time and resource in the feedback process.

Feedback Meeting

7.1 There will be occasions where a formal feedback meeting is considered more appropriate than just written feedback. Normally this would only apply to those that have submitted a tender. **It is important to remember that this does not absolve the contracting authority of their legal responsibility to provide any written feedback, as prescribed by either the 2015 Regs or the Act.** The client team should consist of those best equipped to provide the feedback and may include procurement and technical professionals, to ensure that the feedback meeting is carried out by experienced and fully trained personnel. When holding feedback meeting, which can be either face to face or by video or teleconference, it is recommended that:

- The meeting must not be viewed as or allowed to become, a forum for debate as to the validity of the tender;
- Feedback meetings can take place either face to face or over the phone. It is advised that if choosing to conduct the meeting by phone, that as much preparation is undertaken as for a face-to-face meeting.
- It is made clear to each tenderer that only their tender will be discussed in relation to the successful tender. Under no circumstances will such things as commercial terms or innovative ideas put forward by another tenderer be disclosed.
- It may be helpful to invite the bidder to submit a list of questions that they wish to raise prior to the meeting. This may help to keep the discussion focused, allow the pre-empting of any questions that it might be inappropriate to discuss, as well as helping the contracting authority prepare for the meeting.
- If reasons that the bidder has been successful/ unsuccessful have been given in writing previously by the contracting authority, new or conflicting reasons for the decision should not be introduced as part of the de-briefing, as these should have already been part of any feedback given.
- It is possible that excluded or unsuccessful tenderers will be disappointed at their lack of success and there is potential for the meeting to become adversarial. All efforts should be made to avoid this - the meeting is about helping the bidder to improve and be successful in the future.

- At the end of the feedback meeting, bidders should be asked if they have any constructive comments on the Invitation to Tender (ITT) documentation and the tendering process generally.
- A record of the feedback meeting should be made and retained on file. The contracting authority may also wish to share this with the bidder.

7.2 The point at which a feedback meeting takes place should be determined by commercial judgement and certainly within a reasonable timescale of the award decision. If the feedback is being used in the context of providing additional feedback to a bidder in a contract regulated by the 2015 Regs, (as described in [paragraph 3.5](#) of this chapter) it **must** take place within **15 days** of the written request for feedback being received.

Construction Procurement Handbook

Glossary

A	
Advertise	To publicise a procurement procedure for the award of a public contract.
Adjusted average price	The adjusted average price is the average of all the tender prices provided excluding the highest tender price.
Abnormally low tender	<p>A tender price which is less than the estimated value by a margin which requires explanation.</p> <p>In particular, any tender that:</p> <ul style="list-style-type: none"> • Is more than 15% lower than the adjusted average price; and • Exceeds the proximity margin, that is more than 1% lower than the lowest qualifying price; <p>Will be deemed to be potentially abnormally low, and will be excluded from the competition unless the tenderer satisfactorily explains the aspects that appear abnormally low.</p>
Award	The point at which the client accepts that bidder's offer to perform the contract.
B	
Bidder	An individual or organisation which submits a tender in a public procurement procedure (see also Economic Operator)
Buildability	Assesses the compatibility of human ergonomics and technical ability with the sequencing and logistics associated with constructing the design on site.
Building Information Modelling (BIM)	BIM is a collaborative way of working that facilitates early contractor involvement, underpinned by the digital technologies which unlock more efficient methods of designing, creating and maintaining our assets.
Business case	The business case is a test of the viability of the project and contains the justification for the project including value for money and why it should be done now.
Buyer	The buyer is someone in a client organisation who is authorised to make purchases on its behalf.
C	
Candidate	Individuals or organisations who have notified the client of their interest in being invited to tender in a public procurement process.
Challenge	A candidate or bidder's notification of disagreement with the client's decisions and/or conduct in a public procurement procedure.
Clarification	Information sought by one party of the other in a public procurement process to ensure the bid is compliant and capable of acceptance.
Clients	<p>The organisation which is buying the goods, services or works.</p> <p>The client is rarely a single person, even on relatively small projects. Within the client, there are likely to be a number of groups and individuals with an interest in, or control over the project.</p>

Competitive dialogue	A formal procedure under the Public Contract (Scotland) Regulations 2015 The Competitive dialogue procedure is a pre-qualification process. Short-listed candidates are invited to take part in a dialogue process during which the nature of the project may be discussed and possible solutions may be developed. When the dialogue process is complete, final tenders are invited.
Competitive dialogue with negotiation	A formal procedure under the Public Contract (Scotland) Regulations 2015
Complexity	Characteristics of the procurement procedure and/or project particulars requiring specific time for consideration.
Compliant	Procurement procedures must not deviate from relevant legislation and guidance. Bids must not deviate from procurement procedures.
Consultants	<p>Consultants are those individuals or companies providing construction services to a project. These include architects, project managers, engineers, cost consultants, surveyors acousticians etc. Consultants are distinct from contractors who are generally, in construction, the companies who build the asset.</p> <p>The tasks might include:</p> <ul style="list-style-type: none"> • Providing advice on setting up and defining the project. • Developing and co-ordinating the design. • Preparing production information and tender documentation. <p>Contract administration.</p>
Contract	A contract is an agreement between two or more parties which creates or intends to create legally binding obligations between the parties to it. In Scotland this can be verbal or written and is formed by an offer and an acceptance.
Contract management	The client's arrangements after contract award for ensuring contract performance.
Contract notice	The advertisement which invites bidders for a contract.
Contracting authorities	Contracting authorities is defined in Regulation 2(3) of the Public Contract (Scotland) Regulations 2015 as the state, a regional or local authority, body governed by public law or association formed by one or more such authorities or bodies
Contractors	Bidder awarded the public contract and obliged to perform the requirements. Also means individuals or firms whose purpose is to build or demolish.
Common procurement vocabulary (CPV)	Taxonomy of classification to standardise how contracting authorities convey procurement requirements across the EU.
Criteria	<p>The standards of capacity and capability required by the client before tenders are invited/evaluated.</p> <p>The criteria that are used to evaluate the compliance of market approach responses. These include measures to assess how well competing responses meet requirements and expectations such as criteria to shortlist or rank suppliers. All evaluation criteria must be clearly stated in the request document.</p>

D	
Design	The plan for the construction of the physical object which will deliver the client's requirements.
Design and build	Design and build is a project delivery strategy used to deliver a project in which the design and construction services are contracted by a single entity known as the design–builder or design–build contractor
Design Quality	Design quality is a combination of functionality (how useful the facility is in achieving its purpose); impact (how well the facilities creates a sense of place: and build quality (performance of the completed facility). Design quality is about much more than style or appearance – it incorporates the key requirements of the stakeholders, functionality, whole-life value in relation to maintenance, management and flexibility, health and safety, sustainability and environmental impact. It is not merely subjective; it can defined and measured.
E	
Economic operator	Another term for an individual or company which may participate in a procurement. (see also Bidder)
European Single Procurement Document (ESPD)	European Single Procurement Document. A self-declaration form used in public procurement procedures by public buyers and businesses in the EU and mandated for use in Scotland.
Evaluation	The process of marking candidates' and bidders' responses to the requirements at both selection and award stages.
Exclusion	Candidates and bidders can be excluded from participating in public procurement procedures if they fail to meet certain legislative requirements or others which are at the client's discretion.
F	
Form of contract	The agreement between client and contractor (or consultant) setting out respective rights, obligations and remedies relating to the purpose of the contract.
Framework	A procurement framework is an agreement between one or more clients and one or more consultants or contractors to enable procurement of a repeat need without knowing the related timing or quantities.
G	
Gateway Review	A short, focused review of a programme or project carried out at key decision points in its lifecycle by a team of experienced practitioners, independent of the programme or project team.

Goods	Procurement categories are divided into goods, services and works. Goods (also known as supplies) are physical commodities which in construction terms may contribute to the construction of a built asset. In general terms they may include, eg, tables, chairs, computers, pencils etc, in construction they may be bricks, bags of sand, tins of paint etc. The EU defines public supply contracts as "...contracts having as their object the purchase, lease, rental or hire-purchase, with or without an option to buy, of products. A public supply contract may include, as an incidental matter, siting and installation operations."
I	
Innovation partnership	These partnerships are intended to enable clients to call for bids without pre-empting the solution where the requirement cannot be delivered by the current options available to the market.
Intelligent client	A client which has experience of and the necessary expertise to conceive, develop and deliver a construction project for the optimum combination of time, cost and quality.
M	
Market	Where the client obtains goods, works and services that it cannot provide by itself.
MEAT	"Most economically advantageous tender". All awards of contracts should be made on this basis, it requires that the evaluation takes account of the quality and price of the tender against the requirement and not just the price or the quality.
O	
OJEU	Official Journal of the European Union, a virtual publication containing all procurement procedures for the award of public contracts estimated to be above the relevant monetary thresholds, and some below-thresholds ones.
Open procedure	A formal procedure under the Public Contract (Scotland) Regulations 2015. The open procedure does not include a pre-qualification stage and allows any interested party to bid for the contract.
Outcomes	Objective benefits produced by the output of a construction project and the use of a built asset.
Outputs	Direct products of a project or organisation's activities. For example, the built asset delivered by contract performance.
P	
Prior information notice	A prior information notice (PIN) is a means of giving advance notice of forthcoming procurements; it can also be used as a call for competition.
Procedure	The technical manner in which a procurement is conducted often dictated by legislation.
Procurement	The process of buying goods, services and works from external suppliers. The procurement process begins

	when a need to buy something is identified and will generally end after the contract is awarded.
Procurement (Scotland) regulations 2016	Regulations which give effect to the Procurement Reform (Scotland) Act 2014.
Procurement journey	Guidance provided by Scottish Procurement on the procurement of goods and services.
Procurement Reform (Scotland) Act 2014	The Procurement Reform (Scotland) Act 2014 introduced measure to promote the Scottish Procurement Model.
Procurement strategy	The plan for procurement of contracts which will deliver the built asset. This will cover all stages of the project, all natures of contract and how the market is to be engaged. It is also the term used to describe the legislative requirement for a contracting authority to show how it intends to carry out regulated procurements.
Proximity margin	In abnormally low tender identification. The proximity margin shall be limited to a minimum value of £1,000 and a maximum value of £100,000.
Public bodies	A Scottish public body is an organisation created by the Scottish Government or Scottish Parliament which receives all or, or a significant portion of its funding from the Scottish Government.
Public Contract (Scotland) Regulations 2015	This instrument revokes and replaces the Public Contracts (Scotland) Regulations 2012 and gives effect in Scots law to Directives 2014/24/EU; 89/665/EEC; and 2007/66/EC
Public Contract Scotland	An online purchasing system for use by the public sector in Scotland
Q	
Qualification	In a restricted procedure a bidder may qualify to be invited to tender. Qualification may also refer to a proviso or caveat tabled by a bidder seeking to change the client's requirements.
Quality	An objective measurement of performance against a national, international or an officially-recognised, sector-specific standard or benchmark. In procurement evaluation processes this is often combined with price and used as the basis for deciding which tenderer to award a contract to.
Quick quote	An online system provided on Public Contract Scotland portal for taking low value, low risk contracts to market.
R	
Regulated procurement	Any procurement whose estimated value is at or above the thresholds set out by reference to the Procurement Reform (Scotland) Act 2014
Requirement	What is to be delivered under a contract as set out in the contract documents.
Restricted procedure	A formal procedure under the Public Contract (Scotland) Regulations 2015
Risk	Risk is an uncertain event or condition that can have a negative or positive impact on the output and outcomes of a project. Risk is generally assessed, quantified and either retained or allocated to the contractor/consultant.

S	
Scottish Public Finance Manual	The Scottish Public Finance Manual (SPFM) is issued by the Scottish Ministers as applicable guidance to the Scottish Government (SG) and other relevant bodies on the financial and procedural governance for handling and reporting of public funds.
Scottish Capital Investment Manual (SCIM)	The Manual provides guidance on the cyclical process of project development from inception at the service planning stage, to post project evaluation of service benefits realised once a new building is occupied. The guidance not only covers issues around investment appraisal, financial (capital and revenue) affordability and procurement, but also the project management and governance arrangements required to support the development of such programmes and projects.
Selection	The process by which bidders' capacity and capability is evaluated to determine whether or not they can be invited to bid or have their bids evaluated.
Self-cleanse	The process by which candidates which have been excluded from a procurement process can demonstrate that they have taken action to remedy and areas which were the cause of their exclusion.
Senior Responsible Owner (SRO)	Owns the Business Case and is the primary risk taker <ul style="list-style-type: none"> • Accountable for the effective identification, quantification, management and communication of benefits throughout the project • Typically accountable for the realisation of benefits. In major projects this is not always practical so accountability may be devolved to the Programme Director
Services	Services are intangible products such as the intellectual expertise provided by architects, IT specialists, engineers etc. Services is also the collective noun for the equipment that provides heat, light, power, water and drainage to a building.
Specification	The technical detail of what is required and the standard to which it is to be provided. It is a description of requirements and standards to which the goods, works or services should conform. Also known as a statement of needs, a statement of requirement, an operation requirement or a brief. Its purpose is to present prospective suppliers with a clear, accurate and full description of the organisation's needs, to enable them to propose a solution to meet them.
Standing Orders	The Local Authority's rules and procedures that govern its activities, including procurement of goods, works and services.
Standard conditions	Documents published by specialist organisations intended to provide consistent basis upon which the client and contractor (or consultant) can form a contract.
Standstill	A period following the decision to award a contract to a tenderer during which any bidder may challenge the process resulting in a stay of award.
Submission	An alternative name for the tender submitted by bidders.

Construction Procurement Handbook: *Glossary*

Supplier	Any individual or company providing goods, services or works to a client.
T	
Tender	The formal bid for the specific contract submitted by the supplier.
Tenderer	The individual or company bidding for the contract.
Threshold	A monetary point equal to or above which certain procedures and rules must be found. In Scotland thresholds are set by reference to the Procurement Reform (Scotland) Act 2014 and the Public Contract (Scotland) Regulations 2015.
V	
Value for money	The prime objective of Scottish Government procurement policy, defined as the optimum combination of quality and price to meet the client's business requirements.
W	
Weighting	The means by which criteria are objectively ranked and scored according to that rank.
Whole life cost	The systematic consideration of all relevant costs and revenues associated with cost of an asset, including the design, construction, management, maintenance and decommissioning.
Works	The EU defines works as the outcome of building or civil engineering works taken as a whole which is sufficient in itself to fulfil an economic or technical function. In other words this is the construction of a built asset such as a road, an office block or school. Those that have a value exceeding the current threshold defined by the EU rules will be subject to European tendering requirements. Standing Orders may have different values covering works, services or supplies.



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