

KEY HOUSING ASSOCIATION

POLICY REGISTER

ITEM A4

Procurement

First approved:	September 2018
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This policy is reviewed annually
at the January meeting of The Board

Procurement Policy

Aims of Policy

The Procurement Policy sets out the approach to be followed by Key when procuring contracts for the supply of goods, services or works. Key's procurement activity is almost exclusively focused on supplies and services and this includes property maintenance activity.

The objectives of this Policy are to ensure compliance with legal and regulatory requirements, adopt best procurement practice and to maximise value for money when procuring contracts.

Legal Context

When procuring contracts for goods, services or works, Key must comply with relevant Legislation including:

- Procurement Reform (Scotland) Act 2014
- Public Contracts (Scotland) Regulations 2015
- Procurement (Scotland) Regulations 2016
- European Union Procurement Directives

The legislation specifies financial thresholds to be used in assessing which form of procurement should be adopted and requires the procurement process to be compliant with the general principles of:

- transparency – contract procedures must be transparent and contract opportunities should generally be publicised;
- equal treatment and non-discrimination – potential suppliers must be treated equally;
- proportionality – procurement procedures and decisions must be proportionate; and
- mutual recognition – giving equal validity to qualifications and standards from other member states

The relevant thresholds for the application of the Regulations are summarised in the table below:

Procurement Regime	Contract Type	Contract Value
European Union Requirements*	Works	£4,551,413 and above
	Supplies/Services	£181,302 and above
Regulated Procurement	Works	£2,000,000 to £4,551,413
	Supplies/Services	£50,000 to £181,302
Unregulated Procurement	Works/Supplies/Services	Up to £50,000 (Supplies/Services) or £2,000,000 (Works)

* The EU procurement thresholds values change every 2 years and the table lists updated contract value thresholds that Contracting Authorities must follow for all European procurement from 1 January 2018.

All values are exclusive of VAT and relate to the full life of the contract (including any potential extensions or renewals). Procurement cannot be artificially split to avoid the application of the Act and/or the Regulations (e.g. a single requirement for services with a value of £200,000 cannot be the subject of two separate contracts of £100,000 each).

Regulated Procurement

(for supplies/services over £50,000 and works over £2,000,000)

The Regulations require that contracts above these threshold levels must be advertised on the Public Contracts Scotland website. If they exceed EU Thresholds the contract must also be advertised in the Official Journal of the European Union (OJEU).

There are a number of procurement processes/procedures but commonly Key will only use two main route ways:

Open Procedure

The open procedure is a single stage procedure in terms of which all interested parties may submit a tender in response to a contract advertisement. There is no separate pre-qualification stage in the open procedure, although tenderers will be required to complete a European Single Procurement Document (ESPD) as part of their submission.

The ESPD is a standard-form document, which will include a range of mandatory and discretionary grounds for exclusion. The ESPD may also include a number of “pass / fail” questions or questions in relation to which a minimum score must be achieved and bidders will be required to achieve a minimum score

The Open Procedure is suitable where tenders will be easy to evaluate and / or when there are only likely to be a limited and manageable number of tenders to evaluate.

Restricted Procedure

The restricted procedure is a two stage procedure in terms of which all interested parties may submit an expression of interest in response to the contract advertisement.

An ESPD is issued to interested parties and follows a pre-qualification stage – only those candidates who meet the selection criteria (as set out in the ESPD) will be short-listed and invited to the tender stage of the process.

A minimum of five suppliers must be invited to tender (unless fewer suitable candidates have met the selection criteria and these are sufficient to ensure genuine competition).

As there is a short-listing phase, the restricted procedure will be more appropriate where there is likely to be significant supplier interest and/or where Key needs to limit the short-list of tenderers to those with specific expertise and experience.

Competitive Dialogue Procedure

For more complex procurements, the option of adopting a competitive dialogue procedure is possible; however this is unlikely as Key's procurement activities can normally be captured within a specification document. One example where this approach may be required is in selecting suppliers of bespoke IT systems.

Awarding a Tender

Contracts under the EU Regulations must be awarded on the basis of the 'most economically advantageous tender' and cannot be awarded on the basis of lowest price only. The award criteria must include a mix of price and quality measures. Although not required under Scottish regulations this mix of quality and price components is considered good practice.

Following a contract award decision, both successful and unsuccessful bidders must be informed. Unsuccessful bidders must be given information on the scores they obtained, the reasons why they obtained those scores and the "characteristics and relative advantages" of the successful bidder's tender submission compared to their own tender submission;

- For procurement above EU threshold levels, a mandatory "standstill" period must be observed between the date of the notices informing tenderers of the outcome of the procedure and awarding the contract;
- Any complaint about, or challenge to, a proposed contract award will be reported to the Board.
- Once the applicable standstill period has expired/concluded, a contract may be concluded with the successful tenderer;
- Following completion of the tender procedure, a contract award notice must be published in the appropriate websites.

Specific Duties under the Procurement Reform Act

There are a number of specific statutory duties under the Act which will apply to the procurement of any contracts:

The Sustainable Procurement Duty

Key must consider, and apply, within its procurement practices how it might improve the economic, social and environmental well-being within its area of activity, how it might facilitate the involvement of small and medium enterprises, third sector bodies and supported businesses and to consider how it can promote innovation.

Annual Procurement Strategy

The Act requires organisations to prepare and publish an annual procurement strategy and report for each year in which it considers its total expenditure on regulated procurements will exceed £5,000,000.

Key's procurement activity does not exceed these values and there is no requirement to produce such a strategy. In its place, a summary of procurement activity (contract values, procurement approach taken and outcomes) will be reported to the Board on an annual basis.

Contracts Register

Key must keep and maintain a contracts register which must include details of all contracts entered into following a regulated procurement under the Act. The information must include the date of award; the name of the contractor; the subject matter of the contract; the estimated value of the contract; the start date of the contract; the end date provided for in the contract; and the duration of any period for which the contract can be extended.

Information contained in the contracts register must be made publicly available by such means as considered appropriate, although an entry can be withheld from the contracts register if it is considered that making it publicly available would impede law enforcement; be contrary to the public interest; prejudice the commercial interests of any person; or prejudice fair competition.

Community Benefit requirements

The Act requires that, for any regulated procurement with an estimated value equal to or greater than £4,000,000 (excluding VAT), Key must consider whether to impose community benefit requirements as part of the contract delivery before carrying out the procurement.

Unregulated Procurements

(Contracts which are below threshold values)

Contracts with an estimated value below the thresholds set out in the Regulations and the Act do not require to be procured in accordance with the terms of the Regulations or the Act but must be procured in accordance with the requirements and thresholds set out within Key's delegated authorities' policy.

Estimated value of contract	Procedure to be followed
Below £1,000 works and services	Work may be authorised within individual officer limits and contractor may be directly engaged without any form of public procurement exercise.
Between £1,000 and £5,000 works and services	Minimum of two competitive quotations to be invited (where possible using the Quick Quote facility on Public Contracts Scotland). Lowest priced contractor meeting requirements to be appointed.
Between £5,000 and £50,000 works and between £5,000 and £10,000 services	Minimum of three competitive quotations to be invited (again using Quick Quote where possible) using standardised documentation and processes (for example, a specification and return date to be sent to all contractors being asked to provide costs). Lowest priced contractor meeting requirements to be appointed.
Between £50,000 and £2m works and between £10,000 and £50,000 services	Formal tender process to be followed with at least three competitive tenders invited via Public Contracts Scotland.

Framework Agreements

In some scenarios rather than conducting a stand-alone procurement procedure in respect of a particular requirement, Key may consider the adoption of a framework agreement.

A framework agreement is an 'umbrella agreement' that sets out the terms (particularly relating to price, quality and quantity) under which individual contracts ("call-offs") can be made throughout the period of the agreement (which will be a maximum of 4 years). Frameworks are frequently split into lots.

Key may set up its own framework or it could adopt an existing framework put in place by another contracting authority under which Key is entitled to draw down the required supplies, services or works.

Exceptions to the requirement to publicly procure a contract

There are exceptional circumstances in which tenders are not required for the procurement of contracts which are above the applicable threshold values, including:

- where the tender may only be awarded to a particular supplier for technical reasons or where a particular supplier has exclusive rights, including, but not limited to, intellectual property rights
- where Key has already entered into a contract with a supplier and requires additional services which were not included in the original contract but which, through unforeseen circumstances, have become necessary
- where, for reasons of extreme urgency brought about by unforeseeable events, the time limits for one of the standard procurement procedures cannot be complied with.

Such instances of procurement will be reported to the Board in the annual procurement activity report.