

PUBLIC PROCUREMENT REFORM PROGRAMME

Tendering for Public Contracts

A short guide for businesses





About this guide

The Scottish Public Sector spends an estimated £8 billion each year on goods and services, and is continually looking for ways to improve its processes and make these opportunities easier to access. The existence of high quality and cost-competitive suppliers is a vital ingredient through which to achieve value for money in procurement expenditure. No matter what size your business is, there may be opportunities to become a supplier to this market.

This guide provides you with an overview of how to sell to the public sector in Scotland, the rest of the UK and in Europe, as well as tools and resources to assist you. It was originally published in October 2007 and has been updated to reflect changes to public procurement that have resulted from the Public Procurement Reform Programme.

The guide contains:

1. How the Public Sector works with Suppliers
2. Where to find contract opportunities
3. How to increase your chances of winning Public Sector Contracts
4. What information you will have to provide
5. How the Procurement Policy Framework works
6. An outline of who is responsible for buying across the public sector
7. The public procurement process
8. Where to go for more information

1.

How the public sector works with suppliers

Public procurement takes place within the framework of **EU Directives**¹ that are based on five key principles which always apply to public sector procurement, regardless of contract value:

- Equal treatment – giving everyone the same chance to win the contract irrespective of their nationality or whether you know them or not.
- Transparency – stating requirements upfront and sticking to them.
- Proportionality – setting requirements with reference to the needs of the contract in question.
- Mutual Recognition – giving equal validity to qualifications and standards from all Member States, where appropriate.
- Confidentiality – respecting the confidentiality of any information received regarding tenders and tenderers.

¹ <http://www.scotland.gov.uk/Topics/Government/Procurement/Resources/EUProcurement>

These are implemented in the Public Contracts (Scotland) Regulations 2006 which aim to encourage competition and prohibit the public sector showing any preference for suppliers on the basis of size or location in the tendering process.

To achieve value for money in public sector procurement it is important that access to the market is made easier for suppliers wishing to do business with the public sector.

In response to this, the Scottish Public Sector has introduced a number of measures:

- The **Suppliers' Charter**,² a joint statement between public sector procurement and business organisations.
- The **Public Contracts Scotland**³ portal to enable suppliers to access public sector contracting opportunities in Scotland.
- A core pre-Qualification Questionnaire (**PQQ**),⁴ to ensure that, wherever possible and, consistent with the need to secure value for money, any suitably qualified businesses have the opportunity to compete for public sector business.
- Established the **Single Point of Enquiry**⁵ to provide suppliers with feedback on procurement processes and to help businesses become more competitive.

Measures to improve public sector procurement will continue to develop over time, and the public sector will continue to engage with suppliers from all sectors and development organisations to inform these changes.

² <http://www.scotland.gov.uk/Topics/Government/Procurement/Selling/Supplierscharter2>

³ <http://www.publiccontractsscotland.gov.uk/>

⁴ <http://www.scotland.gov.uk/Topics/Government/Procurement/Selling/QualificationQuestion>

⁵ <http://www.scotland.gov.uk/Topics/Government/Procurement/Selling/supplier-enquiries>

2.

Where to find contract opportunities

Scottish contracts

Public Contracts Scotland³ represents a free and easy way to access details of all public sector contract opportunities in Scotland.

The portal:

- enables suppliers to gain access to a wide range of contract opportunities in Scotland free of charge; and
- provides a source of suppliers for lower value contracts.

The portal has strong support from Ministers and from the business community. It is available for use by contracting authorities and suppliers now. Additionally, there is a plan to roll-out the portal to all major contracting authorities in Scotland by the end of 2009.

UK contracts

Information on other UK public procurement contract opportunities can be found through:

- the **Supplier Route to Government Portal**⁶ that advertises and provides limited free access to below EC threshold contracts, further services are available on a subscription basis.
- the **Central Procurement Directorate**⁷ in Northern Ireland provides information and public contract opportunities for the public sector in Northern Ireland.
- **Sell2Wales**⁸ provides information on public contract opportunities in Wales.
- **Constructionline**⁹ which is the UK's register of national construction and construction-related suppliers, owned and endorsed by the Department for Business, Enterprise & Regulatory Reform. For registration on Constructionline there is a sliding scale of charges dependent on company size and turnover.

European contracts

Your first point of contact will be **Enterprise Europe Scotland**.¹⁰ They will help you understand the requirements of finding and tendering for public sector contracts on a Europe-wide basis. Enterprise Europe Scotland is part of the **Enterprise Europe Network**;¹¹ it operates in both the Scottish Enterprise and Highlands and Islands areas, and is dedicated to helping businesses at a European level. To contact them email enterprise.europe@scotent.co.uk or call 0141 228 2797.

⁶ <http://www.supply2.gov.uk/>

⁷ <http://www.cpdni.gov.uk/index/current-opportunities.asp>

⁸ <https://www.sell2wales.co.uk/index.html>

⁹ <http://www.constructionline.co.uk/>

¹⁰ <http://www.enterprise-europe-scotland.com/>

¹¹ http://www.enterprise-europe-network.ec.europa.eu/index_en.htm

Suppliers can access almost all public-sector contract opportunities worth more than the value set in the EU procurement directives in the **daily supplement**¹² to the Official Journal of the European Union (OJEU). Some public bodies have made it their policy to advertise more widely in the OJEU than is legally required.

Companies taking part in procurement procedures in other EU states can access support from the **European Public Procurement Network**¹³ (PPN), a co-operative network of public procurement experts and officials.

Subcontracting opportunities

Many of the highest-value government contracts go to large companies, but smaller or newer companies may become engaged in these contracts through sub-contracting, partnering/consortia or consultancy work.

Public-sector organisations may provide information about their main contractors, or you might identify and contact a supplier who has been short-listed for or won a major contract through the **Public Contracts Scotland**.³

¹² <http://ted.europa.eu/>

¹³ <http://www.publicprocurementnetwork.org/>

3.

How to increase your chances of winning Public Sector Contracts

Outlined below are some important tips to consider when competing for public sector contracts:

- Investigate your sector and only bid for work that you are sure you can do.
- Make sure you know, early on in the procedure, what format you will have to use to fill in the buyer's documents. You also need to know what timescales you are working to and whether interviews will be likely.
- Plan and cost the full extent of delivering the contract to ensure that you have taken full account of overheads and resource implications.
- Always provide the information you are asked for and make sure you accurately answer all the questions. If you cannot do so, check whether your bid will be acceptable before you send it back. **If you are not sure of anything, ask the buyer in good time.**
- Plan your bid around the timetable the buyer gives you to make sure you can meet all deadlines.
- If your bid is unclear and the buyer asks you to explain something,

you must give your explanation by the original deadline, unless they tell you otherwise.

- Remember that at the Invitation to Tender stage you are being evaluated on how well you would be able to deliver the goods or services required, in line with the criteria given. You will want your response to be better than that proposed by your competitors.
- Remember, your bid will be evaluated only on the information you provide as part of the tender process.
- Be patient, as the procedure from the first advert to awarding the contract can take months.
- Delivering the contract is one of the best ways of ensuring that you keep the contract as it helps build your reputation for contract delivery.

Feedback – It is important that suppliers seek and receive constructive feedback to help improve performance in future bidding exercises.

Some feedback on your tender may be given when you are notified of whether your bid has been successful. Feedback must be given on request for all contracts with a value over the EC thresholds within 15 days. For contracts under those values, debriefing is encouraged as good practice. Feedback is obligatory under the Suppliers' Charter².

A **Single Point of Enquiry**⁵ has been established as an impartial point of contact for businesses where they can ask for advice or raise concerns about public procurement practices in Scotland. It aims to:

- provide businesses with advice on procurement legislation and practices.
- seek resolution of disputes regarding procurement practice.
- help improve the consistency of public procurement processes applied by public and publicly funded bodies in Scotland.

4.

What information will I have to provide?

You should expect to provide information on how you would deliver the specific requirements of a contract. However, in some cases, where there is a link to the contract, a buyer may ask for information relating to your business processes. For example, if a contract is for the provision of advice on equality and diversity, you could be asked how you deal with these issues in your own organisation.

The following section details some areas buyers may consider during a tender process:

- Your company's ability to meet certain **quality assurance standards**. For example, **ISO 9000**,¹⁴ **ISO 14001**¹⁵ standards for environmental management systems, Eco-Management and Audit Scheme (**EMAS**)¹⁶ to improve companies' environmental performance, and many more.
- Your company's adherence to and understanding of **equality and human rights** legislation, and your ability to practice these laws and to ensure that everyone is treated equally.

¹⁴ <http://www.british-accreditation.co.uk/ISO-9000-certification-services.htm>

¹⁵ <http://www.british-accreditation.co.uk/ISO-14001-certification-services.htm>

¹⁶ <http://www.emas.org.uk/>

- Your company's adherence and practice of **health and safety policy**. In particular, if you employ five or more people, you must have a written safety policy which:
 - sets out your business's commitment to managing risks and meeting legal duties for safety;
 - tells people in your business what their duties are for health and safety; and
 - explains the steps that staff need to take to meet their duties.

You may be asked to provide copies of this document with your tender application, as the **Contractor Health and Safety Assessment Scheme (CHAS)** is often used by public and private sector organisations when short-listing contractors.

- Your company's standards of **business probity and ethics, corporate social responsibility** policy and commitment to Scotland's sustainable development.
- **Social and environmental requirements** may be included in public contracts if they comply with the requirements of the EU procurement rules and general EU law. These "social clauses" need to have a direct link to the core purpose of the contract, so that they can be included in the assessment of tenders. Further guidance on social issues in procurement is available **online**.¹⁷
- And don't forget that the procurement of items over the internet, including **e-tendering** and **e-auction**, allows shorter award procedures due to the increased speed that contract notices are transmitted. For more information visit **eProcurement Scotland**.¹⁸

A series of best practice case studies will be available online shortly.

¹⁷ <http://www.scotland.gov.uk/Topics/Government/Procurement/policy/Subject-Specific/corporate-responsibility>

¹⁸ <http://www.eprocurementscotland.com/>

5.

Procurement Policy Framework

The Scottish Government's Scottish Procurement Directorate (SPD) is responsible for developing and advising on procurement policy for the public sector in Scotland. Through the Public Procurement Reform Programme, SPD aims to:

- improve collaboration in procurement across public bodies in Scotland;
- ensure best Value for Money is met, i.e. contracts are awarded on the basis of Most Economically Advantageous Tender (MEAT), evaluating both the price and quality of the tenders submitted as the optimum combination of whole-life costs and quality;
- support better and more consistent practices;
- implement effective policy, regulation, and clear guidance;
- provide a point of enquiry for suppliers;
- improve access to contract opportunities;
- recognise whole-life costs and sustainable procurement; and
- adopt a common, innovative and advanced e-commerce platform across public bodies in Scotland.

Public sector procurement in Scotland takes place within the framework of European, UK and Scottish legislation. These are based on five key principles – equal treatment, transparency, proportionality, mutual recognition, and confidentiality. The rules for Public procurement are bound within:

- EU Treaty Obligations.
- EC Procurement Directives.
- The Public Contracts (Scotland) Regulations 2006.
- The Utilities Contracts (Scotland) Regulations 2006.

The Public Contracts (Scotland) Regulations 2006 set out threshold values above which contract opportunities must be advertised in the OJEU.

The threshold values on 1 January 2008 are shown below. Please note values are Net of VAT.

	SUPPLIES	SERVICES	WORKS
Entities listed in Schedule 1 (primarily Central Government)	£90,319	£90,319	£3,497,313
Other public sector contracting authorities	£139,893	£139,893	£3,497,313

Value for Money (vfm) and Contract Award – All public sector organisations procuring goods and services must ensure they obtain value for money. This means they must choose the bid that offers ‘the optimum combination of whole life costs and quality’. In Scotland, it is policy to award contracts on the basis of Most Economically Advantageous Tender (MEAT), evaluating both the price and quality of the tenders submitted. Quality can include a number of factors including technical merit and functional characteristics.

To assess MEAT, a price:quality ratio will be applied which balances the relative importance of price and quality in the tender. For example, where performance takes a high priority a price:quality ratio of 30:70 may be applied. The relative importance of the criteria on which the contract will be awarded will be listed in the “Invitation to tender” documentation.

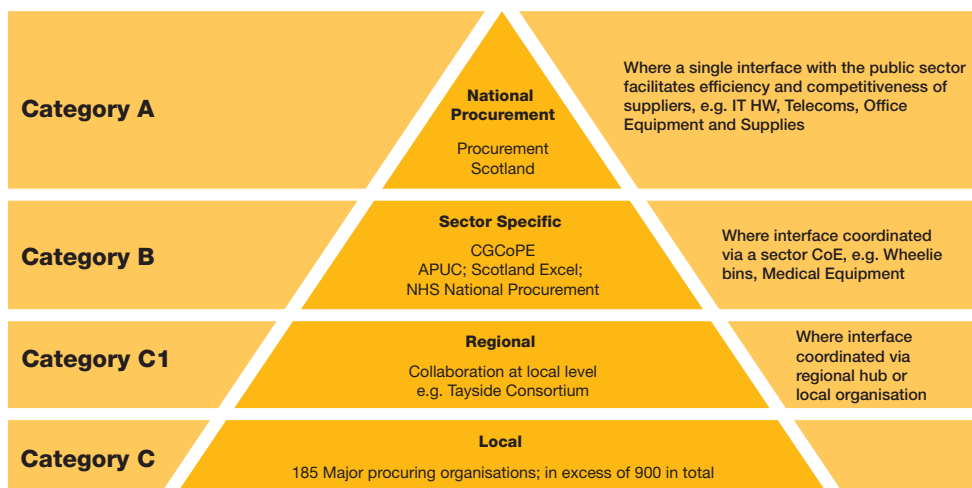
Contract value – Bear in mind that contract values are an estimate of the value of the whole requirement for a good or service over the period of a contract. This may incorporate spend over a number of years. For example, a local authority contract for services valued at £160K may deter a business from competing, however, if the business considers that the value could relate to a period of 4 years, the contract could be more attractive to them at a level of £40K per year.

6.

An outline of who is responsible for buying across the public sector

There are a large number of Public Bodies procuring goods, services and works. The Public Procurement Reform Programme, co-ordinated by SPD, aims to improve procurement practices and engender collaboration between organisations.

Through the programme, the procurement of goods and services are organised into categories – A, B, C and C1.



Procurement Centres of Expertise have been established across the Public Sector to improve processes and collaboration within their relevant business areas and sectors.

At a National level:

- *Procurement Scotland* – responsible for developing and implementing procurement strategies for national Category A commodities such as IT hardware and office supplies, on behalf of all Scottish Public Bodies.

Centres of Expertise have also been established to manage the procurement of goods and services that are defined as Category B in key sectors:

- *Central Government Centre of Procurement Expertise (CGCoPE)* – responsible for leading and facilitating collaborative procurement activity for Scottish Government Agencies, Non-Departmental Public Bodies (NDPBs), Tribunals and Public Corporations.
- *Advanced Procurement for Universities and Colleges (APUC)* – responsible for Higher and Further Education Sector.
- *Scotland Excel* – responsible for local authorities.
- *NHS National Procurement* – responsible for Health.
- *FireScotland Procurement* – the proposed Centre of Expertise for Fire Sector Category B contracts.
- For information on Police Procurement, e-mail tenders@strathclyde.pnn.police.uk

Currently, the relationship between Centres of Expertise may be illustrated as shown:



- Cat A - National Contracts
- Cat B - Sectoral Contracts
- Cat C - Local Contracts

7.

The Public Procurement Process

A summary of the public procurement process is shown below, although for a large number of **Low Value Procedures** complex tender processes will not represent value for money and other methods may be used. These include use of Procurement Cards which are similar to credit cards, or obtaining a number of quotes, (typically three), prior to placing an order. The value at which different procedures apply will vary between organisations and depending on market conditions, but all procedures are subject to the legal requirement for adequate publicity of contract opportunities.



Suppliers should be aware of the following elements in the procurement process:

Preparing the Business Case – Before the procurement can proceed, a business case is needed. Information from users and market information should feed into the business case so that it presents a preferred option, including financing arrangements for the procurement. These early stages may involve meeting with a range of suppliers, (known as “market engagement”), to establish factors including:

- The scope of goods/services required.
- What products/services are currently available.
- Future Trends.
- Constraints.

Procurement Strategy – This relates to how the purchaser will approach the market, identify the opportunities available to the contracting authority and achieve value for money. It will include a decision on the procurement route to be pursued and the scope to include wider social and environmental considerations.

Advertising the Requirement – The Scottish Public Contracts Regulations place a legal obligation on Public Bodies to consider advertising contracts which do not have to be advertised in the EU Official Journal. It is for individual Public Bodies to determine the form and means of publication necessary to meet this obligation, taking into account the value of the contract and the extent to which it is likely to be of interest to the market.

Tendering – Procurements may be conducted by a number of routes. This may be done via mail or electronic tender. The most common procedures that are applied for procurements above **EC threshold values**¹⁹ are known as “Open Procedure” and “Restricted Procedure” and are briefly described below.

Open Procedures are used where there is likely to be limited interest in an opportunity. In this case anyone interested in the contract will be invited to tender.

Restricted Procedure is used for quite straightforward requirements where a lot of suppliers may be able to meet the requirements. This procedure has two distinct stages:

1. Selection stage – requires interested suppliers to complete a “Pre-qualification questionnaire” (PQQ), principally used to assess the financial, technical and/or professional capability and capacity of suppliers. It does not relate to how suppliers would fulfill the requirement. At this stage the contracting authority will limit the number of suppliers invited to tender. To reduce bureaucracy, a core **PQQ**⁴ has been developed for use by the wider public sector.

2. Award Stage – Suppliers selected at stage 1 will be invited to tender for the requirement. At this stage you will be provided with the specification of the requirement and you will be asked how you would deliver it if your bid is successful. The relative importance of the component parts of the response and the format in which bid is required will be provided in the “Instructions to tenderers” provided by the contracting authority. Objective criteria will have been established by the contracting authority against which your response will be assessed.

¹⁹<http://www.scotland.gov.uk/Topics/Government/Procurement/PublicProcurement/thresholdjan06> EC Threshold values are revised every two years.

Negotiated Procedure and Competitive Dialogue – This is used for more complex requirements.

Minimum timescales, intended to allow suppliers sufficient time to prepare their bids/responses, apply for all of the above procedures. The relevant contracting authority for any procurement will advise of the key dates by which responses are required. In many cases these will exceed the minimum timescales.

Standstill Period – For above **EC threshold value**¹⁹ procurements, the contracting authority must allow a period of 10 days between the date suppliers are notified about the outcome of the tender process and the date on which the contracting authority proposes to enter into the contract or to conclude the framework agreement. This allows unsuccessful bidders to request a review of an award decision by the relevant contracting authority.

e-Auctions – These are an electronic device for the presentation of new prices or values. The intention to conduct an electronic auction will be stated in the contract notice, (official OJEU advert) and details of the process will be included in the specification for the requirement. They occur towards the end of the procurement process, after full evaluation of tenders. The contracting authority may conduct an electronic auction, (e-auction), based on:

1. price, where the award criteria is lowest price; or
2. price and/or values of features from the specification to identify most economically advantageous tender.

Further details of all these procedures are available from the **Scottish Public Procurement Toolkit**.²⁰

²⁰ <http://www.scotland.gov.uk/Publications/2006/11/16102303/0>

Framework Agreements

In addition to conventional contracts, (where one supplier has been appointed to provide a specific good or service), authorities may also use Framework Agreements. These are normally used where there are likely to be a large number of lower value requirements over a period of time, as they may reduce the timescales required for commissioning such requirements. They may also be used to ensure that better value for money is obtained through economies of scale or to improve supplier relationship management.

Framework Agreements are required to be competitively tendered in the same manner as other contracts. Once the Framework is set up, organisations are usually required to seek ‘mini-competitions’ from all the Framework suppliers capable of meeting a specific requirement, i.e. a competition among parties to the framework agreement based on, for example, terms that have been tailored to reflect the specific requirement. The duration of Framework Agreements is limited to four years, except in exceptional circumstances e.g. where a large, upfront investment is required.

Once a Framework Agreement has been established for that period of time, further suppliers cannot be added to it.

Subcontracting opportunities

Many of the highest-value government contracts go to large companies. A means for smaller and newer companies to become engaged in a higher value government contract would be through sub-contracting or even partnering/consortia. Where it is not appropriate for small and new businesses to take on high-value and long-term contracts, there may be many opportunities for subcontracting and consultancy work.

Public-sector organisations may provide information about their main contractors, or you might identify and contact a supplier who has been short-listed for or won a major contract through the **Public Contracts Scotland**³.

8.

Where to go for more information

If you have any questions or would like more information about any element of the Public Procurement Reform and Procurement Policy, please contact the **Scottish Procurement Directorate**

Tel: 0141 242 5466 or

E-mail scottishprocurementdirectoratescotland.gsi.gov.uk
or visit www.scotland.gov.uk/procurement

For questions on any aspect of the electronic tendering e.g. e-procurement, e-auctioning, contact **eProcurement Scotland**

Tel: 0131 244 3618 or

E-mail eprocurement@scotland.gsi.gov.uk
or visit www.eprocurementscotland.com



To contact **Procurement Scotland** who are responsible for procuring strategies for national Category A commodities on behalf of all Scottish public bodies,

Tel: 0131 244 0865 or

E-mail ps.enquiries@scotland.gsi.gov.uk
or visit www.procurement.scotland.gov.uk



For information on procurement within the Central Government family, contact **CGCoPE**

E-mail info@cgcopescotland.gsi.gov.uk
or visit www.cgcopescotland.gov.uk





For information on procurement within Scotland's universities and colleges, contact **APUC**
Tel: 0131 442 8930 or
E-mail enquiries@apuc-scot.ac.uk
 or visit www.apuc-scot.ac.uk



For information on procurement within Scotland's local authorities, contact **Scotland Excel** on
Tel: 0141 842 6600 or
E-mail contactus@scotland-excel.org.uk
 or visit www.scotland-excel.org.uk



For information on **NHS National Procurement**,
Tel: 0131 275 7780 or
E-mail nss.np@nhs.net
 or visit www.nhsscotlandprocurement.scot.nhs.uk

For information on procurement for the Police,
E-mail tenders@strathclyde.pnn.police.uk

Information on procurement for the fire sector is available via **FireScotland Procurement**,
Tel: 01224 788785 or
E-mail enquiries@efirescotland.org
 or visit www.efirescotland.org



For details of public sector contract opportunities in Scotland, visit the **Public Contracts Scotland** portal at www.publiccontractsscotland.gov.uk



**The Scottish
Government**

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This document is also available on
the Scottish Government website:
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RR Donnelley B58086 10/08

ISBN: 978-0-7559-5924-2

The text pages of this document are printed
on recycled paper and are 100% recyclable

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