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CORPORATE REPORT

MARCH 2018

<b>Policy Title:</b> Procurement policy	<b>Policy Number:</b> 059
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<b>Lead Person:</b> Finance Manager	<b>Approved by:</b> Audit Committee

## 1.0 Introduction

1.1 Procurement is the process of obtaining goods, services or works (including hire, lease and disposal). The Mental Welfare Commission (the Commission) Procurement Policy specifically covers the following key areas:

- Purchasing Authority
- Procurement Thresholds and Procedures
- Procurement Need
- Supplier Selection
- Specification
- Evaluation of Bids
- Award of Contract
- Supplier Debrief
- EU Procurement Legislation
- Contract Management
- Supplier Payment
- Disposal of Goods
- Openness and Transparency
- Ethical Standards

1.2 The Commission recognises that its procurement activities are relatively limited. However, this policy has been developed to reflect relevant guidance and good practice in order to demonstrate that the Commission has appropriate regard for open, transparent, effective and sustainable procurement.

This policy has been prepared in line with the [Scottish Procurement Policy Handbook](#) (SPPH) and the [Scottish Public Finance Manual](#) (SPFM). The SPPH handbook is also supported by [SPPNs](#) (Scottish Procurement Policy Notes) which are updates on policy that are not always immediately incorporated into the handbook.

Guidance on how to create a purchase order can be found in the Financial Operating Procedures.

## 2.0 Purchasing Authority

2.1 Purchasing Authority is the authority to enter into a legally binding contract on behalf of the Commission which includes purchase orders raised for lower level

procurement. Purchasing authority also covers all other purchasing commitments, including variations to and extensions to existing contracts. Given its size, the Commission regards Financial Authority and Purchasing Authority as interchangeable.

- 2.2 For the purposes of this policy the Commission is classified as the Contracting Authority, with legal responsibility for all procurement decisions.
- 2.3 The Commission has in place a formal Scheme of Delegation, appended to the Standing Financial Instructions, which details the authority of each role in the procurement process

### **3.0 Procurement Thresholds and Procedures**

- 3.1 The Commission is required to achieve value for money (VFM) through its procurement activities. For the purposes of this policy VFM is considered to be the optimum combination of total cost (over the life of the asset) and perceived quality. Relevant environmental, social and ethical issues also form part of this assessment.
- 3.2 The Commission aims to utilise Scottish Government framework contracts where appropriate and, in the first instance, will always seek to establish if an appropriate contract is in place which will make the procurement process more efficient and demonstrate value for money. Where such contracts are not available and for all but low value procurement it is likely that some form of competition will be required. Where this is the case the Commission will use the [Public Contracts Scotland Portal](#) for advertising, where appropriate. Finance can provide support to staff on this.

#### **Procurement below £5k**

- 3.3 The purchase of goods or services under an estimated value of £5k (excluding VAT) does not require formal competition as per the [Scottish Procurement Policy Handbook](#) (SPPH). However, the purchase must still represent value for money (VFM) and offer fair and equitable treatment to suppliers. It may therefore be necessary from time to time to obtain three quotes, although this must be considered against the associated procurement administration costs. The use of “Quick Quote” in PCS should be considered for procurement over £2k, as this is an efficient method and ensures compliance to procurement principles.

#### **Procurement between £5k and £10k**

- 3.4 To comply with Scottish Government Procurement guidelines, a minimum of three written quotations are required for the purchase of goods and services between an estimated value of £5k and £10k (excluding VAT).

The use of “Quick Quote” in PCS should be used for procurement between £5k and £10k, as this is an efficient method and ensures compliance to procurement principles.

### **Procurement between £10k and £15k**

- 3.5 A minimum of three written quotations are required for the purchase of goods and services between an estimated value of £10k and £15k (excluding VAT). Depending on the nature of the purchase, particularly in respect of potentially complex or high risk requirements, the Commission should also consider the appropriateness of formal tender procedures. This must be considered in line with the Public Contracts (Scotland) Regulations 2015, which specifically require a degree of advertising appropriate to the nature of the procurement requirement. The Commission tender process is managed using the PCS website – Quick Quote is generally sufficient for tenders under £50k in total.

The value of contracts within this threshold will include the cost of any potential extension written into the contract.

### **Procurement between £15k and EU Procurement Threshold**

- 3.6 The Commission will adopt formal tendering procedures for all procurement in excess of an estimated value of £15k and, as identified in 3.3, for lower value procurement which has been considered to be potentially complex or high risk. Effective 01.01.18, the EU threshold is £118,133 (excluding VAT)
- 3.7 However, the extent & complexity of the documentation should be no greater than is necessary for the nature/value of the requirement. All tenders must be advertised appropriately. Best practice suggests that this should be via the [Public Contracts Scotland portal](#). The Procurement Reform Act includes the need to advertise any opportunity over £50,000

### **Requirements above the EU Threshold**

- 3.8 The Public Contracts (Scotland) Regulations 2012 and the Utilities Contracts (Scotland) Regulations 2012 (SPPN 1/2012 refers) apply to the Commission’s procurement activities and must be complied with. Failure to comply with this legislation carries severe penalties for which the Commission would be held accountable. Advice from Scottish Government procurement colleagues will be followed for any procurement at this level.

### **Non-competitive Action (NCA)**

- 3.9 Non-competitive Action or single tender action is only acceptable when procurement through the normal competitive process cannot be undertaken i.e. where there is no or limited choice of suppliers (e.g. intellectual property rights ownership issue) or the purchase required is of an extremely specialist nature. Any requests for NCA must receive written authorisation from the Chief Executive or Board, depending on the estimated value of the procurement in line with the

Commission's delegated authority limits. These are set out in the Standing Financial Instructions Policy.

- 3.10 EU Procurement rules must be complied with when taking forward NCA. Contracts awarded following NCA are known as "Direct Awards" and, if the total contract value exceeds the EU threshold (See 3.6 above), may be challenged under the Remedies Regulations. Remedies the court may order include rendering the contract ineffective and/or imposing a fine on the Contracting Authority. In the case of a VEAT (Voluntary Ex-Ante Transparency) Notice, the remedy is limited to the imposition of a fine.
- 3.11 In addition, as with all other forms of procurement, it is essential to achieve value for money and demonstrate fair and equal treatment of suppliers in order to fully justify the procurement method adopted.

#### **4.0 Procurement Need**

- 4.1 Prior to taking forward any type of procurement, the actual need must be established and clearly defined. Only once this is established can the procurement be taken forward, using the appropriate procurement method based on estimated value.
- 4.2 Depending on the estimated value and complexity of the procurement the Commission will undertake an appropriate and proportional assessment of the need, which may range from a purchase requisition and order for low level procurement to a full business case for higher value activities.
- 4.3 As part of either process, the Commission is committed to considering the environmental impact of all procurement and as such will always consider whether refurbishment or upgrade of existing assets is appropriate. The Commission will also consider the extent to which new assets contain recycled materials or are recyclable at the end of their useful life, as well as the environmental credentials of suppliers.
- 4.4 As per the Financial Operating Procedures, a purchase requisition, using the MWC electronic ordering system (EASEbuy), must be completed for all purchases. Procurement by Government Procurement Card (GPC) and Petty cash should be supported by a Commission paper purchase requisition.

#### **5.0 Supplier Selection**

- 5.1 The objective is to identify organisations that have the necessary resources and capability to meet the specified requirement and to ensure that suppliers are selected in a way that is fair and transparent.
- 5.2 The Commission aims to utilise Scottish Government's framework contracts where appropriate and, in the first instance, will always seek to establish if an appropriate contract is in place which will make the procurement process more efficient and demonstrate value for money. Where such contracts are not available and for all but low value procurement (see 3.3 above) it is likely that

some form of advertising will be required. Where this is the case the Commission will use the [Public Contracts Scotland Portal](#) where appropriate.

## **6.0 Specification**

6.1 For all requirements in excess of £15k (excluding VAT), a full specification must be prepared by the Commission. The Head of Corporate Services is responsible for ensuring that tender documents are prepared which

- state the nature and purpose of the tender
- Specify outputs i.e. by stating **what** is to be achieved and not **how** this is to be achieved
- state the last date and time when tenders will be received and advise that the Commission reserves the right to accept a tender other than the lowest or to accept no tender at all.

6.2 For requirements under the £15k threshold, the specification should be appropriate to the value and complexity of the purchase. It must be prepared in a way which does not inadvertently favour a particular supplier and enables all suppliers to prepare a meaningful and comprehensive submission which can easily be evaluated by the Commission. As a minimum the specification should clearly detail the outputs/deliverables required and the date when they will be required. Suppliers must be advised that the Commission reserves the right to accept a quote other than the lowest or to accept no quote at all.

## **7.0 Evaluation of Bids**

7.1 The objective when evaluating submitted bids is to identify the one which most closely meets the Commission's requirements as set out in the specification, and which represents best value for money to the Commission in terms of whole life costs. Help can be found within the [SG Procurement Journey](#).

7.2 Evaluation criteria, and any associated weightings and evaluation guidance must be determined prior to invitations to tender or quote being issued (for very straightforward quotes, criteria may not be necessary). The successful bid should meet the specification in full and, where the lowest total price (over the lifetime of the contract) was not selected, the reasons should be recorded.

## **8.0 Award of Contract**

8.1 For purchases above £15k, a contract award recommendation will be produced and submitted to the OMG. Purchases over £150k will also be submitted to the sponsor department for approval. The recommendation will demonstrate the procurement process that has been adopted; it will provide a brief summary of the submissions received and justify the award recommendation.

8.2 A standard Commission contract letter and terms and conditions will be used for all purchases not covered by the Scottish Government central contracts

framework or an agreed supplier contract template. Contracts for values over £25k are reviewed by the Commission's legal advisors where appropriate.

## **9.0 Supplier Debrief**

9.1 The Commission will offer all unsuccessful suppliers the opportunity of a debrief in order to explain, subject to commercial confidentiality, why their bid was unsuccessful.

## **10.0 EU Procurement Legislation**

10.1 The Public Contracts (Scotland) Regulations 2012 and the Utilities Contracts (Scotland) Amendment Regulations 2012 apply to the Commission's procurement and must be complied with. The 2012 regulations include. Failure to comply with this legislation carries severe penalties for which Commission would be held accountable.

## **11.0 Contract Management**

11.1 The Commission will put in place appropriate methods of contract management dependent of the type, value and complexity of the contract and in line with good practice and Scottish Government procurement guidelines.

11.2 In general, contractor performance management (CPM) is the process that enables both parties to meet their contractual obligations in order to deliver the objectives of the contract fully and effectively. This also involves the Commission developing good and appropriate working relationships with contractors.

## **12.0 Supplier Payment**

12.1 Contractors must be paid within agreed terms, and the CBI Prompt Payers Code observed at all times. Unless otherwise stated in the contract, payment is to be made promptly and, where appropriate, in accordance with the Scottish Government target of 10 working days of invoices for goods and services, completed to the satisfaction of the Commission.

12.2 Payment should not be made in advance of goods and/or services being delivered. However, exceptions can be made in certain circumstances, which will be covered by appropriate contract conditions e.g. training courses. No contract specifying advance payment should be entered into without the prior agreement of the Head of Corporate Services. The arrangements for authorising payment of Invoices are detailed in the Scheme of Delegation.

## **13.0 Disposal of Goods**

13.1 Some assets may have a resale value, whilst for others there may be a cost (including an environmental cost) of their disposal. All these factors will be taken into account by the Commission in considering appropriate disposal arrangements.

13.2 Goods should be re-used wherever possible. Goods that cannot be re-used must always be disposed of in a manner that minimises the impact on the environment, recycling as many components as possible.

13.3 Whatever the method of disposal, it is particularly important that clear records are kept, documenting decisions and actions taken. Reference should be made to the SPFM guidance on Non Current Assets in determining the appropriate procedure.

## **14.0 Openness & Transparency**

14.1 It is the Commission's policy that all procurement activity will be taken forward in an open and transparent manner. Staff should undertake procurement in line the guidance on gifts and hospitality provided within the 'Staff Code of conduct' policy.

14.2 The Commission is a Scottish public authority for the purposes of the Freedom of Information (Scotland) Act 2002 (the Act). Anyone has the right to request information the Commission holds, including information which comes from third parties, such as contractors. The Commission is committed to the spirit of the Act and will seek to disclose all information where possible. The Act does however permit the Commission to refuse to provide information, but only where an exemption in the Act can be applied. For example, the Commission may claim the section 33 exemption (commercial interests) in the Act to withhold information if its disclosure would prejudice substantially someone's commercial interests. If a contractor considers that the disclosure of information they have provided to the Commission would attract the exemption in section 33 of the Act, the Commission will expect the contractor to alert it to this fact before the contract is finalised.

14.3 Occasionally contractors may provide information to the Commission on the basis that it will remain confidential and will not be disclosed in the event that an information request is submitted. The Commission will agree to accept information in confidence from contractors only in very limited circumstances. Even where this is undertaken the information may still be disclosed if the disclosure would no longer constitute an actionable breach of confidence, e.g. if the information is no longer confidential.

### **Public Services Reform (Scotland) Act 2010**

14.4 The Public Services Reform (Scotland) Act 2010 requires listed public authorities, including the Commission, to publish information on a range of expenditure incurred on the following matters:

- Public Relations
- Overseas Travel
- Hospitality & Entertainment
- External Consultancy
- Individual payments in excess of £25,000 (including VAT)

14.5 In accordance with the Act, the Commission will produce all required expenditure information and publish this via the website as soon as practicable after the end of the financial year in line with the annual accounts preparation and signing.

### **Procurement Records**

14.6 For audit purposes there must be a clear record of all procurement decisions undertaken. The Data Retention Policy sets out the retention periods for all documentation supporting financial transactions and contracts.

14.7 Quotes should be in writing and retained as evidence.

## **15.0 Ethical Standards**

### **Supplier Relationships**

15.1 Commission staff involved in procurement activities must always be honest, fair and impartial in their dealings with suppliers. Relationships with suppliers must always be conducted on a professional basis, with proper regard to ethics and propriety. Official orders will only be placed where an arms-length relationship exists with the supplier.

### **Declarations of Interest/Potential Conflicts of Interest**

15.2 Commission staff and Members must declare and record any personal interest that might influence, or be seen by others to influence, their impartiality in arriving at a procurement decision. Those who have business or personal relationships with, or friends/relatives employed by, outside organisations bidding for Commission contracts must declare this at the earliest opportunity.

Members and staff are reminded of their obligations under the Commission policy for Conflict of interest.

### **Personal Gain, Gifts & Hospitality**

15.3 Staff and Members who are either directly involved in procurement activity or may be perceived to be in a position of influencing purchase decisions, may not solicit or accept contributions of any kind from suppliers. Staff and Members should only accept gifts of a trivial nature. Modest hospitality e.g. a business lunch may be accepted from a supplier, provided it is for legitimate reasons, is infrequent and that a situation is not reached where impartiality may be influenced, or be perceived by others to be influenced. Invitations from suppliers to attend social functions and corporate entertainment must not be accepted and declined politely in accordance with this policy.

15.4 Records of all gifts and hospitality offered and whether or not they were accepted must be recorded in the Gifts & Hospitality Register. The Head of Corporate Services maintains the Register and will provide advice on gifts and hospitality where necessary.

## **Equality Duties**

15.5 The Commission must comply with all relevant equality duties as prescribed by legislation. Where a contractor is carrying out a public function on behalf of the Commission, the legal liability for the duties in relation to that function remains with the Commission.

If we stipulate performance conditions in any procurement agreement, we must pay due regard to whether the conditions should include equality considerations which will help us to better perform the equality duty.

The degree to which equality and diversity requirements are specified and incorporated within procurement documentation will vary according to the goods, services or works being purchased and should be assessed on a case by case basis. This will ensure that full consideration is given to the needs of, and the likely impact on, all users and others who will be affected by the contract.



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