



Regulator of
Social Housing

Procurement policy

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1. Introduction

This policy sets out aspects of procurement which must be followed at the Regulator of Social Housing (RSH) to ensure goods and services are procured with a view to: obtaining value for money; demonstrating propriety and good practice; and complying with legal requirements that apply to public sector procurement activities.

RSH has a scheme of financial delegations, under which named staff have the authority to commit RSH to expenditure, that must not be exceeded or further delegated. RSH also operates a scheme of operational decision-making and a schedule of authorised signatories which must be complied with.

2. Principles

The following key principles underpin procurement at RSH:

Principle	How we ensure this
Obtain value for money	Our 'route to market' ensures that competition is introduced by default and that offers are evaluated to determine the most economically advantageous offer. This promotes economy, efficiency and effectiveness in our expenditure.
Demonstrate propriety and good practice	RSH's procurement process is aligned to HM Government's Commercial Functional Standard ¹ to ensure that RSH meets government expectations in the planning, management and execution of procurement activities.
Comply with public sector procurement legal requirements ² : <ul style="list-style-type: none"> UK procurement and remedies rules international obligations, notably World Trade Organisation agreements contract and commercial law in general relevant case law 	Our procurement policy and process comply with legal requirements. Specifically, this policy ensures: <ul style="list-style-type: none"> Procurement activity is open, transparent and fair The form of competition chosen is appropriate to value and complexity Data protection specialists are involved in all situations involving the processing of personal data Legal specialists are involved in contracts³ Equality duties and sustainability are considered; and Barriers to small or medium sized enterprises (SME's) are removed by making our requirements clear, avoiding overly complex processes, minimising supplier procurement effort and cost, and ensuring prompt payment.

¹HM Government (2019) *Government Functional Standard GovS 008: Commercial*. Available at: <https://www.gov.uk/government/publications/commercial-operating-standards-for-government>

²HM Treasury (2019, p.99) *Managing Public Money*. Box A4.6C: the legal framework for public procurement. Available at: <https://www.gov.uk/government/publications/managing-public-money>

³Legal will determine the parameters of which contracts require legal review and support

3. Roles and responsibilities

Director of Finance and Corporate Services

The DF&CS has overarching responsibility for procurement at the RSH and undertakes key gateway controls to provide assurance, including:

- authorisation of triage meeting documentation and business case before procurement commences
- route to market determination
- selection criteria approval; and
- evaluation outcome (before award and contracting) approval.

In addition, they will:

- undertake regular reporting on procurement activity to the Executive
- notify ARAC⁴ when RSH exercises its right to utilise other options for procurement not set out in RSH's standard procurement process (section 4)
- authorise central guidance on procurement matters including procurement manual, business case templates, evaluation criteria templates and evaluation scoring templates.

Senior Assistant Director of Legal Services and Company Secretary

The Senior Assistant Director of Legal Services and Company Secretary is responsible for providing legal review of terms and conditions.

Chief Executive

The Chief Executive is responsible for approval of other options for procurement not set out in RSH's standard procurement process (section 4). All such authorisations will be reported to the next Board Audit and Risk Assurance Committee meeting by the DF&CS.

Finance

Finance ensure probity and good practice by:

- Holding an initial triage meeting with the business to document business case, consideration of equality issues, applicable Cabinet Office Spent Controls⁴, modern slavery risk assessment, proposed route to market, legal support requirements, data protection, and budget availability
- Where the contract may be above public procurement threshold⁵ ensure social value is considered in accordance with the Social Value Act 2012
- Ensuring DF&CS authorisation before moving onto the procure stage
- Maintaining central depository of business cases
- Maintaining a procurement tracker of all active procurements
- Maintaining a central register of all contract expiry dates, where applicable, to enable timely re-procurement
- Regulator procurement reporting into Executive
- Informing contract business owner six months before any contract is due to expire and providing support to ensure adequate notice is served and timely re-procurement; and
- Monitoring government procurement policy notes and identify any requirements to update this policy or central procurement guidance.

Procurement Business Owner

All procurements must have a business owner (Assistant Director or above) who is responsible for procuring goods and services in accordance with this policy and published guidance. The business owner will be recorded on the procurement tracker.

Contract Business Owner

All contracts must have a business owner (Assistant Director or above) who is responsible for ensuring the delivery of goods and services is managed, supplier performance monitored, and contractual obligations fulfilled. The contract business owner will be recorded on the procurement contracts.

⁴ <https://www.gov.uk/government/collections/cabinet-office-controls>

⁵ Available: [Microsoft Word - PPN for New Thresholds 2020 final.docx \(publishing.service.gov.uk\)](#)

4. Procurement process

RSH's four-stage procurement process is aligned to HM Government's Commercial Functional Standard⁶. The following table sets out the required activity at each stage to ensure that RSH procures goods and services using a legally compliant, fair and open process which achieves value for money:

Stage	Activity
<p>Define</p>	<p>Define the business need</p> <p>The procurement business owner should identify the procurement need and hold a triage meeting with Finance to document the business case, consideration of equality issues, applicable Cabinet Office Spent Controls, modern slavery risk assessment, proposed route to market, legal support requirements, data protection and budget availability.</p> <p>Any procurement involving personal data must be discussed with the Data Protection team at earliest opportunity to ensure data protection design is incorporated within the procurement.</p> <p>The triage meeting documentation will be sent to the DF&CS for authorisation to commence procurement. Depending upon the complexity of the procurement, the DF&CS will determine if enhanced procurement support is appropriate.</p> <p>This triage documentation including business case will be stored centrally by Finance.</p>
<p>Procure</p>	<p>The Procurement Business Owner will undertake procurement activity in accordance with this policy, procurement guidance and the Director, Finance and Corporate Services (DF&CS) approved route to market. To ensure best practice Finance will co-ordinate advice and operational support as required.</p> <p>To ensure probity and good practice in the process, Finance will facilitate all evaluation moderating meetings.</p> <p>Route to market</p> <p>The appropriate route to market depends upon the aggregate contract value detailed in section 5. The DF&CS will determine the route to market as part of the triage documentation authorisation.</p>

⁶ HM Government (2019) *Government Functional Standard GovS 008: Commercial*. Available at: <https://www.gov.uk/government/publications/commercial-operating-standards-for-government>

	<p>Supplier selection and evaluation of offers</p> <p>The procurement business owner will produce a request for quote / tender which must be authorised by DF&CS before being released externally. This will include details of the evaluation criteria.</p> <p>The DF&CS must approve evaluation outcomes before award and contracting.</p> <p>Contracting</p> <p>Terms and conditions must be reviewed by the Legal team⁷. Any contract involving the processing of personal data must be reviewed by the Data Protection team to ensure compliance with both UK General Data Protection Regulations and Freedom of Information Act 2000.</p> <p>Contracts must only be authorised and signed by those with delegations under the operational decision-making schedule and schedule of authorised signatories. The signing and sealing procedure must be followed.</p> <p>All supplier contracts will be stored within a central contract register by Finance.</p>
Manage	<p>Each contract will have a contract business owner (Assistant Director or above) who is responsible for ensuring the delivery of goods and services is managed, supplier performance monitored, and contractual obligations fulfilled.</p>
Re-procure	<p>Finance will maintain a contract expiry tracker to ensure that there is sufficient time for re-procurement prior to contract extension notification and contract end dates.</p>

⁷ Legal will determine parameters of which contracts require legal review and support

5. Route to market

Collaborative procurement through either public sector framework agreements⁸ or joint procurement with other public bodies is preferred unless RSH can achieve better value for money (i.e. economy, efficiency or effectiveness) via standalone procurement.

The contract value over its full duration must be aggregated to identify total anticipated costs, the following thresholds will determine the appropriate route to market:

Thresholds including VAT	Route to market
£6,000 or less	Market checking must be undertaken and documented to demonstrate value for money. DF&CS will decide the degree of competition required to demonstrate value for money.
£6,000.01 to £25,000.00	Either follow the requirements of a public sector framework or obtain a minimum of three written quotations to establish value for money. ⁹
£25,000.01 to public procurement threshold ¹⁰	<p>Either follow the requirements of a public sector framework or undertake an open competition to establish value for money.</p> <p><u>Advertising</u> Prescribed details of contract opportunities must be advertised on Contracts Finder (PCR regulation 110)¹¹. Notice of award containing certain prescribed information must be placed on Contracts Finder (PCR regulation 112).</p> <p><u>E-tendering (open competition only)</u> RSH will offer unrestricted and full direct access free of charge to any relevant contract documents (PCR regulation 110(12)).</p>

⁸A public sector framework agreement is an umbrella agreement negotiated with suppliers on behalf of the public sector. Framework agreements aim to deliver better value for money by standardising and aggregating procurement requirements across the public sector.

⁹If a sub £25,000 opportunity is advertised anywhere it must also be advertised on Contracts Finder

¹⁰ Public procurement thresholds. Available: [Microsoft Word - PPN for New Thresholds 2020 final.docx \(publishing.service.gov.uk\)](#)

¹¹ There is no need to advertise an opportunity on Contracts Finder or the Find a Tender if using a public sector framework as the framework opportunity will have been advertised when it was set-up.

<p>Above public procurement threshold</p>	<p>Either follow the requirements of an PCR compliant public sector framework or undertake an PCR compliant competition to establish value for money.</p> <p><u>Advertising</u> Contract opportunities must be advertised in the prescribed form and within the prescribed time limits on Contracts finder and Find a Tender (PCR Part 2, and regulation 106(1)). Contract awards must be advertised in the prescribed form and within the prescribed time limits on Contracts Finder and in the Find a Tender (PCR Part 2, and regulation 108).</p> <p><u>E-tendering</u> An e-tendering system must be used (various regulations in PCR Part 2).</p>
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Where the procurement value is within 10% of the PCR threshold for high value contracts, an PCR compliant procurement route should be considered.

6. RSH panels, legal counsel and learning and development

RSH will procure specific internal frameworks as required including one for legal and another for multi-disciplinary advice and support. These frameworks will be set-up in accordance with the procurement policy. Contracts awarded under these frameworks will be subject to authorisation as detailed in the financial scheme of delegation and will not require DF&CS approval nor follow the standard procurement process detailed in section 4.

Instruction of legal counsel is exempt from this procurement policy due to the need to obtain highly specialist and time critical legal advice.

The procurement of individual learning and development activities, including all conference attendance, is exempt from this procurement policy and will instead follow the training and conference process managed by RSH's Learning and Development team. Procurement of bulk learning and development activities (e.g. training for groups of RSH staff) is not excluded.

7. Other matters

Procurement values

The value of procurement must not be artificially split or reduced to affect the thresholds and influence the procurement route. The value of procurement should be calculated to:

- reflect the whole life cost of the procurement/contract, not just the annual value if the contract is for more than a year; and
- exclude value added tax and insurance premium tax.

Contract lengths should not be artificially split to affect the thresholds.

Other procurement options

There will be circumstances which require RSH to procure goods or services via another method not detailed within RSH's standard procurement process (section 4). In such circumstances, RSH can, on the authorisation of the Chief Executive, exercise its right to utilise other options for procurement, such as those permitted under regulation 32(2)(c) of the Public Contract Regulations 2015, and any such authorisation as set in procurement policy notes issued by the UK government.

The DF&CS must prepare a case setting out the relevant reasons with supporting evidence. Having considered the reasons and taken legal advice, the Chief Executive will determine whether other procurement options can be taken. The DF&CS will report all such authorisations to the next Audit and Risk Assurance Committee meeting.

This procedure should not be used to avoid competition or for administrative convenience.

Evaluation

Optimum contract award decisions resulting from effective bid evaluations are fundamental to achieving value for money. All bids and tenders should be evaluated carefully against the award criteria and weighting set out in the documentation made available to all bidders. An Evaluation Panel will evaluate bids and keep careful records of the decision-making process and an evaluation matrix will be used to record the score of each bidder against the stated criteria. Documented bid evaluations reduce risks of legal challenge and reputation damage by being demonstrable to the bidders that an effective, transparent and non-discriminatory process was rigorously followed.

In accordance with RSH duties under the Bribery Act 2010, evaluation panels should consist of a minimum of two members. Panel members must have no real or apparent conflicts of interest relating to the quotes / tenders being evaluated including: a financial interest in a company under consideration; or a personal interest, including partner, relative or friend working at a company under consideration. RSH's declaration of interest guidance sets out the actions to be taken in the event of any member of staff having any conflict of interest in relation to a procurement exercise.

The DF&CS must authorise the award before communication with bidders.

Awarding contracts

Bidders will be notified of contract award in writing. Unsuccessful bidders will be advised in writing about the award decisions and will be provided with an appropriate debrief.

Equality and diversity

The Equality Act 2010 requires RSH both to eliminate discrimination and to promote equality. This duty cannot be transferred to external suppliers, but RSH will consider its responsibilities and where appropriate seek to include relevant contractual provisions into contracts with suppliers.

Consideration of equality issues is included within the initial triage meeting, this ensures that equality and diversity is considered when developing specifications, sourcing suppliers, preparing pre-qualifications, inviting bids, developing performance indicators and drafting contracts.

Small, medium enterprises

In accordance with government policy, RSH supports small, medium enterprises (SMEs) bid for contracts by:

- Ensuring prompt payment to suppliers and where a contract is let with prime contractors, contractual provisions ensure that payments flow down through the supply chain without undue delay
- Operating a simple process without pre-qualification questionnaires for contracts less than public procurement thresholds; and
- Publishing opportunities in excess of £25,000 (including VAT) on Contracts Finder.

Modern slavery

RSH follows best practice government guidance¹² in ensuring suppliers understand the risk of modern slavery in supplier chains and take appropriate action to identify and address those risks. All procurements include a risk assessment of modern slavery with any medium or high risk rated procurement including modern slavery specification, award criteria, and contract management actions.

¹² Government Commercial Function (2019) Tackling modern slavery in government supply chains: a guide for commercial and procurement professionals. Available at: [Procurement Policy Note 05/19: Tackling Modern Slavery in Government Supply Chains - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/procurement-policy-note-0519-tackling-modern-slavery-in-government-supply-chains)

Sustainability

Sustainable Procurement is 'a process whereby organisations meet their needs for goods, services, works and utilities in a way that achieves value for money on a whole life basis in terms of generating benefits not only to the organisation, but also to society and the economy, whilst minimising damage to the environment'¹³.

Sustainability will be ensured within the four-phase procurement process by:

- Identifying relevant environment issues at the triage meeting including the full life cycle of goods and services to be procured
- Including sustainable requirements, where relevant, in the specification (i.e. meeting requirements of any Government Buying Standards¹⁴)
- Evaluating bidders' responses to sustainable requirements; and
- Managing contracts using agreed delivery targets.

Freedom of Information

All procurement documentation may have to be supplied to anyone making an Freedom of Information (FOI) request under the FOI Act 2000 request.

¹³Department for Environment, Food and Rural Affairs (2006), Procuring the Future. Available at: <https://www.gov.uk/government/publications/procuring-the-future>

¹⁴ Government Buying Standards set sustainability criteria for public procurements

Annex 1: Procurement Legal Framework

The legal landscape

We must also comply with all legislation affecting our procurement activities. These include:

Public Contract Regulations 2015 (PCR 2015) enshrine EU procurement requirements into UK law and will remain in force for the foreseeable future with amendments where needed as a result of leaving the EU (e.g. above threshold contracts will need to be advertised on Find a Tender instead of OJEU¹⁵). The Regulations oblige us to conduct procurement activity in an open and transparent manner. Tenders and contracts entered into without complying with PCR 2015 may result in the procurement exercise and subsequent contract being legally challenged by an aggrieved party. If we are challenged the courts have the power to automatically suspend the contract award, apply financial damages against the RSH, declare the contract ineffective and issue the RSH with an unlimited financial penalty. In addition, we may suffer delays, disruption/impact of services, reputational damage, further legal and business costs.

World Trade Organisation Government Procurement Agreement which regulates the procurement of goods and services by the signatories based on the principles of openness, transparency and non-discrimination.

Equality Act 2010 the general public sector equality duty applies to all contracts regardless of value. As a public authority we cannot delegate our obligations under the Act to a contractor. We must have regard to the three aims of the general equality duty when we procure and be able to demonstrate compliance.

Modern Slavery Act 2015 requires public authorities to identify the risk of modern slavery to contracts to establish if modern slavery can or should be factored into the specification and how it should be factored into selection, award and contract management stages.

Bribery Act 2010 requires public authorities to show that they are taking all reasonable steps, including in procurement, to avoid accusations of or the appearance of bribery or corruption.

General Data Protection Regulations aims to protect the privacy of citizens and prevent data breaches. In procurement, public authorities must identify the data

¹⁵ Official Journal of the European Union

controller and processor and the roles and responsibilities of each within the contract, to ensure data protection compliance.

The Public Services (Social Value) Act 2012 sets out the requirement for public sector spend to consider Social, Economic and Environmental impacts at the pre-procurement stage. Procurement activity should seek to ensure that Social Value is built into contract specifications wherever possible.

Freedom of Information Act 2000 enables both the public and commercial entities to request information that a public body holds about or arises from any of its public procurement exercises or contractual arrangements. You should establish and note at the start of the process which information will be made publicly available and what will be exempt in the event an FOI request is received.

Late payment of Commercial Debts (Interest) Act 1998 and Regulations 2013 which impose statutory interest payments on public services purchasing goods and services where they fail to pay invoices within 30 days of receipt (or within another timescale set out in statute or the contract). The regulations aim to stop the culture of late payment by public authorities, particularly where suppliers are small and medium sized enterprises and where late payment could lead to financial difficulties, job losses and even insolvency.