

Construction Procurement Handbook

Chapter 3

Construction Procurement Route Selection

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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 described 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* and on the webpages at this link:

[Summary of Procurement Thresholds](#). 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 ¹		£2m	£50k
OJEU ²	Central Government	£4,551,413 See thresholds	£118,133 See thresholds
	Other Contracting Auths	£4,551,413	£181,302
	Small Lots	£820,370	£65,630

Figure 1 – Public Contract Procurement Thresholds as at 1 January 2018

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 OJEU thresholds. That said, we recommend that the use of similar processes for all below OJEU 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 OJEU 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.

¹ Section 3 of the Procurement Reform (Scotland) Act 2014 sets out the thresholds for contracts regulated under that Act.

² The OJEU thresholds are correct as at 1 January 2018. The amounts are amended biannually therefore reference to the [SPCD website and the table of EU thresholds](#) should be made for the latest rates.

		Construction Procurement Route 1		Construction Procurement Route 2	
Sub-route		A	B	A	B
Thresholds	Goods and Services	Below £50k	Below £50k	£50k – OJEU	OJEU Threshold
	Works	Below £2m	Below £2m	£2m to OJEU	OJEU Threshold
Procurement Legislation		Case Law	Case Law	Procurement Reform (Scotland) Act 2014	Public Contract (Scotland) Regulations 2015 Procurement Reform (Scotland) Act 2014
Risk		Low and Medium	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.	Should be advertised on PCS and 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. We recommend that proportionate to the specific case that following similar procedures to those required for above OJEU 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).
- CPR1A should be considered the default position for letting all contracts below the Procurement Reform (Scotland) Act 2014 thresholds where the decision matrix indicates it is appropriate.

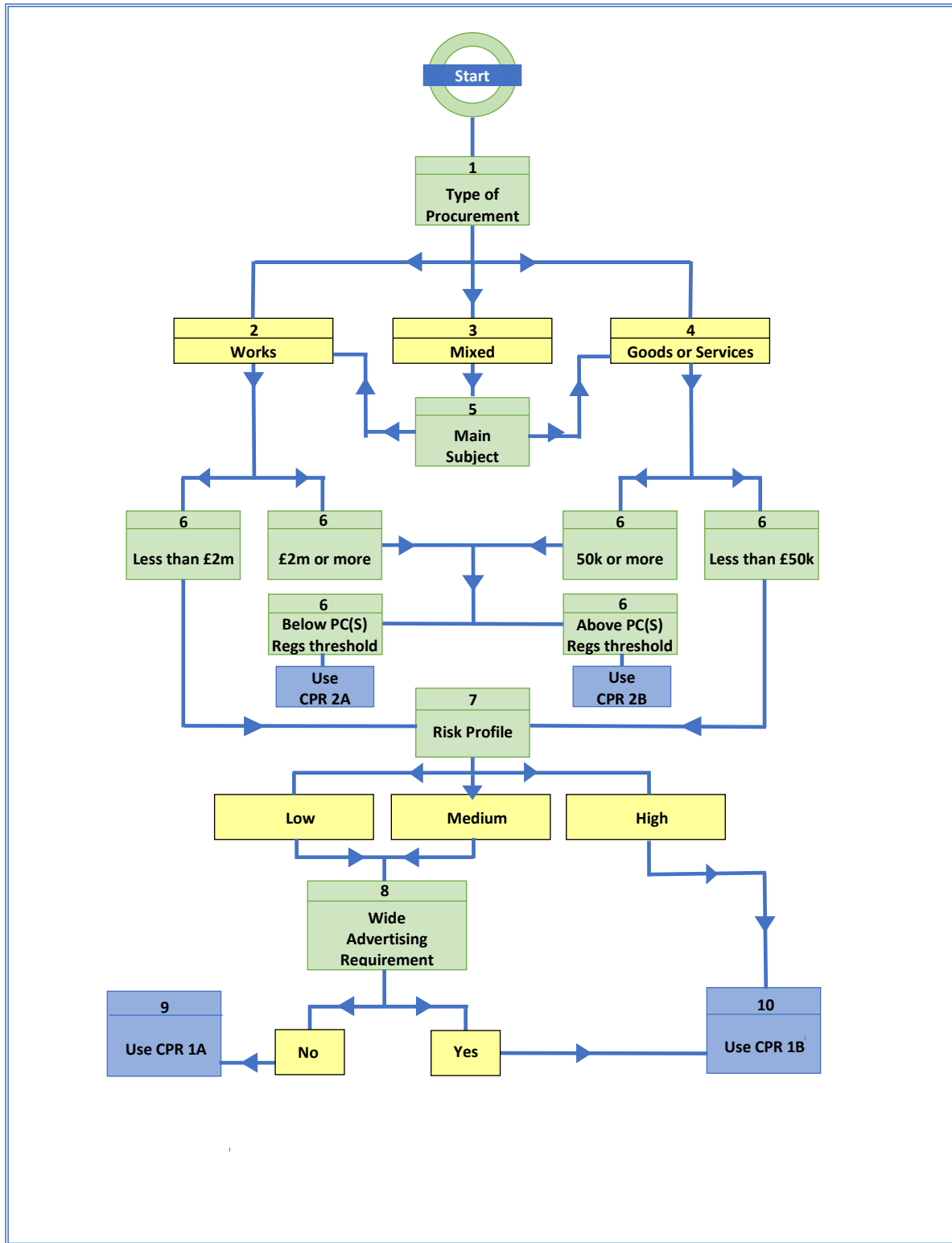
4.4 The use of CPR1A or B does not relieve contracting authorities of the responsibility to carry out a fair and transparent procedure or to maintain an accurate record of the process. Nor is it a substitute for robust and open procedures. Contracting authorities should be able to provide evidence that 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 OJEU 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 Matrix³



³ 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 OJEU thresholds and is not a legal requirement for below OJEU threshold procurements, it is, nevertheless, a useful definition and one which could be applied, for consistency, to below OJEU threshold procurements (it should in any case be applied in this matrix as procurements going through the flow chart may be subject to OJEU 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 2.1](#) 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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