

# Scottish Procurement Policy Handbook

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## 1. Introduction, applicability and legal framework

This Handbook provides guidance on the rules and policies that apply to the procurement activities of public bodies in Scotland. It also highlights some key legal obligations.

The Handbook does not replace a public body's own procurement policy manual or sector-specific policy guidance. It is not legal advice and should not be read as such. Public bodies should seek their own legal advice in relation to any questions and issues they may have. Public bodies should also review, and amend where appropriate, their own policies and procedures so that they are consistent with this Handbook's principles.

The guidance set out in this Handbook is designed to ensure that procurement activity is:

- focused on the delivery of Value for Money (VfM) for public funds
- conducted to high professional standards and to the relevant legal requirements
- conducted by appropriately trained and authorised staff to minimise the risk of legal challenge to public bodies
- accountable, with strong governance practices in place
- open and transparent.

In addition, to help us achieve the aims and priorities of the [National Performance Framework](#), we are expected to conduct our procurement activities in a way which is:

- good for businesses and their employees
- good for society
- good for places and communities
- open and connected.

These outcomes underpin our [Public Procurement Strategy for Scotland](#) (PPSS).

Please note that failure to comply with the legislation and policies as set out in this Handbook may result in formal challenges and complaints being brought against the public body alleging a breach of these rules. The consequences of a successful challenge may, depending on the nature of the breach, result in the public body being fined, the duration of a contract being shortened, award of damages against the public body, and/or reputational damage to the public body.

## Applicability

The Handbook applies to all devolved Scottish contracting authorities (bodies governed by public law, also referred to as public bodies). Compliance with the requirements of the Handbook is expected to feature prominently in internal and external audit scrutiny.

Any public body which fails to comply with the principles and requirements of this Handbook and to apply good practice procurement processes and procedures is unlikely to be able to demonstrate VfM, or be able to demonstrate adequate governance and accountability for the appropriate management of expenditure.

## Legal framework

Public sector procurement in Scotland takes place within a framework of rules and this Handbook should be read in conjunction with these rules, which include the following:

- [Procurement Reform \(Scotland\) Act 2014](#) (the 2014 Act)
- [the Public Contracts \(Scotland\) Regulations 2015](#) (the 2015 Regulations)
- [the Procurement \(Scotland\) Regulations 2016](#) (the 2016 Regulations)

And if conducting Concessions or Utilities procurements, then the following:

- [the Concession Contracts \(Scotland\) Regulations 2016](#)
- [the Utilities Contracts \(Scotland\) Regulations 2016](#)

The Handbook should also be read in conjunction with the internal governance of the relevant public body. Scottish public bodies are also bound by obligations from the [World Trade Organization Government Procurement Agreement \(GPA\)](#) and international trade agreements which are included in regulations covering higher value procurements. By following the legal framework referenced above, public bodies will ensure compliance with these agreements. In relation to procurements covered by these agreements, public bodies in Scotland must give no less favourable treatment to suppliers from signatories of these agreements than those from the UK. GPA signatories and relevant international trade agreements are listed in the appropriate schedules of the applicable regulations.

The Handbook should be read in conjunction with the above legislation and:

- the [Procurement Reform \(Scotland\) Act 2014: statutory guidance \(“the statutory guidance”\)](#)
- the Scottish Government [Public sector procurement](#) webpages
- the [Procurement Journey](#) - which provides guidance, best practice and templates for public bodies on the procurement of goods, services and care and support services
- the [Client Guide to Construction Projects](#) - which provides specific policy and guidance for public bodies on the procurement of construction related contracts
- the [Sustainable Procurement Tools](#) - which are designed to help public bodies identify and address how they can optimise the economic, social and environmental outcomes of their procurement activity
- other guidance or updates issued by Scottish Procurement and Property Directorate, including [Scottish Procurement Policy Notes](#) (SPPNs) and [Construction Policy Notes](#) (CPNs) - which provide updates on procurement policy and legal developments
- [Procurement of care and support services: best practice guidance](#) when conducting procurement for care and support services.

### Scope of public procurement

Public procurement is the process where public bodies buy goods, services and works from third parties. Public bodies should take care to ensure all their contractual agreements are written and formalised.

References to procurement in this Handbook do not cover other funding agreements, for example grant funding, or non-contractual cooperation between public bodies. Please refer to your public body’s rules and governance procedures for these types of agreements.

Public bodies can employ agents to buy on their behalf. This should be done through a public contract where the agent: is required to follow the relevant public procurement rules; has a clear role and responsibilities; and provides indemnity against any costs which may result from a compliance failure. Public bodies should refer to their own internal policies and procedures when employing others to buy on their behalf and must also take responsibility for ensuring any such procurement is conducted lawfully.

### Procurement thresholds

The estimated value of a contract determines which procurement regime applies. The 2014 Act applies to public contracts with an estimated value of £50,000 (excluding VAT) or above for goods and services contracts, and £2,000,000 (excluding VAT) or above for works contracts.

The 2015 Regulations apply to the procurement of contracts equal to or above the GPA financial thresholds. The value of these thresholds in sterling is revised every two years. Wherever VAT may be payable under these contracts, an allowance for VAT must be included in the calculation of the estimated value of the contract for the purposes of determining whether the contract equals or exceeds the threshold values, which are available here: [Procurement threshold values](#).

### Principles of procurement

Public procurement in Scotland must respect the following principles of procurement written into procurement legislation:

- equal treatment
- non-discrimination
- proportionality
- transparency.

[Regulated Procurements](#) must be conducted according to the principles of procurement, and as a matter of best practice, all other procurements undertaken in the Scottish public sector, regardless of value, should also follow these principles.

## 2. Purpose and governance

The [National Performance Framework](#) provides a common purpose and values for all of Scotland. It aims to create a more successful country with opportunities for all through increased wellbeing and sustainable and inclusive growth. Procurement has a key role in achieving this.

### Public Procurement Strategy for Scotland (PPSS)

The [PPSS: 2023 to 2028](#) provides a future high-level vision and roadmap for Scottish public procurement which all public sector bodies can align to and deliver against.

### Governance and audit

Information on the governance structure for public procurement for Scotland, including the Public Procurement Group (PPG) and Procurement Supply Group (PSG) is available at the following link: [Public procurement: governance](#).

Each public body is responsible for ensuring its procurement activity is appropriately governed and accountable. This may include having internal audit arrangements to provide an independent assessment of procurement performance. An appropriate level of risk assurance may be set by an audit committee and reported on annually by internal audit. The Scottish Public Finance Manual provides guidance on:

- [establishing and operating audit committees](#)
- [internal audit arrangements and procedures](#).

Public bodies should be able to demonstrate how their corporate governance is helping them to achieve best value and may also be asked to show how they are complying with public procurement law. [Audit Scotland's](#) programme of performance audits may further scrutinise and report on a public body's procurement systems and their effectiveness.

### 3. Procurement function

Public bodies should have procurement arrangements which are appropriate for their buying needs. This can be through a public body's own dedicated procurement function or a shared resource. Someone at an appropriately senior level relevant to the public body should have clear ownership of procurement and commercial matters.

Having the right procurement arrangements in place can, among other things, help a public body to achieve [Best Value](#) focusing on good governance and effective management of resources while achieving the best possible outcomes.

#### Role of the procurement function

The specific role of the procurement function can vary depending on the size and nature of a public body. Its general function is to:

- provide professional procurement expertise, advice and services
- ensure business needs are met through procurement activities
- contribute to the aims and objectives of the public body
- develop the supplier base, involving Small and Medium-sized Enterprises (SMEs), the third sector and supported businesses
- identify and manage supply risks
- identify opportunities where value can be added
- ensure that VfM is achieved
- develop, promote and implement procurement strategies and procedures
- identify and address training needs, using national/sectoral training contracts where appropriate
- co-ordinate the training and registration of Procurement Officers
- assess procurement competencies across the public body, using tools such as the [national procurement competency framework](#)
- collaborate and share information with relevant [Procurement Centres of Expertise](#) and the Scottish Government
- support national and regional objectives through procurement
- comply with all relevant legislation and policies
- promote the use of technology, including e-procurement, to improve cost efficiencies, for example minimising purchase-to-pay costs
- manage the relationship between the public body and the external marketplace on commercial matters, engaging with and researching the market



- determine requirements and specifications in collaboration with customers, the market and service users as relevant and appropriate
- manage competitions and contract awards
- ensure proportionate contract management is undertaken
- maintain a comprehensive contracts register
- determine governance required for delegated purchasing authority (DPA - the authority given to an individual to sign-off contracts/make purchases)
- measure and report performance of the function as appropriate
- encourage participation of users/feedback within relevant advisory groups (user intelligence groups).

### Role of Procurement Officers

A Procurement Officer describes a member of staff who has written DPA. It is good practice for a public body to have governance in place to provide DPA to individuals to allow them to commit a public body to a contract for the purchase of goods, services or works and is completely separate from delegated budgetary authority. The key elements of the Procurement Officer's role are:

- market analysis and initial market dialogue
- challenging the requirements of customers for best value and fitness for purpose, taking account of whole life costs and other issues such as sustainability
- identifying and engaging other subject experts as required (e.g. end user, legal, finance, equality, diversity, climate etc.)
- working with customers to carry out preliminary market engagement and co-design as appropriate
- working with customers to develop a specification which can attract market interest while stimulating competition and innovation
- developing a commodity/service strategy which considers existing and/or collaborative contracts
- advising customers on the most appropriate and effective route to market, considering all available options
- conducting and managing the full procurement process
- ensuring all procurement processes (tender, order from framework etc.) comply with legal and policy and the relevant public body's internal governance obligations
- ensuring transparency throughout the bidding process, sharing all relevant information with interested suppliers

- ensuring procurement decisions are aligned with wider organisational objectives and policies
- supporting partnership working arrangements
- asking bidders for clarification on bids before the award of contracts when necessary
- finalising the contractual agreement and formal contract documentation
- maintaining a clear audit trail (including recording the contract on the public body's contract register)
- giving feedback to bidders who have been successful and unsuccessful to promote improved performance in future
- ensuring adequate contract and supplier management arrangements are in place, as appropriate
- sharing knowledge to develop best practice
- conducting due diligence on suppliers
- managing and conducting contract modifications.

A Procurement Officer's first point of contact for advice and support will be an appropriately senior person for the public body that they belong to. In addition, a public sector Procurement Officer can also contact the appropriate Procurement Centre of Expertise for further help:

- [Scottish Procurement & Property Directorate](#): awards national and sectoral contracts on behalf of the Scottish Government, its Agencies and Non-Departmental Public Bodies
- [Advanced Procurement for Universities and Colleges](#): awards contracts on behalf of the Higher and Further Education sector
- [NHS National Procurement](#): awards contracts on behalf of the Health sector
- [Scotland Excel](#): awards contracts on behalf of Scottish local authorities (councils).

### Identifying organisational purchasing requirements

The role of identifying a public body's procurement needs is not normally undertaken by a Procurement Officer. It normally falls to someone else within the public body, who should:

- establish clearly defined needs while ensuring there is appropriate consultation with users and their representative bodies
- ensure that the requirement takes account of the public body's policy requirements and is aligned with organisational objectives
- ensure compliance with legal obligations related to what is being bought, e.g. environmental/health and safety legislation, the United Nations Convention on the Rights of the Child (UNCRC), equality legislation etc.
- prepare a business case where appropriate
- ensure that funding is in place
- identify key stakeholders to support co-design and preliminary market engagement as appropriate
- contribute to drafting the tender specification
- contribute to the development of the commodity/service strategy
- be involved throughout the life cycle of the procurement exercise from implementation to review to ongoing intelligence groups
- provide technical expertise and input to support the bid assessment process
- prepare the technical recommendation in any bid assessment report
- participate in bid evaluation panels or identify suitable subject matter experts to do so
- prompt payment of suppliers as per contract payment terms
- monitor and evaluate progress against Key Performance Indicators (KPIs) and work with supplier on continuous improvement
- flag any early warning signs of potential supplier failure to procurement colleagues.

## Separation of roles

The roles of Procurement Officer and budget holder/approver should never be performed by the same person, and customers should not deal directly with bidders or potential bidders once a formal procurement process is underway without the full involvement of the Procurement Officer. Ideally, the technical aspects of a tender should not be evaluated and/or scored by a Procurement Officer, and the financial/commercial aspects must not be evaluated and/or scored by the customer scoring the technical aspects. Separating these roles can help protect a public body from the risk of improper practice and behaviour.

Any actual, potential, or perceived conflicts of interest must be declared. Public bodies must take appropriate measures to prevent, identify, and remedy conflicts of interest arising in the course of the procurement process to avoid any distortion of competition and to ensure equal treatment of all bidders.



## 4. Continuous improvement

Public bodies should regularly assess their procurement capability to continuously improve the procurement and commercial skills of their staff. People involved in awarding and managing contracts should have the right level of professional skills, knowledge, qualifications or experience. This means seeing learning and development as an investment and tailoring it to individual and organisational needs. Doing so can increase the strategic impact of procurement spending decisions while keeping them legally compliant and delivering VfM. This can be achieved through training courses, coaching, mentoring, peer-to-peer learning, job-shadowing and other forms of continuous professional development.

### The Procurement & Commercial Improvement Programme (PCIP)

Procurement Officers should be aware of the [Procurement & Commercial Improvement Programme \(PCIP\)](#), which is a key tool for encouraging and enabling continuous improvement in Scottish public sector procurement. The PCIP assessment process is not an audit but provides a means of measuring and reporting on the procurement and commercial capability of public bodies. The relevant Centre of Expertise will confirm (in agreement with each public body) which level of PCIP assessment is required and when.

### Professional skills

The [National Procurement Development Framework](#) tool can be used to assess skills, identify training and development needs, and support career planning. This free-to-use online tool hosts the national competency framework for the procurement profession in Scotland. It signposts related training available through the national [procurement and commercial training frameworks](#) and also from professional bodies such as the [Chartered Institute of Procurement & Supply \(CIPS\)](#), the [Association for Project Management \(APM\)](#) and the [Chartered Management Institute \(CMI\)](#). The global standards of these professional bodies are also aligned in the tool to the national competency standards for Scotland.

### Recruitment and retention

Public bodies should review their resourcing and talent management plans regularly. Attracting, retaining and developing procurement staff allows for longer term strategic planning, builds capability and protects against skills gaps in the future.

The [Procurement People of Tomorrow \(PPoT\) programme](#) focuses on encouraging, enabling and developing new entrants in the procurement profession across Scotland. Public bodies can benefit from modern apprenticeships, graduate programmes, internships, student placements and other programmes which encourage more diverse entrants into their procurement functions.

### 5. Value for money

For Regulated Procurements, contracts should not be awarded on the basis of lowest price only, and contract award criteria must be specifically designed to assess and award on the basis of VfM. The award stage will identify which of the eligible tenders will deliver best VfM. This is established using the Most Economically Advantageous Tender (MEAT) contract award criteria. It is Scottish Government policy that all Regulated Procurements are awarded based on MEAT, as well as a legal requirement for all contracts awarded in accordance with the 2015 Regulations, the Utilities Contracts (Scotland) Regulations 2016 and the Concession Contracts (Scotland) Regulations 2016. Unregulated contracts should be awarded in line with the relevant public body's internal guidance.

In addition to the quality of products and services, Procurement Officers must also consider factors such as the [Sustainable Procurement Duty](#) (please see the Sustainable Procurement sections in this handbook for further detail). In this context, Whole Life Costing and Life Cycle Costing should also be considered.

Procurement Officers must also be mindful of abnormally low tenders. Where a tender appears to be abnormally low, the price being proposed must be clarified by the Procurement Officer to ensure that it is valid and sustainable, and is not a result of a breach of applicable environmental, social or labour law obligations. For more information on abnormally low tenders please see the [Procurement Journey](#) for goods and services contracts, or for works contracts see the [Client Guide](#) which includes a tool to help identify potentially abnormally low tenders.

Public bodies should set out how they plan to deliver VfM through procurement in their commodity/service strategy.

They can achieve VfM by:

- fully involving people whom the goods/services/works will have an impact on to ensure their needs are being met and to minimise unintended consequences
- understanding the marketplace and supporting a collaborative approach to the market where appropriate
- seeking out opportunities for innovation
- selecting the appropriate route to market, applying fair, open and transparent duties to processes as appropriate
- utilising an effective and efficient contract & supplier management approach.

Further tools and support are available to help public bodies analyse spend and identify savings through the [Scottish Procurement Information Hub](#) and [procurement benefits reporting guidance](#).

## 6. Collaborative procurement

Collaborative procurement can help public bodies achieve VfM while delivering economic, social and environmental benefits. It involves public bodies' buying teams, the Scottish Government, Procurement Centres of Expertise and suppliers working in partnership. This collaboration can:

- increase spending power
- make for more efficient use of procurement resources and skills
- result in greater sharing of best practice
- encourage competition and innovation in the marketplace.

There are a number of collaborative contracts and frameworks which public bodies can use to buy a range of goods and services. These are divided into four categories:

- **Category A** – national contracts let and managed by the Scottish Government
- **Category B** – sectoral contracts let and managed by the Procurement Centres of Expertise
- **Category C** – local contracts with one public body
- **Category C1** – local or regional contracts which involve a group of public bodies pooling their buying power and resources.

Public bodies should use existing collaborative contracts and frameworks when possible and appropriate. Contract registers for Categories A and B are available on the links below:

- [Scottish Government](#)
- [APUC](#)
- [NHS National Procurement](#)
- [Scotland Excel](#)
- [Crown Commercial Services Framework Agreements](#)

## 7. Competition and document retention

### Competition and advertising

Contracts must be awarded through genuine and effective competition unless there are exceptional and justifiable reasons not to do so. Individuals with the appropriate level of DPA are responsible for identifying the most appropriate procurement process that is likely to offer the best VfM.

As part of developing a [commodity/service strategy](#), consideration should be given to any existing [contracts and framework agreements](#) which may be appropriate for the procurement.

Caution must be exercised regarding the use of speculative frameworks. Some factors to be considered in this area can be found in [SPPN 3/2017](#).

A Procurement Officer can use the [Quick Quote](#) function (an online competition process within PCS) to undertake a competitive quotations process for a low value and low risk procurement, however a decision may be made to conduct an open competition for such a procurement if more suitable. The Quick Quote function can also be used to run a mini competition (further competition) to call off from a framework as the functionality allows the Procurement Officer to restrict the suppliers being invited to tender to the appropriate framework suppliers only.

All [advertising notices](#) for competitive tendering procedures for Regulated Procurements must be advertised on Public Contracts Scotland (PCS).

The award of a contract or the conclusion of a framework agreement must also be published on PCS. Exemptions to some or all of these publication requirements apply in certain circumstances. For more information see [regulation 51\(6\)](#) of the 2015 Regulations and [regulation 7\(8\)](#) of the 2016 Regulations.

For Research & Development/innovation services more information can be found on the [Procurement Journey](#).

PCS has more information on how to complete notices which can be found in the [Buyers' Area](#) of PCS. Please also see threshold and contract value estimation [FAQs](#).

PCS can also be used to advertise sub-contracting opportunities to promote a diverse and resilient supply chain, opening up opportunities for SMEs, the third sector and supported businesses as appropriate. For more information please see [SPPN 5/2019](#).

In addition to forms contained within systems, such as PCS and PCS-Tender, a number of templates and other relevant documents can be found in the Procurement Journey [Document Library](#) which can be useful to consult when planning procurements.



### Direct Award (award of contract without competition)

For a direct award there should be a process for considering requests to:

- dispense with competition and award a new contract directly to a specified supplier
- modify an existing contract where there is no clear, unequivocal clause to do so within the existing contract.

Buying goods, services or works without competition should require prior approval by someone who will not otherwise be involved in the award of the contract before any purchase is made. Approval should be granted in exceptional circumstances only and obligations under procurement legislation must be considered.

[Regulation 72](#) of the 2015 Regulations includes specific provisions on the circumstances in which changes or variations may be made to a current contract without requiring a new procurement procedure. Depending on contract value, either [regulation 33](#) of the 2015 Regulations or [regulation 6](#) of the 2016 Regulations set out circumstances in which a contract can be awarded without competition. When considering any of these, the overarching principle is that they should only be used in limited circumstances, in accordance with internal manuals/instructions and, where required, legal advice.

Whilst a decision on whether there are grounds to justify the direct award of a public contract should consider all relevant legal obligations and any decision should be taken on the merits of the individual case, some examples of where grounds may exist include, but are not limited to:

- extreme urgency due to unforeseen circumstances, covering the immediate need
- where there is only one possible supplier
- modifying an existing contract where the modification is not substantial.

Factors which may not constitute sufficient grounds include but are not limited to:

- lack of planning on the public body's behalf (e.g. of scope, timelines or risk)
- lack of internal resources.

Please note the process involved in awarding a contract where there has not been any prior competition (i.e. a direct award) is very similar to the process of awarding a contract after a competitive tendering process. There is still a requirement for a Procurement Officer to undertake many of the steps that would form part of a competitive tendering exercise, such as ensuring a specification sets out key deliverables with timelines, the contract will deliver VfM and due diligence is undertaken in advance of entering into any contract.

In all cases, the guiding principles are that direct award approval is by someone authorised to take such a decision and that person should have no other role in the award of the contract to ensure adequate separation of duties. For audit purposes, the direct award justification and approval must be formally recorded along with robust supporting evidence.

### Retention of documents

Public bodies should ensure that they keep sufficient documentation on their official records management system to justify the decisions they take at all stages of the procurement process. These documents include:

- communications with bidders and internal deliberations
- preparation of the procurement documents
- dialogue or negotiation (if any)
- selection and award of the contract.

The documentation referred to above must be kept for a period in line with the relevant public body's governance arrangements. For contracts awarded under the 2015 Regulations, [regulation 82](#) requires public bodies to keep copies of all contracts "at least for the duration of the contract" where the contract value is equal to or greater than £884,720 in the case of public supply contracts or public service contracts, and £8,847,200 in the case of public works contracts.

Good records management can help with preparing reports and responding to possible challenges or Freedom of Information requests. It is the responsibility of the Procurement Officer to ensure that key documents for each contract are filed promptly.

## 8. Transparency

Public bodies have legal obligations to publish information about their procurement processes and activities. A good level of transparency can also help a public body to:

- improve the design and delivery of contracts by encouraging feedback and increasing accessibility to information
- promote innovation and collaboration by empowering the private sector and wider society to engage
- build trust in public services by increasing accountability.

### Procurement strategy

Public bodies in Scotland are legally obliged to:

- publish a procurement strategy before the start of any financial year when they expect a total Regulated Procurement spend equal to or greater than £5 million (excluding VAT)
- review an existing strategy each year and make any changes they consider appropriate
- publish a strategy as soon as possible when there is no existing strategy and spend on contracts for its Regulated Procurements is about to reach or exceed the £5 million threshold unexpectedly.

More details about what should be included in a procurement strategy and when it should be published or reviewed are in [sections 15 to 17 of the 2014 Act](#), the Procurement Journey's [Procurement Strategy & Annual Procurement Report](#) page and [section 2 of the statutory guidance](#).

A clear, comprehensive and effective procurement strategy should bring strategic focus to a public body's procurement activities and help it achieve its wider aims and objectives in line with the [National Performance Framework](#). It can result in greater mutual understanding with stakeholders and improved performance through increased transparency and greater consistency of approach.

### Annual procurement report

Public bodies which are legally obliged to have a procurement strategy are also required to publish an annual report on their Regulated Procurement activities as soon as reasonably practicable after the end of their financial year. Requirements set out in [section 18 of the 2014 Act](#) with further information in [section 2 of the statutory guidance](#) are complemented by a template for reporting requirements issued by the Scottish Government shortly after March each year. Publication of annual procurement reports supports increased transparency.

Annual procurement reports are an opportunity for public bodies to measure their progress against their strategy and for stakeholders to hold them to account. A report can also show how well procurement is contributing to a body's wider aims and objectives.

For those public bodies who are not legally required to create a procurement strategy or complete an annual procurement report, it is recommended as best practice to compile a procurement strategy and an annual report that are proportionate to the procurement activity of the public body.

### Public Procurement Strategy for Scotland

The PPSS provides a high-level vision and direction for Scottish public procurement. Procurement Officers should familiarise themselves with the PPSS and the procurement strategy of their own public body and consider how their procurement exercises will help to deliver against both.

### Annual Report on Procurement Activity in Scotland

The 2014 Act also requires Scottish Ministers to publish an annual report on procurement activity in Scotland. This report provides an overview of public procurement activity that is informed by the individual annual procurement reports published by public bodies in Scotland. A copy of the Ministers' report must be laid in Parliament.

### Contract awards

Public bodies have a number of other legal obligations to increase transparency. These are to:

- keep and maintain a public register of [Regulated Contracts](#) ([section 35](#) of the 2014 Act).
- advertise Regulated Contract opportunities and publish award notices on [PCS](#) ([sections 22 and 23](#) of the 2014 Act).
- give reasons to organisations which have been unsuccessful in a Regulated Procurement and provide feedback on request ([sections 32 and 33](#) of the 2014 Act, and [regulation 85](#) of the 2015 Regulations), unless the public body deems that such information should be withheld ([section 34](#) of the 2014 Act).

These activities can benefit public bodies more widely by encouraging suppliers to bid for contracting opportunities. Potential suppliers are put in a better position to know about opportunities and to plan for them. They also have the opportunity to learn and improve from any feedback they receive. This can increase the overall quality and value of the goods, services or works on offer.

### Freedom of Information (FOI)

[The Freedom of Information \(Scotland\) Act 2002](#) gives people a general right to ask public bodies for information they hold about public contracts and procurement activity. Public bodies are legally obliged to answer valid FOI requests within 20 working days. Any information they give is subject to certain conditions and exceptions. This includes following the [Data Protection Act 2018](#) when processing personal information.

Answering requests well can build trust and confidence in how a public body spends its money and its overall performance. It can also encourage greater competitiveness in the marketplace.

Guidance on handling FOI requests is available at: [general guidance from the Scottish Information Commissioner](#).

## 9. Relationships with suppliers

It is important to have the right processes in place for working with suppliers in an open and transparent manner. This can reassure the marketplace that the public body conducts its business in a way that is fair, proportionate and transparent. It can also build confidence among wider stakeholders that the right steps are being taken towards achieving continuous improvement and VfM.

Effective use of procurement processes can help a public body to select suitable suppliers. These include:

- pre-market engagement/consultation to assess the market
- [tender clarification](#) where Procurement Officers can ask bidders about quality performance or the terms and conditions of contracts
- post-tender negotiation where Procurement Officers can contact the preferred bidder(s) to refine and improve their bids. It is only available in limited circumstances
- [standstill period](#) which aids transparency of the award decision process
- [debriefing](#) where bidders can request feedback which allows them to make improvements for future bids.

### Supplier selection and exclusion: the Single Procurement Document (SPD)

Public bodies risk delivery failure and reputational damage if they select suppliers which do not have the capability and capacity to deliver. Suppliers to the public sector must work professionally and meet high standards. They are required to comply with legislative and policy requirements on the environment, equality issues, health and safety, modern slavery, employment, prompt payment and taxation.

The SPD is a standard form that includes bidder exclusion and selection questions. It is mandated for use in all procurements covered by the 2015 Regulations, and it is best practice to use it in all other procurements covered by the 2014 Act.

One of the aims of the SPD is to simplify the procurement process by enabling bidders to self-declare that they have not breached any of the grounds for exclusion, and that they meet the relevant selection criteria. SPD Modules are available in [PCS](#) and [PCS Tender](#) (PCS-T). Guidance on the SPD can be found in the [Procurement Journey](#) and further guidance relating to construction can be found in [Chapter 7 of the Construction Procurement Handbook](#).

When carrying out Regulated Procurements, Procurement Officers must take account of the [mandatory and discretionary exclusion grounds](#) which apply. Further guidance can be found in the Procurement Journey. In all cases a bidder will have an opportunity to provide evidence that it has taken remedial action to demonstrate its reliability (“self-cleansing”).

The following section of the statutory guidance may also help when assessing the suitability of potential suppliers: [selecting tenderers and awards of contracts](#).

### Gifts and hospitality

There should be specific guidance within public bodies on accepting gifts and hospitality for those working on tenders and contracts. This guidance should reflect internal human resources policy and the [Bribery Act 2010](#) which outlines situations where a person can be found guilty of committing a bribery offence. Clear guidelines on gifts and hospitality can reduce the risks of this happening.

### Complaints

Complaints from bidders should be handled through a formal process in a professional, objective and timely way. This can have a positive impact on relationships with suppliers and provide evidence of equal and proportionate treatment. Each public body will have their own internal complaints handling process however there are also a number of external bodies, such as the Scottish Public Services Ombudsman, who will investigate certain types of complaints. Effective analysis of complaints can also help deliver continuous improvement. The Scottish Government or Centres of Expertise can advise on complex complaints.

### Single Point of Enquiry

Suppliers should seek to resolve issues relating to specific procurements with the relevant public body in the first instance. If issues cannot be resolved by the relevant public body, bidders/suppliers can contact the [Single Point of Enquiry \(SPoE\)](#) which listens to supplier concerns about specific tenders and looks to work with public bodies to resolve them. Working constructively with SPoE to resolve issues and making suppliers aware of the service can again demonstrate how a public body is treating suppliers in a fair and proportionate way while always looking to improve.

### Further guidance

There is more extensive guidance on working with suppliers in various sections of the [Procurement Journey](#). Public bodies may wish to ensure suppliers, especially SMEs, the third sector and supported businesses they engage with are aware of the support available to them in the [Supplier Journey](#) (including [guidance on Public Procurement for SMEs and third sector suppliers](#)) and the [Supplier Development Programme \(SDP\)](#).

## 10. Sustainable Procurement Duty

The [Sustainable Procurement Duty](#) requires that, before a public body carries out a Regulated Procurement, it must consider how, in conducting the procurement process, it can improve the economic, social and environmental wellbeing of the area in which it operates, and in carrying out the procurement, to act with a view to securing improvements as identified. The duty also requires public bodies to consider how their procurement process can facilitate the involvement of SMEs, the third sector and supported businesses, and how the procurement can be used to promote innovation.

Information on sustainable procurement policies can be found on the Scottish Government's [Public sector procurement policy](#) webpage.

Guidance and support are available, which includes [statutory guidance on the Sustainable Procurement Duty](#) and the [Sustainable Procurement Tools](#) (these tools include a practical methodology to address economic, social and environmental considerations through procurement, as well as e-learning and case studies).

Specific policy on measuring social impact in public procurement is contained in [SPPN 10/2020](#). Other socio-economic and environmental considerations are addressed further on in this Handbook.

This suite of support can help identify and address opportunities to optimise the economic, social and environmental outcomes of procurement activities.





## 11. Equality

The public sector equality duty of the [Equality Act 2010](#) applies to all functions of public bodies, including procurement. Public bodies must exercise their functions with due regard to all of the following:

- the need to eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct
- the need to advance equality of opportunity between people who share a relevant protected characteristic and those who do not
- the need to foster good relations between people who share a protected characteristic and those who do not.

“Due regard” means that when making decisions about procurement, a body subject to the duty must consciously consider the needs of the duty (eliminate discrimination, advance equality of opportunity, foster good relations). How much regard is due will depend on the individual circumstances and the relevance of the duty to the procurement in question.

[“Protected characteristics”](#) are defined in the Equality Act 2010 as age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

[Specific duties](#) also apply when a public body awards a contract which is equal to or above the procurement [thresholds](#). These are to actively consider how the equality duty can be more effectively fulfilled through:

- award criteria
- performance conditions.

[The Fairer Scotland Duty](#) of the [Equality Act 2010](#) places a requirement on public bodies to have due regard to how they can reduce inequalities of outcome caused by socio-economic disadvantage, when making strategic decisions (including procurement).

[Statutory guidance](#) is available to help public bodies perform their Fairer Scotland Duty across all their functions.

Compliance with equality duties aligns with the provisions in the 2014 Act that are used to advance equality through procurement: the [sustainable procurement duty](#); use of community benefit requirements; steps to engage with supported businesses and fair work considerations.

## 12. Fair Work First

Fair work is central to achieving sustainable and inclusive economic growth. Fair Work First is a policy that aims to drive good quality fair work across the labour market in Scotland.

Fair Work First aligns with the Fair Work Convention's [Fair Work Framework](#) and consists of the following criteria:

- payment of at least the real Living Wage
- provide appropriate channels for effective workers' voice, such as trade union recognition
- investment in workforce development
- no inappropriate use of zero hours contracts
- action to tackle the gender pay gap and create a more diverse and inclusive workplace
- offer flexible and family friendly working practices for all workers from day one of employment
- oppose the use of fire and rehire practice.

### Payment of at least the real Living Wage

The Scottish Government promotes payment of at least the [real Living Wage](#) as the minimum rate for everyone in paid work; this is not the same as the statutory National Minimum Wage and National Living Wage that are set by the UK Government.

It is possible to require the real Living Wage to be paid to workers delivering public contracts where:

- it is relevant to how the contract will be delivered
- it does not discriminate amongst potential bidders under international treaty obligations
- it is proportionate to do so
- the contract will be delivered by workers based in the UK.

Where a public body establishes that it can mandate payment of at least the real Living Wage to workers involved in a contract and has included payment of the real Living Wage as a requirement in the Invitation to Tender documents, the public body can exclude a supplier from further consideration where they have failed to confirm in their tender that they will pay staff involved in delivering the contract at least the real Living Wage.

## Guidance

Guidance on how to approach fair work practices, including Fair Work First, in procurement is available on the links below:

- [The Statutory Guidance](#)
- [Fair Work First in Procurement Guidance](#)
- [Fair Work First Guidance](#)



## 13. Community Benefits

Community Benefits in public procurement contribute towards achieving the aims of the Sustainable Procurement Duty. In addition to the Sustainable Procurement Duty, Community Benefits are enshrined in the 2014 Act through a specific provision ([s. 24](#)) to consider their use for all contracts of £4 million or more. Community Benefit requirements are contractual requirements used by public bodies relating to:

- training and recruitment, or
- the availability of sub-contracting opportunities, or
- which are otherwise intended to improve the economic, social or environmental wellbeing of the authority's area in a way additional to the main purpose of the contract in which the requirement is included.

For more information on Community Benefits policy, please see the [statutory guidance](#) which provides information on:

- when to use Community Benefit requirements
- identifying Community Benefit requirements through stakeholder consultation
- incorporating Community Benefit requirements into the procurement process.

### Community Wealth Building

Public procurement is central to delivering the spending pillar of Community Wealth Building in Scotland, as illustrated in the publication of [Scotland's journey of achieving sustainable procurement outcomes 2002-2022: independent review](#).

Under the 2014 Act, public bodies must consider and act on opportunities to achieve environmental, economic and social benefits through spending on goods, services and works, and in doing so, can help contribute towards Community Wealth Building.

## 14. Human rights

Suppliers that are awarded public contracts should take a robust approach to human rights in all parts of their business including their supply chain. [Guidance on due diligence: human rights](#) sets out how the Scottish Government, Executive Agencies and Non-Departmental Public Bodies should undertake appropriate due diligence on companies, including their human rights record, before entering into an investment relationship with them. Other public bodies are encouraged to undertake an assessment of any company, including any parent or subsidiary, before becoming involved in a business arrangement with them, to establish if they have been associated with human rights abuses anywhere in the world.

Public bodies should consider early in the process whether their procurement raises any concerns regarding human rights so that relevant and proportionate measures can be taken to help reduce the likelihood of human rights issues occurring in their contract.

There are a number of measures in the [2015 Regulations](#) and the [2016 Regulations](#) aimed at ensuring suppliers' compliance with environmental, social, and employment laws when performing public contracts:

- The [Sustainable Procurement Duty](#) requires public bodies to consider how their procurements can be used to improve social, economic and environmental well-being, and reduce inequality and act in a way to secure this. Compliance with the duty can help show its contribution to achieving [national outcomes](#).
- [a legal obligation to exclude companies](#) from tendering for public contracts where they have been convicted of any offence under [Part 1 of the Human Trafficking and Exploitation \(Scotland\) Act 2015](#) or under any provision referred to in the Schedule to that Act.
- [the ability to exclude companies](#) from tendering for public contracts where they have breached any obligations in the fields of environmental, social or employment law (this would include the Human Trafficking and Exploitation (Scotland) Act 2015 and the Modern Slavery Act 2015).
- [the ability to require suppliers to replace sub-contractors](#) where they have breached any obligations in the fields of environmental, social or employment law.
- [a legal obligation to include relevant clauses](#) in contracts to ensure contractors comply with environmental, social and employment law obligations. Contract conditions that allow for contract termination if the contractor or a sub-contractor fails to comply with environmental, social and employment law were included in [SPPN 9/2016](#). Public bodies may consider including similar conditions in their terms and conditions.

- [the ability to reject bids](#) that do not comply with environmental, social or employment law, established by national law or collective agreements.
- [a legal obligation to reject bids](#) that have been found to be abnormally low because they do not comply with applicable obligations in environmental, social or employment law.

Public bodies are encouraged to consider human rights related requirements on a case-by-case basis, in a way which is relevant and proportionate to each contract. This approach enables Procurement Officers to do what will have the greatest impact in a particular contract. This includes market analysis which assesses value and risk and accounts for the nature of goods, services or works being bought. The [Sustainable Procurement Tools](#) and [guidance](#) have been designed to help public bodies comply with policy and legislation, including how to take an ethical approach to procurement activity. They take account of human rights considerations including the [UN Guiding Principles](#), human trafficking and exploitation, and conflict minerals.



## 15. Climate change

The Scottish Government is committed to using public procurement to contribute towards the strategic priority of transitioning to a more resource efficient, lower carbon economy. Procurement Officers have a responsibility to be climate literate and to understand how the procurement process can influence net-zero aspirations. The Climate Literacy eLearning which is hosted on the [Sustainable Procurement Tools](#) platform can be used by Procurement Officers to boost their climate capability. [Chapter 18 of the Project Initiation and Business Case Handbook](#) provides additional guidance in relation to Sustainability in Construction.

Help and support in addressing climate change through procurement is available in [SPPN 3/2022](#). For more information on climate change and procurement policy, please see the Procurement and Climate Change [webpage](#).



## 16. SMEs, the third sector and supported businesses

SMEs, the third sector and supported businesses are critical to the economic, social and environmental health of Scotland. Scottish public bodies should be committed to making it as easy as possible for SMEs, the third sector and supported businesses to bid for and be successful in public contracts and/or participate in local supply chains. Public bodies are legally obliged to consider how they can involve these businesses in Regulated Procurement processes for public contracts. This is part of the [Sustainable Procurement Duty](#). Details of how public bodies are increasing access to public contracts should be included in a public body's procurement strategy and annual procurement report. Doing this effectively can promote inclusive growth by giving greater opportunities to SMEs, the third sector and supported businesses.

Public bodies should consider ways to encourage SMEs, third sector and supported businesses to compete for Regulated Procurements and unregulated procurements using systems appropriately. This could be advertising unregulated procurements on PCS and/or using the Quick Quote functionality on PCS.

Public bodies can attract more SMEs, third sector organisations and supported businesses to bid for public contracts through the following measures:

- encouraging suppliers to create an alert profile to receive notifications about opportunities most relevant to them. This includes sub-contracting opportunities which public bodies can encourage their main contractors to advertise on [PCS](#).
- using the [Quick Quote process](#). Suppliers should also be encouraged to create a Supplier Finder profile, which can enhance their chances of being selected for a Quick Quote.
- using [Dynamic Purchasing Systems](#) - which can make it easier for new suppliers to bid for public procurement opportunities by widening opportunities to access for new entrants.
- using [Project Bank Accounts](#) - which can give sub-contractors more confidence that they will be paid on time in construction projects.
- the use of smaller lots - making bidding more accessible for SMEs, the third sector and supported businesses by splitting large requirements into smaller, specialist and/or geographical areas.
- considering the time allowed for bidders to prepare and submit their bids, and whether additional time would benefit SMEs, the third sector and supported businesses to submit bids.
- considering using Prior Information Notices (PINs) to provide early alerts to providers of upcoming opportunities to enable them to prioritise resource to bid.



### Supported businesses

Public bodies can choose to restrict participation in a competitive tendering exercise to supported businesses (see [regulation 21 of the 2015 Regulations](#)). A supported business is legally defined as having the purpose of promoting the social and professional integration of disabled or disadvantaged persons while employing at least 30% of its workers from these groups.

Awarding public contracts to supported businesses can help a public body show that it is creating opportunities for all. Supported businesses can help disabled and disadvantaged people integrate socially and professionally.

[The Scottish national dynamic purchasing system \(DPS\) for the provision of requirements reserved for supported businesses](#) has been created by the Scottish Government. The key aim of this DPS is to provide Scottish public sector and third sector bodies with a clear path for the purchase of goods and services from supported businesses and in doing so, support the integration of disabled and disadvantaged people into the mainstream workforce.

### Social Enterprises

To help increase the profile of Social Enterprises and to make the process of identifying the market easier for public bodies, an on-line resource [Social Enterprise Finder Scotland](#) offers a searchable database for accessing information on social enterprises.

### Further support

Public bodies can direct potential suppliers to free advice, training and resources to help them bid for public sector contracts. Support includes:

- [Supplier Journey](#) – guides suppliers through the public sector procurement process e.g. from how to bid to learning lessons to improve future bids.
- [Supplier Development Programme](#) – helps Scottish SMEs, the third sector and supported businesses bid for public contracts through training, events and opportunities that link suppliers to Procurement Officers to learn more about upcoming contracts.
- [Just Enterprise](#) – offers procurement support as part of wider business support to the third sector.
- [Social Enterprise Scotland](#) – the representative body for social enterprises in Scotland.

- [Procurement Journey](#) - while primarily targeted at public sector Procurement Officers, it is also a useful tool for SMEs, the third sector and supported businesses, helping them to understand the procurement process from a public sector perspective.
- [Guidance on public procurement for SMEs and third sector suppliers](#) - one-stop-shop outlining Scot Gov support for SMEs and third sector suppliers.



## 17. Innovation

The Sustainable Procurement Duty requires that before a public body carries out a Regulated Procurement, it must think about how the procurement process can be used to promote innovation. Promoting innovation can help grow Scotland's economy by encouraging suppliers to invest in, and develop new or improved, solutions to public service problems. It can also help address wider social issues, such as climate change and an aging population.

Public bodies can promote innovation in a number of ways, including but not limited to:

- Focusing on performance and outcomes rather than specific solutions. Public bodies can do this by publishing contract notices and preparing documents which describe what they want to achieve but not how it should be done. This can include standards or benchmarks when requiring more technical equipment.
- Publishing a [PIN](#) which gives potential bidders details of an upcoming requirement before the issue of a contract notice. A PIN provides an opportunity for early engagement with the market, helping to inform Procurement Officers on what is available in the marketplace.
- Publishing a [Preliminary Market Consultation](#) (PMC) notice. This is an open call to the market which seeks to determine both what the market could deliver and what work/effort may be required to deliver an innovative public good, service or work. It is NOT a Regulated Procurement notice and is NOT an intention to procure goods, services or works. A PMC can also facilitate collaboration between suppliers through the [Supplier Collaboration Tool](#).
- Undertaking a [Pre-Commercial Procurement](#) exercise. This allows Procurement Officers to procure research and development services in a competitive way, engage with innovative suppliers as well as allowing Procurement Officers to identify the best offer(s) that the market can deliver to meet their needs.
- Using the [Competitive Dialogue](#) procedure, which allows for negotiation with potential suppliers and may be beneficial where no solution to the problem currently exists on the market.
- Using the [Competitive Procedure with Negotiation](#), which is recommended if a public body is unable to define how to meet its need technically and/or cannot specify the legal or financial requirements of its contract.
- Forming an [Innovation Partnership](#) which allows a public body to work with one or more partners to research and develop a product or service which is not currently available on the market and can be bought without further competition once completed.

- Setting a [Scotland CAN DO](#) innovation challenge which connects public bodies with the marketplace to find innovative solutions to challenges they face. This includes the CAN DO Innovation Challenge Fund which can be used to support a Competitive Dialogue or Innovation Partnership.
- Similarly the public sector can set a [CivTech](#) challenge. Through this process an open challenge is issued to solve a public sector problem and any organisation, team or individual can respond. Applications are assessed and shortlisted proposals are developed further, ultimately resulting in the creation of a solution.
- Assessing innovative solutions which have been submitted through the [Scotland Innovates](#) service. This is a supplier-led innovation service where suppliers, businesses and members of the public can submit innovative solutions to the Scottish public sector for consideration. The service also provides potential suppliers with information, guidance and support on how to develop ideas and innovations into products and technologies that may be of use in the provision of public services in Scotland.

More information on how to consider research and development and how to procure innovative solutions, including guidance on the innovation-related PCS notices, can be found in the [Procurement Journey](#) and [SPPN 3/2023](#).



## 18. Additional considerations and guidance for health and social care services

Buying health and social care services is complex and needs special consideration in a public body's overall approach to procurement. The [Public Bodies \(Joint Working\) \(Scotland\) Act 2014](#) is legislation that implements health and social care integration in Scotland. The aim of integration is to ensure that people receive the right care, in the right place, at the right time. The 2014 Joint Working Act places a duty on integration authorities – either integration joint boards or health boards and local authorities acting as lead agencies – to [create a strategic plan for the integrated functions that they control](#).

It is important to ensure that all procurement activities for these supports and services are aligned with their integration authority's plans. This includes, where relevant, the public body's Procurement Strategy.

The quality or availability of these supports and services can have a significant impact on the quality of life and health of people who might use them. Therefore, it is important that people with lived experience of the services are engaged and involved throughout the procurement process.

There is statutory and best practice guidance for public bodies looking to buy health or social care services:

- [The statutory guidance: procurement of health or social care services](#)
- [Procurement of care and support services: best practice guidance](#)
- [Fair Work First Tools and Guidance](#)

Work is ongoing to support the transition towards the National Care Service (NCS) including embedding an ethical procurement approach. [SPPN 7/2021](#) provides guidance to support the transition to the NCS.

## 19. Contract management

How a public body manages its contracts after the award stage can have a big impact on how successful it is in achieving its desired outcomes. Public bodies should work in partnership with suppliers throughout the delivery of contracts.

The [mobilisation and implementation](#) stage is an opportunity to maximise successful delivery of the contract. This can be achieved by:

- agreeing a project plan with the supplier which has a strategic focus so that desired outcomes remain clear over the life of the contract and that continuous improvement can be achieved
- working to enable smooth implementation of the contract.

A project plan should include:

- all tasks to be completed and what and who is required to complete them
- clear timescales and milestones related to the completion of tasks
- how key information (including relevant policies) is going to be communicated and monitored consistently and effectively
- regular reviews of costs, risks, quality and timescales
- clear roles and responsibilities for different parties.

Doing this effectively can make it easier to manage ongoing contract delivery where regular and effective communication becomes key to maintaining the relationship. It can also help public bodies meet their obligations for publication of Annual Procurement Reports, evidencing how they have delivered their Procurement Strategy.

Public bodies can access a range of support to help increase the efficiency of contract management. This includes:

- [Procurement Journey](#) – provides best practice guidance on contract management, which should be carried out proportionately based on the value and risk of the contract.
- [PCS - Tender](#) – provides contract and supplier performance modules which public bodies can use to manage contracts and supplier performance, having tendered through PCS-T.
- [Professional Electronic Commerce Online System \(PECOS\)](#) – reduces paperwork and enables more focus on performance by automating the purchase to pay (P2P) process from purchase order to invoice payment.

- [PECOS content manager](#) - allows for the creation and management of electronic catalogues which encourage compliance with contracts and more consistently effective business practices.
- [P2P review service](#) - gives an independent view on how to improve business and payment processes in a way which will make contracts easier to manage.
- [Procurement and Commercial Improvement Programme \(PCIP\)](#) - evaluates contract management as part of a wider assessment of a public body's procurement capability, allowing for the development of an action plan to improve performance.



## 20. Prompt Payment

[Section 15](#) of the 2014 Act requires public bodies to set out in their Procurement Strategy how they intend to ensure all payments made to contractors and sub-contractors are paid within 30 days of receipt of a valid invoice. They are recommended to go further and have a clause within their contracts which requires payment within 30 days throughout the supply chain. Payment performance and related complaints should be monitored as part of contract management arrangements. This can lead to the following benefits:

- better relationships with suppliers
- more reliable cashflow for suppliers which reduces the risks of financial problems and any impact this would have on contract delivery
- early warning signs of potential supplier failure: delays in paying sub-contractors in the supply chain could be indicative of deeper financial problems.

[SPPN 2/2022](#) provides guidance to promote contracts being awarded to bidders with a good payment performance history and systems in place so that their supply chains should be paid on time in accordance with the terms within their contracts.

Prompt payment should be monitored as part of the contract management activity, addressing any issues with the prime contractor during the life of the contract to ensure the reliability of the supply chain. It is the prime contractor's responsibility to monitor and support prompt payment to all sub-contractors involved in delivering a public contract.

Project bank accounts allow contractors and sub-contractors in the supply chain to be paid directly. Their use is particularly required for construction projects where late and extended payment terms between businesses can be common, in accordance with [CPN 1/2019: Project Bank Accounts - Revised Thresholds and Procedures](#). The Scottish Government provides official [guidance on the use of project bank accounts](#).



## 21. Health and safety

The wellbeing of people who are employed to deliver a contract can impact its success. It can also affect the reputation of the public body which awards the contract. This includes the ability to meet legal obligations, which is why it is important for public bodies to work with suppliers to prevent or reduce the chances of negative impacts to health and the risk of injury in the workplace. Potential risks to health and safety are not always the same and need to be assessed in each case. The requirements will be different for different goods, services or works.

There should be evidence that suppliers are promoting and managing good practice in this area while explaining what they will do to manage risks which have been identified. It is also important to actively monitor contracts so that health and safety requirements continue to be met.

- Public bodies should ask suppliers for evidence that they adhere to the legal health and safety rights of workers. These can be found in the [Health and Safety at Work etc. Act 1974](#).
- Construction projects have specific requirements under [the Construction \(Design and Management\) Regulations 2015](#).
- More information and guidance is available in [Chapter 2 of the Client Guide to Construction Projects](#).
- Health and Safety guidance is available as part of the [Sustainable Procurement Tools](#).
- The Health and Safety Executive (HSE) website also has useful links below:
  - [General guidance](#)
  - [Construction industry guidance](#).

## 22. Construction projects

Those who are responsible for buying, managing or delivering construction projects should refer to the [Client Guide to Construction Projects](#). This is designed to help public bodies improve their construction project management and ultimately to deliver successful outcomes in construction projects. It can also be used by contractors and consultants to increase their understanding of the processes organisations follow.

The guide is mandatory throughout the Scottish Government, its agencies and organisations covered by the [Scottish Public Finance Manual](#). It is divided into three handbooks which can be accessed on the links below:

- [Construction procurement: project initiation and business cases handbook](#)
- [Construction procurement handbook](#)
- [Construction phase handbook](#).

All public bodies should complete the [Construction Capability Assessment Tool](#) prior to embarking on any construction project, this will assist in ensuring that the public body is properly set up to successfully deliver the project.

More support is available from the Scottish Government [Construction Procurement Policy Unit](#). This includes [CPNs](#) about new policy, guidance and other developments related to public sector construction. There is also [general information about public sector construction procurement policy on the Scottish Government website](#).

## 23. Gateway review

Public bodies which are within scope of the [Scottish Public Finance Manual](#) are required to complete the Scottish Government risk potential assessment forms to determine the type of assurance support projects need. Those assessed as high risk should have Scottish Government Gateway Reviews. The Client Guide to Construction Projects includes guidance on Project Assurance at [Chapter 13 of the Project Initiation Handbook](#).

Some sectors have specific requirements for evaluating and assuring the delivery of programmes and projects. This includes the Health sector which should follow the processes described in the [NHS Scotland Scottish Capital Investments Manual](#).

Public bodies which are not subject to the Scottish Public Finance Manual should perform review or assurance processes at key decision stages in their projects, particularly those which are highly complex or are critical to delivery. These processes should be independent of project teams.



## 24. Fraud response procedures, anti-competitive practices and cyber security

The risk of fraud must be appropriately managed by ensuring that any risks within procurement are identified and assessed, with specific counter-fraud controls and mitigation activity in place to minimise exposure to these risks. Any suspected or confirmed cases of fraud, bribery or corruption, must be reported as soon as possible.

Procurement Officers must also be alert to anti-competitive practices, such as collusion and conflict of interest, cartel activity and bid-rigging practices.

Audit Scotland have published information, supported by Police Scotland, which Procurement Officers can use to identify [Procurement Red Flags](#).

The Competition and Markets Authority (CMA) has detailed information and a free [e-Learning module](#) which covers anti-competitive practices in procurement. The CMA has also published [guidance on Bid-rigging for public sector procurers](#).

Care should also be taken with regards to [Cyber Security](#). For further information, please see [SPPN 2/2020](#).

The [Sustainable Procurement Tools](#) include a range of guidance concerning Security and Crime.

Procurement Officers should also ensure familiarity with the Scottish Government's [Serious Organised Crime strategy](#) which provides guidance on dealing with serious and organised crime for public sector professionals.

## 25. Annex: Glossary

- Bidder - used as a general term throughout the Handbook to encompass bidders, tenderers and, in the case of restricted procedures, candidates
- Client Guide to Construction Projects - specific policy and guidance for public bodies on the procurement of construction related contracts
- Concession Contracts (Scotland) Regulations 2016 - apply when a public body is awarding a concession contract. A concession contract is a works or services contract which allows the contractor to exploit the works or services it provides in lieu of some or all payment from the public body. An example of a works concession contracts might be the construction of a road, for which the supplier is allowed to charge users a toll. An example of a services concession contract might be the provision of café facilities in an office building, from which the contractor is allowed to generate and keep revenue. A contractor may receive some payment from the public body under a concession contract, but must be exposed to a level of operating risk such that it is not guaranteed to recoup its investment
- Construction Policy Notes (CPN) - construction policy and supplementary information issued by the Scottish Government to public sector organisations and other relevant bodies on construction-related matters
- Contracts register - a register of contracts which includes, as a minimum, all Regulated Procurement contracts
- Delegated Purchasing Authority (DPA) - the authority given to an individual to sign off contracts/make purchases
- Framework agreement - an agreement between a public body and one or more suppliers for the supply of specified goods, services or works over a period of time. The framework agreement has agreed terms and conditions, defined pricing structure and if appropriate quality requirements. The main difference between a framework agreement and a contract is that a framework does not state the quantity of the goods, services or works, or when they will be bought. Individual contracts specifying the quantity and timescale are awarded under the terms of the framework agreement
- Procurement Journey - an online platform providing guidance, best practice and templates for public bodies on the procurement of goods, services and care and support services
- Procurement Officer - a member of staff with Delegated Purchasing Authority (DPA), who undertakes procurement as the main function of their role
- Public Contracts Scotland (PCS) - the Scottish Government's official national portal for public sector contract opportunities

- Public Contracts Scotland-Tender (PCS-T) – the national eTendering system, centrally funded by the Scottish Government. The system is a secure and efficient means for buyers and suppliers to manage tender exercises online
- Regulated Procurement – in relation to public contracts, procurements with an estimated value of £50,000 and above for goods and services and £2,000,000 and above for works contracts and which are not otherwise exempt from the Procurement Reform (Scotland) Act 2014
- Scottish Procurement Policy Notes (SPPN) – procurement policy, guidance and legislation issued by the Scottish Government to public sector organisations and other relevant bodies
- Scottish Public Finance Manual (SPFM) – provides guidance to the Scottish Government and other relevant bodies on the proper handling and reporting of public funds
- Utilities Contracts (Scotland) Regulations 2016 – apply when a public body or public undertaking is awarding a contract for the purpose of helping it to carry out one of the activities listed in regulations 8 to 14 of those regulations. These activities include: the provision or operation of networks to supply gas, heat, drinking water or electricity, and the supply of gas, heat, drinking water or electricity to such networks; the provision or operation of networks for transport by railway, automated systems, tramway, trolley bus, bus or cable; the provision of airports, maritime ports, inland ports and other terminal facilities; the provision of postal services; and the exploitation of an area for the purpose of extracting oil, gas, coal or other solid fuels, and exploring for coal or other solid fuels



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