

Annex A

The award of Scottish public contracts must be done via genuine and effective competition. However there are grounds under [regulation 33](#) of the Public Contracts (Scotland) Regulations 2015 which outlines when a contracting authority may award a public contract following negotiated procedure without prior publication of a contract notice or prior information notice (often referred to as a non-competitive action, NCA or direct award).

The Scottish Government's [Procurement Policy Manual](#) sets out the rules for the Scottish Government, agency and non-departmental public bodies (NDPB) staff involved in procurement activity. Section 8 of the manual covers guidance for the award of an NCA.

The Procurement Policy Manual also refers readers to further information on the intranet. This further information includes a page on the intranet titled "Buying using non-competitive action (NCA)". This page has been provided to you as an attachment. Please note that the "Buying using non-competitive action (NCA)" page, the DPO guidance is information intended for core Scottish Government staff. Individual Scottish contracting authorities are responsible for their own procurement decisions.

Also attached to this email is additional information on NCAs for Delegated Purchasing Officers (DPOs), including guidance which DPOs can use when awarding a contract which has resulted from an NCA. For awareness a DPO is an individual within the Scottish Government who holds authority to tender and award certain contracts on behalf of Scottish ministers.

In March 2020 the Scottish Government published a Scottish Procurement Policy Note (SPPN). [SPPN 04/2020: Coronavirus \(COVID-19\): procurement regulations for public bodies](#) outlines the procurement related issues as a consequence of the COVID-19 outbreak. The policy note details how, in such exceptional circumstances, public bodies in Scotland could purchase goods, services and works with extreme urgency. This includes information on direct awards.

The Procurement Journey website also provides guidance for public sector buyers who procure goods, services and care and support services. The Procurement Journey has a number of pages which contain information relating to direct awards / NCAs. Please see below for a list of the most relevant pages:

- [Guidance on Contract Renewal and Direct Award without Competition](#)
- [Route 3 – Profiling the Commodity/Service](#)
- [Route 2 – Contract Notice and Advertising](#)
- [Route 2 - Introduction](#)
- [Light Touch Regime](#)
- [Route 1 – Identify Suppliers](#)
- [Glossary](#)
- [Route 3 – Receipt of Tenders](#)
- [Route 2 – Receipt and Opening of Tenders](#)

1. Buying using non-competitive action (NCA)

It is Scottish Government policy that goods, services and works must be bought by genuine and effective competition. Buying without holding a competition is called non-competitive action (NCA).

2. Buying goods and services without competition

Such a course of action requires to be authorised before any purchase is made and is granted in exceptional circumstances only. The decision on whether to approve an NCA request is made on a case-by-case basis and it is strictly limited to situations where competition is not deemed appropriate.

Situations where approval may be given include:

- extreme urgency due to unforeseeable circumstances, covering the immediate need
- additional purchases from the same supplier due to unforeseeable circumstances
- only one possible supplier

Approval to award a contract using the NCA process does not guarantee that this will be free of challenge by another supplier (for higher value contracts this could include a challenge before the courts). For this reason, it is important that robust, objective supporting evidence is provided as part of the request for NCA.

3. Applying for NCA approval

You should consult a [delegated purchasing officer \(DPO\)](#) about your proposal to award a contract under the NCA procedures.

Once you have discussed your needs, complete an [NCA application form](#) for any value of NCA.

4. Contracts with an estimated value of £10,000 or less (excluding VAT)

For contracts that are valued at £10,000 or less (excluding VAT), approval, prior to the purchase, must be granted from someone at deputy director level or above within your business area. Please note approval must be granted before any commitment is made to a contractor.

If an NCA action is required, you should:

- complete the [NCA application form](#)
- send the application to someone at deputy director (DD) or above for approval - the email will be pre-populated with procurement details but you will need to add your approver's details manually
- if approval is given, make sure details of the NCA approval are recorded in [NCA under £10k database](#) for audit purposes
- send a copy of the approval to [NCA under £10K procurement mailbox](#)
- [contact your local DPO](#) to award contract. If you don't have a DPO, procurement can help you find one, or they can do the procurement for you. Fill out a [request for procurement assistance form \(RPA\)](#) and send it to [procurement](#)
- the justification and approval should be formally recorded on the electronic Record and Document Management (eRDM) system

5. Contracts with an estimated value over £10,000 (excluding VAT)

For contracts with a value greater than £10,000 (excluding VAT) you must, prior to any purchase, request approval by submitting an application form to Scottish Procurement and Property Directorate. **You should allow 20 working days**, however complex requests may take longer.

If NCA action is required, you should:

- complete the [NCA application form](#)
- submit a copy to [NCA Procurement mailbox](#)
- if approval is given, [contact your local DPO](#) to award contract. If you don't have a DPO, procurement can help you find one, or they can do the procurement for you. Fill out a [request for procurement assistance form \(RPA\)](#) and send it to [procurement](#)
- the justification and approval should be formally recorded on the electronic Record and Document Management (eRDM) system

6. Consideration of an NCA

The starting position in assessing any request to award a contract without competition is:

- whether there are sufficient grounds that would warrant departing from Scottish Government procurement policy (which is that all contracts should be awarded through genuine and effective competition unless there are exceptional reasons to the contrary)
- whether such action is consistent with the legal obligations placed on Scottish Ministers under relevant public procurement rules

7. If NCA approval is granted

If approval is granted, this is approval to award a contract without first running a competition only. It is not authorisation to enter into contract on behalf of Scottish Ministers. Only [a DPO holds such authority](#).

Once you have received NCA approval you should arrange for the contract to be awarded by your DPO, who will also advise if you are required to publish a contract award notice on the Public Contracts Scotland website. If you don't have a DPO in your business area, procurement can help you find one, or they can do the procurement for you. Fill out a [request for procurement assistance form \(RPA\)](#) and send it to [procurement](#).

8. If the NCA is not approved

If there are no grounds to support NCA then a competitive tendering exercise will be necessary. What this will entail will depend on the purchase and you should contact your DPO to help you. If you don't have a DPO in your business area, procurement can help you find one, or they can do the procurement for you. Fill out a [request for procurement assistance form \(RPA\)](#) and send it to [procurement](#).

9. Help and support

Detailed guidance on procurement can be found in our [policy manual](#). For further information, call {redacted} or [email procurement](#).

Delegated Purchasing Officers (DPOs)
DPO Guidance Note 1/2019
20th November 2019

NON COMPETITIVE ACTIONS, CONTRACT EXTENSIONS AND CONTACT VARIATIONS.

Purpose

To inform DPOs of the process following NCA approval whether from a Deputy Director or from SPPD Policy Team.

When an NCA has been approved DPOs will still require to follow the procurement process to ensure the preferred supplier has the capability to perform the contract

You will require to undertake a light touch tendering exercise (issue an ITT and evaluate the response) to ensure value for money. The tendering exercise will be a simple Quick Quote process on PCS.

DPOs must also remember that NCA Quick Quote Contract Award Notices must also be published on PCS unless:

making it (or part of it) publicly available would—

- (a)impede law enforcement or otherwise be contrary to the public interest,
- (b)prejudice the commercial interests of any person, or
- (c)prejudice fair competition between economic operators.

[out of scope]

[out of scope]