

Date Issued	May 2021
Date Last Updated	<b>August 2021</b>
Department	<b>Corporate</b>
Title	<b>Procurement Policy</b>
Objective	To describe the Association's approach to the procurement of goods, services and works
Responsible	<b>Management Committee</b>
Next Review Date	<b>August 2026</b>

### 1.0 Overview

This Policy sets out the approach we will follow when procuring contracts for the supply of services, the supply of goods and materials and / or the execution of works.

Where we anticipate to procure more than £5m of goods or services in any one year, we will publish a Procurement Strategy for that year. All procurements undertaken by us in that year must have regard to the terms of our Procurement Strategy and the values, objectives and goals set out in it.

This Policy must be interpreted in accordance with fundamental general principles of equal treatment, non-discrimination, transparency and proportionality.

This Policy is subject to the over-riding provisions of United Kingdom and / or Scottish legislation. It is also subject to any UK Government or Scottish Government guidance on public procurement that may be issued from time to time.

All our employees shall comply with the terms of this Policy. Failure by any employee to comply with the terms of this Policy may result in disciplinary action.

This Policy may be suspended either in whole or in part by a decision of the Management Committee in respect of the proposed award of any contract, provided there are special circumstances justifying the suspension.

Any query regarding the application or interpretation of this Policy should be made in the first instance to the Chief Executive.

## 2.0 Aims of Policy

This Policy aims to ensure:

- We maximise Value for Money when procuring contracts
- That all procurement is in line with our Entitlements, Payments and Benefits Policy
- That the expectations of tenants, staff, colleagues and other key stakeholders are met
- We make best use of the commissioning process and that there is sufficient flexibility to ensure expenditure can be increased and decreased as necessary within the financial year

## 3.0 Legal Framework

We will comply with all legal and regulatory requirements governing procurement when procuring contracts including:

- The Procurement Reform (Scotland) Act 2014
- The Public Contracts (Scotland) Regulations 2015

## 4.0 Related Policies and Procedures

This Policy should be read in conjunction with the following policies and procedures:

- Procurement Strategy
- Financial Regulations
- Standing Orders
- Entitlements, Payments and Benefits Policy
- Authorisation and Standard Charges and Allowances Policy
- Fraud and Theft Policy
- Anti Bribery and Corruption Policy

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In the event of any conflict or inconsistency between the terms of this Policy and any provisions in any of the above policies relating to public procurement of contracts, this Policy shall take precedence.

### 5.0 Overview of Procurement Procedures

When procuring contracts for goods, services or works, we must comply with the Public Contracts (Scotland) Regulations 2015 (“the Regulations”) and the Procurement Reform (Scotland) Act 2014 (“the Act”).

We are subject to a two-tier procurement regime, in terms of which the Regulations will apply to contracts with a value which meets or exceeds the relevant UK thresholds, and the Act will apply to contracts with a value below such UK thresholds but with a value which is equal to or greater than the thresholds set out in the Act).

The UK procurement thresholds values change every two years and the table below lists updated contract value thresholds that Contracting Authorities (Housing Associations) must follow for all UK procurement procedures from 1 January 2020. More information can be found on Scottish Government website.

<b>Contracting Authorities</b>	<b>Public Contracts Type</b>	<b>New Threshold (net of VAT) at 1 January 2020</b>
Central government bodies	Supplies or Services	<b>£122,976</b>
Other contracting authorities (e.g. HA, RSL, LA etc)	Supplies or Services	<b>£189,330</b>
All Contracting Authorities	Works	<b>£4,733,252</b>
	Small lots / Supplies or Services	<b>£70,778</b>
	Small lots / Works	<b>£884,720</b>

### 5.1 Scottish Procurement Thresholds

<b>Contracting Authorities</b>	<b>Public Contract Type</b>	<b>Threshold (net of VAT) at 1 January 2020</b>
All Contracting Authorities	Supplies or Services	<b>£50,000</b>
	Works	<b>£2,000,000</b>

The procedure for the award of any contract depends upon the estimated value of that contract. The relevant threshold values and the associated Procurement Procedure that must be applied are detailed in the table below.

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All values are exclusive of VAT and relate to the full life of the contract (including any potential extensions or renewals).

<b>Contract Type</b>	<b>Contract Value (as at 1 January 2020)</b>	<b>Procurement Procedure</b>
Works	£4,733,252 and above	OJUK Procedure under the 2015 Regulations – please refer to Section 6
Supplies / Services	£189,330 and above	OJUK Procedure under the 2015 Regulations – please refer to Section 6
Works	£2,000,000 to £4,733,252	Regulated procurement under the 2014 Act – please refer to Section 7
Supplies / Services	£50,000 to £189,330	Regulated procurement under the 2014 Act – please refer to Section 7
Works / Supplies / Services	Up to £50,000 (Supplies/Services) or £2,000,000 (Works)	Unregulated procurement – please refer to Section 8

The prescribed threshold values set out in the above table will be automatically revised in accordance with any subsequent amendment to the threshold values set by the UK for supply, services or works contracts (the next amendment being due to take effect from 1 January 2022).

All other financial limits specified in this Policy shall be subject to review from time to time.

### **6.0 Regulated Procurements under the Public Contracts (Scotland) Regulations 2015**

#### **6.1 Overview of the Regulations**

The Regulations apply to the following types of contract:

- Contracts for goods or services with an estimated value of £189,330 (excluding VAT) or more
- Contracts for works with an estimated value of £4,733,252 (excluding VAT) or more
- Contracts for certain health, social and other services with an estimated value of £663,540 (excluding VAT) or more (see Section 8 for further detail on procurement of these types of contract)

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The above types of contract must be advertised in the UK e-notification service / Official Journal (OJUK) and publicly procured in accordance with one of the defined procedures set out in the Regulations, which will include a formal standstill period before a contract can be entered into with the successful tenderer.

Certain categories of services are exempt from the full terms of the Regulations. In addition, certain contracting arrangements are exempt from the terms of the Regulations and such arrangements do not need to be publicly procured (see Section 9 for further detail on procurement of these types of contract).

Any procurement which is subject to the terms of the Regulations must comply with general principles of:

- Transparency – contract procedures must be transparent and contract opportunities should be publicised
- Equal treatment and non-discrimination – potential suppliers must be treated equally
- Proportionality – procurement procedures and decisions must be proportionate
- Mutual recognition – giving equal validity to qualifications and standards from other Member States, where appropriate.

We will award contracts under the Regulations on the basis of the "*Most Economically Advantageous Tender*" (MEAT). The MEAT means the tender offer that is most economically advantageous to us having regard to the subject matter of the contract and including matters such as:

- Quality
- Price
- Technical merit
- Aesthetic and functional characteristics
- Environmental characteristics
- Running costs
- Cost effectiveness
- After-sales service

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- Technical assistance
- Delivery date
- Delivery period or period of completion

(All as may be considered appropriate in relation to any particular contract).

We will not award contracts which are subject to the Regulations on the basis of lowest price only, they will be awarded on a mix of price and quality.

We will not artificially split (de-aggregate) requirements under the Regulations to avoid the application of the Act and/or the Regulations (e.g. a single requirement for services with a value of £200,000 cannot be the subject of two separate contracts of £100,000 each).

Where a proposed contract is “mixed”, e.g. if it contains both works and services / supplies or services and supplies, we will classify it according to the main subject of the contract and then the largest subject value (i.e. supply and fit 50 new kitchens, main subject is the supply then the fit of the kitchens). If, for example, the estimated value of the kitchen supply is £1,200 and the fit (works) cost is £1,000 then the main subject and higher value is the supply then the contract is a Supply. This approach will be followed for all contracts.

If the mixed contract comprises both services and supplies, or services covered by both the main regime, the main subject of the contract is determined by reference to which part of the contract has the greater value.

### 6.2 Procurement of contracts under the Regulations

An overview of each of the most relevant procedures under the Regulations is set out in this Section of the Policy.

Each of these procedures is subject to certain minimum timescales.

In relation to all procedures under the Regulations:

We will place a specific tender notice in the supplement to the OJUK, via Public Contracts Scotland, and will consider whether it would be appropriate to also advertise in a suitable professional / trade journal or the press.

Following the contract award decision, we will notify the successful and unsuccessful bidders of the contract award decision. Unsuccessful bidders must be given information on the scores they obtained, the reasons why they obtained those scores and the “*characteristics and relative advantages*” of the successful bidder’s tender submission compared to their own tender submission as follows:

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- A mandatory “standstill” period must be observed between the date of the notices informing tenderers of the outcome of the procedure and awarding the contract
- If Contract Award Notices are issued electronically, then the standstill period starts on the day after the date of issue of the contract award notices and ends at midnight on the tenth day from that day
- If Contract Award Notices are issued by post, then the standstill period starts on the day after the date of issue of the contract award notices and ends at midnight on the fifteenth day from that day
- If the last day of the standstill period is not a working day, then the standstill period must be extended to include the next working day, for example, if the ten or fifteen-day standstill period ends on a Saturday, then the period must be extended until the next Monday
- Once the applicable standstill period has expired, we may enter into a contract with the successful tenderer
- Following completion of the tender procedure, we must publish a contract award notice in the OJUK, via the Public Contracts Scotland website
- Any complaint about, or challenge to a contract award we make, or any situation which could be reasonably expected to lead to such a complaint or challenge, must be notified to the member of our staff leading the procurement

### 6.3 Procurement Procedures under the Regulations

#### 6.3.1 Open Procedure

The Open Procedure is a single stage procedure in terms of which all interested parties may submit a tender in response to the contract advertisement. There is no separate pre-qualification stage in the Open Procedure, although tenderers will be required to complete a document known as a Single Procurement Document (SPD) as part of their tender submission.

#### Use of the SPD under the Open Procedure

The SPD is a standard-form document, which will include a range of mandatory and discretionary grounds for exclusion. Bidders will need to confirm in their completed SPD that none of the mandatory and discretionary grounds for exclusion applies to them and / or their organisation.

The SPD may also include a number of “pass / fail” questions or questions in relation to which a minimum score must be achieved. Bidders will be required to achieve a “pass” or the minimum score in relation to these questions in order for their tender to be fully evaluated by us.

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The SPD has replaced the requirement for suppliers to provide up-front evidence or certificates by allowing them to self-declare that they meet certain selection and exclusion criteria.

Bidders will be asked to provide proof that they meet the mandatory minimum criteria at a later stage in the tender process or they can be asked to provide the evidence at the SPD selection stage.

By law, a winning bidder has to submit all of the required certificates and documentation, before they are awarded a contract. We can ask bidders to submit their evidence at any point in the procurement process, if this is necessary to ensure that the process is carried out properly.

In an open, or one-stage, procedure, we will ask the successful bidder to provide their supporting evidence at the point of contract award but before any contract is entered into, if this has not already been requested with the SPD.

If, following review of supporting evidence submitted by a successful bidder, we find a bidder to have misrepresented itself, we will need to consider the following:

- If we identify that a bidder is actually in one of the situations which is a mandatory ground for exclusion, or if it does not meet one of the minimum selection criteria, then we **must** exclude that bidder from the competition (depending on the nature and stage of the competition, that may mean either that we proceed without that bidder, or that competition should be re-evaluated without that bidder's tender)
- If we identify that a bidder is in one of the situations which is a discretionary ground for exclusion, then we will need to consider whether or not to exclude that bidder (the decision to exclude must be made in line with the general principles of transparency, proportionality, equality of treatment and non-discrimination)
- If the issue is more administrative in nature (for example, mistakes in providing the required documentation), then we will have the option of inviting the bidder to supplement or clarify the documentation provided

### Clarification of tenders under the Open Procedure

Under the Open Procedure, we can ask tenderers to clarify aspects of their tenders following submission (SPD, Quality and Price). However, material changes to the terms of tenders are not permitted and we may not negotiate with tenderers after submission of tender responses.



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### 6.3.2 Restricted Procedure

The Restricted Procedure is a two-stage procedure in terms of which all interested parties may submit an expression of interest in response to the contract advertisement.

We then issue an SPD to interested parties and follow a pre-qualification stage – only those candidates which meet our selection criteria (as set out in the SPD) will be short-listed and invited to the tender stage of the process.

We must invite a minimum of five suppliers to tender unless fewer suitable candidates have met the selection criteria and these are sufficient to ensure genuine competition.

#### Use of the SPD under the Restricted Procedure

The SPD is a standard-form document, which will include a range of mandatory and discretionary grounds for exclusion. Bidders will need to confirm in their completed SPD that none of the mandatory and discretionary grounds for exclusion applies to them and / or their organisation.

The SPD may also include a number of “pass / fail” questions or questions in relation to which a minimum score must be achieved and bidders will be required to achieve a “pass” or the minimum score in relation to these questions in order for their tender to be fully evaluated by us.

The SPD has replaced the requirement for suppliers to provide up-front evidence or certificates by allowing them to self-declare that they meet certain selection and exclusion criteria. We will ask bidders to provide proof that they meet the mandatory minimum criteria at a later stage in the tender process or to provide the evidence at the SPD selection stage.

By law, a winning bidder must submit all of the required certificates and documentation, before they are awarded a contract. We can ask bidders to submit their evidence at any point in the procurement process, if this is necessary to ensure that the process is carried out properly.

In a restricted, or two-stage, procedure, we will ask the successful bidder to provide their supporting evidence at the point of contract award but before any contract is entered into, if this has not already been requested with the evidence in the SPD.

If, following a review of the supporting evidence submitted by a successful bidder, we found that the bidder has misrepresented itself, we will need to consider the following:

- If we identify that a bidder is in one of the situations which is a mandatory ground for exclusion, or if it does not meet one of the minimum selection criteria, then we **must** exclude that bidder from the competition (depending

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on the nature and stage of the competition, that may mean either that it proceeds without that bidder, or that competition should be re-evaluated without that bidder's tender)

- If we identify that a bidder is in one of the situations which is a discretionary ground for exclusion, then we will need to consider whether or not to exclude that bidder (the decision to exclude must be made in line with the general principles of transparency, proportionality, equality of treatment and non-discrimination)
- If the issue is more administrative in nature (for example, mistakes in providing the documentation), then we will have the option of inviting the bidder to supplement or clarify the documentation provided

### Clarification of tenders under the Restricted Procedure

We can ask tenderers to clarify aspects of their tenders following submission (SPD, Quality and Price) similar to the Open Procedure but we cannot make material changes to the terms of tenders and we may not negotiate with tenderers after submission of tender responses.

### 6.3.3 Competitive Dialogue Procedure

The Competitive Dialogue Procedure is suitable for more complex and / or high value procurements. Interested parties can submit an expression of interest in response to the Contract Notice.

We may then carry out a short-listing exercise (using an SPD) and only those meeting our selection criteria will be invited to dialogue.

We must invite a minimum of three suppliers to dialogue unless fewer candidates have met the selection criteria and these are sufficient to ensure genuine competition, that is, at least two.

We then enter into a dialogue with bidders to develop one or more suitable solutions to meet our needs. There is no set format that the dialogue must follow, it will usually consist of a series of meetings with each tenderer with each meeting focusing on different aspects of the procurement, for example: financial, technical and legal.

However, whichever format is used, we should be careful to ensure that all tenderers are treated equally and are given the same opportunities to access relevant information.

During the course of the dialogue we are able to reduce the number of bidders provided that we confirm we intend to do so in the Contract Notice or Invitation to Participate in Dialogue. If we choose to down select, we should ensure that at least two tenderers remain in the dialogue until it concludes.

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When an appropriate solution has been identified, we will conclude the dialogue phase and invite final tenders. We may require all final tenders to be based on one solution identified during the course of the dialogue or allow each tenderer to submit a bespoke final tender.

Following receipt of final tenders, we evaluate the tenders and select the best tender based on pre-specified award criteria.

Under the Regulations, Contracting Authorities may carry out further negotiations with the highest-scoring bidder, following an evaluation of the final tenders “to confirm financial commitments or other terms contained in the tender in order to finalise the terms of the contract”, as long as this does not materially change the essential aspects of the procurement or risk distorting competition or causing discrimination.

### 6.3.4 Competitive with Negotiation Procedure

The Competitive with Negotiation Procedure is suitable for more complex and / or high value procurements.

This procedure is a “hybrid” procedure because, as with the Restricted Procedure, it allows us to award a contract on the basis of an initial tender.

However, like the Competitive Dialogue Procedure, it also enables us to negotiate with tenderers who submitted an initial tender, and any subsequent tenders, until we decide to conclude those negotiations. There is no limit to the number of negotiation and tender stages.

Once we are satisfied that we have completed our negotiation exercise with each bidder, we must formally close the negotiation phase and invite final tender submissions.

Final tenders are then submitted and evaluated, and the contract is awarded.

Unlike the Competitive Dialogue Procedure, the Regulations do not provide for any clarification or negotiation of the final tenders or the winning tender.

## 7.0 Regulated Procurements under the Procurement Reform (Scotland) Act 2014

### 7.1 Overview of the Act

We will comply with The Act as it applies to the following types of contract:

- Contracts for goods or services with an estimated value of between £50,000 and £189,330 (excluding VAT)
- Contracts for works with an estimated value of between £2,000,000 and £4,551,403 (excluding VAT)

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Such contracts must be advertised on the Public Contracts Scotland website and publicly procured in accordance with the terms of the Act, which imposes general obligations on Contracting Authorities to treat economic operators equally and without discrimination and to act in a transparent and proportionate manner.

Any procurement which is subject to the terms of the Act must comply with general principles of:

- Transparency – contract procedures must be transparent and contract opportunities should generally be publicised
- Equal treatment and non-discrimination – potential suppliers must be treated equally
- Proportionality – procurement procedures and decisions must be proportionate

Requirements under the Act cannot be artificially split (de-aggregation) to avoid the application of the Act (e.g. a single requirement for services with a value of £50,000 cannot be the subject of two separate contracts of £25,000 each).

Where a proposed contract is “mixed”, e.g. if it contains both works and services / supplies or services and supplies, it should be classified according to the main subject of the contract and then the largest subject value. For example, in the supply and fit of 50 new kitchens, the main subject is the supply then the fit of the kitchens. The estimated value of the kitchen supply is £1,200 and the fit (works) cost is £1,000 then the main subject and higher value is the supply, then the contract is a Supply. This should be followed for all contracts.

### 7.1.1 Specific Statutory Duties under the Act

There are a number of specific statutory duties under the Act which will apply to the procurement of any contracts which are subject to the terms of the Act or the Regulations.

The principal statutory duties under the Act are as follows:

#### The Sustainable Procurement Duty

We must consider, before starting a procurement competition, how, by the way in which we conduct the procurement process, we might improve the economic, social and environmental well-being of our area, how we might facilitate the involvement of small and medium enterprises, third sector bodies and supported businesses and to consider how we can promote innovation.

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Having considered and identified how these aims might be achieved, the Act requires us to conduct our procurement in a way designed to secure the improvements identified.

### Annual Procurement Strategy

The Act requires us to prepare and publish an Annual Procurement Strategy for each year in which we consider our total expenditure on Regulated Procurements will exceed £5,000,000.

If we have to prepare an Annual Procurement Strategy, we must also prepare an Annual Procurement Report.

### Contracts Register

We must keep and maintain a Contracts Register which must include details of all contracts entered into by us following a Regulated Procurement under the Act. In relation to each contract, the Contracts Register must contain the following information:

- The date of award
- The name of the successful contractor
- The subject matter of the contract
- The estimated value of the contract
- The start date of the contract
- The end date provided for in the contract (disregarding any option to extend the contract) or, where there is no date specified, a description of the circumstances in which the contract will end
- The duration of any period for which the contract can be extended

We may delete an entry in our Contracts Register only after the contract to which it relates has expired or been terminated.

We must make the information contained in our contracts register publicly available on the internet via PCS and by such other means as we consider appropriate.

We may withhold an entry or part of an entry in the Contracts Register if we consider that making it publicly available would:

- Impede law enforcement or otherwise be contrary to the public interest
- Prejudice the commercial interests of any person

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- Prejudice fair competition between economic operators

### Community Benefit Requirements

The Act requires that, for any Regulated Procurement with an estimated value equal to or greater than £4,000,000 (excluding VAT), we must consider whether to impose Community Benefit Requirements as part of the contract delivery before carrying out the procurement.

We must include in the Contract Notice relative to the procurement a summary of the Community Benefit Requirements it intends to impose or, if it is not going to include any community benefit requirements, or where applicable, the reasons for not including any such requirements.

## 7.2 Procurement Procedures under the Act

There are no specific prescribed procurement procedures or timescales under the Act but we may, if appropriate, use any one of the procurement procedures under the Regulations described in Section 5 of this Policy for procuring contracts which are subject to the terms of the Act.

In relation to advertising of contract opportunities which are subject to the terms of the Act, the Contract Notice, Tender Documentation and Contract Documentation must be published on the Public Contracts Scotland website.

Tenderers should be advised to submit any clarifications through the Public Contracts Scotland website, and these clarifications and answers will be available to all bidders to ensure transparency and anonymity.

Tenderers will be advised to only submit their tender submissions through the Public Contracts Scotland website.

Any complaint about, or challenge to, our contract award procedure or any situation which could be reasonably expected to lead to such a complaint or challenge must be notified to the staff member leading the procurement.

## 8.0 Unregulated Procurements – Contracts which are below threshold value

Contracts with an estimated value below the thresholds set out in the Regulations and the Act do not require to be procured in accordance with the terms of the Regulations or the Act but must be procured in accordance with the requirements of this Section of the Policy.

Contracts with an estimated value below the above prescribed thresholds do not need to be advertised in UK or publicly procured in terms of the Regulations but Contracting Authorities must ensure a degree of advertising and follow a procedure leading to the award of the contract which is sufficient to enable open competition and comply with general principles of equal treatment, non-discrimination, transparency and proportionality.

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### **8.1 Direct Awards below £25,000**

This approach will not be used in relation to any partnership or other contractual document arrangement such as a loan document, approved by Management Committee, and where ELHA can only fulfil its contractual obligations using suppliers specified in the partnership or contractual document.

Where costs are below £25,000 the Chief Executive has Delegated Authority to award contracts for works / services / goods if:

- The Chief Executive considers it is appropriate to make the direct award
- The Management Committee deems there is a requirement for those services to be directly awarded and so instructs the Chief Executive accordingly

However, and in order to achieve Value for Money, due consideration will be given to using the Quick Quote (QQ) facility, where possible.

Management Committee will be asked to approve or homologate any such appointments, depending on the circumstances and timescales involved.

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Estimated value of contract	Procedure to be followed
Below £5,000 works and services / supplies*	Work may be authorised within individual officer limits and contractor / supplier may be directly engaged without any form of public procurement exercise.
Between £5,000 and £25,000 works and services / supplies*	Where possible, a minimum of three competitive quotations to be invited via Quick Quote (QQ).
Between £25,000 and £50,000 works services / supplies*	Where possible, a minimum of three competitive quotations to be invited via Quick Quote (QQ) using standardised documentation and processes (for example, a specification, Quality Document (if appropriate) and return date to be sent to all contractors / suppliers being asked to provide costs). Lowest priced contractor or Most Economically Advantageous Tender (MEAT) can be used and to appoint.
Between £50,000 and £2m works*	Best Practice tender process to be followed with at least three competitive tenders invited via Scottish Contract Notice via PCS tendering procedure. Contractor evaluated as being the (MEAT) to be appointed.
Between £2m and £4,733,252 works and Between £50,000 and £189,330 services / supplies*	Formal Scottish tender process to be followed with at least three / five competitive tenders invited via Scottish Regulated Contract Notice via PCS full tendering procedure. Contractor / supplier evaluated as being the (MEAT) to be appointed.
Over £4,733,252 works and Over £189,330 services / supplies*	Formal OJUK tender process to be followed with at least three / five competitive tenders invited via UK Regulated Contract Notice via PCS full tendering procedure. Contractor / supplier evaluated as being the (MEAT) to be appointed.

*\* out with any existing Measured Term Contracts (MTC) values that are imbedded within a contract*

### 9.0 Framework Agreements

A Framework Agreement is an 'umbrella agreement' that sets out the terms (particularly relating to price, quality and quantity) under which individual contracts ("call-offs") can be made throughout the period of the agreement (which will be a maximum of four years).



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Framework Agreements can be set up for one Contracting Authority to use or can be set up for a number of Contracting Authorities to use.

We may set up our own Framework Agreements or we could explore in relation to a particular requirement, whether there is an existing Framework Agreement put in place by another Contracting Authority under which we are entitled to draw down the required supplies, services or works.

Pre-procured frameworks which we may be able to access include Frameworks established by Buying Solutions, Procurement for Housing and the Scottish and UK Governments.

Framework Agreements are either concluded with a single supplier or with multiple suppliers. Often, Framework Agreements are split into lots.

### **9.1 Do Framework Agreements need to be Advertised in OJUK?**

A call-off is where an individual package of work is awarded to the successful tenderer under the Framework Agreement. If the value of all the potential call-offs under the Framework Agreement is estimated to exceed the UK thresholds, then the Framework Agreement should be advertised in the OJUK. However, if this is not the case, the individual call-offs do not then need to be re-advertised.

Please note that under the Act, Contract Award Notices do require to be published on Public Contracts Scotland in respect of call-off contracts with a value of more than £50,000 for goods or services, or £2 million for works.

### **9.2 How are call-offs awarded under a Framework Agreement?**

If the Framework Agreement is awarded to one provider, then we can simply call-off the requirement from the successful supplier as and when it is needed. Where the Framework is awarded to several suppliers, there are two ways in which call-offs might be made:

- Where the terms laid out in the Framework Agreement are detailed enough for the Purchasing Authority to be able to identify the best supplier for that particular requirement, then the Authority can award the contract without re-opening competition
- If the terms laid out in the Framework Agreement are not specific enough for the Purchasing Authority to be able to identify which supplier could offer them best value for money for that particular requirement, a further mini-competition would be held between all the suppliers on the Framework Agreement who are capable of meeting the need

### 9.3 Advantages of Framework Agreements

If a Framework Agreement has been properly concluded further to compliant procurement procedure, we do not need to follow the full OJUK procedure in respect of each requirement which is the subject of a call-off, thus reducing costs and timescales. There are also potential benefits of economies of scale.

### 9.4 Potential Disadvantages of Framework Agreements

Framework Agreements may be relatively unresponsive to change – there may be new suppliers and/or new solutions within the market that were not included when the Framework Agreement was initially set up.

Framework Agreements tend to apply a "one size fits all" approach, which may make it difficult for us to satisfy our own procurement objectives through use of a Framework Agreement which has been procured by a third party and may not have been tailored to our particular requirements.

## 10.0 Exceptions to the Requirement to Publicly Procure a Contract

There are certain exceptional circumstances in which tenders are not required for the procurement of contracts for supplies, services or works which are above the applicable threshold value under the Regulations or the Act, these are contained both within the PCS Regulations 2015 under Section 33 - *Use of the Negotiated Procedure without Prior Publication* and the for the Reform Act 2014 with the PS Regulations 2016, under Section 6 - *Circumstances in which a contract can be awarded without competition*. These sections consider the following:

- Where no tenders, no suitable tenders, no requests to participate or no suitable requests to participate have been submitted in response to an Open or a Restricted Procedure, provided that the initial conditions of the contract are not substantially altered
- Where the tender may only be awarded to a particular supplier for technical or artistic reasons or where a particular supplier has exclusive rights, including, but not limited to, intellectual property rights, which mean they are the only supplier capable of meeting our requirements
- Where we have already entered into a contract with a supplier and require additional services or works to be supplied which were not included in the original contract but which, through unforeseen circumstances, have become necessary
- Where we want to appoint a supplier with whom we already have a contract to provide new works or services which are a repetition of works or services carried out under the original contract and such new works or services were provided for in the original contract notice

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- Where (but only if it is strictly necessary) for reasons of extreme urgency brought about by unforeseeable events, the time limits for one of the standard procurement procedures cannot be complied with

The above exceptions may only be used in limited circumstances and are subject to a range of specific conditions. Our Management Committee must approve any such approach and we may require specific legal advice before proceeding with any such exception.

### **11.0 Renewals, extensions and changes to existing contracts**

A proposed extension, renewal or amendment to an existing contract may be considered equivalent to the award of a new contract if it constitutes a material change.

If a change to an existing contract has the effect of creating a new contract, we may need to undertake a new competitive tender process in accordance with the Regulations or the Act.

Material changes to a contract are those which demonstrate the intention of the parties to renegotiate the essential terms of the original contract. Amendments to a contract may be regarded as “material” where they:

- Introduce conditions which, had they been part of the initial award procedure, would have allowed for the admission of tenders other than those initially admitted, or would have allowed for the acceptance of a tender other than the one initially accepted – in other words, the new conditions would have potentially changed the participants in and / or the outcome of the original procurement process – examples include extensions or price increases
- Extend the scope of the contract considerably to encompass services not initially covered
- Change the "economic balance" in favour of the contractor in a manner not provided for in the terms of the original contract – in other words, we make changes which improve the contractor's position or alter the balance of risk under the contract in favour of the contractor – examples include extensions or price increases or agreeing to renegotiate a contract in a way which relieves a contractor of an obligation

The Regulations restrict our ability to modify publicly procured contracts.

If we are considering modifying any terms of a publicly procured contract, then we must first get approval from our Management Committee and we may obtain appropriate legal advice.

## **Approved by Management Committee on 26/08/21**

### **12.0 Management Committee Role**

Our Management Committee approves our overall Procurement Policy and, if required, our Procurement Strategy. It does not have a role as part of any individual tender process, but may approve a project that as part of the process requires a tender to be advertised for works, goods or services, or may have a role in approving the budget for and/or acceptance of a winning tender, depending on the nature of the goods, works or services being procured.

Otherwise, the Management Committee delegates responsibility to the Senior Management Team to ensure that procurement by the Association is undertaken in compliance with this Policy.

### **13.0 Contracting within the Group**

ELHA has a wholly owned repairs and maintenance subsidiary company, R3 Repairs Limited. Given that R3 is a subsidiary company which was set up to meet the Teckal exemption for the purpose of the procurement regulations, ELHA is able to contract directly with R3 on the procurement of repairs and maintenance services.

### **14.0 Policy Review**

The Chief Executive will review this policy every five years or whenever there is a material change in legislation. Any changes required will be submitted to the Management Committee for approval.