

# ***FORTH HOUSING ASSOCIATION LIMITED***

## ***PROCUREMENT***

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# **FORTH HOUSING ASSOCIATION LIMITED**







## **PROCUREMENT**

### **1.0 Introduction**

- 1.1 Forth Housing Association will aim to ensure that value for money is obtained in respect of all of its activities. It will ensure that all of its decisions in relation to the procurement of goods and services are achieved with probity that they ensure value for money, are fair and are seen to be fair.
- 1.2 The term 'Procurement' as used in this policy covers the process of commissioning all services, supplies and works by all departments within Forth. This includes, but is not restricted to, development and maintenance contracts; property, IT and other consultants' services; energy and office supplies etc.
- 1.3 The term 'Supplier' as used in this policy will be deemed to include the supply of all services, goods, supplies or works, including contractors, consultants.

### **2.0 Policy aim and objectives**

2.1 It is the aim of Forth to:

-  Achieve Best Value for all development and maintenance contracts procured by the Association, including appointment of consultants, through the operation of efficient and effective procurement procedures, recognising that lowest cost will not always represent Best Value
-  Ensure probity through transparency and accountability at all stages of the procurement process, including public advertising of contracts, and
-  Ensure compliance with statutory legislation and guidance, in the carrying out of any procurement activity.
-  Due to the minor differences between the legislation for 'EU Regulated Procurements' and Scottish 'Lower Value Regulated Procurements', it is our intention as far as practicable, and in order to avoid confusion, to follow the full EU compliant processes for all contracts above the 'Lower Value Regulated Procurements' thresholds.
-  Contracts below the 'Lower Value Regulated Contracts' threshold will be procured in accordance with Forth's Financial Regulations following the same overall principles in terms of demonstrating probity and value for money, and in a manner proportionate to the nature of such smaller contracts.
-  Prepare as required a Procurement Strategy and Annual Reports.

2.2 The objectives of this policy are to ensure that Forth:

- Is able to demonstrate that value for money has been achieved, both in the commissioning of individual contracts, and as an organisation as a whole
- To ensure that all Suppliers appointed by the Association are sufficiently competent, have sufficient resources and are committed to improving the service provided to customers
- Are committed to protecting the health and safety of our employees, customers, members of the public and suppliers employees
- Are committed to promoting innovation in the delivery of services to customers
- Are committed to improving equalities, and the economic prosperity of the communities in which we work
- Ensure equal treatment of all suppliers, confidentiality of all information received from them, and transparency and proportionality for all aspects of the procurement process.

### 3 Legal framework

3.1 The legal framework for public procurement includes the following:

A. European Community (EC) Treaty

The EC Treaty applies to all public procurement activity regardless of value, including contracts below the thresholds at which advertising in the Official Journal of the European Union is required and including contracts which are exempt from application of the EC Procurement Directives.

Fundamental principles flowing from the Treaty include:

- 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; and
- mutual recognition – giving equal validity to qualifications and standards from other Member States, where appropriate.

B. European Community (EC) Procurement Directives and implementing Scottish Legislation

**EU Regulated Procurements:** EU legislation must be complied with for contracts over the thresholds set out in Appendix A. The procurement of contracts above these values are terms 'EU Regulated Procurements'.

**Lower Value Regulated Procurements:** The EU Directives are given effect in Scots law by The Procurement Reform (Scotland) Act 2014. This legislation however has introduced lower thresholds for contracts procured by public bodies, which are set out in Appendix A. The procurement of such contracts are termed ‘Lower Value Regulated Procurements’.

**Other Contracts:** Contracts that fall below the value for ‘Lower Value Regulated Procurements’ do not need to comply with EU or Scottish procurement legislation. However there is an over-arching requirement of EU Directives that probity be demonstrated at all times when public bodies procure services, supplies and works.

C. European Court of Justice and national case law

Decisions of the European Court of Justice and the UK and Scottish national courts provide interpretation of the requirements of the EC Treaty and the EC Procurement Directives and can establish precedents which must be observed. This is constantly evolving, and the Association must ensure that it has appropriate arrangements in place to ensure that staff involved in procurement activity are kept up to date with developments in the legal framework.

D. The Scottish Housing Regulator

The Scottish Social Housing Charter is aimed at helping to improve the quality and value of the services that social landlords provide. This Charter includes two key outcomes relating to procurement:

- Outcome 13 – Value for Money - Social landlords manage all aspects of their businesses so that: tenants, owners and other customers receive services that provide continually improving value for the rent and other charges they pay.
- Outcomes 14 & 15 – Rents & Service Charges - Social landlords set rents and service charges in consultation with their tenants and other customers so that: (1) a balance is struck between the level of services provided, the cost of the services, and how far current and prospective tenants and other customers can afford them; and (2) tenants get clear information on how rent and other money is spent, including any details of individual items of expenditure above thresholds agreed between landlords and tenants.

E. Scottish Government Guidance

The Scottish Government has developed comprehensive procurement guidance for public bodies to improve the quality of and value delivered

through procurement of public contracts in Scotland. This guidance can be accessed on the following website:

<http://www.scotland.gov.uk/Topics/Government/Procurement/buyer-information/spdlowlevel>

## 4 Other related policies

4.1 This policy should be read in conjunction with the following related policy documents:

### Business Plan

The association prepares a Business Plan which is updated annually and sets out:

- The vision, aims and key strategic objectives for the Association
- The main actions to be completed in the first years of the plan and how these complement the relevant key strategic objectives
- The agreed budget for the first year of the plan and longer term financial projections

### Financial Regulations

In addition to the above regulatory provisions, the Association's Financial Regulations detail Committee and staff responsibilities together with details of generally accepted best practice.

### Risk Management Policy

Forth recognises that risk is an inevitable part of our work, and effective risk management optimises the balance between risk and control. The Risk Management Policy sets out to recognise the areas of risk and to ensure that the appropriate policies, procedures and systems are in place to minimise them.

### Entitlements & Benefits Policy:

This policy describes the entitlements, payments or benefits that Forth's employees and Committee Members are able to receive. It also describes what is not permitted and the arrangements that the Association has in place to ensure that the requirements of this policy are observed.

## 5 Procurement approach

- 5.1 As stated earlier, procurement includes the acquisition of goods, services and works from third parties, whether under formal contract or otherwise.
- 5.2 In terms of the planning and delivery of the procurement of goods, services and works, the Association will where necessary prepare a Procurement Strategy, and review this on an annual basis. This will contain, as a minimum, information on how expected 'Regulated Procurements':
- Are being undertaken in compliance with EU Treaty Principles of equal treatment, non-discrimination, transparency, proportionality and mutual recognition
  - Are being undertaken in compliance with the sustainable procurement duty
  - Contribute to the carrying out of the Association's functions and the achievement of our key strategic objectives
  - Deliver value for money
  - Describe how we intends to achieve prompt payment in the supply chain
- 5.3 In addition our Procurement Strategy will set out our general policy on:
- The use of community benefit requirements
  - Consulting and engaging with those affected by our procurement
  - The payment of a living wage to persons involved in producing, providing or constructing the subject matter of regulated procurements
  - Promoting compliance by contractors and sub-contractors with the Health and Safety at Work etc. Act 1974 and any provision made under that Act
  - The procurement of fairly and ethically traded goods and services
- 5.4 The Association will also where necessary complete and submit an Annual Report on our Procurement Strategy, which will report on compliance with these factors. This will be published as soon as practicable after the end of each financial year.
- 5.5 The Association will maintain a Contract Register, for all regulated procurement, which sets out the goods, services and works procured by the organisation, the value and duration of the contract, and the supplier appointed.

## 6 Roles and responsibilities

6.1 The key roles and responsibilities in relation to the procurement of contracts by the Association are illustrated below:

Management Committee	Provide sponsorship and ensure appropriate governance and organisational arrangements are in place. Ensure sufficient skilled resources and that the procurement function is recognised in wider organisational policies.
Relevant Departmental Manager	Ensure that the function is appropriately staffed, organised and supported to deliver procurement requirements.
Officers	Deliver user requirements whilst ensuring compliance with legislation and achieving Best Value.

6.2 The procurement function will be led by the Manager of the relevant department responsible for procurement of the contract, whose primary role will be to:

- develop, promote and implement appropriate procurement strategies and procedures, including authority to procure;
- assess procurement competencies across the organisation and establish and address training needs
- provide professional, qualified procurement expertise, advice and services;
- contribute to the aims and objectives of the association, and take account of business needs and wider policy requirements
- pro-actively manage and develop our supplier base, including small and medium-sized enterprises (SMEs) and third sector and voluntary sector organisations, identifying and managing any supply risks or value added opportunities;
- ensure that value for money is achieved;
- ensure adherence to this procurement policy, current legislation and best practice;
- support sustainability and corporate responsibility through procurement processes;
- measure and report on procurement performance;

6.3 The term 'Procurement Officer' is used to describe any member of staff who is involved in the procurement of goods, services or works. The key elements of a procurement officer's role are to:

- determine contract requirements and establish specifications in collaboration with end users;
- establish cost-effectiveness, taking account of whole life costs and corporate social responsibility/sustainability issues;
- identify and engage with other experts as required (e.g. consultants, end users, legal advisors, other internal departments etc.);

- develop an appropriate output-based specification to attract market interest and stimulate competition and innovation;
- consider existing and/or collaborative contracts;
- ensure that all procurement processes (tender, order from framework etc.) are compliant with relevant legal and policy obligations, advertising through the national portal where appropriate;
- publicise procurement contact points and make available as much information as suppliers reasonably need to respond to the bidding process;
- understand and comply with relevant legal obligations relating to the goods, services or works to be purchased, e.g. environmental/health and safety legislation;
- manage the procurement procedure;
- conduct any procurement clarification required prior to contract award;
- finalise the contractual agreement and formal contract documentation;
- establish a clear audit trail (including recording the contract on the contract register);
- notify the outcome of bids promptly and, within the bounds of commercial confidentiality, debriefing winners and losers on the outcome of the bidding process to facilitate better performance on future occasions;
- ensure that adequate contract and supplier management arrangements are in place;
- share knowledge to develop best practice
- provide support and guidance to the end user/customer

6.4 Detailed guidance on individual aspects of procurement practice is available through the Scottish Government's 'Scottish Public Procurement Toolkit' and from SPD/Centers of Expertise websites.

## **7 Summary of procedures**

7.1 The preceding sections of this policy set out the Association's overall aims, objectives and obligations in terms of procurement, and how we intend to meet these. This section provides a brief summary of the procedures we will follow whilst carrying our procurement activity.

7.2 The association will generally tend to follow the 'Open' (single stage) or 'Restricted' (two stage) Procedures as set out in the EU Legislation. Generally, where timescales permit, the Restricted Procedures will be followed whereby there is a selection of shortlisted tenderers, followed by a more detailed tender submission for those shortlisted.



### 7.3 Both processes require:

- Initial project notifications (sometimes called a PIN notice) as soon as the decision to proceed with the project has been made, where streamlined procedures are to be followed
- Publication of a Contract Notice to start the tender procedure
- A pre-selection shortlisting process, in the case of two stage tendering
- A tendering exercise to all interested parties (single stage) or shortlisted parties (two stage)
- Ideally between 3 and 5 Tenders or Quotations should be sought
- A Quality/Price assessment of tenders submitted
- Publication of a Contract Award Notice
- The observation of a 10 day 'Contract Standstill' period before appointment of the preferred tenderer, for EU Regulated and Lower Value Regulated Contracts
- The provision of constructive feedback on submissions to all successful and unsuccessful bidders
- If the nature of the contract is such that three suitable Suppliers cannot be identified the Association will seek quotes from one or two suitable suppliers, provided that value for money can be demonstrated
- All suppliers must complete the relevant ESPD, and this must have been assessed and deemed to be satisfactory, prior to the supplier being appointed by the Association
- Where a procurement exercise results in a 'Framework' of shortlisted suppliers being appointed, the tender documentation will set out clearly how 'Call Off' contracts will be awarded to suppliers on a fair and consistent basis

## 8 Central purchasing bodies

- 8.1 The Association will consider procuring contracts through a 'Central Purchasing Body' provided that Value for Money can be demonstrated through this method of procurement. A Central Purchasing Body is a public body that has procured a contract for specific works, services or supplies on behalf of themselves and/or other public bodies. The Association will satisfy itself that all EU and Scottish procurement legislation has been complied with by the Central Purchasing Body prior to entering into any contract through this route.

## **9 Partnering**

- 9.1 It should be noted that 'Partnering' is not a procurement route, rather it is a term used to describe a non-confrontational way of working through which all parties, including clients and suppliers act as a single team to achieve common goals. It is about developing systems and methods to enable people and organisations to operate more effectively and efficiently together irrespective of the nature of the project or the method of procurement used, and it is intended to overcome old confrontational ways of working.
- 9.2 Strategic and Project Specific Partnering Agreements will be considered by the Association where added value can be clearly demonstrated, or where entering into a partnering arrangement is likely to lead to additional business opportunities for Forth which would not otherwise be available.
- 9.3 As with Central Purchasing arrangements the Association will satisfy itself that all EU and Scottish procurement legislation is complied with prior to entering into any contract through this route.

## **10.0 Review**

- 10.1 Management Committee will review this policy at least every 3 years, and Staff are responsible for ensuring that it meets legal and good practice requirements.

## APPENDIX A – PROCUREMENT THRESHOLDS

### EU Regulated Contract Thresholds:

Supplies	£181,302
Services	£164,176
Works	£4,551,153

N.B All figures are current as at 1<sup>st</sup> January 2018 and are exclusive of VAT.

### Lower Value Regulated Contract Thresholds:





Supplies	£50,000
Services	£50,000
Works	£2,000,000

N.B All figures are current as at 1<sup>st</sup> January 2018 and are exclusive of VAT.

### Association thresholds:

Below £5,000	The relevant authorised staff members have discretion to decide whether competitive quotations are obtained.
Between £5,000 and £20,000	At least three competitive quotations must be sought and a record maintained of all quotations received.
Above £20,000	Formal tendering procedures must be followed.

Exceptions to the above are as follows:

-  where a developer or other party brings an opportunity to the Association and the terms of the proposed arrangements will require the Association to contract with them or another named company
-  where consultants are being used and there is a reason to offer a particular firm the work (for example if they have unique skills or have carried out work at risk)
-  where works have been included as part of a schedule of rates contract which has been tendered in the usual way and the cost of the repairs does not exceed £20,000
-  where works and services are procured where no satisfactory alternative is available

- where works and services are only available from a limited number of suppliers – in which case, a reasonable number should be invited to quote or Tender
- where goods and materials are of a proprietary nature and no satisfactory alternative is available
- where, for other definable reasons, open competition would not be appropriate e.g. in the case of long-term agreements negotiated tenders or monopolies