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**SCOTTISH  
POLICE  
SERVICES  
AUTHORITY**

# **Scottish Police Services Authority (SPSA)**

## **Procurement Manual**

## **1 INTRODUCTION**

- 1.1 The purpose of this Manual is to provide guidance and best practice to SPSA staff on managing individual procurements. The contents of this Manual apply to the purchase of all goods and services for SPSA Business Areas and the purchase of ICT goods and services with SPSA acting as Agent on behalf of the Scottish Police Forces via the Agency Agreement. This Manual is the key document for implementing the SPSA Procurement policy and ensuring compliance with the SPSA Financial Regulations. Forms and templates for documents referred to in this Manual can be found on the Procurement & Contracts section of the SPSA Intranet. Any queries regarding the contents of this Manual and any requests for specific guidance should be addressed to [tenders@spsa.pnn.police.uk](mailto:tenders@spsa.pnn.police.uk)

## **2 STRUCTURE OF THE PROCUREMENT ORGANISATION AND SERVICE DELIVERY**

- 2.1 SPSA Procurement and Contracts is co-ordinated on behalf of the Head of Corporate Management by the Head of Procurement & Contracts. The Head of Procurement & Contracts is responsible for the delivery of an effective cycle for the acquisition of goods, materials and services together with the provision of a policy-making, advisory and monitoring service. The Head of Procurement & Contracts also acts as focal point for general procurement issues and escalation of specific procurement problems. The Head of Corporate Management is the final arbiter on all matters relating to Procurement at the SPSA.

## **3 PROCUREMENT PRINCIPLES**

- 3.1 SPSA is committed to a rigorous procurement process which emphasises the principles compliance, collaboration, and value for money. Other procurement principles include a commitment to best practice procurement, competitive tendering and adherence to Government procurement policy and EU procurement rules. These principles should underpin all SPSA procurement activity.
- 3.2 In order for the procurement process to be rigorous, it is important that all assessments, discussions and decisions are fully documented and filed together with all correspondence with potential suppliers.
- 3.3 The Key principles of the procurement policy are listed below:

- SEPARATION OF DUTIES (Also see section 4)

The roles of Budget Holder/Customer, Purchaser and Payment Authoriser should be separated. The purchaser who is empowered to make any recommendation must have written delegated authority.

- COMPLIANCE

All procurement activity must comply with current EU Directives and associated Scottish Public Contracts legislation.

- COLLABORATION

As per the recommendations of the Scottish Government McLelland review 2006, SPSA actively collaborate across Public Sector organisations by utilisi

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ng, where appropriate, existing framework agreements and other available viable contracts.

- VALUE FOR MONEY

A prime aim of the procurement process is to ensure that best Value for Money (VFM) is achieved.

- COMPETITION

Procurement should be undertaken via open competition unless there are exceptional reasons.

- INTERNATIONAL OBLIGATIONS

Procurement processes must comply fully with the EC Procurement Directives and the WTO Government Procurement Agreement.

- PAYMENT ON TIME

Suppliers must be paid on time in accordance with contractual arrangements.

- ETHICAL STANDARDS

Procurement must be undertaken to the highest ethical standards and with fairness to suppliers.

- ENVIRONMENTAL IMPACT

Consideration should be given regarding sustainable sources and current waste disposal issues/regulations.

#### **4 SEPARATION OF DUTIES**

In the procurement process two key distinguishable roles are:-

- the budget holder/customer who perceives the need and makes out the business case to obtain any necessary approval to spend, then commissions the procurement service, and normally gives final approval to the recommended choice.
- the purchaser who fulfils the procurement role and is responsible for ensuring that the procurement process fully complies with procurement policy, and secures best Value for Money (VFM).

It is SPSA Policy that these two key roles should be separated. However, in all but the simplest cases, the customer and the purchaser should work together as a team throughout the procurement process. In more complex cases, the team is likely to be expanded to include Finance, Technical, and possibly legal colleagues. The final sourcing decision should be agreed by all the parties involved.

Neither of the above roles include the authority to make payments in connection with the contract entered into by the purchaser.

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Actual payment is to be handled in accordance with the Scottish Public Finance Manual.

## **5 PROCUREMENT CYCLE**

5.1 The procurement cycle consists of a number of generic stages that are common to all procurements and a number of additional stages relating to more complex and higher value procurements. The generic stages are:

- Determining the need to procure (requirement scrutiny)
- Establishing authority to procure
- Establishing the procurement route (type of contract and procedure)
- Determining availability of potential suppliers (competition)
- Inviting quotes/tenders
- Evaluation of quotes/tenders
- Awarding the contract
- Managing the contract
- Receiving and paying for goods and services

## **6 REQUIREMENT SCRUTINY (DETERMINING THE NEED)**

6.1 As part of requirement scrutiny, staff engaged in procurement activity should attempt to identify procurement risks and ensure risk management techniques have been applied where appropriate. Examples of procurement risks include dependencies on other goods/services, supplier risks (non-performance, bankruptcy, etc), payment risks where advances of the contract price have been made (pre payments, milestones, etc), intellectual property (IP) risks (risk of third party infringements and claims resulting, etc) and risks occasioned by the legal framework (minimum timescales for tendering, risk of ineffectiveness of non-compliant contracts etc).

6.2 As part of requirement scrutiny, staff engaged at business area and or project level should ensure that the total cost of ownership has been calculated using whole life cost models/techniques. Total cost of ownership will include "hidden" costs like design changes and longer term costs such as spares, maintenance and disposal. Some suppliers will sell equipment at a lower price in order to make their profit on after-sales services – accordingly all pricing elements should be taken into account in the value of the requirement and, later, during tender evaluation.

6.3 As part of requirement scrutiny, staff engaged in procurement activity should consider whether the requirement could be met by using an SPSA framework agreement or a wider framework agreement to which SPSA (and, when acting as agent, the relevant Police Force(s)) can validly utilise, before considering open market procurement.

6.4 As part of requirement scrutiny, staff engaged in procurement should consider the environmental impact of the goods or services they are procuring. In particular procurement from sustainable sources should be

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considered, as should the likely waste disposal issues and regulations (e.g. the WEEE Directive) when the procured goods reach the end of their useful life. Specifically, the following issues should be considered (this list is not in order of priority):

- Energy usage including mains water and drainage water
- Waste minimisation; process efficiencies and re-cycling opportunities
- Waste disposal implications, hazards and costs
- Avoidance of ozone-depleting substances
- Reduction of volatile organic compounds
- Reduction of materials containing heavy metals
- Control of discharges into air, land and water
- Noise levels generated from plant and machinery
- Space available to house/site equipment

## **7 AUTHORITY TO PROCURE**

7.1 Authority to commit expenditure to procure has been delegated to the Head of each Business Area or, where SPSA is acting as agent, the relevant Police Force Partner Manager. When acting as agent, both SPSA and Force approval is required. These persons may be referred to as Authorised Signatories however this is not authority to award a contract (See Chapter 16 for contract award) and should be registered with the Finance Department in accordance with Financial Regulations.

7.2 It is the responsibility of the Head of each Business Area or Partner Manager to ensure that the Authorised Signatory list is completed by all staff who have **been given** the authority to commit expenditure to purchase.

7.3 Authorised Signatories requiring to purchase goods or services in excess of their limit of authority must obtain a signature of authorisation from an Authorised Signatory with authority to commit the required level of expenditure.

7.4 Unauthorised members of staff requiring to purchase goods or services using SPSA funds **must** obtain authority from an Authorised Signatory prior to committing the SPSA to any expenditure.

7.5 All expenditure in excess of £25,000, except ICT National Procurement which is up to £50,000, will require signatures of authority, at Executive Group level or above, before a contract is awarded. Please refer to the SPSA Scheme of Delegation contained within the Intranet for further details of authority levels.

7.6 The SPSA will **not** accept liability for the payment of any invoice for goods or service supplied against an order, which has not been properly authorised.

7.7 **Under no circumstances shall the SPSA Terms and Conditions, for SPSA acting agent and principal, be compromised or varied in any manner without prior written authority from the Head of Procurement & Contracts and/or the Head of Legal and Compliance**

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## 8 COMPETITION

8.1 Competition is a cornerstone of public sector procurement and needs to be considered for each and every requirement unless a pre-competed route exists (e.g. a framework agreement or available contract). In assessing whether or not competition is practicable, a number of factors needs to be considered:

- Value of requirement/thresholds for competition
- Timescales of the requirement
- Technical complexity (ability to specify requirement, proprietary/IP issues)
- Market for competition (presence of suppliers with appropriate capability and capacity)

## 9 PROCUREMENT ROUTES

9.1 Before considering potential suppliers, the optimum procurement route (which might affect the choice of suppliers) needs to be selected. Generally the procurement route options will be either via a framework agreement/existing contract or stand alone procurement.

9.2 Framework agreements are those set up for particular goods and/or services against which call-offs can be made without resorting to further competition other than a Mini Competition within the framework. Where a framework agreement is in place for a particular good and/or service, it should be considered as the **preferred route to market, provided it can be proven to be fit for purpose and provide value for money**. Where the requirement cannot be met via the framework agreement or the SPSA believes that better value for money can be obtained via an alternative procurement route, then use of the framework can be waived. Note, where there is a choice between multiple frameworks, such as those placed by an external body (Scottish Government, Buying Solutions, etc), SPSA will select the framework best meeting the SPSA needs in conformance with the EU procurement rules. A Mini competition may not be required if the terms of a particular framework are clear and precise enough that it is possible to identify the most competitive supplier for a particular requirement without reopening competition. In such cases, a direct "call-off" to that supplier may be made under the terms of the frameworks. For detailed guidance on framework agreements, contact the Procurement & Contracts team.

9.3 Stand alone procurements are those in which SPSA invite competitive bids under its own terms and conditions. When conducting stand alone procurement it will also need to be decided which type of procedure is most appropriate (and available) for the relevant requirement

### 9.4 Thresholds

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9.4.1 Competitive tendering should always be considered, however frameworks can be used for the higher value requirements covered by this Manual. Where the requirement exceeds, or is likely to exceed a value, exclusive of value added tax, of **£113,057** for SPSA goods or services (**£173,934** for Forces) and **£4,348,350** for works, competition should be conducted in accordance with the EU Procurement Directives

9.4.2 Values correct as of 1<sup>st</sup> January 2012:

<u>Value</u>	<u>Degree of Formality</u>	<u>Minimum Number of Tenderers if shortlisted</u>
Above:  £113,057 (for SPSA requirement for supplies/services)  £173,934 (for SPSA acting as agent on behalf of Scottish Police Forces requirements for supplies/services)	OJEU advert and formal tenders (full EU procedural rules followed)  OR  Utilise relevant framework agreement	5
£25,000 to threshold above	Advert and formal tenders	3
£1,000 - £24,999	Written / email quotations	3
Below £1,000	Written / email quotations  Ensure VFM always obtained	-

Note: **ALL** ICT related procurement requests should, in the first instance, be directed to the National ICT Procurement team.

**Note, however,** that in respect of any contract which potentially could attract interest from suppliers in other EU member states – **irrespective of value** – EU principles of fairness, equal treatment and transparency **must** be observed. This requires open advertising of, equal access to, and fair and equal treatment of Tenderers in the award of, the contract in question.

## 9.5 Timescales

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- 9.5.1 Time factors alone will not be sufficient for dispensing with competition in exceptional circumstances.

## 9.6 **Competition as Default**

- 9.6.1 Each case should be treated on its merits within an overarching presumption that competition is the default position.

## 9.7 **Non Competitive Action (NCA)**

- 9.7.1 Where there is a valid case for Non Competitive Action (Sole Supplier) competition may be dispensed with. However such a case must be robust, well recorded, defensible against challenge from other potential suppliers and provide demonstrable value for money (VFM).
- 9.7.2 For detailed information regarding Non-Competitive Actions, please refer to the SPSA Intranet.

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## **10 EU PROCUREMENT RULES**

### **10.1 Part A/B Services**

- 10.1.1 The EU Directives refer to Part A Services and Part B Services. These are specific categories of services. Part A Services require mandatory OJEU advertising whereas Part B Services allow for more discretion in the procurement process, but also require to be advertised (albeit not necessarily in the OJEU) and the 'spirit' of the legislation must be followed. An 'award notice' must also be published for any Part B Services contract awarded over the thresholds.

### **10.2 Thresholds**

- 10.2.1 Thresholds are defined in the European Procurement Directives (and in Scotland the Public Contracts (Scotland) Regulations as amended (the Scottish Regulations)) in Euros. The equivalent GBP values of the EU thresholds are assessed every two years and published in the Official Journal of the European Union (OJEU) and reproduced on the Scottish Procurement Directorate's website. Please refer to the Procurements & Contracts section of the SPSA intranet for the current EU Thresholds as of January 2010.

### **10.3 Aggregation**

- 10.3.1 The EU Directives require that public bodies aggregate the value of their Supplies, Services and Works contracts/purchases to establish whether or not groups of related contracts are subject to the full application of the EU Directives.
- 10.3.2 Aggregation involves estimating and totalling the SPSA spend, over the financial year, on contracts which are for the same type of goods or services and have similar characteristics. These aggregated values are then compared with the appropriate published threshold values. Where the aggregated spend exceeds these values, the full EU procurement rules and the Scottish Regulations must be applied.

### **10.4 General Rules on Aggregation**

- 10.4.1 Aggregated values are calculated exclusive of Value Added Tax.
- 10.4.2 Aggregated values must be calculated to the highest potential contract value i.e. it should include the value of anticipated variations, contract amendments and options.
- 10.4.3 Contracts must not be split to avoid the regulations. However contracts that are covered by the EU Directives (through aggregation or otherwise) may subsequently be advertised as separable lots.
- 10.4.4 If the contract period is greater than 12 months then the value is calculated by totalling the spend over the whole contract period, if the contract period is not known then over 4 years is assumed.
- 10.4.5 If the Category group has no previous history then the estimated expenditure for the commodity group during the 12 month period following the first delivery date is used to calculate the value. (Again, if a contract is

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let for a period of greater than 12 months then the value is calculated as the total estimated expenditure over the whole contract period.)

## **10.5 Award Procedures INCLUDE OPEN WORDING**

10.5.1 Where procurement activity will exceed the EU thresholds, it is mandatory that the Procurement and Contracts team are engaged. The nominated Procurement and Contracts professional will establish the relevant Procurement Strategy including the EU procedure to be undertaken.

## **10.6 Advertisements**

10.6.1 Most requirements covered by the EU Procurement rules will need to be advertised in the OJEU. Some requirements, known as Part B Service requirements, do not need to be advertised in the OJEU but they may be advertised elsewhere e.g. on [www.supply2.gov.uk](http://www.supply2.gov.uk). All advertising must be undertaken by a member of the Procurement and Contracts team.

## **11 SUPPLIER SELECTION**

### **11.1 Elements of Supplier Selection**

11.1.1 When selecting potential suppliers to be invited to tender for a contract, a number of elements must be considered and checked :

- Criteria for selection
- Pre Qualification (where appropriate)
- Financial/credit checks
- Mandatory / voluntary exclusion criteria (if supplier/provider convicted of certain crimes etc)

### **11.2 Selection Criteria**

11.2.1 A number of selection criteria may be used to pre-qualify potential suppliers, usually under the generic headings of Economic and Financial Standing and Technical or Professional Ability.

11.2.2 Criteria in the former could include profitability, ratio of turnover to contract value and credit rating.

11.2.3 Criteria in the latter could include previous experience, accreditations, and health & safety policies.

### **11.3 Pre-Qualification (where appropriate)**

11.3.1 Pre-qualification is necessary when using the Restricted Procurement to ensure the right type and number of suppliers are invited to tender. Use of a pre qualification questionnaire (PQQ) is recommended for larger procurements,.

### **11.4 Financial/Credit Checks**

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- 11.4.1 An important part of supplier selection is ensuring that all potential suppliers have the financial capacity and stability to fulfil the requirement both during and after the contract (the latter for any post-contract requirements such as warranties and further services). Financial stability can be checked in a number of ways such as: a review of accounts submitted as part of the PQQ/EoI; comparison of contract requirement with a company's turnover to ensure the value of the work is not disproportionate to the company's finances; credit/financial health checks.

## **11.5 Mandatory (and Voluntary) Exclusion criteria**

The EU Directives provide that potential suppliers/providers must be excluded from the tender process where they fall foul of certain mandatory exclusion criteria. These include convictions for certain offences, such as fraud, bribery etc. The EU Directives also include a list of voluntary exclusion criteria – typically less serious offences and non-compliance with legislation such as environmental laws etc - which contracting authorities are permitted (but not required) to use as exclusion criteria

## **12 INVITATION TO TENDER (ITT)**

### **12.1 Issuing the ITT**

- 12.1.1 All selected Tenderers must be invited to tender simultaneously and in writing. The EU legislation requires tenders to be issued in the fastest practicable manner.
- 12.1.2 These actions are best practice and should be applied as a matter of course.

### **12.2 Format of the ITT**

- 12.2.1 The ITT will have a number of sections but should contain detailed enough information in order to allow Tenderers to submit compliant responses, for example :
- Guidance on the format and receipt of tenders (including intention to tender responses, treatment of late tenders, any requirement for Parent Company Guarantees, etc)
  - Guidance on tender clarification, amendments, pre-tender meetings, Q&A's, extension of time
  - Specification including Business and Technical requirements
  - Award criteria, if not already issued (these should include any sub-criteria and the relative weighting given to each criterion when scoring)
  - Likely pricing mechanisms (fixed, ascertained cost, etc) and payment terms, including any retentions/vesting issues
  - A draft contract with terms and conditions

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### 12.3 Tender Clarification and Amendments

- 12.3.1 Tender clarification and tender amendments occur once the ITT has been issued. Tender clarification occurs through discussion between Tenderers and the SPSA in order to clearly identify the requirement. This does not result in any change to the ITT. The details of these clarifications should be issued to all other Tenderers (unless the discussions are to clarify a Tenderer's offer, in which case it will be kept confidential to the Tenderer e.g. where a minimum specification has been provided to generate innovative technical solutions). All clarifications should be numbered and dated. It is important that responses to clarifications are issued to all Tenderers at the same time and within a reasonable period of time prior to return of tenders.
- 12.3.2 Tender amendments occur when one or more elements of the tender is changed resulting in an amendment to tender documents being issued to specify the change to the original ITT requirements. Once an ITT has been issued, amendments must be issued simultaneously to all Tenderers at any time prior to and before the final date for return of tenders. Consideration should be given as to whether the tender return date is then reasonable in light of the additional information being issued.
- 12.3.3 Where amendments are of a significant nature, particularly where they affect those who would have been interested in tendering or which Tenderers would have been selected to tender, consideration should be given to withdrawing the ITT and recommencing the tender process. Any change in the suppliers/providers invited to tender must be fully justified under the EU Directives.
- 12.3.4 All amendments and clarifications must be issued by the Procurement & Contracts Department.

### 12.4 Extension of Time

- 12.4.1 It is vital that Tenderers are allowed adequate time to prepare and submit tenders. The time allowed must take into account the complexity and extent of documentation, pre-tender meetings and site visits.
- 12.4.2 It may be necessary to grant an extension of time for the return of tenders for a number of reasons such as unforeseen circumstances or through tender amendments.
- 12.4.3 When an extension of time is being assessed, consideration must be given to the strategic and programme implications before it is granted.
- 12.4.4 A request by a tenderer for an extension of time should only be granted if reasonable, consistent with the SPSA requirements, and is received at least 3 working days prior to the tender return date. All Tenderers invited must be given the same extension.

### 12.5 Pre-Tender Meetings and Site Visits

- 12.5.1 Pre-tender meetings and site visits, sometimes referred to as Supplier Briefing days, are arranged by the Procurement & Contracts Department in conjunction with the Business Area. A pre-tender meeting or site visit may be required where the issues contained in the tender are complex or

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where there is an element of interpretation in the specification. These meetings are designed to clarify the exact requirements of the tender and allowable variants.

- 12.5.2 All vendors selected to receive an ITT must be invited to attend such meetings or visits where these are part of the tendering process. This invitation must be undertaken in writing.
- 12.5.3 Tenderers should be invited as a group, but where separate meetings or visits occur all Tenderers should receive the same information.
- 12.5.4 Minutes of meetings should be taken and circulated to all Tenderers. Items confidential to individual Tenderers should be treated as such. In certain circumstances, pre-tender or site visit notes can be incorporated into the tender documentation.

## 12.6 Return of Tenders

### 12.6.1 Prior to tender return :

- Tenderers should be permitted to submit revised tenders or written amendments at any time up to the time and date specified for the return of tenders.

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## **13 TENDER RECEIPT AND TREATMENT**

### **13.1 Receipt of Tenders**

- 13.1.1 The date and time (if applicable) of receipt should be recorded and Tenders should then be stored in a secure location until opening. Tenders should be treated as confidential documents. This also refers to electronic tendering.

### **13.2 Tender Opening**

- 13.2.1 Tenders must not be opened before the date and time for return of tenders specified in the ITT or such amended date and time as may have been advised to all Tenderers. Tender opening must be undertaken by an individual with the appropriate authority in the presence of an independent witness, this also applies to electronic-tendering.
- 13.2.2 All pages (including copies of tenders) that refer to any financial information i.e. cost, discounts must be date stamped and signed by the responsible officer and an independent witness.
- 13.2.3 All tenders that are related must be opened at the same time

### **13.3 Late Tenders**

- 13.3.1 All unaccepted tenders should be returned to the tenderer unopened, accompanied by an explanatory letter.

### **13.4 Initial Checking and Non-Compliance**

- 13.4.1 Once opened, tenders should be checked to ensure they contain all relevant information and any non-compliance should be noted. Tenders may be ruled out for non-compliance.
- 13.4.2 Part of the checking process is to ensure any honest mistakes are highlighted. For example, should an abnormally low (or high) price be tendered, it may be a mistake (for instance a misplaced decimal point) and the tenderer should be contacted to confirm that the price tendered is what they intended. However this is not an opportunity for the tenderer to alter their genuine price on negotiation.

### **13.5 Distribution to User Department**

- 13.5.1 Once checked, the relevant volumes of the tender documents will be distributed to the User Department for evaluation. Depending on the agreed process, this will almost certainly exclude pricing information at this stage.

## **14 TENDER EVALUATION**

### **14.1 Process for Evaluation**

- 14.1.1 It is essential for the evaluation matrix to be in place before ITT's are issued. In practice, only minor amendments should be undertaken

between issue of ITT and tender return. The process should be fair, documented, clearly understood by all and potentially releasable under Freedom of Information. The process should include the step-by-step process for treatment of the tenders, who is involved in the process, what their responsibilities are, timescales, detailed instructions on conduct/scoring/communications/security, etc.

## **14.2 Scoring/Weighting**

- 14.2.1 If an OJEU procurement, the detailed evaluation criteria and any sub-criteria (as well as their relative weightings) will already have been advertised in the OJEU Notice and/or the ITT. The detailed scoring/weighting criteria actually used when scoring must be consistent with the criteria advertised. For below EU-threshold contracts (but which still have a value high enough to attract potential cross-border interest), this best practise should also be applied.. The value/complexity of the procurement will determine the level of granularity of the scoring/weighting. All scoring/weighting systems will include price, quality and delivery but more detailed systems might also include whole life costs, relationship fit, after sales service, reliability, innovation, added value, future proofing, etc.
- 14.2.2 Scoring should be carried out independently of other scorers (even when in scoring teams) except where there is a moderator or controller who can independently advise on (though not influence) scoring issues. Normally scorers (or scoring teams) will only score certain aspects of tenders e.g. the commercial response or the technical response. Scores should be kept confidential until they are assimilated.
- 14.2.3 Scores should be assimilated in a manner which allows no changes or premature disclosures to be made. At this stage, there may be some analysis/justification/clarification/moderation of scores. Ultimately this stage should result in a ranking of the tenders.

## **14.3 Selection of Preferred Bidder(s)**

- 14.3.1 Once tenders have been ranked, the key decision makers should agree on a clear winner (to whom the contract is intended to be awarded) or a preferred bidder if further clarification is required. Preferred bidders may be appointed for high value/complexity requirements where further stages in the award process are required such as due diligence (see Chapter 14.4). It is important, however, that these stages do not allow for further evaluation of, or negotiation with, the preferred bidder. It would be unusual to appoint multiple preferred bidders unless more than one contract is being awarded, and if used this possibility should be set out already in the OJEU Notice. However a reserve bidder might be appointed where appropriate.

## **14.4 Due Diligence**

- 14.4.1 Where a preferred bidder has been appointed, there may be a need for a further stage in the process before contract award called due diligence.

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During due diligence, the preferred bidder will require more detailed information about the requirement (which the SPSA will be obliged to provide) in order to validate his assumptions made when first bidding.

- 14.4.2 The aim of due diligence is to result in a contract award to the preferred bidder. Should this aim not be met, the SPSA may discharge the preferred bidder and commence dialogue with the reserve bidder. If there is no reserve bidder, or the reserve bidder declines to take any further part, the competition may have to be re-started.

## **15 PRE-CONTRACT**

### **15.1 Post Tender Clarification**

- 15.1.1 Where there is a clear winner but where certain aspects of the winning tender are unsatisfactory, post tender clarifications may be required before a contract can be awarded. The aim is to clarify, the winning tender such that it is wholly acceptable to the SPSA.

### **15.2 Parent Guarantees/Performance Bonds**

- 15.2.1 Where the procurement is strategic to the SPSA, some form of performance guarantee may be required to ensure the supplier fulfils the contract. This might take the form of a parent company guarantee or performance bond. Any requirement for these will have been included in the ITT and the bidders should have included sample responses in their tenders. Actual guarantees/bonds should be taken up before contract award.

### **15.3 Key Performance Indicators (KPI's) / Service Level Agreements (SLA's) and Service Credits**

- 15.3.1 Where the procurement is for a complex or wide-ranging service, KPI's/SLA's may be required which detail the individual service levels and how delivery of those service levels is to be measured. Draft KPI's/SLA's should have been provided in the ITT/Tender and these should be firmed up and agreed during due diligence and before contract award.
- 15.3.2 Service Credits should be applied as an agreed form of reparation for non-performance against the agreed KPI/SLA metrics.

## **16 CONTRACT AWARD**

### **16.1 Internal Approval/Signature**

- 16.1.1 Before **any** contract award decision is communicated outside of the SPSA, the contract must be approved by the relevant member of the Executive Committee or an individual with equal delegation. Please refer to the SPSA Scheme of Delegation available on the Intranet.

### **16.2 Notification Process**

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- 16.2.1 As soon as a contract award decision has been made, the winning tenderer should be notified and all unsuccessful Tenderers must be separately notified.
- 16.2.2 For procurements undertaken via OJEU tendering, a mandatory minimum **standstill period of 10 calendar days** must be observed between the date on which all unsuccessful Tenderers were notified and debriefed and the date on which the contract is concluded. A contract award notice must then be published within 48 days of the contract award.
- 16.2.3 Unsuccessful Tenderers should be notified in writing as soon as the award decision has been made and a debrief should be offered to them. All requests for written debriefs should be referred to the Procurement and Contracts department.
- 16.2.4 In OJEU-advertised procurements, unsuccessful Tenderers **must** be notified in writing before the mandatory standstill period can start. Notifications must include considerable detail in terms of debriefing information, as specified in Regulation 32(2) of the Scottish Regulations and associated SPPN's.

### 16.3 Internal Communications

- 16.3.1 Once the contract has been signed, internal customers should be notified via an agreed communications plan. For SPSA-wide contracts, such as framework agreements, a wider communications plan will be needed which might include a global email, entry on the SPSA intranet/website and Roadshows with the supplier.

## 17 LOWER VALUE REQUIREMENTS

- 17.1 For lower value contracts which cannot be expected to attract interest from suppliers in other EU member states the best practice contained in Chapters 9 to 16 should still be applied.
- 17.2 Less formal Invitations for Quotation (ITQ's) may be used to obtain quotations. For procurement activity below the £25,000 SPSA threshold, receipt and assessment of quotations may be undertaken by the Business Area. Quoted prices should be challenged where it is believed best value is not being offered.
- 17.3 Award of contract must be documented, particularly where the supplier submitting the lowest value quotation is not selected. Where a higher value quotation/supplier is selected, **clear reasons must be stated.**
- 17.4 Contract award should be confirmed through the issue of a purchase order.
- 17.5 It is good practice to advise unsuccessful bidders that they have been unsuccessful. A formal debrief is not mandatory however high level justification for their failure should be communicated either by email or by minutes of a verbal debrief.

## 18 CONTRACT MANAGEMENT

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## **18.1 Performance Measurement**

- 18.1.1 The performance of the supplier should be monitored throughout the life of the contract and should be measured where KPI's/SLA's are in place. Incidents of poor or under performance by suppliers should be immediately notified to the Procurement & Contracts Department.

## **18.2 Supplier Relationship Management (SRM)**

- 18.2.1 Whilst the working relationship with the supplier is the responsibility of the Business Area, the wider supplier relationship will be the responsibility of the Procurement & Contracts Department who will act as :

- Focal point for SPSA-wide issues with the supplier
- Escalation point for issues that can not be resolved at the local level

## **19 CONTRACT AMENDMENT**

### **19.1 Process for Amending Contracts**

- 19.1.1 There can be circumstances where amendments are required during the life of a contract. This should only be undertaken via the Procurement and Contracts team. However, care should be taken that a contract amendment does not weaken the SPSA rights e.g. by enshrining a delay. Care should also be taken that the contract amendment value is not disproportionate i.e. where a new contract might be more appropriate.
- 19.1.2 Each amendment should be treated as if it were a contract in its own right, with offer/acceptance, etc, clearly documented. Signature of the amendment should conform to SPSA delegations.
- 19.1.3 Any "material change" to a contract is deemed to result in a new contract for the purposes of those rules. A "material change" is particularly likely to occur if the nature or scope of the contract is changed and/or terms are amended to the supplier's benefit. If so, the new contract may need advertised in the OJEU. In doubt, you must seek the advice of the Head of Procurement & Contracts.

### **19.2 Aggregation Rules for Amendments**

- 19.2.1 The aggregation rules detailed in Chapter 10 also apply to contract amendments. Should a contract amendment value take the new contract value over the EU thresholds, the whole requirement may need to be OJEU-advertised.

## **20 CONTRACT COMPLETION**

20.1 Upon completion of the contract, the goods or services should be receipted and paid for as outlined in Chapter 21 below.

20.2 All documentation relevant to the contract should be filed and kept for a minimum of 7 years after the expiry of the contract in accordance with the SPSA Recommended Record Retention Periods contained within the Corporate Policy Section of the Intranet.

## **21 OTHER CONTRACTUAL/PROCUREMENT ISSUES**

### **21.1 Receipt of Goods**

21.1.1 At the delivery point the packaging and, as far as possible, the condition of goods must be checked promptly on receipt to ensure that they are acceptable. At this stage the recipient who signs on behalf of the SPSA should note any apparent defect on the delivery notice.

21.1.2 Goods should then be transferred promptly to the users or storage where further inspection will take place following unpacking. Those that are rejected for any reason must be reported promptly by the person who placed the order originally. Such action to the supplier and /or haulier should be within the specified time scale and replacement(s) sought urgently.

### **21.2 Payment for Goods**

21.2.1 Following receipt and acceptance of goods, payment will be made on receipt of the appropriate invoice after reconciliation with the original order and Goods Received Note documentation.

21.2.2 Before any invoice is passed for payment it is to be checked against the original order to ensure that the following conditions have been met:

- That the goods have been received
- That they have arrived on time
- That they arrived in good order
- That the correct quantity and quality was delivered
- That the correct price is being charged, (price quoted at the time of ordering)

## **22 BUSINESS RELATIONSHIPS**

### **22.1 Ethics Policy**

22.1.1 It is the policy of the SPSA to conduct its business and operations in accordance with the highest ethical standards. The SPSA Financial Regulations are applicable to all members and all business operations conducted by members of staff on behalf of the SPSA.

22.1.2 In cases where there is any question as to whether a given course of action complies with applicable laws or regulations, or with the ethical

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standards of the SPSA or its policies, advice should be sought in the first instance from the individual's line manager or Principal Budget Holder who may elect to seek further guidance from the Head of Procurement & Contracts.

## 22.2 Business Dealings

- 22.2.1 The reputation for integrity must be at the very foundation of the SPSA business and operations. Every effort should be made to preserve this reputation with all who do business with the SPSA by adopting a professional approach at all times.
- 22.2.2 Each employee has a fiduciary responsibility and obligation to comply with the Financial Regulations, Financial Procedures and Procurement Manual of the SPSA. Failure to comply with these may result in disciplinary action being taken.

## 22.3 Conflict of Interest

- 22.3.1 **No employee** may accept or solicit favours or gifts from any external organisation. The only exceptions to this policy are stationery or promotional items of small or nominal value which usually carry the donor's logo, e.g. company diaries or calendars. The SPSA Integrity Guidelines contained within the Corporate Policy Section of the Intranet should be referred to for further guidance.

### 22.3.2 Any information received during the course of business shall be treated as confidential and not used to personal advantage.

- 22.3.2 Every employee should be cognisant of **and avoid** circumstances which could lead to a conflict of interest with respect to the performance of their duties on behalf of the SPSA. Any employee, who has a conflict of interest, real or implied, must declare that interest to their Head of Business Area who may in turn consult the Head of Procurement and Contracts. If the Head of Procurement and Contracts has a conflict of interest it must be declared to the Head of Corporate Management.

## 23 Freedom of Information

- 23.1.1 The Freedom of Information (Scotland) Act 2002 came into force on 1<sup>st</sup> January 2005. It brings new rights to access information held by public authorities including the Executive and provides statutory underpinning to the Executive's commitment to being an open, transparent and trusted organisation. The vast majority of requests will, therefore, continue to be responded to straightforwardly, by providing the information being asked for. However there will be cases when an exemption will need to be applied.

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## **Glossary**

### **Aggregation**

The term used to describe the process of estimating total values of spend for comparison with Thresholds.

### **Assignment (Scots law) / Assignment (English law)**

A party to a contract (the assignor) may, as a general rule and subject to the express terms of the contract, assign its rights under the contract to a third party (the assignee) without the consent of the other party against whom those rights are held. The principle with regard to obligations is that they cannot be transferred to a third party except by Novation. Depending on the type of assignment / assignment (and whether it is under Scots or English law), notice (or "intimation") of the assignment / assignment may need to be given to the other party or parties for the assignment / assignment to take effect.

Before assignment / assignment can take place, it is essential to check that there is no bar on assignment in the original Contract, or if assignment is allowed that any conditions are attached to it.

### **Authorised Signatory**

A person authorised to procure goods and services on behalf of the SPSA acting as agent or as principal following delegation from the Principal Budget Holder.

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<b>Commodities</b>	In this Manual, this is used as a collective term for goods, services and/or works.
<b>Contract</b>	Any written legally binding agreement for consideration including Purchase Orders and lease and hire agreements.
<b>Contract Amendment</b>	A change to a <b>Contract</b> which cannot be exercised by a <b>Variation</b> . It includes the exercise of an <b>Option</b> .
<b>Contract Award</b>	The written notification to a <b>Tenderer</b> that it has been awarded a <b>Contract</b> .
<b>Contract Award Criteria</b>	Objective criteria by which <b>Tenders</b> shall be evaluated.
<b>EU Directives</b>	The EU directives regulating public procurement which are in force from time to time. The directive which principally affects SPSA is Directive 2004/18/EC, which is the basis for the Public Contracts (Scotland) Regulations 2006.
<b>Framework Agreement</b>	An agreement between one or more contracting authorities and one or more pre-qualified suppliers/providers which establishes certain terms and conditions (sometimes including prices) which will apply when contracting authorities party to the agreement call off contracts to suppliers/providers party to the agreement.
<b>ITT</b>	<b>Invitation to Tender</b> which contains all the relevant commercial and technical documentation against which a <b>Tender</b> may be submitted and evaluated, sometimes referred to as and Invitation To Quote ITQ.

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**Negotiated Procedure**

A procedure for inviting **Tenders** from a limited number of pre-qualified **Tenderers** under which a certain extent of negotiation is permitted.

**Novation**

Novation is a three way contract which extinguishes a contract and replaces it with another contract in which a third party takes up the rights and obligations which duplicate those of one of the original parties to the agreement.

All parties have to sign the Novation Agreement. All rights and liabilities under the original contract are therefore cancelled and the party who is leaving the agreement is free of it.

As Novation involves the cancellation of a Contract it is advisable that all parties know what is intended as otherwise they may insist on the affirmation of the original Contract and refuse to allow Novation.

**OJEU**

The Official Journal of the European Union

**OJEU Notice**

A notice, published in the **OJEU** which invited **Vendors** to express interest in receiving a PQQ (in Restricted/Negotiated/Competitive Dialogue procedures) or **ITT** (in Open procedure).

**Open Procedure**

A procedure for inviting **Tenders** whereby all **Vendors** who express an interest must be sent the relevant **ITT**.

**PIN**

**Periodic Indicative Notice.** An advertisement, published in the **OJEU** that indicates the future Procurement intentions of the **SPSA**.

**PQQ**

**Pre-Qualification Questionnaire**

**Preferred Supplier**

A supplier used as a first resort for a particular commodity. The use of Preferred Suppliers must be thoroughly checked against the EU

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procurement rules and must be authorised by the Head of Procurement and Contracts.

<b>Principal Budget Holder</b>	The person with authority to delegate the procurement of goods and services.
<b>Procurement</b>	The process of inviting <b>Tenders</b> and awarding <b>Contracts</b> .
<b>Procurement &amp; Contracts Department</b>	The department responsible for setting procurement policy and issuing guidance on individual procurements.
<b>Restricted Procedure</b>	A procedure for inviting <b>Tenders</b> from a number of pre-qualified <b>Tenderers</b> under which only matters of clarification may be discussed and any negotiation which could affect the commercial or material content of tenders is not permissible.
<b>Tender</b>	An offer, in response to an <b>ITT</b> , to perform <b>Works</b> , provide <b>Supplies</b> , or perform <b>Services</b> for a consideration.
<b>Threshold(s)</b>	Values specified in the OJEU against which the estimated total value of a contract (or a group of contracts which must be aggregated) is compared to determine whether the <b>EU Directives</b> apply.
<b>Business Area</b>	A Department of the SPSA with a need to procure goods or services.
<b>Variants</b>	Alternative proposals which may be submitted in response to an <b>ITT</b> where the terms of the ITT and OJEU Notice allow for it.
<b>Vendor</b>	A potential or actual supplier, service provider or contractor. Also referred to as Supplier.

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