

# THE STATE HOSPITALS BOARD FOR SCOTLAND

## PROCUREMENT POLICY FOR TENDERING AND CONTRACTING

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The date for review detailed on the front of all State Hospital policies/ procedures/ guidance does not mean that the document becomes invalid from this date. The review date is advisory and the organisation reserves the right to review a policy/ procedure/ guidance at any time due to organisational/legal changes.

Staff are advised to always check that they are using the correct version of any policy/ procedure/ guidance rather than referring to locally held copies.

The most up to date version of all State Hospital policies/ procedures/ guidance can be found on the intranet: <http://intranet.tsh.scot.nhs.uk/Policies/Policy%20Docs/Forms/Category%20View.aspx>

## REVIEW SUMMARY SHEET

No changes required to policy (evidence base checked) ☐

Minor Change required to policy (evidence base checked) ☒

### Summary of changes within policy:

#### 2024 Review

Public Contracts Tender threshold levels updated from 1 January 2024 on page 6.

APPROVED

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## 1 INTRODUCTION / PURPOSE

1.1 The State Hospital's Board for Scotland is committed to the adoption of best current practice in its Procurement function to ensure compliance with relevant regulations and to provide an effective service to all of its stakeholders.

1.2 The priority for all public procurement is to achieve sustainable, value for money. Value for money does not, however, mean 'lowest price'. It is defined in the Scottish Public Finance Manual as "the optimum combination of whole life cost and quality to meet the end user's requirement".

1.3 The purpose of this Procurement Policy is to set out guidelines for staff that are engaged in procurement activity in order to ensure compliance with varying statutory requirements.

1.4 It will help ensure that we:

- Correctly identify the goods and services (or works) needed to achieve objectives.
- Perform a critical evaluation of what is purchased and why.
- Obtain the goods and services (or works) needed at the right price, time and quality.
- Can demonstrate a robust and reasonable decision-making process.

1.5 This policy does not apply in the case of acquisition or rental of land, buildings or other immovable property, employment contracts, arbitration or conciliation services.

1.6 The main duties of the Procurement team are to:

- Carry out tendering or quotation processes for contracts over £5k (for the duration of the contract), with particular emphasis on contracts above £50k which are regarded as regulated spend and therefore higher risk.
- Provide an efficient service to stakeholders to meet their purchasing requirements.
- Monitor procurement procedures.
- Reduce the amount of off-contract expenditure.
- Manage all business-critical contracts in-conjunction with a key stakeholder(s).

## 2 THE PUBLIC SECTOR CONTEXT

2.1 Procurement is the process of buying goods, services and works from external suppliers. The procurement process begins when a need to buy something is identified and will generally end after the contract is awarded. Contract management will be carried out throughout the duration of the contract for business-critical contracts, led by Procurement with key stakeholder(s)

2.2 Key principles of Procurement policy are:

**Public Procurement Legislation and Principals** - All procurement activity must comply with relevant legislation and the principles of transparency, equal treatment and non-discrimination, proportionality and mutual recognition.

**Competition** - contracts must be awarded through genuine and effective competition unless there are exceptional reasons to the contrary.

**Legal aspects** - contracts for the procurement of goods, services and works must be in writing and awarded in line with the Scheme of Delegation.

**Value for money (VfM)** - contracts should be awarded on the basis of VfM.

**Ethical standards** - all Procurement activity must adhere to and apply the highest ethical standards in their procurement activity.

**Buying sustainably** – putting sustainability at the heart of everything we do and embed social, economic and environmental factors into all of our processes.

**Separation of duties** - the roles of budget holder and approvers be kept separate.

**Consultancy services** - the procurement of consultancy services must adhere to the [Scottish Government Consultancy Procedures](#).

2.3 The Procurement team has a legal, moral and ethical responsibility to ensure that all accountable spend is compliant with all legislation and that all contracts and agreements are awarded to meet its operational and strategic requirements.

2.4 Most importantly we must demonstrate that our purchases are value for money and our Policy is consistent with the [Scottish Government Policy Handbook](#).

2.5 Staff and agents of the State Hospital are required to declare any “conflict of interest” they have when dealing with individual suppliers, or the letting of contracts. Further advice can be obtained from the Head of Procurement. Any staff or agents who sit on a tender evaluation panel must complete a conflict of interest form prior to any tender evaluations.

2.6 All staff should adhere to the Hospitality, Gifts and Interests policy.

### 3 PROCUREMENT REQUIREMENT

3.1 All purchases made by are subject to audit. The State Hospital must demonstrate that it has been meticulous in its procurement methods and that they stand up to scrutiny of both internal and public enquiries. In addition, under the terms of the Procurement Reform Act 2014 we have a legislative requirement to publish information on contracts over £50,000.

3.2 We should ensure that all our suppliers of goods and services are covered by an appropriate contract, and/or a purchase order.

3.3 You must firstly assess the whole life cost of your requirement. For example, if you are considering an IT development, you will need to assess the cost of development, implementation and ongoing maintenance of the system. VAT is excluded when making this calculation. If the value of the proposed contract is over £50'000 it is critical that Procurement are involved from the outset.

3.4 If the estimated new commitment for any goods and services is below £50,000 and above £5,000 a Quick Quote process facilitated by Procurement should be carried out unless a suitable framework contract can be utilised. Anything below £5,000 it is best practice to obtain 3 quotes where practicable. As above Procurement can advise and support from the outset.

3.5 Additional factors need to be taken into account for this type of procurement including the construction Industry Scheme (CIS), whereby the State Hospital may need to deduct money from a supplier's payments and pass it to HM Revenue and Customs (HMRC). Procurement must be contacted at the outset to provide guidance.

### 4 PROCUREMENT ROUTE

4.1 You should initially contact the Procurement team who will advise on the best route to market. Generally, it will depend on four factors:

- Availability of appropriate framework contracts.

- Complexity of the requirement.
- Timeframes.
- Whole life cost of the product / service.

4.2 All goods and services contracts must be signed by the appropriate authorised staff member in-line with the Scheme of Delegation. Once the contract has been authorised a purchase order must be raised on the PECOS system at the outset to cover all related invoices.

4.3 Regardless of the value, all purchases must be made via the PECOS system to enable an authorised purchase order to be raised and sent to the supplier before any good or services are ordered. A Government eProcurement Card may also be used for low value or one-off purchases. It must NOT be used for:

- IT Software and Hardware purchases.
- Personal Travel and Subsistence expenses.
- Withdrawal of cash for business or personal use.

4.4 The State Hospital will in the first instance take advantage of any compliant framework or collaborative agreement which offers value for money, fit for purpose goods or services.

4.5 The chosen route will depend on the financial value of the contract.

4.6 The Public Contracts (Scotland) Regulations 2015 and the Public Contracts and Utilities Contracts (Scotland) Regulations 2016 applies to the State Hospital Procurement and must be complied with.

4.7 Public Contracts (Scotland) Regulations 2015 regulates that procurements must be advertised on Public Contract Scotland (PCS) when their estimated value is equal to or greater than the thresholds below:

Summary of thresholds from 1 January 2024 (Including VAT).

	<b>Supplies</b>	<b>Services</b>	<b>Works</b>
The State Hospital	£139,688 (now including VAT)	£139,688 (now including VAT)	£5,372,609 (now including VAT)

4.8 Procurement Reform (Scotland) Act 2014 regulates that procurement must be advertised on Public Contracts Scotland (PCS) when their estimated value is equal to or greater than the Reform Act thresholds below:

Goods and services, including framework agreements and dynamic purchasing systems	£50,000
Works contracts, including framework agreements and dynamic purchasing systems	£2,000,000

Failure to comply with this legislation carries severe penalties for which the State Hospital would be held accountable.

4.9 In any procurement equal to or greater than £4,000,000, the State Hospital must consider whether to impose community benefit requirements as part of the procurement:

- A summary of the community benefit requirements that will be included in the contract.
- Where we do not intend to include any such requirements, a statement of its reasons for not including any requirements.

- Where community benefits are included in a regulated procurement, it must include in the award notice a statement of the benefits it considers will be derived from those requirements.

Community Benefits Clauses on the Scottish Government website:

<http://www.gov.scot/Topics/Government/Procurement/policy/corporateresponsibility/Sustainability/CommunityBenefits>

## 5 TENDERING PROCESS

5.1 Following the full end to end [Scottish Government Procurement Journey](#) all Tenders will be issued via the Public Contracts Scotland Portal. The Quick Quote facility will be used to obtain quotations for below £50k goods and services. The routes used within the Journey will depend on value and complexity of project.

5.2 The State Hospital is required by law to take account of the sustainable procurement duty and community benefit requirements for all regulated procurements. We will conduct the procurement and act with a view to secure improvements to the economic, social and environmental wellbeing. We will consider before conducting any regulated procurement how it can facilitate the involvement of SME's, third sector bodies, supported businesses and promote innovation.

The statutory guidance, which was published on 17 March 2016, provides details of the specific obligations relating to both the sustainable procurement duty and community benefits.

<https://www.legislation.gov.uk/asp/2014/12/section/9>

We will use relevant sustainable procurement tools at the outset of all regulated tender processes to assess impact.

5.3 A micro / small / medium sized enterprise employs fewer than 250 people. Procurement has a strong role to play in Community Wealth Building, especially in relation to the way in which we treat our suppliers and in the way suppliers treat their sub- contractors; labour conditions along the supply chain; support for SME's and local production; fair trade; and selection of environmentally friendly products and services.

5.4 Under the Public Contracts (Scotland) regulations and the Procurement Reform Act regulated procurements may be reserved for (1) Organisations that are supported businesses; (2) suppliers who operate an employment programme, the main aim of which is the social and professional integration of disabled or disadvantaged persons or may provide for this to be performed in the context of supported employment programmes. In all cases the reservation is only available to economic operators where at least 30% of their workforce is disabled or disadvantaged. When advertising the tender on Public Contracts Scotland it must be clear that the opportunity is a reserved contract or concession.

5.5 Using a performance or output-based specification means that suppliers have the opportunity to suggest solutions that would meet the requirements. The State Hospital then has a choice as to which solution would best suit the business. Producing such a specification will help to consider the outcomes it wishes to achieve rather than concentrate on the complexities of the solution and leverage the experience and knowledge of the suppliers.

To start an output based – specification, ask the question “What is the end product I require?” This will enable to define the benefits of any proposed solution and track the delivery of those benefits. This will also allow the Procurement team to identify the suggested solutions that will add value.

5.6 There will be very few occasions where this can be justified and it should only be granted in exceptional circumstances as, without competition, it is difficult to achieve value for money and

difficult to demonstrate that the procurement process is robust. The following situations may allow for a Tender waiver:

- For work of exceptional urgency caused by unforeseeable circumstances e.g. emergency situations (Acts of God) where competitive tendering would cause unacceptable delay.
- The supplier possesses unique or specialised capacity that is not available from another source.
- Intellectual property rights restrict supply.
- A recent best value supplier is likely to remain so in another competition (i.e. evidence of recent market testing).

Failure to appreciate the timescales required for competition is not an acceptable reason for a Tender waiver.

In all cases justification and approval will need to be obtained by the Chief Executive.

5.7 The Procurement team and other staff must declare and record any personal interest that might influence, or be seen by others to influence, their impartiality in arriving at a decision. Those who have business or personal relationships with, or friends / relatives employed by, outside organisations bidding for contracts must inform their line manager and the Head of Procurement at the outset.

5.8 All contract documentation must be retained for 7 years after contract completion.

5.9 Unsuccessful tenders should be retained for 3 years after contract completion.

## **6 CONTRACT TERMS AND CONDITIONS**

6.1 All contracts will be governed by our standard Terms and Conditions of Contract. Staff must not sign any documentation which contains a supplier's terms and conditions. More complex requirements (such as works or FM contracts) will require more detailed terms and conditions but they should be consistent with the standard terms and conditions. If in any doubt please contact the Procurement Team.

6.2 The length of a contract should be appropriate to the procurement strategy decided for each category of procurement and in-line with regulations.

## **7 FAIR WORK PRACTISES**

We will ensure that all suppliers/contractors or sub-contractors are paid at least the Real Living Wage as outlined by the Living Wage Foundation and shall not use zero hours' contracts in relation to any contracts with the State Hospital. We will also ensure First Work Criteria are included in all Procurements as mandated by the Scottish Government.

## **8 MODERN SLAVERY**

We will mitigate where possible the risk of modern slavery in our supply chain by using the SPD document within all regulated tender processes to ensure compliance with The Modern Slavery Act 2015.



## 9 SUSTAINABILITY

9.1 Sustainable Procurement is essentially how, as part of overall value for money and affordability considerations, we take account of the economic, social and environmental impacts of Procurement activity, maximising the positive outcomes and minimising the negative. Details on how to maximise sustainability outcomes are available from the Scottish Sustainable Procurement Action Plan. <https://www.gov.scot/publications/sustainable-procurement-action-plan/>.

As part of the climate change emergency the State Hospital will support the transition to a net-zero carbon emissions economy and society.

9.2 Goods and Service we buy can have an impact on the environment and a key priority is to ensure this impact is minimised as far as possible. The State Hospital is committed through its buying decisions to:

- Work only with organisations which can demonstrate the environmentally minded and ethical management of their business, specifically by demonstrating:
  - How they source the materials that go into the products that they make (their supply chain policy).
  - How they minimise the impact on the environment through running an energy efficient, and toxic free, plant and office environment.
  - How they dispose ethically of their waste products (i.e. re-use as much as possible with landfill the last option).

9.3 All relevant products purchased should support our position as a Fair -Trade Partner.

9.4 With a particular emphasis on Community Wealth Building we will support local business wherever possible, by ensuring all relevant opportunities are advertised and where possible lotted to open competition up to SME's.

9.5 We are required to consider including community benefit requirements for all regulated procurements where the estimated value of the contract is equal to or greater than £4 million. Their use does not need to be limited to procurements of this value as research has shown that community benefits can be achieved in procurements under the £4 million threshold.

## 10 SUPPLIER AND CONTRACT MANAGEMENT

10.1 The award of the contract is not the end of the overall procurement process, but rather the start of the operational stage. The process for managing the contract will be dependent on the value, risks and impact to the State Hospital.

10.2 We will work actively together with its key suppliers to solve problems at the earliest possible stage and will seek to resolve contractual disputes using alternative dispute resolution mechanisms (negotiation, mediation) wherever appropriate.

10.3 We will, wherever possible, avoid unrealistic and unnecessary changes in dates or timescales, particularly in the event that requirements change but ensuring that key decisions are communicated promptly to the supplier in the event that the project is revised.

10.4 If the need to consider or propose changes to the contract arises, do so constructively and in consultation with the supplier, seeking to maintain value for money and minimise the potential adverse impact on performance, cost and timescale.

10.5 We will seek to mitigate disruption, delays and additional costs, however they may be caused. In particular, keeping procedures as simple as possible and taking other actions as appropriate in order to eliminate all unnecessary costs to both parties.

10.6 For business-critical contracts the Procurement team along with a key stakeholder will facilitate regular contract review meetings with key supplier personnel to ensure maximum performance and resolve any issues. A balanced scorecard may be used to record and monitor performance.

## **11 FREEDOM OF INFORMATION**

11.1 The Freedom of Information (Scotland) Act 2002 designates the State Hospital as a “Scottish public authority” and therefore subject to the provisions and obligations of that Act. Information relating to procurement policies, procedures and decisions will be released on request unless there are convincing reasons not to do so.

11.2 We must reject any tender which includes a blanket claim for confidentiality as we may be required to disclose information:

- According to the provisions of the Freedom of Information (Scotland) Act, 2002.
- According to EU Directives or any other legislation.
- To those UK Government departments and bodies which are entitled to it.

## **12 PROCUREMENT EQUALITY DUTIES**

12.1 All public bodies are legally required as per the Equality Act (2010) <https://www.legislation.gov.uk/ukpga/2010/15/contents>, in the exercise of their functions, to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct.
- Advance equality of opportunity between people who share a relevant protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

12.2 These principles as part of the Fairer Scotland Duty will be considered in all State Hospital tender processes to help reduce inequalities of outcome caused by socio-economic disadvantage.

## **13 COMMUNICATION, IMPLEMENTATION, MONITORING AND REVIEW OF POLICY**

This policy will be communicated to all stakeholders within the State Hospital via the intranet and through the staff bulletin.

The Audit Committee will have responsibility for the implementation and monitoring of this policy.

Any deviation from policy should be notified directly to the policy Lead Author. The Lead Author will be responsible for notifying the Advisory Group of the occurrence.

This policy will be reviewed every three years or earlier if required.

## **14 EQUALITY AND DIVERSITY**

The State Hospitals Board (the Board) is committed to valuing and supporting equality and diversity, ensuring patients, carers, volunteers and staff are treated with dignity and respect. Policy

development incorporates consideration of the needs of all Protected Characteristic groups in relation to inclusivity, accessibility, equity of impact and attention to practice which may unintentionally cause prejudice and / or discrimination.

The Board recognises the need to ensure all stakeholders are supported to understand information about how services are delivered. Based on what is proportionate and reasonable, we can provide information/documents in alternative formats and are happy to discuss individual needs in this respect. If information is required in an alternative format, please contact the Person-Centred Improvement Lead on 01555 842072.

Line Managers are responsible for ensuring that staff can undertake their role, adhering to policies and procedures. Specialist advice is available to managers to ensure that reasonable adjustments are in place to enable staff to understand and comply with policies and procedures. The EQIA considers the Protected Characteristic groups and highlights any potential inequalities in relation to the content of this policy.

## 15 STAKEHOLDER ENGAGEMENT

Following review there have been no changes to current practice. Therefore stakeholder engagement has not been necessary for the 2024 review.

Key Stakeholders	Consulted (Y/N)
Patients	N/A
Staff	N/A
Carers	N/A
Volunteers	N/A

## 16 INFORMATION GOVERNANCE AND CYBER SECURITY

For all State Hospital regulated tender processes which involve contracts that include data controlling/processing elements by contractors, the Procurement Team will ensure a Data Protection Impact Assessment (DPIA) is carried out by the stakeholder from the outset of the process and that relevant data protection due diligence checks are carried out as part of the tender evaluation process. Similar cyber security due diligence checks will also be carried out to ensure compliance with NHS Scotland standards.

## **APPENDIX 1: KEY POINTS FOR STAFF**

### **Key Points for Staff**

As we are spending taxpayer's money, remember it is subject to rules and regulations so if unsure contact the Procurement Team at the outset who can advise the process and the various timescales.

### **Process**

- £0-5k – 3 quotes ideally should be obtained.
- £5k - £50k – 3 quotes should be obtained or a quotation (Quick Quote) process facilitated by Procurement to be carried out.
- Over £50k – Tender process facilitated by Procurement must be carried out.
- Tender waivers/direct awards may be allowed however the Tender waiver process must be followed.

If suitable frameworks can be utilised the above may not need to be carried out.

Remember a purchase order must be raised and approved (or in some cases a Government Procurement Card) in PECOS before any goods or services can be ordered from a supplier. Invoices will not be paid without a purchase order number.