



POLICY FOR THE PROCUREMENT OF GOODS, SERVICES AND WORKS

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1 Overview of Procurement Policy

This Procurement Policy sets out the procedures which Berwickshire Housing Association Limited (referred to in this Policy as “**BHA**”) will follow when procuring contracts for the supply of services, the supply of goods and material and / or the execution of works.

All procurements undertaken by BHA must have regard to the terms of the Procurement Strategy and the values, objectives and goals set out in the Procurement Strategy.

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

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

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

This Policy may be suspended either in whole or in part by a decision of the governing body in respect of the proposed award of any contract upon the **joint recommendation of the Chief Executive or other members of the leadership team such as the Finance Director if they have delegated responsibility for the policy and the chairperson, provided there are special circumstances justifying the suspension.**

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

2 Objectives of this Procurement Policy

The objectives of this Policy are to:

- Ensure that BHA maximises value for money when procuring contracts;
- Ensure that BHA complies with all legal and regulatory requirements governing procurement and related best procurement practice when procuring contracts;
- Ensure that procurement accords with the requirements of BHA’s policy in respect of payments and benefits;
- Maximise opportunities to jointly procure services on a collaborative basis with colleagues in other local registered social landlords and related organisations
- Ensure that expectations of tenants, customers, staff, colleagues and other key stakeholders are met and continually improved; and

- Ensure that BHA makes best use of the commissioning process and that there is sufficient flexibility to ensure expenditure can be increased and decreased as necessary within the financial year.

3 Related BHA policies and procedures

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

1. **Financial Regulations,**
2. **Scheme of Delegation,**
3. **Entitlements Payments and Benefits Policy.**

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

4 Overview of Procurement Procedures

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

BHA is subject to a two-tier procurement regime, in terms of which the Regulations will apply to contracts with a value which meets or exceeds the relevant EU thresholds (£181,302 for supplies or services and £4,551,413 for works) and the Act will apply to contracts with a value below such EU thresholds but with a value which is equal to or greater than the thresholds set out in the Act (£50,000 for supplies or services and £2,000,000 for works).

The EU procurement thresholds values change every 2 years and the table below lists updated contract value thresholds that Contracting Authorities (Housing Associations) must follow for all European procurement procedures from 1 January 2018. More info can be found on Scottish Government website <http://www.gov.scot/Topics/Government/Procurement/policy/10613>

Contracting Authorities	Public Contracts Type	New Threshold (net of VAT)
Central government bodies	Supplies or Services	£118,133 (€144,000)
Other contracting authorities (e.g. HA, RSL, LA etc)	Supplies or Services	£181,302 (€221,000)
All Contracting Authorities	Works	£4,551,413 (€5,548,000)
	“Light Touch Regime” services	£615,278 (€750,000)
	Small lots / Supplies or Services	£65,630 (€80,000)
	Small lots / Works	£820,370 (€1,000,000)

Scottish Procurement Thresholds

Contracting Authorities	Public Contract Type	Threshold (net of VAT)
All Contracting Authorities	Supplies or Services	£50,000
	Works	£2,000,000

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

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

Contract Type	Contract Value	Procurement Procedure
Works	£4,551,413 and above	OJEU Procedure under the 2015 Regulations – please refer to Section 5
Supplies / Services	£181,302 and above	OJEU Procedure under the 2015 Regulations – please refer to Section 5
Works	£2,000,000 to £4,551,413	Regulated procurement under the 2014 Act – please refer to Section 6
Supplies / Services	£50,000 to £181,302	Regulated procurement under the 2014 Act – please refer to Section 6
Works / Supplies / Services	Up to £50,000 (Supplies/Services) or £2,000,000 (Works)	Unregulated procurement – please refer to Section 7
Social and Other Specific Services	£615,278 and above	OJEU Procedure under the Light Touch Regime under the 2015 Regulations – please refer to Section 8

The prescribed threshold values set out in the above table will be automatically revised in accordance with any subsequent amendment to the threshold values set by the EU Commission for supply, services or works contracts (the next amendment being due to take effect from 1 January 2020).

All other financial limits specified in this Policy shall be subject to review from time to time. BHA employees will be notified promptly of any change to the relevant values.

5 Regulated Procurements under the Public Contracts (Scotland) Regulations 2015

5.1 Overview of the Regulations

The Regulations apply to the following types of contract:

- contracts for goods or services with an estimated value of £181,302 (excluding VAT) or more;
- contracts for works with an estimated value of £4,551,413 (excluding VAT) or more; and
- contracts for certain health, social and other services with an estimated value of £589,148 (excluding VAT) or more – please see section 8 of this Policy for further detail on procurement of these types of contract.

The above types of contract must be advertised in the Official Journal of the European Union (“**OJEU**”) and publicly procured in accordance with the one of the defined procedures set out in the Regulations, which will include a formal standstill period before a contract can be entered into with the successful tenderer.

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

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

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

Contracts under the Regulations must be awarded on the basis of the "Most Economically Advantageous Tender" (MEAT). The "Most Economically Advantageous Tender" means the tender offer that is most economically advantageous from BHA's point of view having regard to the subject matter of the contract and including matters such as:

- quality;
- price;

- technical merit;
- aesthetic and functional characteristics;
- environmental characteristics;
- running costs;
- cost effectiveness;
- after-sales service;
- technical assistance;
- delivery date; and
- delivery period or period of completion

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

Contracts which are subject to the Regulations cannot be awarded on the basis of lowest price only and must be awarded on a mix of price and quality.

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

Where a proposed contract is “mixed”, e.g. if it contains both works and services / supplies or services and supplies, it should be classified according to the main subject of the contract and then the largest subject value.

If the mixed contract comprises both services and supplies, or services covered by both the main regime and services covered by the Light Touch Regime (please see section 8 of this Policy), the main subject of the contract is determined by reference to which part of the contract has the greater value.

A flowchart and guidance note has been included at **Appendix 1** to this Policy to assist BHA staff in determining which statutory requirements apply to a particular procurement.

5.2 Procurement of contracts under the Regulations

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

Each of these procedures is subject to certain minimum timescales. A guidance note has been included at **Appendix 2** to this Policy to assist BHA staff in determining the minimum timescales which apply to a particular procurement procedure.

In relation to all procedures under the Regulations:

A specific tender notice must be placed in the supplement to the OJEU, via Public Contracts Scotland, and consideration given as to whether it would be appropriate to also advertise in a suitable professional/trade journal or the press;

One member of the Leadership Team and another staff officer will be present during the opening of all submitted tenders.

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

- A mandatory “standstill” period must be observed between the date of the notices informing tenderers of the outcome of the procedure and awarding the contract;
- If contract award notices are issued electronically, then the standstill period starts on the day after the date of issue of the contract award notices and ends at midnight on the tenth (10) day from that day;
- If contract award notices are issued by post, then the standstill period starts on the day after the date of issue of the contract award notices and ends at midnight on the fifteenth (15) day from that day;
- If the last day of the standstill period is not a working day, then the standstill period must be extended to include the next working day. For example, if the ten or fifteen-day standstill period ends on a Saturday, then the period must be extended until the next Monday;
- Once the applicable standstill period has expired, BHA may enter into a contract with the successful tenderer;
- Following completion of the tender procedure, BHA must publish a contract award notice in the OJEU, via the Public Contracts Scotland website; and
- Any complaint about, or challenge to, a BHA contract award procedure or any situation which could be reasonably expected to lead to such a complaint or challenge must be notified to **the senior officer immediately on the relevant BHA staff member becoming aware of it**. If a challenge is raised within the standstill period relative to a particular contract, all correspondence in relation to the challenge must immediately be passed to **Board for review**.

5.3 Procurement procedures under the Regulations

5.3.1 Open Procedure

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

Use of the ESPD under the Open Procedure

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

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

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

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

In an open, or one-stage, procedure, the successful bidder will be asked to provide their supporting evidence at the point of contract award but before any contract is entered into.

If, following review of supporting evidence submitted by a successful bidder, a bidder is found to have misrepresented itself, then BHA will need to consider the following:

- If BHA identifies that a bidder is actually in one of the situations which is a mandatory ground for exclusion, or if it does not meet one of the minimum selection criteria, then BHA **must** exclude that bidder from the competition. Depending on the nature and stage of the competition, that may mean either that it proceeds without that bidder, or that competition should be re-evaluated without that bidder's tender;
- If BHA identifies that a bidder is in one of the situations which is a discretionary ground for exclusion, then BHA will need to consider whether or not to exclude that bidder. The decision to exclude must be made in line with the general principles of transparency, proportionality, equality of treatment and non-discrimination; and

- If the issue is more administrative in nature (e.g. mistakes in providing the documentation), then BHA will have the option of inviting the bidder to supplement or clarify the documentation provided.

Clarification of tenders under the Open Procedure

Under the open procedure, BHA can ask tenderers to clarify aspects of their tenders following submission. However, material changes to the terms of tenders are not permitted and BHA may not negotiate with tenderers after submission of tender responses.

When to use the open procedure

The Open Procedure is suitable where tenders will be easy to evaluate and / or when there are only likely to be a limited and manageable number of tenders to evaluate.

As all interested parties may submit a tender, the open procedure is unlikely to be appropriate where there is any complexity in the evaluation process for practical reasons or where BHA anticipates a significant volume of responses and wishes to limit the number of tenderers invited to the tender stage of the process.

5.3.2 Restricted Procedure

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

BHA then issues an ESPD to interested parties and follows a pre-qualification stage – only those candidates which meet BHA’s selection criteria (as set out in the ESPD) will be short-listed and invited to the tender stage of the process.

A minimum of five suppliers must be invited to tender (unless fewer suitable candidates have met the selection criteria and these are sufficient to ensure genuine competition).

Use of the ESPD under the Restricted Procedure

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

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

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

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

In a restricted, or two-stage, procedure, the successful bidder will be asked to provide their supporting evidence at the point of short-listing.

If, following review of supporting evidence submitted by a successful bidder, a bidder is found to have misrepresented itself, then BHA will need to consider the following:

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

Clarification of tenders under the Restricted Procedure

As is the case under the open procedure, BHA can ask tenderers to clarify aspects of their tenders following submission. However, material changes to the terms of tenders are not permitted and BHA may not negotiate with tenderers after submission of tender responses.

When to use the restricted procedure

As there is a short-listing phase, the restricted procedure is likely to be more appropriate than the open procedure for procurements where there is likely to be significant supplier interest and a large volume of expressions of interest or where BHA needs to limit the short-list of tenderers to those with specific expertise and experience in a particular area or sector.

As contracting authorities are unable to negotiate with tenderers, the restricted procedure should only be used where BHA is able to adequately specify its needs.

For more complex procurements, BHA should either: consider using one of the more complex procurement procedures described at sections 5.3.3 and 5.3.4 of this Policy; or undertake a suitable market testing exercise to identify what solutions may be appropriate prior to issuing a contract notice.

5.3.3 Competitive dialogue procedure

The competitive dialogue procedure is suitable for more complex and / or high value procurements. Interested parties can submit an expression of interest in response to the contract notice.

BHA may then carry out a short-listing exercise (using an ESPD) and only those meeting BHA's selection criteria will be invited to dialogue.

A minimum of three suppliers must be invited to dialogue (unless fewer candidates have met the selection criteria and these are sufficient to ensure genuine competition, that is, at least two).

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

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

During the course of the dialogue BHA is able to reduce the number of bidders provided that it confirms it intends to do so in the contract notice or invitation to participate in dialogue. If BHA does choose to down select, it should ensure that at least two tenderers remain in the dialogue until it concludes.

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

Following receipt of final tenders, BHA evaluates the tenders and selects the best tender based on pre-specified award criteria.

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

When to use the competitive dialogue procedure

The competitive dialogue procedure will be suitable where:

- the needs of BHA cannot be met without adaptation of readily available solutions;
- the contract includes design or innovative solutions;

- the contract cannot be awarded without prior dialogue and negotiation because of specific circumstances related to the nature, the complexity or the legal and financial makeup of a requirement or because of risks attaching to them;
- the technical specifications cannot be established with sufficient precision by the contracting authority with reference to a standard or common technical specification or technical reference; and / or
- only irregular/unacceptable tenders have been submitted in response to a previous procurement run using the open or restricted procedure and BHA needs to have the option to dialogue and negotiate with tenderers.

5.3.4 Competitive with negotiation procedure

The competitive with negotiation procedure is suitable for more complex and / or high value procurements.

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

However, like the competitive dialogue procedure, it also enables BHA to negotiate with tenderers who submitted an initial tender, and any subsequent tenders, until it decides to conclude those negotiations. There is no limit to the number of negotiation and tender stages.

Once BHA is satisfied that it has completed its negotiation exercise with each bidder, it must formally close the negotiation phase and invite final tender submissions.

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

Unlike for the competitive dialogue procedure, the Regulations do not provide for any clarification or negotiation of the final tenders or the winning tender.

When to use the competitive with negotiation procedure

The competitive with negotiation procedure will be suitable where:

- the needs of BHA cannot be met without adaptation of readily available solutions;
- the contract includes design or innovative solutions;
- the contract cannot be awarded without prior negotiation because of specific circumstances related to the nature, the complexity or the legal and financial makeup of a requirement or because of risks attaching to them;
- the technical specifications cannot be established with sufficient precision by the contracting authority with reference to a standard or common technical specification or technical reference; and / or

- only irregular/unacceptable tenders have been submitted in response to a previous procurement run using the open or restricted procedure and BHA needs to have the option to dialogue and negotiate with tenderers.

6 Regulated Procurements under the Procurement Reform (Scotland) Act 2014

6.1 Overview of the Act

The Act applies to the following types of contract:

- contracts for goods or services with an estimated value of between £50,000 and £181,302 (excluding VAT); and
- contracts for works with an estimated value of between £2,000,000 and £4,551,403 (excluding VAT).

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

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

- transparency – contract procedures must be transparent and contract opportunities should generally be publicised;
- equal treatment and non-discrimination – potential suppliers must be treated equally; and
- proportionality – procurement procedures and decisions must be proportionate.

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

Where a proposed contract is “mixed”, e.g. if it contains both works and services / supplies or services and supplies, it should be classified according to the main subject of the contract and then the largest subject value.

A flowchart and guidance note has been included at **Appendix 1** to this Policy to assist BHA staff in determining which statutory requirements apply to a particular procurement.

Specific statutory duties under the Act

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

The principal statutory duties under the Act are as follows:

The Sustainable Procurement Duty

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

Having considered and identified how these aims might be achieved, the Act requires BHA to conduct its procurements in a way designed to secure the improvements identified.

Annual Procurement Strategy

The Act requires BHA to prepare and publish an annual procurement strategy for each year in which it considers its total expenditure on regulated procurements will exceed £5,000,000.

If it is obliged to prepare an annual procurement strategy, BHA must also prepare an annual procurement report.

Contracts Register

BHA must keep and maintain a contracts register which must include details of all contracts entered into by BHA following a regulated procurement under the Act. In relation to each contract, the contracts register must contain the following information:

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

BHA may delete an entry in its contracts register only after the contract to which it relates has expired or been terminated.

BHA must make the information contained in its contracts register publicly available on the internet via PCS and by such other means as it considers appropriate.

BHA may withhold an entry or part of an entry in the contracts register if it considers that making it publicly available would:

- impede law enforcement or otherwise be contrary to the public interest;
- prejudice the commercial interests of any person; or
- prejudice fair competition between economic operators.

Community Benefit requirements

The Act requires that, for any regulated procurement with an estimated value equal to or greater than £4,000,000 (excluding VAT), BHA must consider whether to impose community benefit requirements as part of the contract delivery before carrying out the procurement.

BHA must include in the contract notice relative to the procurement a summary of the community benefit requirements it intends to impose or, if it is not going to include any community benefit requirements, the reasons for not including any such requirements.

6.2 Procurement procedures under the Act

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

In relation to advertising of contract opportunities which are subject to the terms of the Act, the contract notice, tender documentation and contract documentation must be published on the Public Contracts Scotland website.

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

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

Following completion of the procurement procedure, a contract award notice must be published on the Public Contracts Scotland website.

7 Unregulated Procurements – Contracts which are below threshold value

Contracts with an estimated value below the thresholds set out in the Regulations and the Act do not require to be procured in accordance with the terms of the Regulations or the Act but must be procured in accordance with the requirements of this section 7 of this Policy.

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

Estimated value of contract	Procedure to be followed
Below £1,000 works and services / supplies*	Work may be authorised within individual officer limits and contractor/supplier may be directly engaged without any form of public procurement exercise.
Between £1,000 and £5,000 works and services / supplies*	Minimum of three competitive quotations to be invited via Quick Quote (QQ). Lowest priced contractor/supplier to be appointed.
Between £5,000 and £50,000 works and Between £5,000 and £50,000 services / supplies*	Minimum of three competitive quotations to be invited via Quick Quote (QQ) using standardised documentation and processes (for example, a specification, Quality document (if appropriate) and return date to be sent to all contractor/supplier being asked to provide costs). Lowest priced contractor or Most Economically Advantageous Tender (MEAT) can be used and to appoint.
Between £50,000 and £2m works*	Best Practice tender process to be followed with at least three competitive tenders invited via Scottish Contract Notice via PCS tendering procedure. Contractor evaluated as being the Most Economically Advantageous Tender (MEAT) to be appointed.
Between £2m and £4,551,413 works and Between £50,000 and £181,302 services / supplies*	Formal Scottish tender process to be followed with at least three/five competitive tenders invited via Scottish Regulated Contract Notice via PCS full tendering procedure. Contractor/supplier evaluated as being the Most Economically Advantageous Tender (MEAT) to be appointed.
Over £4,551,413 works and Over £181,302 services / supplies*	Formal OJEU tender process to be followed with at least three/five competitive tenders invited via EU Regulated Contract Notice via PCS full tendering procedure. Contractor/supplier evaluated as being the Most Economically Advantageous Tender (MEAT) to be appointed.

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

8 Regulated Procurements under the Light Touch Regime under the Public Contracts (Scotland) Regulations 2015

8.1 Overview of the Light Touch Regime

The "Light Touch Regime" is a specific statutory regime under the Regulations which applies to certain types of services contracts for social, health, healthcare and certain other services, which are listed in Schedule 3 to the Regulations.

8.2 Procurement of contracts under the Light Touch Regime

Different procurement procedures apply to procurement of the relevant types of contract covered by the Light Touch Regime, depending on their value.

Light Touch Regime contracts valued at or above the EU threshold

Where a relevant service contract is valued at or above the EU threshold of £589,000, BHA must:

- publish a Contract Notice or Prior Information Notice (PIN) if used as a call for competition on Public Contracts Scotland for onward transmission to the OJEU;

Publish a Contract Award Notice (these can be grouped quarterly);

- Apply reasonable and proportionate time limits to any stages of the procurement; and
- Assess successful bidder(s) to identify any instances where mandatory exclusion grounds may apply.

There is no set procedure laid down for the conduct of procurement processes under the Light Touch Regime other than the requirements above general requirements and BHA has a degree of discretion to use the tools, techniques and procedures of their choice when following the Light Touch Regime.

Accordingly, the approach to procurement of contracts under the Light Touch Regime may be determined on a case by case basis, provided that, in each instance, the procedure adopted is proportionate and appropriate to the scale and type of procurement process being conducted.

As a minimum requirement, the procedure adopted should cover essential information such as timescales, evaluation methodology and any scope for change / change management procedures.

It must be developed in line with any internal governance requirements and in accordance with the principles of transparency and equal treatment. Any award of a

contract under the Light Touch Regime must be made on the basis of the "most economically advantageous tender" and not based on price alone.

Light Touch Regime contracts valued below the EU threshold

Where a relevant service contract is valued below the EU threshold of £589,000, but its value is at least £50,000, BHA has discretion to directly award a contract without undertaking any form of public procurement exercise.

If BHA chooses to undertake some form of public procurement exercise, then this exercise should be undertaken in accordance with the terms of the Act.

BHA must publicise the award of any Light Touch Regime contracts valued below the EU threshold on Public Contracts Scotland and must include these contracts in its contracts register.

9 Framework Agreements

Rather than conducting a stand-alone procurement procedure in respect of a particular requirement, BHA may consider procurement through a framework agreement.

What is a framework agreement?

A framework agreement is an 'umbrella agreement' that sets out the terms (particularly relating to price, quality and quantity) under which individual contracts ("call-offs") can be made throughout the period of the agreement (which will be a maximum of 4 years).

Framework agreements can be set up for one contracting authority to use or can be set up for a number of contracting authorities to use.

BHA may set up its own framework agreements or it could explore in relation to a particular requirement, whether there is an existing framework agreement put in place by another contracting authority under which BHA is entitled to draw down the required supplies, services or works.

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

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

Do framework agreements need to be advertised in OJEU?

If the value of all the potential call-offs under the framework agreement is estimated to exceed the EU thresholds, then the framework agreement should be advertised in the OJEU. However, the individual call-offs do not then need to be re-advertised.

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

How are call-offs awarded under a framework agreement?

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

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

Advantages of framework agreements

If framework agreement has been properly concluded further to compliant procurement procedure, BHA does not require following the full OJEU procedure in respect of each requirement which is the subject of a call-off, thus reducing costs and timescales. There are also potential benefits of economies of scale.

Potential disadvantages of framework agreements

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

Framework agreements tend to apply a "one size fits all" approach, which may make it difficult for BHA to satisfy their own procurement objectives through use of a framework agreement which has been procured by a third party and may not have been tailored to BHA's particular requirements.

10 Exceptions to the requirement to publicly procure a contract

There are certain exceptional circumstances in which tenders are not required for the procurement of contracts for supplies, services or works which are above the applicable threshold value under the Regulations or the Act, including:

- where the tender may only be awarded to a particular supplier for technical or artistic reasons or where a particular supplier has exclusive rights, including, but not limited to, intellectual property rights, which mean they are the only supplier capable of meeting BHA's requirements;
- where BHA has already entered into a contract with a supplier and requires additional services or works to be supplied which were not included in the original contract but which, through unforeseen circumstances, have become necessary;

- where BHA wants a supplier with which it already has a contract to provide new works or services which are a repetition of works or services carried out under the original contract and such new works or services were provided for in the original contract notice; or
- where (but only if it is strictly necessary) for reasons of extreme urgency brought about by events unforeseeable by BHA, the time limits for one of the standard procurement procedures cannot be complied with.

The above exceptions may only be relied upon in limited circumstances and are subject to a range of specific conditions. **You must obtain the approval of the management committee and obtain appropriate legal advice before relying on any such exception.**

11 Renewals, extensions and changes to existing contracts

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

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

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

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

The Regulations restrict BHA’s ability to modify publicly procured contracts.

If any member of BHA staff is considering modifying any terms of a publicly procured contract, then they must first consult with and obtain the written approval of **the Board** and, if considered necessary, obtain appropriate legal advice.

Appendix 1

Choice of Procurement Procedure

Guidance on Procurement Flowchart

The attached flowchart has been designed for BHA staff members to determine what statutory requirements apply to procurements.

The relevant legislation is as follows:

- Procurement Reform (Scotland) Act 2014 – the “Act”; and
- Public Contracts (Scotland) Regulations 2015 – the “Regulations”.

Even where a procurement does not fall under the requirements of either the Act or the Regulations, staff must ensure that bidders are treated equally and non-discriminatorily and that BHA acts in a transparent and proportionate manner (the “Principles”).

Type of contract:

- Goods or services.
- Works.

Goods or services:

BHA staff must consider the estimated total value of a contract before commencing any procurement exercise. The following must be taken into account:

- any amounts payable as part of an option or renewal;
- the estimated value upon commencement of the procurement; and
- the total estimated value of any lots.

Estimated total value of contract is < £50,000 – neither the Act nor the Regulations apply, please procure contract in accordance with one of the procedures set out in section 7 of the Procurement Policy.

Estimated total value of contract > £50,000 but < £181,302 – the Act applies, go to section 6 of the Procurement Policy.

Estimated total value of contract > £181,302 but < £4m – the Regulations apply, go to section 5 of the Procurement Policy.

Estimated total value of contract > £4m – the Regulations apply and the Act (community benefits) apply, please see sections 5 and 6 of the Procurement Policy. If the services to be procured are health or social care services, please go to section 0 of the Procurement Policy.

Works:

BHA staff must consider the estimated total value of a contract before commencing any procurement exercise. The following must be taken into account:

- any amounts payable as part of an option or renewal;

- the estimated value upon commencement of the procurement;
- the total estimated value or any suppliers and services necessary for executing the works, provided by the RSL to the contractor; and
- the total estimated value of any lots.

Estimated total value of contract < £2m– neither the Act nor the Regulations apply, please procure contract in accordance with one of the procedures set out in section 7 of the Procurement Policy.

Estimated total value of contract > £2m but < £4,104,394 – the Act applies, go to section 6 of the Procurement Policy.

Estimated total value of contract > £4m but < 4,551,413 – the Act (community benefits) apply, go to section 6 of the Procurement Policy.

Estimated total value of contract > £4,551,413– the Regulations apply and the Act (community benefits) apply, go to section 5 of the Procurement Policy.

Procurement of goods, services or works under the Act (“regulated procurements”)

The sustainable procurement duty applies:

BHA must consider and prepare a report on how the procurement can: (i) improve social, economic and environmental wellbeing of BHA's area; (ii) facilitate the involvement of SMEs, third sector bodies and supported business in the procurement process; and (iii) promote innovation; and

the procurement process must be carried out with a view to securing the above improvements.

Publication of contract notice (excluding call-offs under framework agreement unless the call-off is above the thresholds) and contract award notice on PCS.

Where BHA decides to exclude a supplier from participating in a procurement process before a tender has been submitted, it must notify that supplier of the decision and include: (i) the names of the excluded suppliers; (ii) the exclusion criteria used; and (iii) BHA's scoring (if any) used against the criteria.

Upon deciding to award a contract, BHA must notify all unsuccessful tenderers of the name of the successful tenderer, the award criteria used, and BHA's scoring against those criteria, of the unsuccessful tenderer and the successful tenderer.

Requirement for technical specifications to be set out in the tender documents.

Procurement of works under the Act (community benefits)

The requirements set out in section 4 above and the Principles apply.

Before undertaking the procurement, BHA must consider whether to impose community benefit requirements as part of the procurement. Community benefit requirements relate to training and recruitment, availability of sub-contracts, or improvements to the economic, social or environmental wellbeing of BHA's area.

The contract notice must contain:

- a summary of the community benefit requirements intended to be included in the contract; or
- a statement of reasons for not including any community benefit requirements.

Where requirements are included in a contract, the contract award notice must state the benefits which BHA considers to be derived from the requirements.

Procurement of goods or services under the Regulations

The Principles apply.

The tender requires to be published in the Official Journal of the European Union (“OJEU”) and one of the defined procedures set out in the Regulations must be followed:

- open or restricted procedure;
- innovation partnership;
- competitive procedure with negotiation; or
- competitive dialogue.

Specific requirements include:

- technical specifications to be set out in the tender documents;
- tender documents must be available electronically and free of charge from the date of publication of the contract notice;
- mandatory and discretionary grounds for excluding tenderers – maximum turnover requirement of two times the value of the contract;
- selection and award criteria; and
- self-declaration for tenderers under the European Single Procurement Document.

Procurement of goods, services or works under the Regulations and the Act (community benefits)

The requirements in sections 5 and 6 above apply.

Framework agreements

If a framework agreement is required, the procedures set down in the Regulations apply. The term of a framework agreement must not exceed four years, including any extensions.

Single supplier framework agreement – a contract based on that agreement must be awarded in accordance with the framework agreement and the RSL may write to the supplier to supplement its tender as necessary for the award of such a contract.

Multi-supplier framework agreement – there are specific provisions within the Regulations in terms of awarding contracts under the framework agreement, either without or by reopening competition.

Dynamic purchasing systems

This type of procurement is completely electronic and is governed by the Regulations.

Health or social care services

If the total estimated value of the contract is < €750,000 (current equivalent value in sterling is £589,148) then the RSL may award a contract for health or social care services without seeking offers.

However, if the total estimated value of the contract exceeds €750,000 (current equivalent value in sterling is £589,148) then the procurement is subject to the lighter touch regime under the Regulations, which set out certain principles for procurement contracts of this nature.

Procurement Strategy

Where BHA's total value of regulated procurements is £5m or more within a financial year, a procurement strategy must be prepared and published online before the start of that financial year in accordance with the Act. If BHA's total value of regulated procurements is less than £5m but it becomes apparent during the course of the financial year that this threshold will be exceeded, BHA must prepare and publish online a procurement strategy for that financial year.

The strategy must set out:

- how procurements will help achieve BHA's purposes and value for money;
- BHA's general policy on community benefits, consulting and engaging with stakeholders, payment of living wage by suppliers, promoting health and safety compliance by suppliers, etc; and
- how BHA will ensure suppliers are paid (and pay their sub-contractors) within 30 days of invoice.

Annual Report

If BHA has prepared (or revised) a procurement strategy for a financial year, an annual procurement report on regulated procurements must be prepared, published online and include:

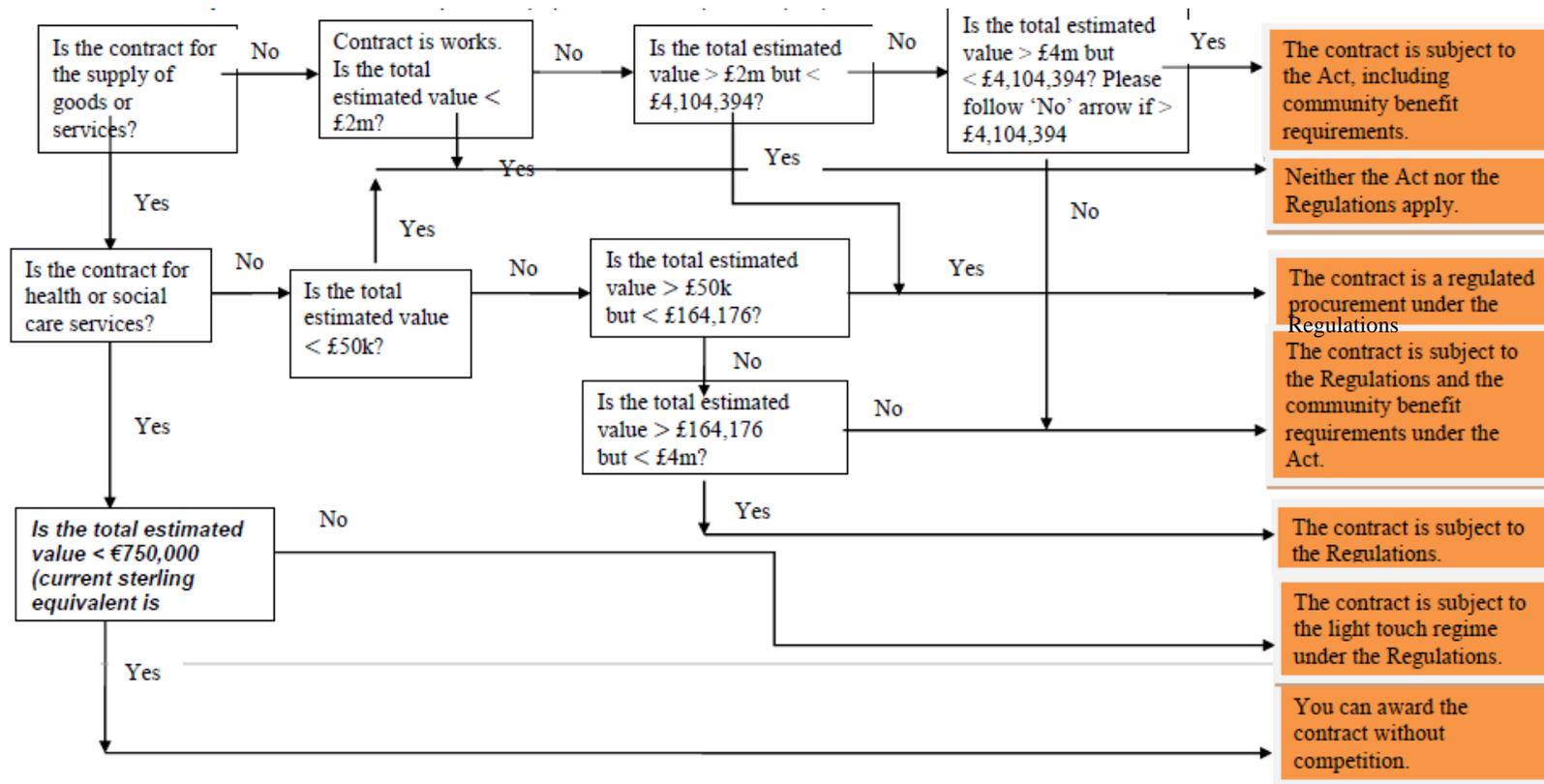
- a summary of the regulated procurements that have been completed during the year covered by the report;
- a review of whether those procurements complied with BHA's procurement strategy;
- to the extent that any regulated procurements did not comply, a statement of how BHA intends to ensure that future regulated procurements do comply;
- a summary of any community benefit requirements imposed as part of a regulated procurement that were fulfilled during the year covered by the report;
- a summary of any steps taken to facilitate the involvement of supported businesses in regulated procurements during the year covered by the report; and
- a summary of the regulated procurements BHA expects to commence in the next two financial years.

Appendix 1 - Flowchart

The following flowchart has been designed for BHA staff members to determine what statutory requirements apply to procurements. The relevant legislation is as follows:

- Procurement Reform (Scotland) Act 2014 – the “Act”; and
- Public Contracts (Scotland) Regulations 2015 – the “Regulations”.

Even where procurement does not fall under the requirements of either the Act or the Regulations, BHA staff must ensure that bidders are treated equally and non-discriminately and that BHA acts in a transparent and proportionate manner (the “Principles”).



Appendix 2

Procurement Timescales

Type of procedure	Standard timescales	Options for the Association to reduce timescales	Tenders submitted electronically	Requirement is urgent and longer time limit is impractical as a result	PIN published no more than 12 months and no less than 35 days from despatch of contract notice
Open	Despatch of contract notice to receipt of responses – 35 days Standstill period – 10 days if notice issued electronically / 15 days if by other means	5 day reduction	Period reduced to 15 days	Period reduced to 15 days	
Restricted	Despatch of contract notice to receipt of responses – 30 days ITT to receipt of tenders – 30 days Standstill period – 10 days if notice issued electronically / 15 days if by other means	May agree time-limit with tenderers – in absence of agreement minimum period is 10 days	5 day reduction	Period reduced to 15 days Period reduced to 10 days	Period reduced to 10 days
Competitive dialogue	Despatch of contract notice to expressions of interest – 30 days Standstill period – 10 days if notice issued electronically / 15 days if by other means				
Competitive with negotiation	Despatch of contract notice to expressions of interest – 30 days ITN to receipt of tenders – 30 days Standstill period – 10 days if notice issued electronically / 15 days if by other means	May agree time-limit with tenderers – in absence of agreement minimum period is 10 days	5 day reduction	Period reduced to 10 days	Period reduced to 10 days