



**Table of Contents**

- 1. Introduction & Background..... 3**
- 2. What is Procurement? ..... 3**
- 3. Policy Objectives ..... 4**
- 4. Procurement Authorisation..... 5**
- 5. Risk vs. Value ..... 7**
  - 5.1 Risk Management ..... 7
  - 5.2 Risk vs. Value Matrix..... 7
- 6. Procurement Process ..... 10**
  - 6.4 Procurement Routes ..... 10
- 7. Procurement Methods/Tools..... 12**
- 8. EU Public Procurement ..... 15**
- 9. Policy Review ..... 22**

## **1. Introduction & Background**

- 1.1 Public sector organizations can achieve significant savings by managing better their procurement and commercial activities. Good procurement is not just about getting the price down. It's about balancing whole life cost and fitness for purpose, while meeting European Union rules and treating suppliers fairly.
- 1.2 This policy document sets out Clydesdale Housing Association's vision for reviewing its approach to procurement.
- 1.3 The Association has developed this policy document in accordance with the requirements of the following legislation, regulatory standards and best practice:
  - Scottish Procurement Regulations 2012
  - Performance Standards (Communities Scotland/COSLA/SFHA – 2006):
    - GS1.5, Procurement
    - AS2.1, Repairs
    - AS2.3, Lifetime Maintenance
    - AS3.2, Risk & Value For Money
  - Procurement Guide for use by Registered Social Landlords (Communities Scotland – November 2006).
  - The Scottish Executive Scottish Procurement Directorate (various).
  - Office of Government Commerce (OGC) Procurement Guides (various)
  - EU Public Procurement Directives 2014

## **2. What is Procurement?**

- 2.1 *'Procurement is the whole process of acquisition from third parties (including logistical aspects) and covers goods, services and construction projects. This process spans the whole life cycle from initial concept and definition of business needs through to the end of the useful life of an asset or the end of a services contract' (Review of Civil Procurement in Central Government, Sir Peter Gershon, 1999.)*
- 2.2 It is recognised that good procurement is crucial to providing high quality and cost effective services. The development of a clear procurement strategy is a key component to ensuring Value for Money.
- 2.3 The procurement of goods, services and works is about making choices and obtaining best Value for Money. It spans the "whole life cycle" from inception to the end of the contract or the useful life of the asset. In order to obtain Value for Money there needs to be a balance between whole life costs and the requirements of the service to meet customer requirements (selecting the most economically advantageous contract and make a balanced judgment between price and quality outcomes).

### **3. Policy Objectives**

The objectives of the Association's Procurement Policy are to:

- 3.1 Ensure that the Association procures goods and services of the appropriate quality, on suitable terms and at a price, which represents good value for money. Value for money is not necessarily the lowest price; it is defined as the optimum combination of whole life costs and quality to meet the Association's requirements;
- 3.2 Provide documentary evidence of the procedures followed so that the Association's management and the relevant external parties can be assured that the policy objectives are being delivered, that financial control requirements are satisfied and devolved budget responsibilities are met;
- 3.3 Improve the efficiency of Clydesdale's procurement by avoiding disproportionate effort by Clydesdale's staff or suppliers and unnecessary delays in reaching procurement related decisions;
- 3.4 Ensure that the Association's procurement practice complies with government policy relating to procurement by public bodies and with requirements laid down by the Treasury, Department of Work and Pensions, European Union rules and with good practice;
- 3.5 As the Association's Sustainability Policy is developed, the approach to procurement will also focus on outcomes that are consistent with wider social, environmental and sustainability priorities.

## 4. Procurement Authorisation

4.1 Clydesdale has a clear and policed purchase ordering policy that all members of staff who are authorised to make purchases are aware of – our Internal Financial Controls. The following basic structure of authorisation based upon value of expenditure exists (see our Internal Financial Controls Policy for more details):

- **Up to £2,000**  
Single authorisation by Budget Holder.
- **£2,001 to £5,000**  
Approval of Commitment by Depute Chief Executive and Treasurer on production of a Value for Money Statement by Budget Holder.
- **Over £5,000**  
Approval of Commitment by Chief Executive Officer and Treasurer on production of a Value for Money Statement by Budget Holder.
- **Above EU Threshold**  
EU procurement rules apply above the following thresholds:
  - Services     £ 172,514
  - Supplies     £ 172,514
  - Works        £4,322,012

4.2 Value for Money Statements should cover:

- A statement on the procurement route (see Section 6.3) and procurement method/tool used (see Section 7) and an explanation of why these were the options selected;
- Details and documentary evidence that benchmarking between at least three suppliers has taken place. Purchases with an estimated value of between £2,001 and £14,999 will require quotations. Purchases valued at £15,000 and above will require a formal tendering approach (see Section 7.7);
- Where the lowest quote is not recommended for acceptance for purchase values between £2,001 and £14,999, strong grounds for this course of action must be presented.

4.3 Please refer to section titled EU Public Procurement for more details on EU procurement rules.

4.4 Clydesdale needs to consider exactly *how* it makes purchases. Even where there is a robust purchase ordering system in place, if there is a wide spread of purchasers with free reign to order low value/high volume goods and services then the generation of invoices and multiple suppliers can generate significant workload for Finance/Corporate Services staff who are responsible for operational financial processing.

4.5 All areas of the Association need to be mindful of the workload generated by order authorisation/invoicing and procurement methods that will minimise this workload should be seriously considered.

4.6 Purchases can either be made:-

- 4.6.1 By end-users/budget holders, where ‘source and selection’ activity (*find a supplier and place an order*) is undertaken by the staff requiring the goods/services/works. This approach is flexible, is commonly used by Registered Social Landlords (RSLs), however it causes duplication of

effort, fragments potential discounts that could be obtained from purchasing volumes, often delivers lower levels of Value for Money, and generates significant amounts of back office administration;

- 4.6.2 By a central purchasing function (usually Finance), where all purchases are internally requested by end-user staff and passed to the central function for validation, approval and order. This approach requires a dedicated resource and is less flexible, however, it reduces duplication of purchasing activity, ensures purchasing volumes are achieved and compliance with any contracts/use of approved suppliers, gives a clear audit trail for probity and often better management information. This is common in the private sector but rare amongst RSLs at present;
- 4.6.3 By a hybrid of the above two options, where deals and contracts are established centrally on behalf of the organisation. These deals are then used at a transaction level by end-users and budget holders who 'call-off' orders using the centrally agreed terms as required. These centrally agreed deals are often framework agreements (see 8.24), and ensure optimum commercial terms are achieved by all individual transactions, reduce duplication of tendering and supplier selection activity and retain flexibility (and allow for contingency suppliers to be pre-approved for use). This model is increasingly popular in the sector and is replacing approved supplier lists as a best practice approach to how RSLs structure themselves for procurement. Most procurement will fit well with manager roles and responsibilities, however, where responsibility for corporate procurement deals is unclear the Chief Executive will allocate this responsibility to a staff member on a project by project basis.
- 4.7 Clydesdale currently uses the first option (source and selection) for one-off purchases and where the cost of goods etc exceed £2,000. The third option (hybrid) is in operation for reactive maintenance services and office stationery. **Where possible, the Association will move towards the 'hybrid' approach in order to achieve procurement efficiencies.**

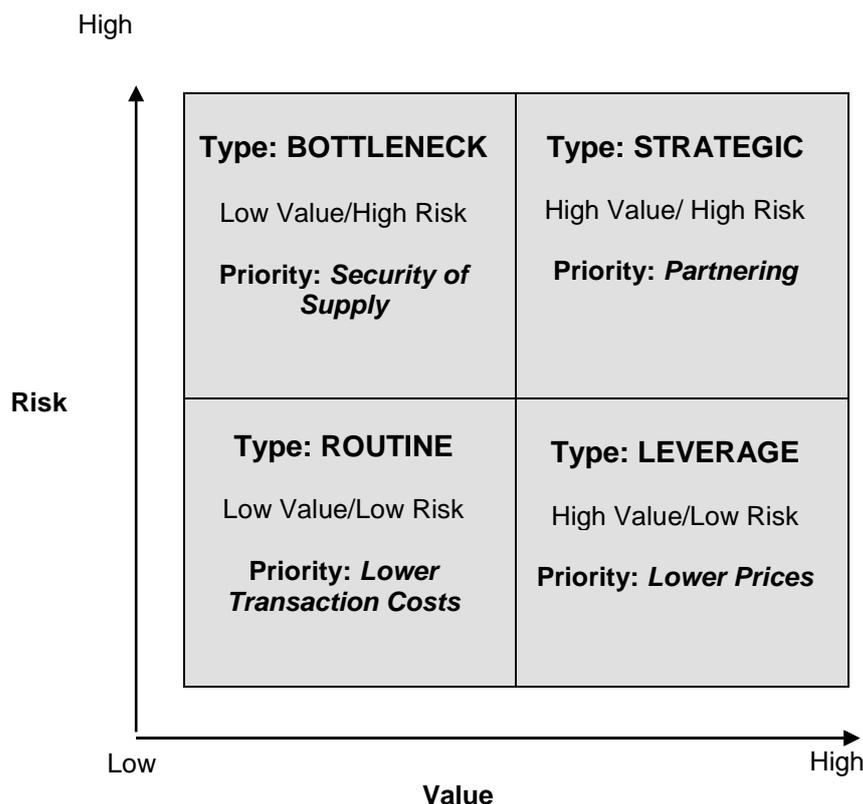
## 5. Risk vs. Value

### 5.1 Risk Management

- 5.1.1 It is essential that the risks associated with procurement are properly assessed and managed. The high value/high risk contracts should be the main focus of attention with the other low risk and low value areas requiring proportionately less attention.
- 5.1.2 Risks need to be identified, agreed and shared among respective stakeholders and reviewed at regular intervals throughout a project. Good risk management can include what innovation has to offer, having given due consideration to what can go wrong and putting in established solutions and strategies to manage it.
- 5.1.3 When assessing the level of risk involved, it will depend on the type and length of contract and external market conditions at the time.

### 5.2 Risk vs. Value Matrix

- 5.2.1 In order to determine an organisations risk to different procurement activities, a comparison needs to be carried out between the value of spend on goods, services or works and its associated risk.



- 5.2.2 There are four key areas (quadrants) that should be considered as detailed in the **Risk vs. Value** matrix above, which defines different types of procurement and the different approaches to their delivery. They each have been given names to reflect how they need to be managed:

### 5.2.3 BOTTLENECK = Low Value/High Risk = Security of Supply

- Goods/services should be positioned here where there are a limited number of products/suppliers in the market to meet demands, goods are typically low in value but there is quality, safety, reliability or environmental factors.
- Where the Association has 'security of supply' goods/services it will gradually reduce the uniqueness of suppliers and ensure continuity of supply by developing new suppliers, or dual sourcing, increase competition, increase length of contracts, consider in-sourcing, decrease orders and payments.
- Examples – Gas Safety Quality Control Consultants

### 5.2.4 ROUTINE = Low Value/Low Risk = Lower Transaction Costs

- Goods/services should be positioned here where there are many suppliers in the market to meet demands, goods are typically low in value and there is no special quality, safety or environmental factors.
- Clydesdale will look to reduce the time and costs involved in procurement activities for 'routine' goods/services by having fewer everyday transactions (as often the cost of procurement can be greater than the cost of the good/service itself), and make more transactions electronic.
- Procurement methods in the 'process' area include: use of procurement cards, e-commerce, blanket orders, consolidated invoicing, consignment stocks to reduce buying effort and minimise administration costs.
- Examples – Training & Development and Office Supplies.

### 5.2.5 LEVERAGE = High Value/Low Risk = Lower Prices

- Goods/services should be positioned here where there are many suppliers in the market to meet demands, goods/services are relatively high in value but there is no special quality, safety or environmental factors.
- Where the Association has 'lower prices' goods/services it will consider: combining requirements and co-ordinating procurement activities into large groups by time and volume to drive down the cost; using collaborative and framework contracts; active sourcing to change suppliers as new opportunities arise; promote competitive bidding; use industry standards; outsource carefully; increase market knowledge; and increase short-term contracts.
- Examples – ICT goods.

### 5.2.6 STRATEGIC = High Value/High Risk = *Partnering*

- Goods/services should be positioned here if they are classified as strategically critical to the Association, whereby they will impact on the overall profitability, competitiveness and well-being of the organisation. They are high value and either have significant quality, safety, reliability or environmental factors or there are limited supplies and/or suppliers in the market.

- 'Partnering' is very labour intensive when carried out correctly and should be reserved for strategic procurements that are high value/high risk. It is not an approach that is suitable for all situations and must be thought out very thoroughly before proceeding.
- Where Clydesdale has 'partnering' goods/services, it will: ensure contingency plans are in place; increase long-term frameworks, partnerships and supplier knowledge; analyse costs, market and competitors; ensure close supplier management; increase the role of selected suppliers.
- Examples – Development, Reactive, Planned & Cyclical Maintenance Consultants and Contractors.

## 6. Procurement Process

6.1 The main circumstances in which a decision on procurement will be required will be due to:

- Implementing a capital/maintenance/repair programme;
- Prior to the expiry of an existing contract;
- To fulfil a requirement that cannot be serviced in-house;
- As a result of new funding opportunities from external sources;
- A procurement review;
- As a matter of urgency.

6.2 Before a procurement decision is taken, identification and agreement on feasible and realistic procurement objectives and routes should take place which will involve:

- Benchmarking current arrangements – obtain quotes, comparison with other RSLs/similar organisations, check consortia rates, search internet, check catalogue price lists;
- Selecting and agreeing the most effective procurement route and ensuring that the agreed route meets the needs of the end user and relevant legal and statutory requirements.
- Agreeing and confirming the procurement route selected and appropriate implementation procedures – obtaining line manager or Management Committee approval for the preferred procurement option.

6.3 Procurement Routes

- Collaboration – obtain better Value for Money by bringing other RSLs and other public bodies together in order to leverage the combined buying power delivering economies of scale and reducing duplication of effort.
- Partnering – promoted by the ‘Egan’ Report (*Rethinking Construction*, 1998), this option calls for the creation of sustainable, collaborative relationships with suppliers to deliver services, carry out projects or purchase goods and services. Common features of Partnering include: formalised mutual objectives; agreed problem resolution methods; and an active search for continuous improvement.
- Partnering is not a soft option and requires strong players that will make each other stronger. More detail on Partnering is contained in the *Procurement Guide for use by Registered Social Landlords* (Communities Scotland – November 2006).
- Consortium/Purchasing Agency – a group of organisations who come together to fulfil a combined objective. Consortia will collectively bring together their buying power in order to gain economies of scale and preferable terms for their members – public sector consortia manage and administer full EU tenders for various goods and services then offer these to its members after finalisation of prices and terms with chosen suppliers (saving members the valuable time tendering directly for those specific commodities). Consortia generally provide either two types of ‘deals’:
  - *Framework models* - these are a set of pre-tendered agreements with a range of suppliers from which organisations can opt to purchase

goods and services from. Generally the consortium collects a commission from suppliers for sales made under its frameworks. These frameworks are 'open' for organisations to buy into without committing any volumes.

- *Commitment models* - this model differs from the framework model in that the consortium requires its members to commit volumes upfront to enable it to go to market with a determined volume on behalf of its members' aggregated volumes. Funding is usually in the form of membership fees paid by members of the consortium. These can, in some cases, add up to substantial sums and the costs incurred should be offset against the benefits realised through the consortium offer, to establish if membership will give any overall value for money benefit to the Association.
- Outsourcing – entering into a contract with another organisation or person to provide a particular function (usually a non-core function) that might otherwise be performed by Association employees. Whilst the benefits of outsourcing are desirable, i.e. reduced costs and improved service, the reduction of flexibility and possible introduction of risk must be carefully considered before arriving at a decision.
- Broker/Specialist - Sometimes goods, services and works that Clydesdale procures may require detailed knowledge of the commodity and its market, as the knowledge is not available in-house. The Association can opt to utilise an organisation that has specific knowledge and experience in a field where that knowledge is not available in-house to act as a Broker on its behalf. Most commonly used in insurance, Brokers can provide impartial advice and expertise and are able to aggregate the requirements from a number of clients to efficiently and effectively buy competitively, and offer a range of contract options and services.

## 7. Procurement Methods/Tools

- 7.1 Some of the procurement methods and tools available to use when the procurement route has been decided upon include:
- EU Tendering
  - Non-EU Tendering
  - Ad hoc purchases
  - Blanket Purchase Order/call off order
  - e-Auction/Reverse Auction
  - e-Procurement
  - Procurement Card
- 7.2 Clydesdale will purchase an assortment of goods, services and works in line with its Internal Financial Controls and complying with statutory and EU legislations. The Association may decide to use one or more of the procurement methods and/or tools in conjunction with the procurement routes as described in Section 6.4.
- 7.3 For new purchases and projects, an evaluation should be conducted against the risk vs. value matrix (Section 5) to assess the risk exposure and monetary value of the good/service and the appropriate procurement method should be followed.
- 7.4 EU Tendering - please refer to Section 8 'EU Public Procurement' within this policy for further details regarding EU legislation and the types of tendering procedures for goods, services and works. Public Sector Authorities and Bodies Governed by Public Law must comply with these Directives if contracts are above the EU Public Procurement Regulation threshold to enable free competition within the EU.
- 7.5 The different types of tendering procedures (open, restricted, negotiated and competitive dialogue) and the use of framework agreements or commitment contracts should be used dependant on the good/service/work that is being procured.
- 7.6 Non-EU Tendering – where contract values are below EU thresholds there may still be a need to undertake a formal advertisement and selection process to demonstrate transparency and open market completion (e.g. to meet the needs of the EU 'Interpretative Communication'), or simply to find a supplier for a particular requirement. In these cases EU rules regarding timescales and publication in the Official Journal of the European Union (OJEU) do not apply, but the flowcharts and procedural types (open, restricted etc) can still be used as guidelines for good tendering practice. More detailed guidance on how to progress down the EU tendering route for non-compulsory contracts can be found in the Communities Scotland *Procurement Guide* (November 2006).
- 7.7 Clydesdale will, as a matter of course, procure goods and services with an estimated value of over £15,000 using 'value based' selection methods. The *Procurement Guide for use by Registered Social Landlords* referred to in 6.4 provides detailed guidance on this approach which involves appointing a Tender Panel to set a ratio for balancing quality and price depending on the complexity of the project and the Association's exposure to risk. The selection panel should assess the quality of tendering organisations/products balance these with fee proposals and make an appointment based on the best score when balancing

quality & price. Fee proposals will not be opened until all quality assessments are complete. Unsuccessful bidders will receive debriefings when requested.

7.8 Clydesdale will observe the following guidelines in implementing the value based tendering approach:

- Tenders must take place every three years for each major contract, with the exception of external audit services which will take place every five years;
- At least five tenders should be received for each contract, unless there is a small marketplace in which case the Chief Executive's approval to proceed with less than five tenders will be required;
- A review of each company/supplier accounts will be carried out prior to any appointment being made;
- The Tender Review Panel should comprise of two managers and two committee members, unless an amendment to this composition has been previously approved by Management Committee. The Tender Panel shall:
  - Review how the need for the project arose.
  - Agree a 'Brief' for the project.
  - Assess the risks associated with the project.
  - Agree a price/quality ratio. Quality/price ratios will vary from 20/80 for repeat projects through to 85/15 for feasibility studies and investigations.
  - Decide on whether an initial pre-qualification stage is required and agree a procurement timetable.
  - Assess interviews/presentations and submissions for quality.
  - Consider fee proposals.
  - Balance quality and price to make an appointment.
  - Nominate an individual to provide debriefings to unsuccessful bidders.

7.9 Ad Hoc purchases - Ad hoc purchases are one-off purchases that are standalone – they are not part of a wider contract or agreement, are unique in nature and are typically low value. Depending on value, ad hoc purchases are often made following a number of basic quotations, or other benchmarking and can be undertaken in conjunction with some of the other tools described below such as e-procurement (e.g. web based ordering) or procurement cards. Higher value one-off contracts and requirements valued between £5,000 and £14,999 will go through the more formal tendering procedures based on either lowest price or quality/price procedure depending on the complexity and risk presented by the contract/requirement.

7.10 Blanket Purchase Order/Call-off Order - A blanket purchase order is a standing purchase order with fixed start and end dates for repetitive purchases from a single supplier. Staff can purchase (or 'call-off' items) against the predefined purchase order until the amount of the blanket order is depleted or the blanket order expires.

7.11 Using a blanket purchase order avoids the cost of issuing a new purchase order for purchasing similar items over a period of time. For example, the Association may agree to purchase from a supplier 1000 items, at X pounds per item, over the subsequent six months. Each time Clydesdale orders that item, it quotes the one blanket purchase order number. This can be set up for equipment, supplies,

etc., where the supplier agrees to provide goods/services on a purchase-on-demand basis; deliveries are to be made as required by the purchaser.

- 7.12 Procurement Card - A procurement card is a bank charge card that works in a similar way to a bank credit card and should not be confused with an account/trade card. Account/trade cards are identification cards issued by a supplier rather than a bank. They will usually be linked to the agreed commercial terms with that supplier and, as they belong to a specific supplier, are only valid with that supplier.
- 7.13 Procurement cards can be treated like traditional bank charge cards with set transaction and credit limits, and can be open to use with any supplier and/or have restrictions placed on them by the employer limiting their use to certain commodities or certain suppliers. They can be used to purchase a variety of goods or services. Typical commodities purchased with procurement cards include: stationery, office equipment, computer supplies, electrical goods and building and maintenance supplies. These commodities tend to be high volume and low value transactions. They are also used for ad-hoc or infrequent purchase such as publications and subscriptions, and for internet purchases. The main benefit of their use is the consolidation of payments from the purchase to pay process, which reduces administrative costs and manual handling error rates.
- 7.14 Another important benefit with the use of procurement cards is the level of management information that is available from their use. The level of information that a procurement card transaction provides is based on the amount of electronic information made available by suppliers. However, even basic expenditure information can provide an organisation with valuable data regarding its purchasing.
- 7.15 Procurement cards can deliver significant tangible and intangible benefits to an organisation. They increase process efficiencies from the reduction of invoices, improve financial transparency and accountability, increase compliance to corporate contracts, improve supplier relations resulting from prompt payment leading to reduction in cost of goods/services, empower employees and release staff time and skill to focus on strategic activities or high value purchases. Research shows that effective use of procurement cards can reduce the processing costs of each transaction by up to 80%.

## 8. EU Public Procurement

- 8.1 The main legislative impact upon RSLs procurement practices is the requirement since 2004 to comply with EU Public Procurement rules. Specifically Directive 2004/18/EC, which combines procedures for the award of public works contracts, public supply contracts and public services contracts. This directive became a full part of Scots law at the end of January 2006 under the following statutory instruments, Public Contracts (Scotland) Regulations 2006 (SSI 2006/1) and the Utilities Contracts (Scotland) Regulations 2006 (SSI 2006/2). The previous regulations have been encompassed and replaced with the new Scottish Procurement Regulations 2012.
- 8.2 These EU procurement directives impose upon bodies responsible for expenditure of public money obligations such as non-discrimination, equal treatment of all suppliers and above all transparency. The directives are structured to the 1957 Treaty of Rome and are designed to encourage European wide transparent and non-discriminatory trade. It needs to be noted that all public procurement is subject to the obligations of the Treaty of Rome although it is only purchases above certain value thresholds that are required to follow the entire processes detailed in the directives.
- 8.3 A recently issued 'Interpretative Communication' (IC) from the EU on the following, "*Community law applicable to contract awards not or not fully subject to the provisions of the Public Procurement Directives*", underlines that consideration for the provisions of the Treaty of Rome needs to be given. Specifically there is evolving EU case law on the requirement that contracting authorities such as RSLs must give sufficient publicity on contracts below the thresholds or outside the scope of the directive.
- 8.4 The IC takes the position of clarifying that the fundamental principles of the EC Treaty apply to all public procurement contracts, specifically Part B services (covered in more detail later) and below threshold contracts. The principles include, but are not limited to, free movement of goods, equal treatment, transparency and non-discrimination. In essence the impact upon procurers is that they must ensure a degree of advertising (based upon the individual circumstances of the contract) sufficient to allow the contract to be opened up to competition. It is the sole responsibility of all contracting authorities to decide whether a particular contract might be of interest across the wider EU, therefore it is recommended that all purchasers make a decision on a case by case basis. The Office of Government Commerce (OGC) has issued a Procurement Policy Information Note on this matter, and it can be found on their website.
- 8.5 When the directive applies it is mandatory that the processes outlined in the documentation are fully adhered to. Organisations that fail to comply can be challenged resulting in suspension or cancellation of a tender procedure by the Courts. Further penalties can include a liability to pay damages; sources of public funding potentially removed and possibly more importantly than any financial penalties, there could be damaging publicity.
- 8.6 The requirements of this directive will be considered in the following manner:
- When does it apply?
  - What procedures are there?
  - What are the timescales?

- 8.7 This document should always be reviewed with the consideration that fresh legislation and guidance from such bodies as Communities Scotland, the Scottish Procurement Directorate, the Office of Government Commerce and the EU itself could have been issued. It is highly recommended that staff responsible for purchasing via the OJEU (Official Journal of the European Union) spend some time familiarising themselves with either the EU document or the Scottish Statutory Instruments, preferably both.
- 8.8 When does it apply? - In the simplest terms the rules apply when the threshold value for various categories of contract are exceeded. The current values came into effect from April 2014; are set as follows for RSLs

	<b>Supplies</b>	<b>Services</b>	<b>Works</b>
Threshold (Excluding VAT)	£172,514 (€207,000)	£172,514 (€207,000)	£4,322,012 (€5,186,000)

8.9 Clydesdale will regularly check that these thresholds have not altered, this can be done via the website for the Scottish Procurement Directorate at the following online location: [www.scotland.gov.uk/Topics/Government/procurement](http://www.scotland.gov.uk/Topics/Government/procurement)

8.10 In considering whether the thresholds will be reached, or are likely to be reached for service and supply contracts the directives require aggregation:-

- Of the estimated value of separate contracts for meeting a single requirement; and
- In particular defined circumstances, where a series of contracts or a renewable contract is entered into for supplies/services of the same type during a twelve month period.

8.11 In relation to works contracts, if a single work involves more than one contract, then the estimated value of all the contracts must be aggregated to ascertain if the threshold will be reached. Where the resulting aggregation means the threshold is reached, then each of the works contracts is covered by the directive, with some very minor exceptions.

8.12 Generally it is simple to define which category a purchase falls under, e.g. the requirement for a new stationery supplier for the next 3 years is easily defined as a supplies contract. In essence all Clydesdale needs from the supplier is the materials (stationery) 'supplied'. There are, however, circumstances when a contract may contain expenditure on both supplies and services. In these situations though the regulations have provisions that:

- Where a contract covers both services and supplies, the classification should be determined by the respective values of the two elements;
- Where it covers works/supplies or works/services, it should be classified according to its predominant purpose;
- Where a contract provides for the supply of equipment and an operator, it should be regarded as a service contract;

- Contracts for software are considered to be supplies unless they have to be tailored to the purchaser's specification, in those circumstances they are then services.
- 8.13 The rules do not specifically define what constitutes a services contract, other than by what it is not, i.e. a contract which is neither a works or supplies contract and the central requirement is one of the services listed in either Part A or Part B of the directive (or schedule 3 of the Scottish Statutory Instrument: Public Contracts). Services designated as Part B are still required to follow sections of the directive, but certain steps are not required. Every service required should be considered against those listed in the schedules and the relevant process followed. Where a service is not easily categorised then consideration should be given to following a full process to limit the possibility of challenge.
- 8.14 There are limited exclusions from the directive, in relation to RSLs these will most often be concerning contracts for the acquisition of land, or any interest in land. So when purchasing an interest in land or newly complete or existing dwellings then Clydesdale will not have to follow the directive.
- 8.15 What procedures are there? - Upon realisation that a procurement activity must be taken in line with the requirements of the directive, there is choice around which procedure will best deliver Value for Money for the particular activity. All procedures require for a contract notice to be placed in the Official Journal of the European Union (OJEU). This can be done via the European Public Procurement website (<http://simap.europa.eu/>). In the directive there is provision for a number of procedures:-
- Open procedure
  - Restricted procedure
  - Negotiated procedure
  - Competitive dialogue procedure
- 8.16 Each of the procedures has a different structure and impacts upon the minimum timescales imposed upon the procurement activity by the directive. Reductions in the timescales documented can be achieved via the use of Prior Information Notices (PINs) or through use of electronic submission and circulation of documentation.
- 8.17 Procedures – Open - A simple explanation of the open procedure is that all parties interested in the OJEU advertised contract notice may tender for the contract. There is no provision for the short-listing of bidders. This procedure is used where a limited number of bidders are anticipated (e.g. due to the specialist nature of the requirement), or in any situation where costs from all bidders are required for benchmarking purposes.
- 8.18 Procedures – Restricted - The restricted procedure provides a short-listing opportunity; a selection is made from those who respond to the advertised notice. This thereby allows purchasers to avoid having to deal with excessive numbers of submitted tenders. The short-listing process is undertaken through the format of specific questions on the advertised notice or via a separate document often referred to as a Pre-Qualification Questionnaire. The questions and requests for information asked for must be categorised into the following (as detailed in Articles 45-50 of the directive):

- Personal situation of the candidate or tenderer
- Suitability to pursue the professional activity
- Economic and financial standing
- Technical and/or professional ability
- Quality assurance standards
- Environmental management standards (in appropriate cases)

8.19 The responses can then be evaluated and a shortlist created to receive the full tender. Restricted procedures are the most commonly undertaken by public bodies, and are most appropriate when you anticipate a large number of responses.

8.20 Procedures – Negotiated – (can only be used in exceptional circumstance)  
Negotiated procedure is a situation under which a purchaser is permitted to select one or more potential suppliers with whom to negotiate the terms of the contract. The directive and the Scottish Statutory Instrument categorises this process in two ways:-

- Use of the negotiated procedure with prior publication of a contract notice
- Use of the negotiated procedure without prior publication of contract notice

8.21 In both situations usage of this procedure has to be exceptional and justified, often failure of an open or restricted procedure due to irregular/unacceptable tenders will suffice. Also in circumstances relating to technical or artistic reasons, perhaps in conjunction with the protection of exclusive rights whereby the public contract may only be awarded to particular individuals/organisations, can the negotiated procedure be utilised.

8.22 Procedures – Competitive dialogue - Using this procedure the purchaser enters into dialogue with potential suppliers prior to tenders being submitted to identify the most effective solutions to complex projects or to refine broad objectives or specifications. Bidders will then be invited to tender against the resulting solution(s) developed through the dialogue process. In all situations the open and restricted procedures should be fully considered. Even with complex projects there should be no presumption that competitive dialogue will be the most suitable procedure at delivering Value for Money. It is seen as a way of utilising the expertise of the supply chain while undertaking an EU compliant tender, particularly when the purchaser understands the requirement but does not necessarily know the best solution.

8.23 General note about procedures - For the majority of above threshold procurement requirements it is likely that either the open or restricted procedure will suffice. Use of the negotiated and competitive dialogue options are in exceptional circumstances only and the justification for use must be reasoned and well documented.

8.24 Procedure options

- Framework agreements - Framework agreements can be utilised with the purpose of establishing terms governing contracts to be awarded over a given period (framework agreements are limited to four years under the directive, unless there are exceptional extenuating circumstances). More generally a framework agreement is created with providers (agreements can

be with single or multiple suppliers) and sets out the terms and conditions under which specific purchases (call-offs) can be made throughout the duration of the agreement.

For example in relation to minor works, a framework is awarded to several contractors on a most economically advantageous basis (a combination of cost, quality and other relevant criteria). The contractors provide a range of services within categories, such as building, plumbing and electrical services. Hourly rates, call out charges and levels of quality are set under framework agreement. When a purchase or 'call off' is required, the purchaser goes to the contractor providing the most economically advantageous service on the basis of the original award criteria

- A dynamic purchasing system (DPS) is a new method for public bodies to purchase particular goods, works or services. Full detail on the process can be found within Article 20 of the Scottish Procurement Regulations 2012. Any organisation seeking to utilise a DPS should pay close attention to the regulations to ensure compliance.

A contracting authority may establish a DPS to purchase commonly used goods, works or services in a completely electronic method over a limited duration. During the duration of the DPS the system is open for any bidder that meets the selection criteria detailed by the purchaser and submits an indicative tender. An indicative tender is the submission prepared by the bidder seeking access to the DPS, this indicative tender sets out the terms on which the bidder is willing to enter into under contract with the purchaser should that purchaser award a contract from the DPS.

The DPS must be fully electronic, it must be set up and have contracts awarded from it in a completely electronic format. It must also be advertised via the OJEU by means of an open award procedure, no other procedure is applicable to a DPS. Furthermore a DPS can last for a maximum of four years, and organisations cannot make any charges to bidders for admission or any other aspect of the DPS.

- Electronic Auctions - Useful guidance on the use of e-Auctions in line with the directive is available from the EU directly, and can be found at the following website, <http://ec.europa.eu/idabc/en/chapter/5874>.

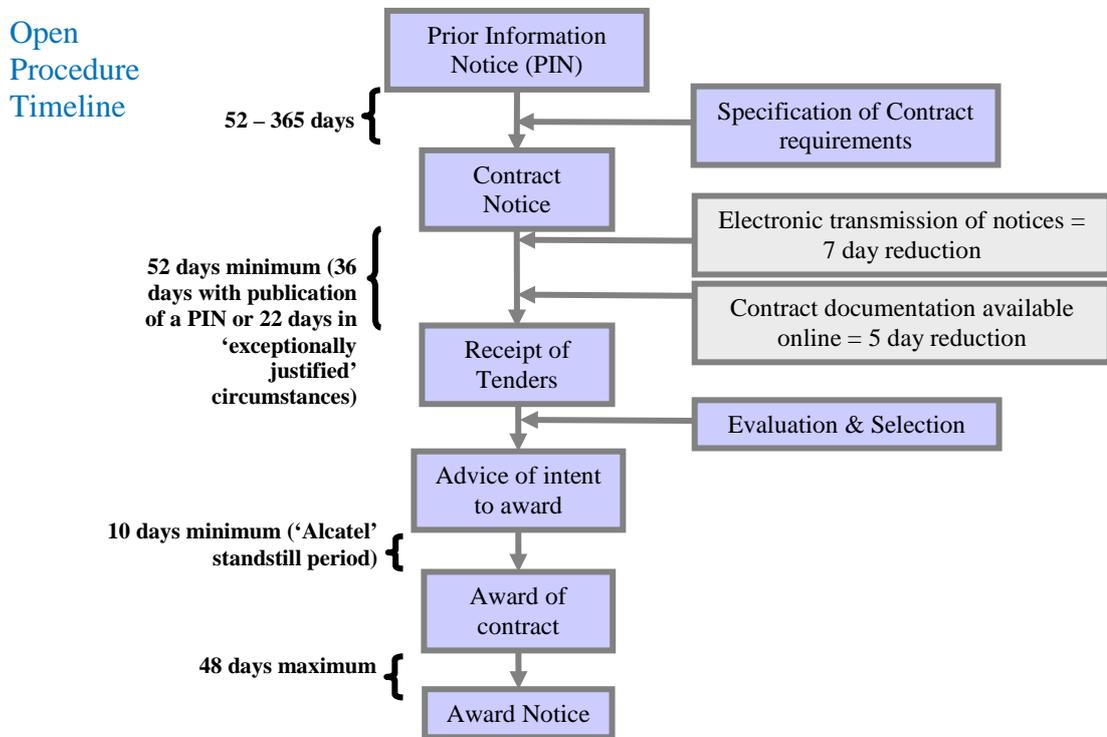
The OJEU contract notice must state the intention of an organisation to utilise an e-Auction and an auction can be used in open and restricted procedures. Under more complex scenarios it can also be utilised in competitive dialogue and negotiated procedures. It may also be used in conjunction with framework agreements when competition for contracts (call-offs) is reopened, provided the intention to utilise e-Auctions for this purpose was detailed in the original contract notice. If in an existing framework where there was no prior request for an option to utilise e-Auctions during mini-competitions, e-Auctions may still be utilised with the consent of the framework suppliers.

- Central purchasing bodies - The current directive includes a specific provision for Central Purchasing Bodies (CPB); Article 11 provides the detail. In the Public Contracts (Scotland) Regulations a CPB is defined as "a contracting authority that:

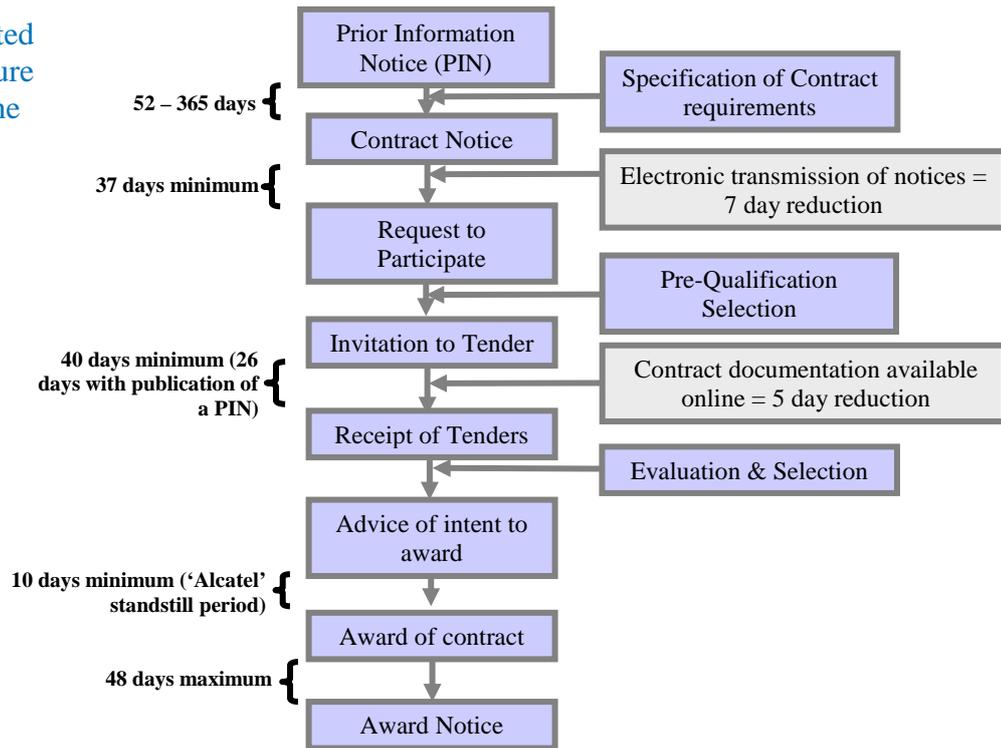
- Acquires goods or service intended for one or more contracting authorities;
- Awards public contracts intended for one or more contracting authorities;
- Or concludes framework agreements for work, works, goods, or services intended for one or more contracting authorities”.

Clydesdale should note that it will have been deemed to comply with the Regulations in so far as the CPB has complied with them in the original award process. In essence, so long as the CPB has complied with the Regulations then organisations purchasing via them do not have to go through the procedures detailed in the directive. This does work in reverse, where a CPB has failed to comply then the organisation purchasing via the contract/framework is deemed not to have complied either.

8.25 Timescales - Outline timescales for both open and restricted procedures are detailed below. The relevant timescales for the negotiated and competitive dialogue procedures can be found in the Scottish Statutory Instrument : Scottish Procurement Regulations 2012:



# Restricted Procedure Timeline



**9. Policy Review**

This policy will be reviewed within one year of its approval and every 3 years thereafter.

<b>Approved by the Committee of Management on:</b>	
<b>Signed:</b>	<b>Signed:</b>
<b>Secretary/Chairperson</b>	<b>Chief/Depute Chief Executive</b>