**FALKIRK COUNCIL**

**CORPORATE PROCUREMENT PROCEDURES**

**For the supply of goods or materials, the provision of services and the execution of works**

**These procurement procedures apply to all service areas**

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# Introduction

## Use of these Procedures

* + 1. Chief Officers are to ensure that anyone involved in any part of the procurement process has read and understood these procedures. Procurement processes include ‘from identity of need, to purchase, payment and ultimately disposal of asset’. Use of these procedures is mandatory.
    2. Following these procedures will enable a high level of assurance that contracts are let and managed in a manner that is effective and legal. It is strongly recommended that the council’s Corporate Procurement Unit (CPU) is involved in significant and complex purchases and that their guidance is sought when required. Advice and guidance on the procurement of public sector works contracts is available from Design, Roads and Transport Division (DRT). Activities constituting works are set out in Schedule 2 to The Public Contracts (Scotland) Regulations 2015 and are referred to in these procedures as “works”)

## Purpose

* + 1. This document provides council staff with a single reference point to allow them to procure in accordance with this document and all other statutes that govern public sector procurement within Scotland and the UK.

## Objectives

* + 1. To detail the most effective and appropriate procedures to be followed by all staff when procuring goods, services and works on behalf of the council.
    2. To support the council’s Corporate Procurement Strategy in achieving standardised practises and procedures pertaining to procurement across the council.

## Updates

* + 1. These procedures will be regularly reviewed and updated as necessary to reflect any legislative or other changes which impact upon procurement. Updates will be published on the council’s intranet.

## Exemptions

* + 1. Subject to the requirements of UK & Scottish Procurement Rules, Contract Standing Orders (CSO) allow Chief Officers, in certain circumstances, to exempt contracts from the requirement to obtain quotes or tenders (CSO section 5). Any Service seeking to invoke these exemptions must comply fully with CSO’s and Financial Regulations to ensure compliance with UK & Scottish Procurement Rules.
    2. Any query regarding the application or interpretation of these Procurement Procedures should be made in the first instance to CPU particularly in relation to goods and services. DRT are also able to assist with enquiries in relation to works contracts.

# Procurement Roles and Responsibilities

## Scheme of Delegation to Officers

* + 1. The council’s CSOs and Financial Regulations sets out the powers which have been delegated by the council to senior officers.
    2. The Chief Executive, Chief Officers and Head Teachers (under the council’s Scheme of Devolution of School Management) can delegate their authority for the making of contracts on behalf of the council. Those officers whom they authorise to perform procurement functions and tasks on their behalf must have sufficient training, knowledge and experience to determine relevant procurement issues and be aware of the extent and limitation of their delegated authority.
    3. The CPU offers and provides training in regard to Quick Quotes and CSOs. Requests for training should be made to [cpu@falkirk.gov.uk](mailto:cpu@falkirk.gov.uk)

## Corporate Procurement Unit (CPU)

* + 1. The CPU is Falkirk Council’s Centre of Procurement Expertise. It is charged with providing strategic direction, advising and guiding officers, and implementing improvements to procurement processes, procedures and systems to deliver benefits and enhanced procurement performance. CPU works in parallel with DRT. The main focus of CPU is goods and services contracts while the main focus of DRT is on works contracts.

## Council Wide Procurement Roles and Responsibilities

* + 1. All council employees have a role to play in the procurement process and clarity of expectation and understanding of responsibility and the potential consequences of non- compliance are essential. Table 1 below provides a high level list of roles and responsibilities relating to procurement.

|  | **Role** |  |  | **Responsibility** |  |
| --- | --- | --- | --- | --- | --- |
| *Elected Members* | | | * Leadership, through endorsement of the council’s Corporate Procurement Strategy * Involvement in and scrutiny of procurement processes through, for example, the planned procurement bulletin, prior consideration process and information bulletin * Delegation of appropriate authority to officers | | |
| *Procurement Board* | | | * Implement and develop corporate procurement strategy * Champion procurement best practice across the council * Ensure availability of necessary resources, support and commitment | | |
| *Chief Officers* | | | * Define procurement business needs * Control and approve budgets * Authorise strategic procurement decisions * Support line managers * Ensure appropriate and proportionate contract management of contracts | | |
| *Line Managers* | | | * Plan and deploy resources to procurement projects * Develop and assist with the development of procurement business case * Approve operational purchases * Responsible for quick quotes (online low value/low complex requirements < £50k for Goods & Services and < £250k for Works) * Support contract management, budgetary control and provision of technical expertise | | |
| *Operational Staff* | | | * Initiate purchase and process orders * Monitor contracts and feedback supplier / contract performance to CPU / service management teams * Provide technical knowledge * Represent function / Council at User Intelligence Groups (Scotland Excel or Falkirk Council) | | |
| *Corporate Procurement Unit* | | | * Provide expertise and specialist procurement advice across the Council (noting that DRT are the Council’s specialists in relation to works contracts) * Develop and award local and regional collaborative contracts * Advise and assist in the management of contracts & procurement risk. * Report corporate procurement performance * Report procurement performance to the Procurement Board * Report awarded tenders to Council in accordance with CSOs * Report all Council Quick Quotes between £10,000 and £250,000 to Council in accordance with CSOs | | |

***Table 1 Roles and Responsibilities***

## Contract Strategy Roles and Responsibilities

* + 1. Table 2 below provides a detailed list of roles and responsibilities which will assist all staff involved in the development of contract strategies for the procurement of Goods, Services and Works to understand their remit throughout the procurement process.

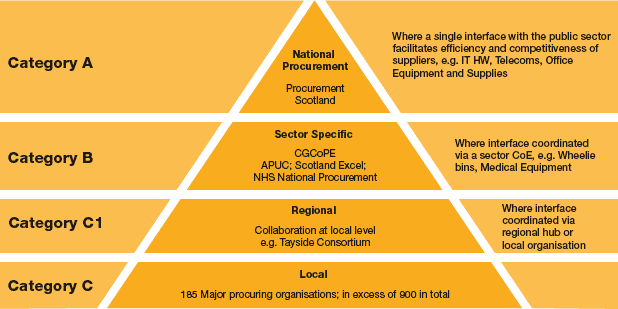
| **Process** | | **Service** | **CPU / DRT** | **Comments** |
| --- | --- | --- | --- | --- |
| **Budget** |  | ● | ○ | Service to ensure budget is in place prior to starting any exercise. No exercise is to start without this. Authorisation obligation is dependent on value (see CSO 6.2) |
| **User Intelligence Group** | Agree individual roles and responsibilities and agree project management principles | ◐ | ◐ | No Conflict of interest confirmed at first meeting and conflict statements completed by members |
| **Contract Strategy  (£50,000 and above for Goods and Services and £250,000 and above for Works)** | Identify initial requirement | ● | ○ | Service initiates contact with CPU / DRT to advise of requirement and to provide the necessary details (background; spend; roles; timescales, etc). Early engagement is crucial |
| Engage with stakeholders | **◐** | **◐** | UIG Members to represent their Service and obtain all information necessary to feed into tendering activity |
| Draft contract strategy | **◐** | **◐** |  |
| Agree tender process | **◔** | **◕** |  |
| Finalise and sign off Contract Strategy & tender approach | **◔** | **◕** | Joint sign off of Contract Strategy between Service & CPU / DRT. |
| **Contract Strategy  (£7,500,000 and above or where Chief Officer considers it to be of such significance)** | Service to complete prior to any tendering activity commencing.  This includes ensuring that a prior consideration report is presented to Executive | **●** | **○** | See CSO 6.2 (ii) |
| **Tender Development and Procedure** | Agree selection and award criteria & weightings | **◔** | **◕** | * Open tender (one stage): both selection (SPD) & award criteria apply * Restricted tender (two stages): selection criteria applies to stage 1 (SPD) and award criteria applies to stage 2 (ITT) |
| Define specification & service level expectations | **◕** | **◔** |  |
| Create tender documentation | **○** | **●** |  |
| Publish contract notice / tender documentation on PCS | **○** | **●** |  |
| Monitor tender Questions area on PCS and provide updates | **◔** | **◕** | CPU / DRT will monitor and update, but Service will be required to provide technical responses to questions asked by tenderers. |
| **Tender Evaluation Open Procedure** | Undertake commercial evaluation | **○** | **●** | Evaluate as per criteria weighting and methodology indicated in tender exercise. Officers evaluating the Commercial element cannot also evaluate the Technical element. |
| Evaluate technical submission | **●** | **○** | Evaluate as per criteria weighting and methodology indicated in tender exercise. Officers evaluating the Technical element cannot also evaluate the Commercial element. |
| Amalgamate both commercial and technical elements once both are complete to obtain most economical advantageous tender / ranking. | **◐** | **◐** | Service to view whole commercial / technical submission of those they intend to award, to ensure there are no surprising elements. Further clarification can be sought from tenderers at this stage. |
| Obtain and evaluate SPD / additional selection stage documentation for successful suppliers. | **◕** | **◔** | Due diligence exercise required only for successful suppliers. Further clarification can be sought from tenderers at this stage. |
| Draft & issue standstill letters. | **○** | **●** | Service to provide adequate wording for standstill letters on the qualitative evaluation |
| Conduct tender debriefs | **◐** | **◐** |  |
| Draft & issue award confirmation letters. | **○** | **●** |  |
| **Finalise Contract Award** | Complete contract award notice on PCS | **○** | **●** | This **MUST** be done within 48 days of confirming award. Where CPU or DRT have not been involved in the process, this must be done by the Service. |
| **Contract & Supplier Management Strategic** | Complete contract management tool | **◐** | **◐** | To determine minimum levels of contract management required |
| Conduct contract pre- start meeting | **●** | **○** | Template agenda available on CPU Intranet Webpage. Meeting notes to be given to CPU / DRT Procurement Lead. |
| Conduct contract review meetings | **●** | **○** | Template agenda available on CPU Intranet Webpage. The frequency of the meetings will be dependent on the value, organisational risk and duration of contract (see contract management tool). Meeting notes to be given to CPU / DRT Procurement Lead. |
| Benchmark performance against KPI’s | **●** | **○** |  |
| Benchmark costs against market | **●** | **○** |  |
| Address issues of non- conformance | **●** | **○** |  |
| Investigate value adding opportunities | **●** | **○** |  |
| Review and capture lessons learned | **●** | **○** | Tender lessons learned to be circulated to CPU / DRT. |
| **Contract & Supplier Management Operational** | Manage contract performance on a day to day basis. | **●** | **○** | Issues which can’t be resolved at an operational level are to be escalated to the contract review meetings (strategic level) or if a quick resolution is required then an emergency meeting should be arranged between the responsible service lead / key customers and the supplier |

***Table 2 Tender exercise roles and responsibilities***

See [APPENDIX 2](#_APPENDIX_2_–) for a summary of the process and reporting requirements.

## Scottish Procurement, Government Procurement Service and Scotland Excel

* + 1. In addition to the procurement activities performed by the council, certain commodities are assigned to the Scottish Government and the UK Government.
    2. Scottish Procurement has responsibility for developing and implementing procurement strategies for national category A commodities on behalf of all Scottish public sector organisations.
    3. Category A commodities are defined as goods or services that are standard or of a similar nature across the largely common requirements of the Scottish public sector. The aim of Scottish Procurement is to maximise effective collaboration throughout the procurement cycle and optimise compliance to national contracts.
    4. The Crown Commercial Service is the national procurement partner for UK public services. Its primary role is to maximise the value for money obtained by Government departments and other public bodies through the procurement and supply of goods and services.
    5. Scotland Excel is a non-profit making organisation funded mainly by participating local authorities, with Renfrewshire Council as the hosting authority. It is the Centre of Procurement Expertise for the local government sector with responsibility for developing and implementing procurement strategies for Category B commodities.
    6. Category B commodities are generally high-value commodities that tend to be unique to a specific sector yet common within that sector.
    7. Category C & C1 commodities are those which are neither categorised as A (National Contracts) nor B (Sector Specific Contracts), or they have a bespoke requirement that wouldn’t be covered by a typical approach to categories A and B. Category C contracts will be established by Falkirk Council for use by Falkirk Council and category C1 contracts will be established by Falkirk Council or another regional organisation for use by Falkirk Council or one of the regional organisation partners.



***Diagram 1 Scottish Public Sector Procurement Category Structure***

# Identifying Need

## Service Plans

* + 1. Before considering individual procurement requirements, services will be planning and developing their own service plans or commissioning strategies which will determine the overall direction for that service. As a result of these deliberations, or as part of the process, there is a need to consider procurement. It may be the need for an exit strategy for an existing contract, a replacement for a current procured service / supply or the creation of a new contract for external expenditure.
    2. The information provided through Service Plans and the Capital Programme Monitoring Group will be used to inform the future regulated procurement exercises published within the Council’s Annual Procurement Report to the Scottish Government.  This allows the planning of priorities, allocation of resources, and identification of new training requirements.  It also informs the procurement workplan listing of all known regulated contract requirements for Goods, Services and Works over the two years ahead and should form the basis of the Planned Procurement Bulletin.

## Authorisation to Award (see CSO 6.2)

* + 1. Authorisation to award is determined by overall contract spend value. Disaggregation of on-going spend with the effect of circumventing authority levels is prohibited.
    2. Officers may make their own purchasing arrangements for a one-off requirement **below £5,000**. An audit trail must be maintained to demonstrate best value considerations.
    3. Chief Officers are delegated the authority to commence procurement exercises and award contracts **below £500,000**.
    4. Before a procurement can be commenced which has an estimated value of **£500k or above but less than £7.5m**, it must be notified to members of the Executive via a two monthly (or ad hoc if required) Planned Procurement Bulletin. Members of the Executive then have 14 days from publication of the Bulletin to approach the relevant Chief Officer for further information. The Chief Officer may decide to refer the matter to Executive.
    5. **All procurements with an estimated value of £7.5m or above** shall automatically be the subject of a report to Executive before the procurement process is commenced.

The report will cover matters such as:

* What is the Council’s requirements for the goods, works and services and why does it need them?
* What are the available options including internal provision, which is best and why?
* Can and should the Council afford it?
* Packaging – is it appropriate for the contract to be packaged in different lots or geographical areas?
* What are the most appropriate selection and award criteria and quality/price ratio?
* How will the Council monitor the performance and measure the benefits?

If members agree the recommendations of the Chief Officer, then the procurement process can commence and thereafter the Chief Officer can award the contract subject to consultation with the Chief Governance Officer

## Contract Strategy (Procurement Journey Strategy)

* + 1. Strategic procurement is long term planning to ensure timely supply of goods, services and works that are critical to the ability to meet core business objectives. Strategic procurement covers the whole procurement cycle and considers analysis of whole life costing expenditure, looking across services and partnerships to identify synergies and opportunities for improving economy, efficiency and effectiveness.
    2. Other than low value and low risk procurement exercises, prior to commencing a procurement exercise, the Officer responsible must appraise the procurement in a manner commensurate and proportionate with its complexity and value. The Scottish Procurement Directorate has developed a toolkit, the Procurement Journey (<https://www.procurementjourney.scot/>), to guide procurers through the whole process starting with the identification of need. In order to document and evidence these initial considerations, best practice is that tendered regulated procurements should have a Contract Strategy template completed which would include, as appropriate and proportionate:
       - Contract objective;
       - Funding arrangements;
       - Current contract status;
       - Historical spend information;
       - Market analysis;
       - Collaboration considerations;
       - Sustainability considerations;
       - Climate and circular economy;
       - Fair Work first;
       - Prompt Payment;
       - Community wealth building;
       - Equality;
       - Procurement procedure to be followed;
       - Proposed contract benefits;
       - Risk Assessment

Consideration may also be given to the following where appropriate:

* + - * Commodity / Service Profile
      * Background of Service / Commodity
      * Key Project & Implementation Plan
      * Project Team Members & Key Stakeholders
      * Project Team Aims & Objectives
      * Critical Areas of Success
      * Current Contract Status
      * Policy Considerations
      * Payment Mechanisms
      * Spend Analysis
      * Commodity/Service Scope
      * Commodity Tree
      * Sustainability
      * Supply Market Analysis
      * Key Risks and Issues
      * Best Value & Opportunities
      * Procurement Route and Criteria Considerations
      * Options Appraisal
      * Evaluation Considerations
      * Contract Award and Implementation / Exit Considerations
      * Contract Management Summary
      * Review Process
      * Project Approval

Guidance template is available via the guides section of the CPU webpage.

* + 1. For non-construction works, the [Contract Strategy](https://intranet.falkirk.gov.uk/file/91abc6ed-9b2f-423a-8911-98c5f1dfa496) document must be completed. The Route 2 Contract Strategy template and guidance for its completion is available at the CPU webpage. For route 3, contact should be made with CPU. For construction works, the general guidance contained within the [Construction Procurement Handbook - gov.scot (www.gov.scot)](https://www.gov.scot/publications/construction-procurement-handbook/)
    2. The Procurement Journey is intended to support all levels of procurement activities and to help manage the expectations of stakeholders, customers and suppliers alike. It facilitates best practice and consistency across the Scottish public sector. The Procurement Journey has been updated to be compliant with the Public Contracts (Scotland) Regulations 2015, Procurement (Scotland) Regulations 2016 and the statutory guidance.

**Route 1 -** designed to conduct low value/low risk/non-repetitive procurement for goods or services.

**Route 2** - regulated procurements, as defined in the [Procurement](http://www.legislation.gov.uk/asp/2014/12/contents) [Reform (Scotland) Act 2014](http://www.legislation.gov.uk/asp/2014/12/contents)**,** which are between £50k and WTO GPA procurement thresholds.

**Route 3 -** regulated procurements for goods and services for WTO GPA procurement thresholds and above.

A commodity / [contract strategy](https://intranet.falkirk.gov.uk/file/91abc6ed-9b2f-423a-8911-98c5f1dfa496) is always required for all Route 2 & 3 procurements. The commodity strategy however should be proportionate to risk, value and strategic importance of the commodity to the Council.

## User Intelligence Groups

* + 1. To ensure that the requirements of stakeholders are met, and maximum compliance is achieved, a cross-functional team, or User Intelligence Group (UIG), should be established. The UIG will assist when developing the commodity strategy, tender evaluation and the ongoing activities of contract/supplier management/risk assessment, monitoring, implementation, compliance and benefits tracking. This group should have representation from key stakeholders within Falkirk Council, any other participating Organisation(s) and should include procurement and business / technical / customer representatives.
    2. Members of the UIG should not underestimate the amount of time and commitment involved in being a team member. Although the team itself may typically meet only fortnightly or monthly there will be work to be completed in-between meetings and members should come to meetings fully prepared.
    3. UIG members and relevant stakeholders should always be open to new ways of shaping the requirement by sounding out the market and identifying what the market is able to provide. They should give consideration to the options for shaping the market, encouraging the market to develop in such a way that it can meet the Councils’ future requirements. There should be an assessment of future demand of the commodity, based upon the knowledge and expertise within the team and upon information obtained from communications with non-team members. Engaging the market provides an opportunity to ensure that the services provided are at the forefront of those available.

## Spend Analysis

* + 1. A detailed understanding of the current spends, and likely future requirements of participating departments are key to commodity strategy development. To assist with spend analysis the council can access information on historical spend via the Scottish Procurement Information Hub (aka “The Hub”). The Hub is funded by the Scottish Government and allows procurement staff within the Scottish Public Sector to determine:
       - how much they are spending on external goods and services
       - who the key suppliers are
       - how many transactions were made with each supplier
       - where the suppliers and spend categories are used in common

The information provided enables individual organisations to identify where collaborative opportunities may exist and where transactional efficiencies can potentially be made. Some suggested areas for analysis are:

* + - * Total Expenditure and Volume
      * Expenditure by Commodity and Sub-Commodity
      * Expenditure by Division or Department or geography
      * Expenditure by Supplier
      * Future Demand projections where possible
      * Collaborative Opportunities
      * Benchmarking
      * Profile of suppliers (large, SME, etc.)
    1. Although The Hub provides many pre-defined reports and data that can be exported into MS Excel format, there are unfortunately some limitations to the classification of spend available. It currently classifies suppliers and therefore expenditure based on their type of business, not on the specific goods, services or works that were procured. This means that the UIG will still need to obtain detailed spend information from finance systems within the council, e.g. Integra, NEC Housing System and Purchase Card data.
    2. The Hub can be used to identify possible transactional savings and collaborative opportunities and to determine market share positioning with other public sector bodies in Scotland.

## Market Research and Pre-Tender Consultation

* + 1. Market research enables the UIG to develop a detailed understanding of key trends, major players, and overall market dynamics that could influence the commodity and supply. A supply market analysis should be undertaken to enable the User Intelligence Groups (UIG) to develop a detailed understanding of key trends, major players, and overall market dynamics that could influence the development of the commodity strategy e.g. route to market, Lotting strategy.

Early market engagement can be critical to contract strategy success, and it is vital to understand the key issues before starting, but it must be undertaken with care and in such a way as to ensure equal treatment and fairness to potential suppliers. Activities typically include researching and analysing the market as a whole and meeting selected potential suppliers for discussion. The Council must ensure that it takes appropriate measures to ensure that competition is not distorted by the participation of potential suppliers.

* + 1. After the estimated aggregate purchase value of the contract has been calculated, some initial market research can prove valuable to ascertain the suppliers offering the required needs. Market research is beneficial for procurement exercises that have no historical spend. It can be done by obtaining information from:
       - Services with experience of a particular market
       - Previous procurement exercises
       - Other Public Sector procurement agencies, e.g. Scotland Excel, Scottish Procurement, etc.
       - Other Public Sector Procurement authorities, e.g. neighbouring councils
       - Replies to Prior Information Notice
       - Trade directories, magazines, exhibitions, internet and supplier catalogues
    2. Prior to the issue of the Invitation to Tender, the Procuring Officer may wish to consult potential suppliers in general terms about the nature, level and standard of the supply, contract packaging and other relevant matters in order to obtain market and commodity condition information.
    3. It is imperative that any consultation does not prejudice any candidate and that the Procuring Officer does not:

1. make any contact with suppliers before seeking advice from the CPU, or
2. seek or accept technical advice on the specific preparation or design of an Invitation to Tender or Quotation from anyone who may have a commercial interest in the contract that would result in restricting competition in favour of those consulted with.
3. does not communicate with individual suppliers directly once the tender exercise has commenced. If a technical query is raised, the reply must be given to all engaged in the exercise.
   * 1. As a minimum the consultation must be carried out in a transparent way that ensures there is no distortion of the marketplace, the outcome cannot be a procurement that unduly favours or disadvantages a particular potential supplier, and it is the responsibility of the buying organisation to make sure that these requirements are met.
     2. Care should be taken to ensure transparency at all times in the process, with no distortion of competition and/or discrimination in favour of or against potential suppliers. Potential supplier interest can be generated by publishing advance notice of likely requirements, for example through Prior Information Notices (PINs).
     3. You should engage with a good cross section of potential suppliers to best inform your strategic options i.e. the views of a Small and Medium sized Enterprise (SME) compared with a large or multi-national supplier may be different. Early engagement with potential suppliers can be critical to success and it is vital to understand the key issues before starting the procurement process, however, it must be undertaken with care and in such a way as does not distort competition. It is vital that any discussions on costs at this stage should be indicative only and you must make this clear to potential suppliers.
     4. When re-tendering for services activity, contact should be made six months preceding the expiry of the Contract or after the Council has given notice to terminate the Contract or the Provider stops trading.

Within 20 working days of being so requested by the Council, the Provider shall fully and accurately disclose to the Council information relating to employees engaged in providing the Service in relation to the Contract in particular, but not necessarily restricted to, the following:

A statement indicating whether they wish to retain relevant staff under their current employment.

Or if they believe TUPE would be applicable, they should provide information indicating:

* + - * Anonymous list Identifying role, age, continuous service period & pay rate of employees who are wholly or mainly engaged in the undertaking of the contract.
      * Information contained in their 'statements of employment particulars', such as written statement of pay, hours of work, holidays etc. (usually contained within the employee’s offer letter or contract of employment).
      * Information about any relevant collective agreements.
      * Contact name and e-mail address should tenderers wish to contact them directly.

Information received from the incumbent provider should be included within the tender documentation and should also include the following statement:

o *The Council cannot verify the accuracy of any information supplied to Tenderers in respect of personnel currently employed by the incumbent provider, and therefore the Council has no liability in respect of such information. It is for each Tenderer to ensure that they have sufficient TUPE information to submit a compliant Tender. The Council accepts no liability for any costs incurred as a result of TUPE either during the Tender process or post Contract award.*

## Sustainability

* + 1. The [Sustainable Procurement Duty](http://www.legislation.gov.uk/asp/2014/12/section/9) outlined in the [Procurement Reform (Scotland) Act 2014](http://www.legislation.gov.uk/asp/2014/12/contents) requires that an Organisation must think about how they can improve the Social, Environmental and Economic wellbeing of the area in which they operate, with a particular focus on reducing inequality.

To support this, the Scottish Government Procurement Policy Team has developed a suite of Sustainable Procurement tools with guidance that can be used when developing commodity strategies including the Sustainability Test [Sustainable Procurement (sustainableprocurementtools.scot)](https://sustainableprocurementtools.scot/).

The key to successful Sustainable Procurement is to regard its importance as equal to the other areas of commodity profiling such as quality, technical specifications and commercial objectives. The primary considerations that must be noted as part of the process include:

* + - * Identify the opportunities to improve the economic, social and environmental wellbeing of the area in which your organisation operates
      * Facilitate the [involvement of small and medium enterprises, third sector and supported businesses](http://www.gov.scot/Publications/2016/03/8410/3)
      * Promote innovation

The Council is required to consider including community benefit requirements for all regulated procurements. Falkirk Council however requires you, for all contract values to consider their use by taking into account the nature of the contract, its duration and other, local factors for all contract values. Not applying Community benefit requirements however should only be considered by exception. See the Falkirk Council Community Benefits Process for further guidance.

3.7.2 Procurement Lead Officers will use a whole systems approach to continuously consider **whether to buy, what to buy, how to buy and how much to buy** as per [SPPN 3/2022 Public procurement - taking account of climate and circular economy considerations](https://www.gov.scot/publications/public-procurement-taking-account-of-climate-and-circular-economy-considerations-3-2022/).

**Whether to buy** **–** demand management is considered – i.e., can an existing asset be repaired, refurbished or reused or can we bring a service in-house. See Contract Strategy Template.

**What to buy –** Can we specify refurbished, repaired or pre-used rather than new, and consider options to improve use of service models. Consideration should also be given to buying future-proofed solutions that are designed to be refurbished and repaired, or to take advantage of emerging climate-related innovations. See Government Guying Standards Guide [Sustainable Procurement (sustainableprocurementtools.scot)](https://sustainableprocurementtools.scot/guidance/).

**How to buy –** Can we include climate selection and award criteria. The User Intelligence Group (UIG) must understand and actively support a strong focus on climate considerations, helping to achieve a balance of economic, social and environmental outcomes in procurement decisions. Additional focus must be placed upon life cycle impacts which includes evaluating impacts of raw materials, delivery, use and end-of-life considerations. See further guidance [Sustainable Procurement (sustainableprocurementtools.scot)](https://sustainableprocurementtools.scot/guidance/). See also Contract Strategy Template and Contract Management Procedure

**How much to buy** – again demand management is considered – i.e., targeted spend controls or restricting choices through contracts could target the purchase and consumption of lower carbon alternatives. Therefore, minimising or avoiding the purchase of high carbon impact goods including cement; glass; iron, steel and aluminium; paper and pulp; food and drink. Reducing consumption also directly minimises the emissions associated with supply chain logistics, manufacturing, and distribution.

# Framework Agreements

## What is a Framework Agreement?

* + 1. A framework agreement is an arrangement between one or more contracting authorities (buyers) and one or more economic operators (suppliers), the purpose of which is to establish the terms governing contracts in particular with regard to price and where appropriate, quantity envisaged.
    2. The council can award a framework contract to either a single supplier or to three or more suppliers, unless a multiple-supplier framework is required and only two competent tenders are received. The existence of the framework reduces time, saves on administration and provides the prospect of continuity for a high performing supplier and managing risk.

## Why Use a Framework Agreement?

* + 1. A framework agreement is used where the extent of the purchase is not known or where several suppliers will be engaged on the agreement over a specific period of time.
    2. Although framework agreements are most commonly used by buying organisations such as Scottish Procurement, GPS or Scotland Excel who are unable to guarantee their own clients’ specific demands, there are advantages for the council in letting framework agreements covering a term, rather than a series of short term specific contracts.

## How Can a Framework Agreement be arranged?

* + 1. Framework agreements can be established using procedures such as Open, Restricted, Negotiated or Competitive Dialogue procedures. They are subject to the same requirements for advertising and evaluation as all other contracts. No such framework may have a lifetime of greater than four years without specific and justifiable reason being recorded for the commitment to a longer period.

## Awarding Contracts Based on Framework Agreements

* + 1. It is possible that a framework can be tightly specified in terms of unit price and deliverables, but this is not always the case. In such cases, selection to specific supply under the framework may be undertaken by mini competition. Evaluation criteria of the mini competitions must mirror that of the original framework agreement evaluation criteria. Mini- competitions can also be a useful mechanism to take advantage of spot market rates. Mini competitions would be undertaken via the Public Contracts Scotland portal.

## Single Supplier Framework Agreements – “Call Offs”

* + 1. Specific contracts are awarded within the limits of the terms laid down in the framework agreement, but the supplier may also be consulted in writing requesting it to supplement its tender as necessary.

## Multi-Supplier Framework Agreements – “Call Offs”

* + 1. Call off contracts can be awarded either by application of the terms set out in the agreement itself; or where not all the terms are set out in the framework agreement, by mini competition. Mini competitions would be undertaken via the Public contracts Scotland portal.

## Multi-Supplier Framework Agreements - Mini Competition “Call Offs”

* + 1. Mini competitions re-open the contest between the suppliers who (and only who) are party to the framework agreement and who are capable of performing the proposed call off contract. They can also be a mechanism to take advantage of spot market rates. The call off must be placed with the tenderer who has submitted the best tender in accordance with the award criteria which should have been set out in the framework agreement. It is not possible to change matters which have been agreed as part of the framework agreement itself, when you are awarding call-offs, and the award criteria must mirror that of the original tender exercise. Mini competition can only be used if their use and conditions of use was conveyed within the original tender. Mini competitions would be undertaken via the Public contracts Scotland portal.

## Construction Procurement strategies and Forms of Contract

Procuring Officers should consider and select an appropriate procurement strategy, having considered the risk profile of the project, and the risks and benefits of the available options. For construction works, these options may include the following types, these being listed within the Scottish Government Construction Procurement Manual.

* + 1. Non-Profit Distributing Vehicles using Private Finance

Private finance solutions, such as the non-profit distributing model require the private sector to assume responsibility for delivery of elements of service defined in an output specification which also captures the level and quality of service required. This is normally done through a long term contract, with standard of delivery of service monitored throughout the contract period. Legal and Financial advice is required if such a strategy is to be considered.

* + 1. The risks presented by this model are:
       - The process will be at risk without a long-term commitment from both the Council and "service providers"
       - The process leading up to the completion of a new building can take a long time and needs an extensive and fully refined brief at the outset
       - There is significant cost to industry in tendering which has to be recovered by each bidder
       - Change is difficult to achieve and potentially expensive to incorporate once the contract is let
    2. The benefits presented by this model are:
       - The process is service rather than project focused and concentrates on the whole life of the service and associated assets
       - There is a single point of responsibility for service delivery
       - There is an opportunity to draw on a wider range of management and innovation skills

## Construction Traditional Lump Sum Contracts

* + 1. With this type of contract the design team fully develop the design prior to tender, with the contractor only responsible for the construction works. This type of contract should provide a reasonable degree of cost certainty at tender stage.
    2. The risks presented by this model are:
       - The overall programme needs to be sufficient to allow the production of a fully developed design before the project goes to tender
       - The project team must have the necessary resources and skills to administer the contracts of consultants and contractors
       - The consecutive timing of design and construction may result in a lack of continuity, with less input on ‘buildability’
       - Claims for delay and disruption can arise if the design is not fully detailed or if changes are introduced after the contract is let
    3. The benefits presented by this model are:
       - Price certainty and risk are transferred to the contractor at contract award
       - A high level of quality in design and construction is achievable as the scope of work is prescribed on an input basis
       - The Council retains direct contractual relationships with the design team and main contractor.

## Construction Re-measurement Contract

* + 1. With this type of contract the design team fully develop the design prior to tender with a bill of quantities. The tendered rates are then used to confirm costs as work is constructed and measured.
    2. The risks presented by this model are:
       - there is less certainty on price and the risk on quantity accuracy lies with the employer
    3. The benefits presented by this model are:
       - tendered rates allow a mechanism/basis for agreeing additional work or variations to the contract.
       - This is a form of contract that is well established and familiar to contractors and best suited to low risk/small value/non-complex works

## Construction Lump Sum Activity Schedule

* + - * With this type of contract the design team fully develop the design prior to tender but the risk and responsibility for the quantities lies with the contractor. Activities or sections of work are identified by the contractor within their tender with milestone payments on completion of the activity.
    1. The risks presented by this model are:
       - there is a premium in terms of certainty on price irrespective of whether risk materialises or not and additional work or variations are more difficult to quantify and agree in terms of price.
    2. The benefits presented by this model are:
       - quantity accuracy risk lies with the contractor and there is greater certainty on price.
       - This is a form of contract that is well established and familiar to contractors and best suited to higher risk/larger value/complex works.

## Construction Management Contracting

* + 1. A potential fast track strategy which overlaps design and construction stages, enabling early works packages before the design is complete. A management contractor is appointed to manage the overall contract in return for a management fee. Contracts for works packages are between the contractor and the individual trades contractors. Cost control relies on budget estimates which are replaced with actual costs when obtained in competition, with the final cost only known when the final works package has been awarded.
    2. The risks presented by this model are:
       - The final price and timescale are not fixed at commencement of works, only becoming so after the final works package is let
       - The project team must have the necessary resources and skills to administer the contracts of consultants and the management contractor
       - It is not suitable for inexperienced or ‘hands off’ client teams due to the risk of increased cost and delay arising from ineffective contract administration
    3. The benefits presented by this model are:
       - Early completion is possible with overlapping design and construction activities
       - The management and trade contractors can contribute to design development and buildability
       - Changes can be accommodated in let and unlet packages, provided there is little impact on the project budget and timescale

## Design and Construct

* + 1. In a design and construct contract, a single supplier is responsible for design and construction, potentially allowing benefit from innovation and standardisation. However, if the output specification is insufficiently well developed, there is risk that the quality, design and performance of the project may be compromised.
    2. The risks presented by this model are:
       - The Council’s requirements must be properly specified prior to the contract being let, as changes to the scope of the project, once let, will increase cost
       - The Council has little control over design and quality standards once the contract is let
       - Design liability offered by design and build contractors is limited
       - Design and build is unsuitable for complex, challenging projects
    3. The benefits presented by this model are:
       - Low tendering and preparation costs to the Council
       - Single entity responsible for design and cost risk
       - Potential cost benefit from early input on buildability
       - Potential for reduced overall design and construction period

# Rules for Tendering for Different Contract Values

## Procurement Regulations

* + 1. The Procurement Reform (Scotland) Act 2014 and the Public Contracts (Scotland) Regulations 2015 give effect in Scotland to the WTO GPA directive on Public Contracts and procedures for contracts falling below WTO GPA threshold limits. These Directives seek to ensure that public sector bodies, such as the council, award contracts in an efficient, sustainable and non-discriminatory manner. The Regulations set out the procedures to be followed at each stage of the procurement process leading to the award of contracts for works, goods and services by the council and other public bodies.

## Estimated Aggregate Purchase Value

* + 1. For the avoidance of doubt, any reference in these Procurement Procedures to the value of any Contract shall mean its estimated aggregate purchase value (total estimated value), excluding VAT, over the entire term of the Contract and use across the whole council, including all options, permitted extensions and variations. Where a contract does not include an aggregate purchase value (i.e. new on-going requirement), the estimated aggregate purchase value will be the amount of the consideration payable each month multiplied by 48.

## Tender Thresholds

* + 1. All procurement exercises must be advertised via Public Contracts Scotland (PCS) advertising portal. Further advertising to the UK “Find a Tender” advertising portal will automatically be forwarded when the estimated aggregate purchase value of the contract is above the values in Table 3 and Table 4.

|  |  |
| --- | --- |
| Contracts for the provision of Goods | £213,477 (£177,897 ex VAT) |
| Contracts for the provision of Services | £213,477 (£177,897 ex VAT) |
| Contracts for the execution of Works | £5,336,937 (£4,447,447 ex VAT) |
| Contracts for the execution of Health & Social Care | £633,540 (£552,950 ex VAT) |

***Table 3: Thresholds from 1st January 2022***

|  |  |
| --- | --- |
| Contracts for the provision of Goods | £214,904 (£179,087 ex VAT) |
| Contracts for the provision of Services | £214,904 (£179,087 ex VAT) |
| Contracts for the execution of Works | £5,372,609 (£4,477,174 ex VAT) |
| Contracts for the execution of Health & Social Care | £633,540 (£552,950 ex VAT) |

***Table 4: Thresholds from 1st January 2024***

* + 1. Procuring social care services is a complex area and as such it requires special consideration within the Councils overall approach to procurement. This recognises that the quality or availability of these services can have a significant impact on the quality of life and health of people who might use these services and also their carers. Special consideration also acknowledges that many of these services are becoming increasingly personalised to better match individual needs. For these reasons, these types of services are often purchased differently to other services. The Council needs to retain flexibility to decide how to procure these contracts on a case-by-case basis. This includes whether these require advertising and competition and also the form that this should take under the new “light touch regime” (LTR) and Self Directed Support (SDS) legislation. SDS is underpinned by a set of principles designed to maximise choice and control for supported people. The Social Care (Self-Directed Support) (Scotland) Act 2013 places a duty on Local Authorities to offer people who are eligible for social care a choice over how they receive support and as such, are out with the scope of this document. The LTR is a specific set of rules for certain service contracts that tend to be of lower interest to cross-border competition. Those service contracts include certain social, health and education services, defined by Common Procurement Vocabulary (CPV) codes. The list of services to which the LTR applies is set out in Schedule 3 of the Procurement Regulations. The LTR applies only to Schedule 3 contracts which are worth at least £663,540 (including vat) or £552,950 (excluding vat) over the life of that contract. Contracts below that threshold, but which are worth at least £50,000 are regulated separately by the Procurement Reform Scotland Act 2014. Advice on all Schedule 3 procurements should be obtained from the CPU. Further Guidance on procuring Health or Social Care Services is included in [Appendix 1](#_APPENDIX_1_-).
    2. In accordance with the council’s CSO, any goods or services contract with an estimated aggregate purchase value of £50,000 and works contract with an estimated aggregate purchase value of £250,000 and over, should be put out to tender using Public Contracts Scotland as a website notice. The aim is to create an effective, fair and transparent competition between suppliers to ensure best value for the council and the taxpayer. Above WTO GPA threshold exercises should be advertised on Public Contracts Scotland and, in accordance with the decision of the relevant procurement lead office, put out to tender via the Public Contracts Scotland website or the Public Contracts Scotland Tender website.
    3. In accordance with the council’s CSO, goods or services contracts with an estimated aggregate purchase value less than £50,000 and works contracts with an estimated aggregate purchase value less than £250,000, should be procured using the Quick Quote facility provided through Public Contracts Scotland. Where the Quick Quotes facility is not used, the reason for the exception should be recorded within a report published within the Information Bulletin report to Members. It should be noted that where the contract has been identified as being high risk and or the criteria for awarding the contract is complex, Quick Quote should be avoided and a full invitation to tender process should be progressed to enable greater benefits to the Council.
    4. Should no framework or contract exist internally or be available for Falkirk Council to participate in, Table 5 highlights, based on financial thresholds, the suggested advertising requirements and the minimum number of quotations or tenders sought dependent upon the type of contract as stipulated within the council’s CSO and Financial Regulations.
    5. Please note that should aggregate contract value (as determined in 5.4) be within 10% of Website notice or WTO GAP thresholds, it is advised that these routes to market are utilised.

|  |  |  |  |
| --- | --- | --- | --- |
| **Nature of Contract** | **Contract Value**\* | **Route to Market** | **Engagement Required** |
| **Goods / Services** | £1 - £4,999 | Most appropriate | Service to determine most appropriate route as per 3.2 |
| £5,000 - £49,999 | PCS Quick Quote | Minimum 3 quotes \*\* |
| £5,000 - £49,999\*\*\* | PCS Website Notice | No restriction, open to all registering Category interest on PCS Website. |
| £50,000 - £213,476 |
| £213,477+ | PCS will automatically forward all exercises above WTO GPA thresholds to the UK "Find a Tender" advertising portal. |
| **Works** | £1 - £4,999 | Most appropriate | Service to determine most appropriate route as per 3.2 |
| £5,000 - £249,999 | PCS Quick Quote | Minimum 3 quotes \*\* |
| £5,000 - £249,999 \*\*\* | PCS Website Notice | No restriction, open to all registering Category interest on PCS Website. |
| £250,000 - £5,336,936 |
| £5,336,937+ | PCS will automatically forward all exercises above WTO GPA thresholds to the UK "Find a Tender" advertising portal. |
| **Health or Social Care Services** | £1 - £4,999 | Most appropriate | Service to determine most appropriate route as per 3.2 |
| £5,000 - £49,999 | PCS Quick Quote | Minimum 3 quotes \*\* |
| £5,000 - £49,999 \*\*\* | PCS Website Notice | No restriction, open to all registering Category interest on PCS Website. |
| £50,000 - £663,539 |
| £663,540+ (inc vat)  £552,950+ (excl vat) | PCS will automatically forward all exercises above WTO GPA thresholds to the UK "Find a Tender System" advertising portal. |

***Table 5: Defined Procurement Processes (route to market)***

*\* Refer to Tables 3 and 4 for appropriate values*

*\*\* At least one local provider (where applicable) must be invited.*

*\*\* Invitations should be rotated where larger supply bases exist in order to explore offering and provide opportunities to those you have no previous experience of.*

*\*\*\* To be used where QQ minimum quote criteria cannot be met, or you do not know size of market.*

* + 1. Risk assessment of legal challenge should be conducted should you decide not to advertise a Health or Social Care Services requirement and proceed to award the contract or framework agreement without competition. A legal challenge may have serious implications for procurement activity and future service delivery. For example, for a ‘light-touch’ contract with a value of at least £663,540 (including vat), if a court grants an ineffectiveness order together with damages, legal costs and/or compensation, this may divert monies from service provision and may cause significant disruption and uncertainty to people who use services. Advice should be sought in the first instance from CPU.
    2. The WTO GAP financial thresholds (<https://www.procurementjourney.scot/additional-resources/thresholds> ), as indicated above as requiring a PCS / Find a Tender Notice, were applied on 1st January 2022 and will be revised in accordance with any amendment to the threshold values set by the Procurement Directives. All other financial limits specified in these Procurement Procedures shall be subject to review from time to time in accordance with the council’s CSO.
    3. In order to enable as great a competition as necessary, if you are aware of a company being able to fulfil the requirements in which you wish to tender and they are not registered on Public Contracts Scotland, you should advise them to do so in order to have the opportunity to be engaged in the tendering process.
    4. Public bodies have the ability to restrict participation in a tender exercise to supported businesses. The provision within the legislation which makes this possible is also referred to as “Reserved Contracts” with those meeting the criteria having met a two-part test. The first part of the test is that the main aim of the bidding organisation must be to socially and professionally integrate disabled or disadvantaged people, and the second part is that at least 30% of the employees of the bidding organisation must be disabled or disadvantaged persons. A bidding organisation that meets both parts of the test is known, for the purposes of public procurement legislation, as a Supported Business.
    5. SPPN 4/2017 describes disadvantaged persons as “*The unemployed, members of disadvantaged minorities, or otherwise socially marginalised groups*.” It is for businesses themselves to self-determine on PCS whether they fall within this category, and it is suggested that findings from due diligence checking are used to confirm suitability.

## Rules for Contract Aggregation

* + 1. It is not permitted to deliberately divide any procurement into two or more contracts if the intention in doing so is to avoid the application of any financial thresholds stipulated within the council’s CSO or within the Scottish or WTO Procurement Directives.
    2. Rules for aggregation must be applied to all procurement activity. The Procuring Officer must take into account the estimated aggregate purchase value of any single requirement for goods, services or works across the whole council over the full contract term to determine if it exceeds the applicable threshold. If so, even if the procurement of any such requirement is split among a number of contracts which taken individually are below the applicable threshold value, each of these contracts is subject to the requirements of the council’s CSO and where applicable, the Scottish Procurement Regulations in the same way as if the requirement were procured through a single large contract.
    3. To determine aggregate contract value for repeat contracts, forecast spend over a 4 year period be calculated to determine route to market.

# Recognised Industry Schemes and Bodies

* + 1. Pre-Qualification Schemes - The council cannot stipulate that an organisation must be a member of Constructionline, CHAS, etc. as this is deemed discriminatory. The Procuring Officer may ask the Tenderers to declare whether they are a member of Constructionline, CHAS, etc for information only if required. An organisation cannot gain additional points or credit if they are a member. Equally, an organisation who is not a member of Constructionline, CHAS etc cannot be ruled out, but must provide equivalent supporting information for assessment purposes.
    2. Industry Recognised Bodies – The Council can stipulate that membership of Industry recognised bodies is mandatory. This however can only be in instances where membership of a body is mandated in order to carry out the function it performs, and not other like body exists (i.e. Gas Safe Registration).

# eTendering Quick Quote

## What is Quick Quote?

* + 1. Quick Quote is the Scottish Government’s online quotation facility provided through the Public Contracts Scotland portal. It is an efficient solution for obtaining competitive quotes from Goods, Services and Works suppliers who are registered on the portal for low risk procurement exercises with an estimated aggregate contracts value less than £50,000 for Goods and Services and £250,000 for Works.

## Why Use Quick Quote?

* + 1. The procedures for dealing with quotations must be as rigorously fair and open as those for dealing with tenders. The Procuring Officer may advertise in a more restricted manner and should seek quotations directly from at least three suppliers registered on PCS that are known to be competent. Quick Quote provides a standard simplified business process in line with best practice models across the Scottish Public Sector. It is essential that the Procurement Officer ensures that those invited to quote are reputable and have the competency to deliver the contract.
    2. The council’s CSO promote the use of the Quick Quote facility for all low value, low risk procurement exercises. Quick Quote demonstrates transparency, provides management information and increases the auditability of the quotation request and receipt process. It also means that suppliers can register for both high value contracts and low value quotations within a single location, Public Contracts Scotland.
    3. To ensure a fair and consistent competitive process is achieved, direct invites to a Quick Quote exercise should be given to Economic Operators we have past experience of being able to successfully perform the requirements of the exercise along with those we have no experience of but are aware, through market research, of being able to perform the requirements of the exercise. If in doubt due to unknown size of marketplace, it is suggested that a PCS Website Notice is used as the call to competition. It should also be the case that at least one local (within Falkirk Council areas of operation) Economic Operator is invited to participate where applicable for all Quick Quotes.

## Who Can Use Quick Quote within Falkirk Council?

* + 1. Officers within the council will be able to use the Quick Quote facility after registering as a Contracting Authority on the Public Contracts Scotland portal and attending user training arranged by the CPU.

## How is a Quotation Requested?

* + 1. For every Quick Quote published above £10,000, users must complete a Contract Reference Number Request form and submit it to the Procurement and Commissioning Unit (CPU). The CPU shall provide a contract reference number which should be used in the publication of the Quick Quote on PCS.
    2. A Falkirk Council Officer creates a Quick Quote request online through the Public Contracts Scotland portal. The request must be sent to a minimum of three selected suppliers dependant on value and complexity. Only those suppliers selected to quote can access the details of the request and submit a bid. Where possible, local providers should be included in the list of suppliers invited to quote. Further information regarding sourcing local providers can be found via the ‘Supporting the Local Economy’ Toolkit in the Sustainable Procurement section on the intranet.
    3. Construction line may be used as a basis for selecting suppliers for Works Quick Quotes. Approved contractors may be selected and invited to register on Public Contracts Scotland, if they are not already registered.
    4. Before using Quick Quote, Council Officers must be satisfied that it will meet their obligations for adequate publicity of the contract opportunity as per table 5.
    5. Reliance on the same providers for the provision of quotations may not be continued for any longer than two years without documented evidence that no other potential providers exist at the end of any such two year period.

## How Can Suppliers Submit a Quote?

* + 1. Suppliers not registered on Public Contracts Scotland cannot be invited to quote. If it is known that a supplier is not registered and the Procuring Officer believes they may be interested in submitting a quotation, the Officer may contact the supplier and provide them with the Public Contracts Scotland website registration link.
    2. Registered suppliers complete the required details and submit their quotation using the secure electronic post box. A full electronic audit trail is maintained

## When Should Quick Quote not be used?

* + 1. Quick Quote should not be used for high value and/or high risk procurement exercises. It should also be avoided where the contract criteria are complex and a full tender process would bring greater benefits to the council.
    2. Special circumstances may exist which make it impossible or inappropriate to seek quotations, e.g. there is only one potential supplier. The Procuring Officer should seek guidance from CPU and prepare and retain for audit purposes a written record detailing the reason(s) why the Quick Quote procurement tool was not used and an alternative method of appointing a supplier was selected.

# eTendering Public Contracts Scotland Website Notice

## What is a website only notice?

* + 1. When selling organisations / economic operators, register on Public Contracts Scotland, they are asked to complete various sections including which category best suits their service provision. A Public Contracts website only notice is a facility that allows tendering entities to issue a call to competition to all of those registering an interest in the category they are advertising.

## Why use a website only notice?

* + 1. There are Public Sector procurement obligations to ensure that we publicise tendering opportunities of significant value but below WTO GAP threshold limits. Using this facility allows us to comply with the obligation to ensure these tendering opportunities are adequately publicised.
    2. All adverts, for contracting opportunities above £50,000 for Goods or Services and above

£2,000,000 for Works must be advertised electronically. Falkirk Council’s CSO’s go even further however in terms of route to market determined by value (see table 5).

* + 1. All tender submissions, for contracting opportunities above £50,000 for Goods or Services and above £2,000,000 for Works must be submitted electronically using Public Contracts Scotland / Public Contracts Scotland Tender websites.

Exceptions to this are:

* + - * due to the specialised nature of the procurement, the use of electronic means of communication would require specific tools, devices or file formats that are not generally available or supported by generally available applications;
      * the applications supporting file formats that are suitable for the description of the tenders use file formats that cannot be handled by any other open or generally available applications or are under a proprietary licencing scheme and cannot be made available by the contracting authority for downloading or remote use;
      * the use of electronic means of communication would require specialised office equipment that is not generally available to the contracting authority; or
      * the procurement documents require the submission of physical or scale models which cannot be transmitted using electronic means.

## Who can use website only notice within Falkirk Council?

* + 1. Officers within the council will be able to use this facility. Advice should however be sought from CPU or DRT if you intend to use this facility.

## How can suppliers engage?

* + 1. Suppliers registered on Public Contracts Scotland will have indicated within their registration to be notified via PCS of any opportunities that arise within their particular area of interest.
    2. Suppliers complete the required details and submit their response (including SPD using the secure electronic post box. A full electronic audit trail is maintained.

# Tendering Processes

## Choosing the Correct Tender Procedure

* + 1. The tender procedure options are dependent upon the complexity of need and the number of potential suppliers available within the market. The Open and Restricted procedures are used most commonly by the council.

## Open Procedure

* + 1. The contract opportunity must be advertised stating that the Open (one stage) method of supplier selection is being used. All suppliers or contractors who submit a response will be assessed. SPD due diligence review is only necessary with those who have achieved an award ranking through qualitative and commercial assessment.

The selection of the Procurement Route to be taken will be dependent on the value and nature of the requirement. You must ensure that the Procurement Route you choose is consistent with the requirements of the [Procurement Reform (Scotland) Act 2014](http://www.legislation.gov.uk/asp/2014/12/introduction), the [Public](http://www.legislation.gov.uk/ssi/2015/446/introduction/made) [Contracts (Scotland) Regulations 2015](http://www.legislation.gov.uk/ssi/2015/446/introduction/made) and the [Procurement (Scotland) Regulations 2016](http://www.legislation.gov.uk/sdsi/2016/9780111030868) before you embark on your procurement.

In the Open Procedure, any interested bidder may submit a tender.

The practicality of the Open Procedure will depend upon the number of tenders received and the nature of the evaluation criteria. If the Council receives a large number of tenders, the evaluation of them is likely to be time consuming.

After dispatching the electronic contract notice, at least 30 days has to elapse before the closing date for receipt.

Organisations may make known their intentions of planned procurements through the publication of a Prior Information Notice (PIN). A PIN, in this instance, cannot be used as a call for competition – a Contract Notice must be dispatched later- but minimum timescales for response can be reduced.

If using a PIN only a minimum of 15 days needs to elapse after the dispatch of the Contract Notice before the closing date for the receipt of tenders if:

* + - * the PIN includes certain information required for the Contract Notice in so far as it is available when the PIN is published; and
      * the PIN is sent for publication between 35 days and 12 months before the Contract Notice is sent.

The ITT time limits set for receipt of tender submissions from bidders should be long enough for responsive tendering taking into account: the contract complexity and the time required to prepare and submit a bid.

## Restricted Procedure

* + 1. The contract opportunity must be advertised stating that the Restricted (two stage) method of supplier selection is being used. Assessment of all SPD Part IV of the Selection Criteria (Technical & Professional Ability) can only be used to select those most capable of progressing onto the award (qualitative and commercial) stage, a minimum of five suppliers should be invited to the second stage where possible (which must be pre-determined and disclosed). SPD due diligence review is only necessary with those who are progressing. The second stage requires those you have progressed to complete and submit a response to the qualitative and commercial criteria you have chosen. The award of the agreement shall be determined through analysis and ranking of submissions made.

The Restricted Procedure should be used for procurements where market analysis has shown a large number of bidders are likely to be interested in participating. In this case it is beneficial to use this procedure where the number of bidders can be reduced at the selection stage based on their capacity, capability and experience to perform the contract.

The Restricted Procedure is a two stage process. The first stage is a [selection process](https://www.procurementjourney.scot/node/402/), where the bidders’ capability, capacity and experience to perform the contract is assessed. The second stage is when the [Invitation to Tender i](https://www.procurementjourney.scot/node/135/)s issued and the bids are assessed to determine the most economically advantageous tender, the basis of contract award.

## Stage 1 - Selection Stage

Following a call for competition, any economic bidder may submit a request to participate. The SPD is used as a standard request to participate document in Scotland.

Selection is looking at the bidder's capacity and capability, not how the bidder will deliver your requirement. Therefore, this is a backward looking process, i.e. you cannot consider matters specific to performance of the contract at this stage. You must indicate, in the contract notice or in the invitation to confirm interest, the objective and non-discriminatory criteria or rules that you intend to apply, the minimum number of bidders that you intend to invite and, where applicable, the maximum number.

## Stage 2 - Invitation to Tender (ITT) Stage

The minimum number of bidders that may be indicated by an Organisation is five and in any event the number of candidates invited must be sufficient to ensure genuine competition (note if the number of bidders meeting the selection criteria is fewer than five the procurement can still proceed).

The Organisation must issue ITT documents for completion by bidders successful at the stage 1 selection stage

# Tender Documents

## Specification

* + 1. The specification should be written in a manner designed to achieve the objectives laid out in the contract strategy and as far as possible to manage the risks identified at that time. When writing a specification: Ensure that the documents are written for a non-specific audience; Avoid brand names; look to specify measurable outcomes where appropriate; Seek advice from past users of contracts and be open to bidders being able to provide you with innovative responses.
    2. Where detailed technical specifications are required, the following hierarchy of technical standards should be adopted: (i) British standards; (ii) British standards transposing European standards; (iii) Common technical specifications; (iv) International standards; or (v) Other technical reference systems established by the European standardisation bodies.
    3. In the absence of such technical standards, reference can be made to the following: (i) British standards; (ii) British technical approvals; or (iii) British technical specifications relating to the design, calculation and execution of the work or works and use of the project. In this instance each reference to a technical standard must be accompanied by the words, “or equivalent”.
    4. When developing your specification it is important to engage as early as possible with the supply base. This is important in terms of identifying the desired outcomes, risks and issues, as it permits suppliers to provide feedback on how the outcomes might be achieved, the risks and issues as they see them, along with feedback on timescales, feasibility and affordability.

## The specification must:

* + - * Clearly describe what is required
      * Lay down the characteristics required
      * Not refer to the following except where justified by the subject-matter of the contract or on an exceptional basis where a sufficiently precise and intelligible description of the subject- matter of the contract is not possible. In which case the reference must be accompanied by the words “or equivalent”
        + brands or trade names
        + any particular process that is specific to a supplier in the marketplace
        + trademarks, patents, types, or a specific origin or production
      * Not be written in a way that distorts market competition, creates unjustified obstacles or limits scope for entry to the procurement process by potential suppliers
      * Take account of relevant policies
      * Consider opportunities for sustainable procurement. See Government Buying Standards Guide [Sustainable Procurement (sustainableprocurementtools.scot)](https://sustainableprocurementtools.scot/guidance/)
      * Take into account accessibility criteria for persons with disabilities or design for all users except in justified cases and may specify a conformity assessment e.g. ensuring a web site meets accessibility standards through specifying appropriate font sizes.

The [award criteria](https://www.procurementjourney.scot/) must be linked to the specification. The award criteria must be proportionate and relevant to the subject matter of the contract and non-discriminatory.

## Conditions of Contract

* + 1. Every contract shall specify all the applicable terms and conditions, drawn from the council’s standard suite terms and conditions of contract or other specialist or professional bodies’ terms and conditions as appropriate.
    2. Special conditions of contract shall be attached to a particular contract or type of contract,

e.g. clauses on payment mechanisms for major contracts where some form of sub- contracting is expected to take place.

* + 1. Exit strategies are necessary to identify possible risks, define potential losses, ensure continuity of services and benefits both organisations to ensure minimum business and customer disruption in the event that relationships are terminated.

Exit strategies should be reviewed annually, or when significant change occurs.

* + 1. Falkirk Council is an Accredited Living Wage Employer. Our accreditation carries a requirement that we work with our supply chain to ensure that our contractors pay the Living Wage. It is currently defined as those contracted staff who work for 2 or more hours a week, for 8 or more consecutive weeks of the year. The Living Wage does not apply to contractors that supply us with goods e.g. stationary suppliers. Falkirk Council have committed that all relevant future contracts include an assessment of fair working practices (as per SPPN 6/2021) to help deliver the payment of the Living Wage throughout our supply base. As such, please consider and include fair working practices as part of your procurement if it is appropriate. As you may be required in future to advise if the Living Wage is being paid for successful contractors it may be helpful to obtain this information.

## Insurance Requirements

* + 1. Ensuring that correct insurance limits are in place and are adequate, mitigates risk that the insurance fund is able to pay towards losses should they occur. The table below is provided by Falkirk Council’s Insurance section as guidance. However, it is for the procuring Service to determine appropriate levels as to mitigate of risk and proportionate as to ensure sufficient competition levels are met.

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Contract Type** | **Employer’s (Compulsory) Liability** | **Public & Products Liability** | **Professional Indemnity**  **(6 year “run- off cover” should also be stipulated)** | **Motor Insurance** | **Contract Works** | **Comments** |
| **Goods / Materials Contracts** | *£10M\*\** | *£5-10M\** | *£1-5M* | *£20M \*\*\*PC*  *£5M \*\*\*CV* | *Per contract & contract conditions*  *(please also consult with the Insurance Team should any Works contracts have a completion date greater than 12 months)* | Refer for Contract Value in excess of  £2M & £5M &/or heat use, height work, structural, asbestos, gas, electrical, roofing, children or vulnerable persons |
| **Service Contracts** | *£10-25M* | *£2-5M* |
| **Collaborative Goods / Services Contract Between Falkirk and one or more Councils** | *£5-10M* | *£1-5M* |  |
| **Social Care Services Contracts** | *£10M* | *£5M* | PL limit takes into account current suggested Government scale on abuse claims |
| **Works Contracts** | *£10-25M* | *£2-5M* | EL depends on numbers on site at any one time - check for accumulation. PI does not depend on contract value but possible financial loss arising from an error, to set things right.  £10M PL usually fine but as above and refer for Contract Value in excess of £2M & £5M &/or heat use, height work, structural, asbestos, gas, electrical, roofing, children or vulnerable persons, i.e. care home, etc. |

**Table 6 Insurance Levels Matrix**

\* Contracts involving the supply of food or drink require a minimum £10M PL/PR limit of indemnity

\*\* £5M EL in respect of Terrorism, Asbestos, Offshore Work \*\*\* PC Personal Car \*\*\* CV Commercial Vehicle

*Although not mandatory, consideration should be given to Management Liability Insurance of £1M which encompasses Directors’ and Officers’ Liability, Employment Practice Liability and Corporate Legal Liability. Most companies buying this insurance have a tighter hold on their own corporate governance, which can be a good indicator of how well an organisation operates. Dependant on perceived risk, please consult with* [*insurance@falkirk.gov.uk*](mailto:insurance@falkirk.gov.uk) *to discuss feasibility of inclusion.*

# Single Procurement Document (SPD)

## SPD

* + 1. The Single Procurement document must be used for all regulated Procurement exercises. The SPD is a generic document, used across the UK. This means that the questions in the SPD cannot be amended, and new questions cannot be added. Procuring Officers must set out the specific requirements, the relevant exclusion grounds and the minimum standards that are relevant for the procurement exercise in the Contract Notice.

The distinction between selection and award criteria is crucially important. Selection criteria are focused on "the bidder" and award criteria are focused on "the bid”. All selection criteria must be relevant and proportionate to the subject-matter of the contract.

This means that issues/questions which are appropriate to the selection criteria must be addressed at the selection stage and cannot form part of the award stage (even if they were omitted from the selection stage in error) and vice versa.

* + 1. The Procuring Officer should set out the specific requirements and minimum standards that are relevant and proportionate for the procurement exercise in the Contract Notice (or the PIN, if that is being used as a Call for Competition).

A set of standardised statements has been developed to support you in preparing this aspect of the relevant Contract Notice(s) (or the PIN if that is being used as a Call for Competition) which is available along with copies of the SPD via [https://www.procurementjourney.scot/procurement- journey](https://www.procurementjourney.scot/procurement-%09journey). You must include these statements to your Contract Notice (or the PIN if that is being used as a Call for Competition) and complete where relevant. You may also set out further selection stage and exclusion information you require to be included in the Contract Notice (or the PIN if being used as a call for competition) where relevant and proportionate to the subject-matter of the contract,

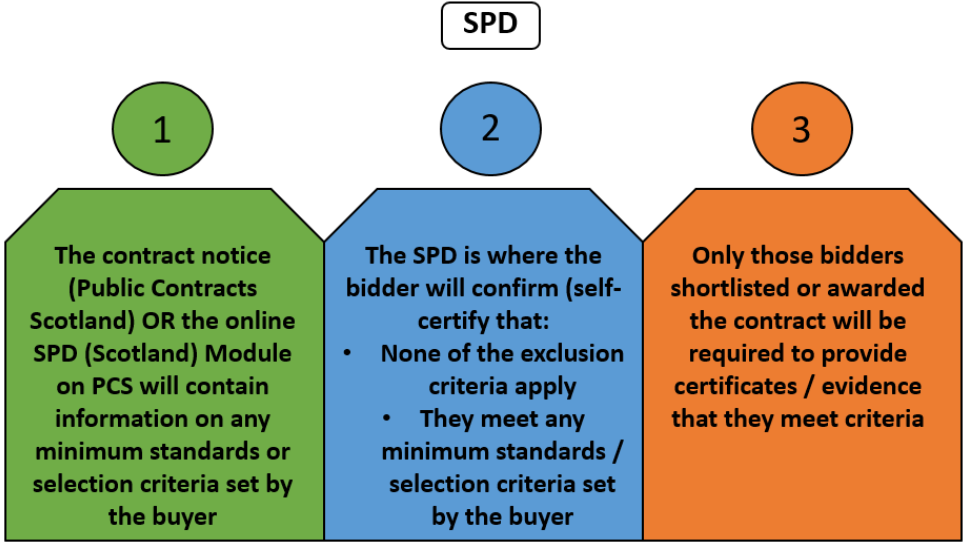
* + 1. Bidders are not required to produce supporting documentary evidence or certificates until requested by the Procuring Officer prior to awarding the contract, as part of the due diligence process. You may also request supporting evidence from bidders after stage one of a two stage procurement procedure.

The Procuring Officer may also, where it is necessary to ensure the integrity and proper conduct of the procurement process, request at any time during the procurement process, all or part of the supporting documents from bidders.

* + 1. Only Part IV of the Selection Criteria (Technical & Professional Ability) can be weighted and should be used as the criteria in which progression from the Selection Stage can be made.

## Scoring the SPD

* + 1. Evaluation of the SPD is dependent on whether the Open Procedure of the Restricted Procedure has been used.
    2. Using the Open Procedure, evaluation of Qualitative and Commercial submission is done first in order to obtain ranking. After which you should request (from suppliers to intend to award to only) supporting documentation referenced to in the SPD submission and evaluate all information provided as a due diligence exercise regarding ability to fulfil the scope of the requirement.
    3. Using the Restricted Procedure, evaluation of the Technical and Professional Ability section with the SPD is done first in order to obtain shortlist ranking. After which you should request (from suppliers to intend to progress to the award stage only) supporting documentation referenced to in the SPD submission and evaluate all information provided as a due diligence exercise regarding ability to fulfil the scope of the requirement.



***Diagram 2 SPD Process***

* + 1. Company Registration numbers must be checked against Companies House register (<https://www.gov.uk/get-information-about-a-company>) to verify the company information submitted is listed and that the registered head office matches the information provided. The information provided within Companies House will also show the trading status of the company. Further checks will be required where organisations are not shown as ‘Active’ in Companies House.
    2. When using the Restricted Procedure, the minimum number of candidates that can be selected for the Award stage is five. It should be noted however, that so long as the council has acted in accordance with the relevant regulations during the selection process, it will be possible to continue to tendering with fewer than five suppliers, as long as the list of potential suppliers does not include any supplier not selected through SPD, or that did not request to participate (i.e. less than five responses were received).
    3. A scoring methodology should be drawn up in advance of issuing the Tender. In the interests of transparency the scoring methodology should disclose relative weightings.
    4. When scoring the Tender, it is important to observe principles of transparency, non-discrimination and equal treatment:
    5. Transparency: i.e. the criteria used by the Procuring Officer to score the Tender must be the same as the minimum standards and/or objective non-discriminatory criteria laid down in the contract notice.
    6. Non-discrimination: i.e. Potential suppliers must not be excluded or receive less favourable treatment on the basis of geography.
    7. Equal treatment: i.e. All potential suppliers should be given the same opportunity to win the contract. This means that the council should not treat some potential suppliers more or less favourably than their competitors.
    8. If you intend to exclude potential suppliers based on mandatory or discretionary exclusion criteria related to criminal activity as per Public Contracts (Scotland) Regulations 2015, you must inform the supplier as soon as possible as they have the right to present “self-cleansing” evidence which we are obligated to consider.

## Next Step

* + 1. An evaluation report will be produced that identifies the reasons for rejecting suppliers to assist with debriefing. It may be helpful to identify any risks or issues arising from the responses and raise these during the next stage when finalising the tender documents for issue. The tender list should be prepared based on the outcome of the supplier assessment and suppliers should be notified of the outcome of the selection stage.
    2. When scoring Technical (or Qualitative) elements of SPD (or ITT Award Criteria), method of scoring submissions must accompany the tender documentation. The score must be a defined number (you cannot introduce a range score. i.e. Poor Response scores between 2 & 3).

|  |  |
| --- | --- |
| **Scoring methodology** | **Score** |
| **Unacceptable**:  The information is either omitted or fundamentally unacceptable to the Council. | 0 |
| **Poor**:  The information submitted has insufficient evidence that the specified requirements can be met and/or does not demonstrate an acceptable level of quality of the proposed solution. This may include significant omissions of relevant details. | 2 |
| **Fair**:  The information shows limited evidence that the specified requirements can be met and/or demonstrates only limited level of quality of the proposed solution. | 4 |
| **Satisfactory**:  The information submitted provides good evidence that the specified requirements can be met and/or demonstrates a satisfactory level of quality of the proposed solution. | 6 |
| **Very good**:  The information submitted provides strong evidence that the specified requirements can be met and/or demonstrates a very good level of quality of the proposed solution. | 8 |
| **Outstanding**:  The information submitted provides compelling and coherent evidence of best of sector capability to deliver the specified requirements and which will provide additional benefits and/or exceed the performance requirements of the contract. | 10 |

***Table 7 Suggested Scoring Methodology***

* + 1. All notes taken during evaluation must be retained for audit and possible litigation purposes. The tender has some rights to be able to view notes and instructions relating to award given.

# Fraud Risk

* 1. As per Financial Regs (20.2), Chief Officers are responsible for identifying and managing the risk of fraud and corruption, for ensuring that appropriate risk management, internal control, and governance arrangements are in place, and that best value is achieved. i.e. Requests received from organisations to changed payment arrangements should always be checked with the organisation directly and not through any contact details submitted with the request. Any fraudulent claim must be reported to Internal Audit immediately.

# Contract Award Criteria

* 1. The Procuring Officer must define award criteria that are appropriate and proportionate to the contract and designed to secure an outcome of best value for the council. Criteria can include but is not limited to quality, price, technical merit, aesthetic and functional characteristics (including security and control features), social, economic and environmental sustainability, running costs, cost effectiveness, after sales service, technical assistance, delivery date and delivery period or period of completion.

The Award Stage involves examination of the merits of the bids. This will identify which of the eligible tenderers will deliver best value for money for the organisation, based on the Most Economically Advantageous Tender, depending on the criteria agreed.

* 1. You must not use price only or cost only as the sole award criteria. Instead, you must identify the Most Economically Advantageous Tender on the basis of the Best Price Quality Ratio, which must be assessed on the basis of criteria linked to the subject matter of the contract and must include the price or cost using a cost effectiveness approach. Award criteria must be considered and linked to the subject-matter of the contract where they relate to the goods or services to be provided under the contract in any respect and at any stage including factors which do not form part of their material substance. Good criteria will ensure that responses from suppliers clearly address the most critical aspects of the specification and allow the evaluation panel to make a fair and equal comparison of the bids received. Award criteria must ensure the possibility of effective competition and be accompanied by specifications that allow the information provided by bidders to be verified during their award criteria assessment.
  2. Lowest price criteria can only be used for as an alternative to the most economically advantageous tender only where all bidders can evidence that they can meet the contract requirements and only for non-regulated contracts (less than £50,000 for goods and services / less than £2,000,000 for works / less than £633,540 for Health & Social Care Services). However, Procuring Officers must be certain that there are no Qualitative elements that may be considered in order to achieve best value delivery.
  3. Award criteria elements can include organisations’ qualification and experience of staff assigned to performing the contract where the quality of staff assigned can have a significant impact on the level of performance of the contract.

# Advertising

## Why Does the Council Need to Advertise Contracts?

* + 1. Public Contracts (Scotland) Regulations 2015 require a degree of advertising which is sufficient to enable open competition and meets the principles of equal treatment, non-discrimination and transparency.

All Contract Notices must be published on [Public Contracts Scotland](http://www.publiccontractsscotland.gov.uk/default.aspx) (PCS). PCS is the national advertising portal which provides suppliers with free access to contract opportunities. It also guides Procurement Officers through the process of creating a Notice on its website and automatically creates a Notice when applicable on the UK Find a Tender portal.

* + 1. We are also able to make our intention of planned procurements known by publishing a Prior Information Notice (PIN) on Public Contracts Scotland. The PIN can be published up to twelve months in advance of the actual procurement exercise taking place and will contain some basic information regarding the goods, works or service to be purchased. Publishing a PIN is not a mandatory requirement for the public body but can alert the market that there is an opportunity coming up within the next 12 months and make it possible for the buyer to reduce the timescales needed to complete the procurement exercise. PINs can also be used as a call for competition. Various templates are accessible via the PCS website for all Pin notice types.
    2. Contracting opportunities should be advertised to an extent to allow access to suppliers that could be reasonably expected to be interested. The council has interpreted this within Standing Orders for the Regulation of Contracts with adverts for quotations required for contracts below £50,000 for goods and services and £250,000 for works and adverts for tenders required above these figures. These financial thresholds for adverts apply to goods, services and works contracts (see table 5).
    3. Timescales

Tendering exercises that have a contract value below WTO GAP threshold levels do not have minimum timescale restrictions. They should however be proportionate in regard to the complexity of information sought.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Tender**  **Timescales** | **STANDARD MINIMUM TIMESCALE** | **IF ELECTRONIC TENDER SUBMISSION**  **PERMITTED** | **IF URGENT \*** | **WHERE PIN PUBLISHED \*\*** |
| **Open Procedure** | Minimum time limit for receipt of tenders | Minimum time limit for receipt of tenders | Minimum time  limit for receipt of tenders | Minimum time  limit for receipt of tenders |
| 35 days | 30 days | 15 days | 15 days |
| **Restricted Procedure** | Minimum time limit for requests to participate | Minimum time limit for requests to participate | Minimum time limit for  requests to participate | Minimum time limit for requests to participate |
| 30 days | 30 days | 15 days | 30 days |
| Minimum time limit for tenders | Minimum time limit for receipt of tenders | Minimum limit for tenders | Minimum time limit for tenders |
| 30 days | 25 days | 10 days | 10 days |

***Table 8 Above Threshold Timescales***

These are minimum time limits. When fixing the time limits for requests to participate and for the receipt of tenders, you must take account of the complexity of the contract and the time required for drawing up tender documentation.

All of the timescales in this table are calendar days and the timescale begins at midnight at the end of the day that the notice/invitation is sent and ends on midnight at the end of the last day of the specified time period. The last day of this timescale must not be a Saturday or a Sunday or a bank holiday in Scotland. In addition, any period of time that is referred to here must include at least two working days.

Please also be aware that a Prior Information Notice may be used as a call for competition in restricted procedures or competitive procedures with negotiation. You must allow at least 35 days for expressions of interest after which they must simultaneously invite the candidates to confirm their interest and must allow at least 30 days for this. When the invitation to tender is dispatched to the selected candidates, you must allow at least 30 days for submission of tenders, or at least 25 days where electronic submission tenders is permitted. There is also the option to agree the time limit with the candidates with a default time limit of at least 10 days where there is no mutual agreement.

* *This shorter time limit is allowed where a state of urgency, duly substantiated by you, renders the minimum time limit impractical. This can only be against unforeseen circumstances. It cannot be used in situations where circumstances should have been anticipated.*

*\*\* This shorter time limit for the receipt of tenders is allowed where you have published a prior information notice which was not itself used as a means of calling for competition, provided that all of the following conditions are fulfilled:*

* + - * *The prior information notice included all of the information required in section I of the Prior Information Notice referred to in the Public Contracts (Scotland) Regulations 2015, insofar as that information was available at the time that the prior information notice was published.*
      * *The prior information notice was sent for publication between 35 days and 12 months before the date on which the contract notice was sent.*

## Public Contracts Scotland

* + 1. [Public Contracts Scotland](http://www.publiccontractsscotland.gov.uk/) is the national advertising website for the Scottish Public Sector, available free of charge to the council. The portal fulfils all advertising requirements in accordance with the Public Contracts (Scotland) Regulations 2015. It enables contract notices above and below the WTO GAP threshold to be advertised, as well as notifying of subsequent contract awards. The portal allows the council to invite suppliers to submit quotations electronically via the website’s secure tender post box.
    2. Contracts above the WTO GAP thresholds will be automatically dispatched to the UK Find a Tender advertising portal.

## Tender Advertising

* + 1. The use of Public Contracts Scotland is standard practice and mandatory within Falkirk Council.
    2. Details of how to obtain access to the Public Contracts Scotland portal and instructions about how to use the portal can be obtained from the CPU.

## Prior Information Notice

* + 1. A prior information notice (PIN) is the annual or occasional advertisement via PCS. Voluntary use of a PIN can stimulate market interest in advance of the commencement of the procurement process and allow potential bidders to prepare themselves to bid in time for the contracts announced.
    2. A PIN can also help the council to identify the level of interest that exists in the marketplace, resulting in a change to the contract strategy with regard to little or no interest or a suitable selected tender procedure in the event of an overwhelming amount of interest.
    3. The issue of a PIN can reduce the minimum timescales for the return of tenders. Although in order to reduce the timescales, the PIN must be issued at least 35 days ahead of the Invitation to Tender. A PIN is valid for a period of 12 months from the date of issue.
    4. A Prior Information Notice does not create any commitment from the council to proceed with a tendering exercise.
    5. A Prior Information Notice can also be used, where disclosed, as a call for competition. Where it is used for this purpose, no contract notice is required to be advertised.

# Tender Facilitation

## Suppliers New to PCS

* + 1. The use of Public Contracts Scotland is mandatory for all council tendering. As such, the council needs to be available to help and guide suppliers in their use of the system. A short [help guide](http://www.millstream.eu/guides/en-gb/Supplier_QuickStart.pdf) has been provided to help suppliers which should enable successful use of the Portal, however if suppliers are still having difficulties with the website and you are unable to help them, they should be directed to the CPU.

## Tender Questions

* + 1. During the tendering process, suppliers should direct all questions, further information requests and clarification questions (tender specific) via the [‘Questions and Answers’](https://www.millstream.eu/guides/en-gb/P_S_Questions_Answers.pdf) section of Public Contracts Scotland. Answers to questions will be accessible to all bidders. This method cuts down on duplicate questions and reduces work for the council as they do not have to manually circulate all questions and answers to all interested parties. Questions over the phone should be on the whole avoided. If the answer you would provide over the phone could be of material interest to other bidders involved in the exercise, ask them to submit their question via the portal and you will answer it via this process.
    2. Once the procurement has commenced, care must be taken, and a process put in place to ensure that all correspondence between the potential tenderers and the Organisation is carried out in a fair and transparent manner. For example, it is best practice to provide details of the deadline for the submission of questions and the date by which all questions will be answered within the ITT documentation. These dates must be prior to the closing date for expressions of interest of tenders and should allow sufficient time for all tenderers to consider information which may be relevant to their proposals.

Any question submitted by a potential tenderer along with the answer must be anonymised and circulated to all of the potential tenderers involved in the process. Provided questions are asked in good time, you must supply answers to the questions to all tenderers not later than six days before the deadline for tender responses.

Deadlines must be extended where, for whatever reason, additional information requested by a tenderer, which is requested in good time and is significant, is not supplied at least six days before the deadline, or where significant changes are made to the procurement documents.

The use of an electronic tendering system, for example Public Contracts Scotland / Public Contracts Scotland Tender will facilitate the receipt and circulation of questions and answers. If you do not use an electronic system, clear instructions and contact details should be provided to the suppliers within the ITT documentation.

* + 1. Strict use of the [‘Questions and Answers’](http://www.millstream.eu/guides/en-gb/P_S_Questions_Answers.pdf) section allows the council to provide evidence in a form of an electronic audit trail from Public Contracts Scotland / Public Contracts Scotland Tender to prove fair and equal treatment of all suppliers. The contract advert should specify the final date that questions should be submitted and the identity of the tenderer raising the question will not be revealed.

## Tender Submissions

* + 1. Tender submissions can be accepted via the tendering portal’s [‘Post-box’](http://www.millstream.eu/guides/en-gb/Scotland/Postbox%20-%20Contracting%20Authority%20Guide.pdf) (for hard copy receipt, see CSO section 11 for process). The complete tender with no pages omitted must be [submitted](http://www.millstream.eu/guides/en-gb/Scotland/Postbox%20-%20Supplier%20Guide.pdf) signed by the Tenderer or by a person authorised by the Tenderer. If the signatory is not the Tenderer then the Tenderer must provide at time of tendering written confirmation of the signatory’s authority to bind the Tenderer. It is encouraged as matter of good practice, to issue a submission reminder 1 week prior to the deadline via PCS / PCST.

# Tender Receipt

## Receipt of Tenders

* + 1. Notification to suppliers of receipt of tenders is not required as they are automatically notified by Public Contracts Scotland / Public Contracts Scotland Tender when their response has been successfully submitted into the tender post-boxes. Please note, all tender submissions must be by electronic means unless 8.2.3 exceptions apply.

## Opening of Tenders

* + 1. Public Contracts Scotland operates a secure post-box facility which is locked until the pre- programmed deadline has passed. When the advert is being created, the ‘tender openers’ are required to be specified. The elected person / people must be registered with the site and have the appropriate access levels.
    2. A full audit trail accompanies the post-box which details all access, downloads and illegal attempts to access. Tenders must be opened at the advertised time of opening or as soon as possible thereafter.
    3. Tenders received after the time specified for the receipt of tenders may be accepted at the discretion of the Chief Officer in consultation with the Chief Governance Officer provided that they are satisfied that late receipt does not place any tenderer at an advantage over any other.

## Evaluating Tenders

* + 1. Contracts must be evaluated and awarded in accordance with the documented award criteria. Tender evaluation criteria must be relevant and objectively measurable, and all criteria and their associated weightings must be published either with the contract notice or the Invitation to Tender. Selection criteria applied to SPDs must be proportionate to the requirement in hand. Where membership of a particular organisation or qualification is required, the principle of mutual recognition must be upheld, and the words “or demonstrated equivalent” inserted.

## Quality / Technical Scoring

An evaluation panel of preferably at least two people should be established and consist of individuals with demonstrable technical ability to evaluate tenders, this may or may not include the Procuring Officer. Ideally the panel membership will be consistent throughout the entire process from tender creation to presentations and site visits. The evaluation panel should be able to withstand any scrutiny and no member should be associated in any way with any of the tendering suppliers to ensure no conflicts of interest exist. Evaluators are required to have completed a Confidentiality and Conflict of Interest Statement.

* + 1. The panel members may read and score the quality/technical aspects of the tenders independently using pre-defined evaluation criteria and scoring system prior to a moderation meeting taking place. At the moderation meeting the evaluators must agree the final scores. The process to agree the final scores and justification must be fully transparent and documented.

## Price Scoring

The Procuring Officer should evaluate the commercial aspects of the tenders separately, including the [price evaluation](http://www.scotland.gov.uk/Topics/Government/Procurement/buyer-information/spdlowlevel/routetwotoolkit/openandevaluatetender/bestvalueformoney). In order to comply with separation of duty obligations and to ensure that the Commercial evaluation is not unduly influenced by the Qualitative evaluation, these should be carried out in isolation by different UIG members capable of performing such tasks. Evaluation must be done in a consistent and proportionate manner (i.e. least expensive option achieves 100% of the Commercial weighting score, bids thereafter shall be a pro-rata calculation from this). Most Economically Advantageous Tender (MEAT) or Best Price Quality Ratio results should be analysed together only once both have been separately completed. No member of the evaluation panel should assess both the quality/technical elements and the commercial elements of the tender**.** The evaluation criteria and scoring methodology should have been determined as part of the Award Criteria stage and published to tenderers in the ITT and advert.

* + 1. The arithmetic in compliant tenders must be checked in line with the process outlined in the Invitation to Tender. If arithmetical errors are found they should be notified to the potential supplier, who should be requested to confirm or withdraw their tender. Alternatively, if the rates in the tender, rather than the overall price, were stated within the Invitation to Tender as being dominant, an amended tender price may be requested to accord with the rates given by the potential supplier.
    2. The Procuring Officer must notify all bidders simultaneously and as soon as possible, after authority to award has been obtained, of the intention to award the contract to the successful bidder(s). The Procuring Officer must ensure that where required that the statutory (and voluntary) standstill period is applied before the conclusion of the contract. If notification is received by an unsuccessful bidder to present a legal challenge, during the standstill period, then the Procuring Officer shall not conclude the award of the contract and shall seek the advice of the Procurement and Commissioning Manager.

## Demonstrations, Interviews & Site Visits

* + 1. Presentations and site visits can be included as part of the evaluation process to offer the opportunity for the evaluation panel to gain a clearer and deeper understanding of the tenderers proposal.

The purpose and anticipated outcomes of the presentations and site visits must be made clear in the [Invitation to Tender (ITT) documentation](https://intranet.falkirk.gov.uk/services/transformation-communities-corporate-services/corporate-procurement-unit/procurement-guidance-documents-and-forms/#:~:text=file%20%E2%80%94%2092%20KB-,Regulated%20Tendering,-%E2%86%91) including details of how the visits will count towards the overall evaluation of the tender submissions. Where tenders can be made only after a visit to the site, the time limits for the receipt of tenders must also be fixed so that all tenderers concerned are made aware of all the information needed to produce tenders.

Details of any scoring for either the presentation or site visit must be pre-agreed and published within the relevant Procurement Documents.

You should ensure that the focus of these events is around the specification and delivery of the product or service and not on the characteristics of the tenderer.

# Post Tender Clarifications

## Clarification

* + 1. Providing clarification of an Invitation to Tender to potential suppliers or seeking clarification of a tender, whether in writing, phone call or by way of a face to face meeting, is permitted under certain conditions. Post tender clarification/negotiation takes place after the formal receipt of tenders and before the formal award of contracts. Under no circumstances should any direct discussions / meeting regarding the subject matter of the exercise be made (out with the question and answer facility of PCS) during the period after issue of advert and before submissions deadline.
    2. The onus is upon the tenderers to submit clear and compliant bids. There is no obligation to seek clarification of any bids. The objective at the clarification stage is however to clarify, as you deem appropriate, the tenders as submitted.

Tender, or bid clarifications may become necessary during the evaluation of tenders. For example, where there are aspects of the bids that are unclear or contain minor errors. You should consider whether, where a certain aspect of the bid seems ambiguous, it might be prudent to request clarification. For example, if the tender has asked for services to be completed daily and a tenderer responds that the services will be completed seven times per week, you would seek clarification that the services are indeed completed once per day.

Clarification may also be sought from tenderers on matters of quality performance or particular terms and conditions of contracts.

In seeking clarification, all communications with tenderers must be properly recorded so that an audit trail is maintained.

If providing an opportunity to clarify a tenderers bid, you must provide the same opportunity to all tenderers.

## Negotiation

* + 1. Discussions with potential suppliers after submission of a tender and before the award of a contract with a view to obtaining adjustments in price, delivery or content must be the exception. In particular, they must not be conducted where the Procurement Regulations apply where this might distort competition, especially with regard to price.
    2. Post tender negotiations may only be used in the following circumstances:- (i) modifications are proposed to be made to the specification, quantity or conditions, or, (ii) the Tender under consideration exceeds the estimated contract value and price reduction measures are necessary.
    3. For Works tendering activity, post tender negotiation on fundamental aspects of contracts (especially price) is not allowed. Competition must not be distorted by allowing a tenderer, not clearly in the lead, a chance to improve its offer. Nor should any changes be made which would result in a contract being awarded on terms more favourable to the tenderer.
    4. Where post-tender negotiation results in a material change to the specification or contract terms the contract must not be awarded, but re-tendered.
    5. If post-tender negotiations are necessary after a single-stage tender or after the second stage of a two-stage tender, then such negotiations shall only be undertaken with the supplier who is identified as having the most economically advantageous tender (or where applicable the lowest cost tender if that award criterion is being used), and after all unsuccessful suppliers have been informed. During negotiations tendered rates and prices shall only be adjusted in respect of a corresponding adjustment in the scope or quantity of goods / services included in the tender documents.
    6. During face to face negotiations with a tenderer, there shall always be present at least two officers from the Authority. All discussions must be conducted professionally and with demonstrable probity.
    7. A note of negotiations will be made by one of the officers present, recording those present of the time, the location of the negotiations, details of the discussion and any agreement reached. The note shall be signed by all officers present and will be kept with a file copy of the record. Written confirmation of the negotiated terms must be obtained from the Tenderer before any final award is made.
    8. For Goods and Service tendering activity, the Legal and Procurement Manager or CPU Procurement Co-ordinators must be consulted prior to entering into post-tender negotiations.
    9. For Works tendering activity, DRT Management must be consulted, and approval sought, prior to entering into post-tender negotiations.

## Abnormally Low Tenders

* + 1. You must require a tenderer to explain the price or costs proposed in the tender where the tender appears to be abnormally low in relation to the works, goods or services.
    2. The explanations may, in particular, relate to:

1. The economics of the manufacturing process, of the services provided or of the construction method;
2. The technical solutions chosen or any exceptionally favourable conditions available to the tenderer for the execution of the works or for the supply of the products or services;
3. The originality of the works, goods or services proposed by the tenderer;
4. Elements that require further explanation in or to obtain understanding.
   * 1. You must assess the information provided by consulting the tenderer.
     2. For Construction tenders, the SG Construction handbook also provides further information regarding this.
     3. You may only reject the tender where the explanations given and any evidence supplied do not satisfactorily account for the low level of price or costs proposed, taking into account the elements referred to in 17.3.2.

# Notification of Successful & Unsuccessful Tenderers

## Notification to Successful Tenderers

* + 1. The notification to the successful candidate(s) of the award decision must contain the following information:
       - Contract name
       - Contract reference number
       - Contract start and end date
       - Pricing schedule
       - Any agreed amendments to the standard conditions of contract

Guidance available on CPU intranet page. <http://inside.falkirk.gov.uk/services/corporate-housing/procurement/procurement-guidance.aspx>

* + 1. The successful Tenderer must complete and return the council’s Contract Acknowledgement and Acceptance form in advance of the contract start date.
    2. Following evaluation, notification of intention to award a contract and rejection of tenders on the basis of the evaluation criteria must be issued simultaneously, however in respect of regulated contracts, a standstill period must elapse between the date that the contract award decision is communicated and the date that the contract commences. This ‘standstill’ period must be explained to the successful contractor in the letter of intention to award (standstill letter).

## Notification to Unsuccessful Tenderers

* + 1. The notification to the unsuccessful candidate(s) of the award decision must contain the following information:
       - Contract name
       - Contract reference number
       - The name(s) of the winning Tenderer(s)
       - The score the unsuccessful Tenderer obtained against those of the successful Tenderer
       - Summary of reasons why the tenderer was unsuccessful
       - Characteristics and relative advantages of the successful tenderer(s)
    2. Providing the above information helps unsuccessful suppliers to improve their competitive performance which in turns produces benefits to the council in future tender exercises. Unsuccessful Tenderers have a right to know the reasons for their rejection and this disclosure enables the council to operate as a fair and honest customer.
    3. You must, as per Public Contracts (Scotland) Regulations 2015, inform by notice in writing as soon as possible after the decision has been made to exclude a provider from the tender exercise.

## Mandatory Standstill Period

* + 1. For all above WTO GPS threshold contracts and where authority to award has been received there is a mandatory requirement for a standstill period. The mandatory standstill period between notification of award decision and contract commencement is required to allow all tenderers a reasonable opportunity to apply in court for interim measures, which could lead to the award decision being overturned. It is therefore necessary for the council to issue electronic notice of their decision to unsuccessful candidate suppliers at least 10 days prior to their entry into the contract. Although not mandatory, standstill periods should be considered for under threshold exercises as appropriate as a matter of best practice.
    2. The period does not apply to below threshold procurements, to procurements otherwise outside the full scope of the Directives or where there is only one tenderer including those following the urgency provision under the negotiated procedure where single tendering takes place. The standstill period is a defined period of time between the notice of the contract award decision and the award of the contract. The purpose of the standstill period is to enable unsuccessful tenderers to consider the feedback on their submissions and to allow them an opportunity to seek further information or call for a review of the decision.

An organisation must allow a period of at least the relevant standstill period to elapse between the date of dispatch of the standstill notice and the date on which that organisation enters into the contract. This does not apply, however, where: -

* + - * The contract or framework agreement is exempt from the requirement for prior publication of a contract notice;
      * There are no tenderers concerned;

A notice is not required to be given under regulation [85(1) of the Public Contracts (Scotland)](http://www.legislation.gov.uk/ssi/2015/446/regulation/85/made) [Regulations 2015](http://www.legislation.gov.uk/ssi/2015/446/regulation/85/made) (notices of decisions to award a contract or conclude a framework agreement).

* + 1. The mandatory standstill period begins the day after the electronic communication of the award decision to all tenderers. If the standstill period ends on a non-working day, it must be extended to the next working day. An outline of the 10 day timeline can be seen in Table 9 below.

|  |  |
| --- | --- |
| **Day 0** | Notification of award decision containing all relevant information to be e-mailed or faxed (most rapid means of communication) to unsuccessful Tenderers and confirmed by post. |
| **Day 1** | Standstill period commences. |
| **Day 2 - 9** |  |
| **Day10 (midnight)** | End of standstill period. |
| **Day 11** | Conclusion (final award) of Contract if no legal challenge received. |

***Table 9 Timeline for Mandatory Standstill Period (electronic means of communication)***

* + 1. If unsuccessful tenderers have any concerns with regard to the process and/or its outcome, they should be raised during this period and a request for debrief made. Before approaching the court seeking any legal remedies, a tenderer must inform the Organisation, explaining the basis for its application to the court. The Council will usually be aware of any legal challenge prior to the end of the mandatory standstill period.

When action is commenced in court the Council cannot award the contract unless the court permits this (usually after the Organisation has successfully applied to the court).

It should be noted that, even after the award of the contract a supplier can approach the court seeking damages (see remedies section).

* + 1. Although there is no mandatory standstill period for regulated contracts below thresholds, you should as a matter of best practice include a voluntary standstill period no greater or lesser than is proportionate to the exercise in question.

## Debriefing

* + 1. Debriefing is a way of helping suppliers to improve their competitive performance, which in turn produces benefits to procuring organisations. Unsuccessful suppliers and tenderers have a right to know the reasons for their rejection.
    2. The Procuring Officer provides a limited debrief in the standard notification to unsuccessful candidates, however a candidate may request in writing the reasons for a contracting decision. Under such circumstances, the Procuring Officer must give the reasons in writing within 15 days of the request. If requested, the Procuring Officer may also give the debriefing information to candidates who were de-selected in a pre-tender short listing process.
    3. Where a formal debriefing meeting is required, this may involve representatives from both the Service and CPU to ensure that the debriefing is carried out by experienced and fully trained staff. Technical/operational representatives must understand their role prior to the debriefing.
    4. Only the Tenderer’s own submission may be discussed during debrief - commercial terms or innovations put forward by another tenderer cannot be disclosed. Tenderers may also be asked for constructive comments on the ITT document. A record of any tenderer debrief must be kept.

## Legal Challenge by Tenderer

* + 1. A Tenderer may make an application to the Court of Session/Sheriff Court which shall automatically suspend the procurement process upon serving of a summons. This litigation is not an expensive process for the Tenderer and the Tenderer will not be responsible for the costs of delay, merely legal expenses, if rejected. The onus is on the council to demonstrate that the application is spurious and for the suspension to be lifted prior to proceeding to contract award. If court proceedings are served on the Council during the standstill period then the Council cannot enter into the contract.

The Council must ensure that a process is in place to make sure that all relevant staff are informed when proceedings are served, and that appropriate action is taken.

* + 1. In the event that the council breaches the standstill period or proceeds with contract award despite automatic suspension, then the contract may be declared ‘ineffective’, i.e. can be set aside even when performance has commenced, and the court must make an order unwinding the result – the council may become liable for damages from the aggrieved bidder and the supplier who was awarded the contract.
    2. The court must then decide what to do about works already completed under the contract and must order a fine. To avoid ‘ineffectiveness’ it is critical that the process has been standstill compliant as a contract may not be declared ineffective for substantive breach alone.

## No Legal Challenge by Tenderer

* + 1. If no legal challenges have been received by the end of the mandatory standstill period, then the contract award may be concluded, and a letter issued to the successful supplier.

## Due Diligence

A final due diligence check must be carried out to ensure that the organisation you are entering into contract with is the same organisation that has been involved in the tender exercise. Check the company registration number with Companies House to ensure the company name is the same as submitted in the tender documentation, the registered head office match and the company is listed as ‘active’. (<https://www.gov.uk/get-information-about-a-company>).

# Award Notice

## Placing the Contract Award Notice

* + 1. Contract award notices must be placed on Public Contracts Scotland for all contracts. This notice will be placed by the Procuring Officer responsible after they have received confirmation that the successful bidder agrees and understands the contents of the letter of acceptance and in any case within 30 days of conclusion of standstill period.

# Reporting

* + 1. The value and complexity of the contract / framework shall determine the reporting route and approval process.
    2. The Council has a requirement to publish details of its planned regulated procurements within its Annual Procurement Report (APR). Published in August each year, the APR provides high level details of regulated procurement activity which the Council plans to commence within the current and next financial year. To ensure that the APR contains valuable and informative data to potential bidders, Chief Officers should notify the CPU of planned regulated procurements by the end of June each year.

## Contracts valued at less than £5,000 (Goods, Services and Works)

* + 1. After having established that [best value](https://www.falkirk.gov.uk/services/council-democracy/policies-strategies/procurement/docs/Contract%20Standing%20Orders.pdf?v=202204041520#page=17) is being obtained for the Council, Officers from the contracting Service should seek budget holder approval before issuing a purchase order and entering into a contractual agreement.
    2. No formal internal reporting is necessary before placing an order.

## Contracts valued between £5,000 and £49,999 (Goods and Services) and £249,999 (Works)

* + 1. PCS Quick Quote should be used to invite bids. Following evaluation of the bids, Officers from the contracting Service must seek approval to award the contract from the relevant Chief Officer (or officer with delegated authority).
    2. Successful and unsuccessful letters should be emailed to bidders to notify them of the outcome. Following agreement by the successful supplier(s), Officers must publish the award notice within 30 days on PCS. Purchase orders can then be placed with the supplier(s).
    3. The CPU shall extract award notice details from PCS and report these to Members (and the public) via the Information Bulletin (where of a contract value of £10,000 or above). *Note: the contract needs to be awarded within PCS to enable CPU to extract.*
    4. Where PCS Quick Quote has not been used, approval to award the contract must be sought from the relevant Chief Officer (or officer with delegated authority). Furthermore, where the value of the award is between £10,000 and £49,999 (or £10,000 and £249,999 for Works), the contracting Service requires to add the contract award details into the [Information Bulletin Report – Contract Award spreadsheet](https://falkirk365.sharepoint.com/:x:/s/FC-INT-InformationBulletinReports/ET3ih_ZHdAFKjbCk18cVnZ0B6aFo5d4vmzeqBuACxnku9Q?e=ibJSlI), accessed via the [Information Bulletin Reports Teams Channel](https://teams.microsoft.com/l/channel/19%3aFW7QXoeZAOnJ4_r5JjWIvvS2KBrV44mwsDKAVtnpKMI1%40thread.tacv2/General?groupId=11ee401f-aeb7-43f1-9ef1-159c25f319f9&tenantId=614a3a29-7253-4dd8-a5c0-4261e39f28d0). This will allow CPU to extract the data for reporting through the Information Bulletin. *Note: It is important that data is only added to the Information Bulletin spreadsheet once the contract award process has been completed.* To request access to the Information Bulletin Teams channel, please contact [cpu@falkirk.gov.uk](mailto:cpu@falkirk.gov.uk).

## Contracts / frameworks valued between £50,000 and £499,999 (Goods and Services) and between £249,999 and £499,999 (Works)

* + 1. Following tender evaluation or decision to call off from an external framework, approval to award the contract must be received.
    2. The authorised Service lead, including Place Services, in conjunction with CPU where appropriate, must draft a report permitting the award of the contract / framework participation, which requires to be approved by the relevant Chief Officer.
    3. Following Chief Officer approval and subsequent agreement by the successful supplier(s), purchase orders can then be placed with the supplier(s). The procurement lead should ensure that an award notice is published within 30 days on PCS.
    4. The award details need to be included within the next publication of the Council’s Information Bulletin. The procurement lead should ensure that award details are added to the [Information Bulletin Report – Contract Award spreadsheet](https://falkirk365.sharepoint.com/:x:/s/FC-INT-InformationBulletinReports/ET3ih_ZHdAFKjbCk18cVnZ0B6aFo5d4vmzeqBuACxnku9Q?e=ibJSlI) which can be accessed through the [[Information Bulletin Reports Teams Channel](https://teams.microsoft.com/l/channel/19%3aFW7QXoeZAOnJ4_r5JjWIvvS2KBrV44mwsDKAVtnpKMI1%40thread.tacv2/General?groupId=11ee401f-aeb7-43f1-9ef1-159c25f319f9&tenantId=614a3a29-7253-4dd8-a5c0-4261e39f28d0)](https://teams.microsoft.com/l/channel/19%3aFW7QXoeZAOnJ4_r5JjWIvvS2KBrV44mwsDKAVtnpKMI1%40thread.tacv2/General?groupId=11ee401f-aeb7-43f1-9ef1-159c25f319f9&tenantId=614a3a29-7253-4dd8-a5c0-4261e39f28d0). This will allow CPU to extract the data for reporting through the Information Bulletin.
    5. *Note: It is important that data is only added to the Information Bulletin spreadsheet once the award process has been completed.* To request access to the Information Bulletin Teams channel, please contact [cpu@falkirk.gov.uk](mailto:cpu@falkirk.gov.uk).

## Contracts / frameworks valued between £500,000 and £7.49m (Goods, Services and Works)

* + 1. Before the procurement exercise can commence, the relevant Chief Officer (or officer with delegated authority) must notify CPU of their planned procurements. Details of planned procurements should be added to the next available Planned Procurement Bulletin (PPB) which can be accessed via the [Planned Procurement Bulletin Teams Channel](https://teams.microsoft.com/l/channel/19%3aH-p-up0v1GpGTSrmA1mM4OgZGJgVQP8aRGrEogeqUDQ1%40thread.tacv2/General?groupId=4e77317a-dfb0-4d44-9b83-27d6aa2785f6&tenantId=614a3a29-7253-4dd8-a5c0-4261e39f28d0).
    2. CPU shall issue the PPB to Members of the Executive via email and Teams. Any member of the Executive may, within 14 days of the PPB circulation date, approach the relevant Chief Officer for further information if they consider that any of the planned procurements might be of significance. Following any such approach by an Executive Member, the relevant Chief Officer shall consider if it is appropriate to refer the planned procurement to the Executive. Following on from this process, the Chief Officer will be authorised to start the procurement.
    3. The PPBs are circulated to the Executive in February, April, June, September and November. However, provision can be made for ad hoc PPBs if required by a Chief Officer.
    4. Following evaluation of submitted tenders or decision to call off from an external framework, approval to award the contract must be received.
    5. The authorised Service lead, including those in Place Services, in conjunction with CPU where appropriate, must draft a report permitting the award of the contract / framework participation, which requires to be approved by the relevant Chief Officer. The Chief Officer report must also be submitted to theChief Governance Officeradvising of the Chief Officer’s intention to award.
    6. Following Chief Officer approval, Governance consultation and subsequent agreement by the successful supplier(s), purchase orders can then be placed with the supplier(s). The procurement lead should ensure that an award notice is published within 30 days on PCS.
    7. The award details need to be included within the next publication of the Council’s Information Bulletin. The procurement lead should ensure that award details are added to the [Information Bulletin Report – Contract Award spreadsheet](https://falkirk365.sharepoint.com/:x:/s/FC-INT-InformationBulletinReports/ET3ih_ZHdAFKjbCk18cVnZ0B6aFo5d4vmzeqBuACxnku9Q?e=ibJSlI) which can be accessed through the [[Information Bulletin Reports Teams Channel](https://teams.microsoft.com/l/channel/19%3aFW7QXoeZAOnJ4_r5JjWIvvS2KBrV44mwsDKAVtnpKMI1%40thread.tacv2/General?groupId=11ee401f-aeb7-43f1-9ef1-159c25f319f9&tenantId=614a3a29-7253-4dd8-a5c0-4261e39f28d0)](https://teams.microsoft.com/l/channel/19%3aFW7QXoeZAOnJ4_r5JjWIvvS2KBrV44mwsDKAVtnpKMI1%40thread.tacv2/General?groupId=11ee401f-aeb7-43f1-9ef1-159c25f319f9&tenantId=614a3a29-7253-4dd8-a5c0-4261e39f28d0). This will allow CPU to extract the data for reporting through the Information Bulletin.

* + 1. *Note: It is important that data is only added to the Information Bulletin spreadsheet once the award process has been completed.* To request access to the Information Bulletin Teams channel, please contact [cpu@falkirk.gov.uk](mailto:cpu@falkirk.gov.uk).

## Contracts / frameworks valued at £7.5m or above (Goods, Services and Works)

* + 1. Before the procurement exercise can commence, the Chief Officer of the Contracting Service must report to the Executive details of their proposed contract strategy. The Prior Consideration Report (PCR) should be developed in conjunction with the authorised procurement lead within CPU or Place Services.
    2. The PCR shall be discussed at a meeting of the Executive and after approval, the procurement can proceed.
    3. Following evaluation of submitted tenders or decision to call off from an external framework, approval to award the contract must be received.
    4. The authorised Service lead, including Place Services, in conjunction with CPU where appropriate, must draft a report permitting the award of the contract / framework participation, which requires to be approved by the relevant Chief Officer. The Chief Officer report must also be submitted to theChief Governance Officeradvising of the Chief Officer’s intention to award.
    5. Following Chief Officer approval, Governance consultation and subsequent agreement by the successful supplier(s), purchase orders can then be placed with the supplier(s). The procurement lead should ensure that an award notice is published within 30 days on PCS.
    6. The award details need to be included within the next publication of the Council’s Information Bulletin. The procurement lead should ensure that award details are added to the [Information Bulletin Report – Contract Award spreadsheet](https://falkirk365.sharepoint.com/:x:/s/FC-INT-InformationBulletinReports/ET3ih_ZHdAFKjbCk18cVnZ0B6aFo5d4vmzeqBuACxnku9Q?e=ibJSlI) which can be accessed through the [[Information Bulletin Reports Teams Channel](https://teams.microsoft.com/l/channel/19%3aFW7QXoeZAOnJ4_r5JjWIvvS2KBrV44mwsDKAVtnpKMI1%40thread.tacv2/General?groupId=11ee401f-aeb7-43f1-9ef1-159c25f319f9&tenantId=614a3a29-7253-4dd8-a5c0-4261e39f28d0)](https://teams.microsoft.com/l/channel/19%3aFW7QXoeZAOnJ4_r5JjWIvvS2KBrV44mwsDKAVtnpKMI1%40thread.tacv2/General?groupId=11ee401f-aeb7-43f1-9ef1-159c25f319f9&tenantId=614a3a29-7253-4dd8-a5c0-4261e39f28d0). This will allow CPU to extract the data for reporting through the Information Bulletin.

* + 1. *Note: It is important that data is only added to the Information Bulletin spreadsheet once the award process has been completed.* To request access to the Information Bulletin Teams channel, please contact [cpu@falkirk.gov.uk](mailto:cpu@falkirk.gov.uk).

## Contracts Register

* + 1. It is a requirement of the Procurement Reform Act (2014) that all regulated procurement activity is published on an external facing contracts register. The following information is required:
    - the date of award
    - the name of the successful supplier(s)
    - the subject matter
    - the estimated contract value
    - the start date
    - the end date provided for in the contract / framework (disregarding any extension option)
    - the end date including any permissible extension.
    1. All contract / framework awards as a result of a tender process, including mini competition and direct award need to be added to the Contract Management System by CPU for subsequent contract register publication on the council’s website.
    2. It is therefore important that the reporting requirements discussed in Sections 20.2 to 20.5 are followed to ensure that the council complies with its Procurement Act duties.

# Supplier and Contract Management

## Purpose of Contract & Supplier Management

* + 1. Contract and supplier management enables a more effective relationship between the council and its suppliers and provides greater benefits to the council. Contract and supplier management is therefore essential to deliver efficiencies and is mandatory for all new and existing contracts awarded by the council.
    2. Construction contracts will be managed in accordance with the relevant form of contract and in line with recognised industry standards and practice and the following is applicable to all other contracting activity.

## Contract & Supplier Management Strategy

* + 1. Supporting the objectives set out in the Corporate Procurement Strategy, a Contract and Supplier Management Procedure has been developed to provide a standard approach and guidance to Procuring Officers and Services. It defines a clear ownership for operational day-to-day management and strategic management throughout the lifecycle of a contract. *Contract & Supplier Management Process.*
    2. The process begins with contract implementation through migration and mobilisation and continues through a post-contract award meeting with the successful supplier. As a guideline, the post award contract meeting should be conducted within 1-3 weeks of the contract award. The purpose of this meeting is to discuss the contract implementation phase and confirm roles, responsibilities, identify activities and agree SLA’s, KPI’s, timescales and expectations.
    3. It is important to keep in regular contact with the supplier during the contract implementation phase and to arrange meetings and maintain open dialogue throughout.

## Determine Level of Contract & Supplier Management

* + 1. It is important to determine the level of management required for contracts. The value and length of contract, business criticality and dependency, number of customers / end-users, public visibility, openness to complaints or challenges, risk, performance criteria and compliance with requirements of governing bodies will influence the level of management and determine the frequency and content of supplier review meetings. A pre-start agenda template has been created to help enable this and is available via the CPU intranet page.
    2. To determine the minimum level of contract management appropriate, the Contract/Supplier Management Tool must be completed. CPU will be able to assist completion.

## The Contract & Supplier Management Plan

* + 1. Once the contract implementation has been completed and the level of management determined, a Contract and Supplier Management Plan should be constructed which outlines:
    - Roles & responsibilities
    - Agreed level of management (low/medium/high)
    - Contract objectives
    - Performance Management Framework, e.g. Use of balanced scorecard, KPI's & SLA's
    - Mobilisation Plan
    - Migration Plan
    - Contract Compliance
    - Escalation process (within supplier organisation and the council)
    - Review meeting schedule
    - Risks & issues
    1. The Contract and Supplier Management Plan needs to be agreed with the contracted supplier. All of these, in particular, the routes for escalation and the review meeting schedule should have been built into the initial Contract(s) Strategy and tender, with reference to the fact that a Contract and Supplier Management plan will be developed.
    2. The standard Supplier Pre Start Meeting Agenda template is available on the intranet within the Purchasing Guides section. Where appropriate, further agenda headings can be added, however none of the current headings should be removed. A copy of all Supplier Pre-Start Meeting minutes should be sent to cpu@falkirk.gov.uk
    3. The standard Supplier Review Meeting Agenda is available on the intranet within the Purchasing Guides section. Where appropriate, further agenda headings can be added, however none of the current headings should be removed. A copy of all Supplier Review minutes should be sent to cpu@falkirk.gov.uk
    4. The purpose of Business Continuity Management (BCM) in Falkirk Council is to ensure the continuous operational delivery of services when faced with a range of disruptive challenges,

e.g. staff shortages, denial of access, failures in technology, loss of utility services and

failure of key suppliers. As such, supplier BCM reviews, proportionate to perceived risk, are periodically conducted to ensure service disruption is mitigated / minimised should events occur.

# Extensions, Variations and Modifications to Contracts

* 1. A contract and framework agreement may be modified without a new Procurement Procedure:

1. where the modifications, irrespective of their monetary value, have been provided for in the initial procurement documents in clear, precise and unequivocal review clauses, which may include price revision clauses or options, provided that such clauses:
   1. state the scope and nature of possible modifications or options as well as the conditions under which they may be used; and
   2. do not provide for modifications or options that would alter the overall nature of the contract or framework agreement;
2. to provide for additional works, goods or services by the original contractor that have become necessary and were not included in the initial procurement, where a change of contractor:
   1. cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, services or installations procured under the initial procurement; and
   2. would cause significant inconvenience or substantial duplication of costs, provided that any increase in price does not exceed 50% of the initial contract value;
3. where all of the following conditions are fulfilled:
   1. the need for modification has been brought about by circumstances which “a diligent contracting authority” could not have foreseen;
   2. the modification does not alter the overall nature of the contract or framework;
   3. any increase in price does not exceed 50 % of the initial contract value or framework agreement;
4. where a new contractor replaces one to which had initially been awarded the contract or framework as a consequence of:
   1. an unequivocal review clause or option in conformity with sub-paragraph (a); or
   2. complete or partial succession into the position of the initial contractor, following corporate restructuring, including takeover, merger, acquisition or insolvency, by another economic operator that fulfils the criteria for qualitative selection initially established, provided that this does not entail other substantial modifications to the contract or framework and is not aimed at circumventing the application of this Part;
5. where the modifications, irrespective of their value, are not substantial (as defined in paragraph 22.7); or
6. where paragraph 22.4 applies.
   1. Where several successive modifications are made:
7. the limitations imposed by the proviso at the end of paragraph (22.1)(b) and in paragraph (22.1)(c)(iii) shall apply to the value of each modification; and
8. such successive modifications must not be aimed at circumventing Regulations.
   1. Modification of a contract or framework in either of the cases described in paragraph (22.1)(b) and (c) must send a notice to that effect for publication in accordance with Public Contracts Scotland Regulations section 52 (form and manner of sending notices for publication).
   2. This paragraph applies where the value of the modification is below both of the following Values:
9. the relevant regulated thresholds; and
10. 10 % of the initial contract value for service and supply contracts or frameworks and 15% of the initial contract value for works contracts or frameworks, provided that the modification does not alter the overall nature of the contract or framework agreement.
    1. For the purposes of paragraph (22.4), where several successive modifications are made, the value must be the net cumulative value of the successive modifications.
    2. For the purpose of the calculation of:
11. the price mentioned in paragraph (22.1)(b) and (c); and
12. the values mentioned in paragraph (22.4)(b), the updated figure shall be the reference figure when the contract or framework includes an indexation clause.
    1. A modification of a contract or a framework agreement during its term must be considered substantial for the purpose of paragraph (22.1)(e) where:
13. the modification renders the contract or the framework agreement materially different in character from the one initially concluded;
14. the modification introduces conditions which, had they been part of the initial procurement procedure, would have: -
    1. allowed for the admission of candidates other than those initially selected;
    2. allowed for the acceptance of a tender other than that originally accepted; or
    3. attracted additional participants in the procurement procedure;
15. the modification changes the economic balance of the contract or the framework agreement in favour of the contractor in a manner which was not provided for in the initial contract or framework agreement;
16. the modification extends the scope of the contract or framework agreement considerably; or
17. a new contractor replaces one to which the contracting authority had initially awarded the contract or framework in cases other than those provided for in paragraph (22.1)(d).
    1. A new procurement procedure in accordance with Regulations is required for modifications of the provisions of a public contract or a framework agreement during its term other than those provided for in regulation.
    2. Term extensions beyond that originally advertised (excluding paragraphs specifically referred to above) is normally deemed to affect a materially different change, irrespective of spend. As such, no extension should normally be considered for repeat contracts and a new tender exercise should take place. CPU must be consulted on all contract extension decisions for goods and services. The Council’s CPU must be informed of all contract extension for construction contracts.
    3. Even if prices are agreed to be fixed for the duration of the contract, suppliers may wish to renegotiate previously agreed contract terms (including rates). Written documentary evidence must be provided by a supplier to support any price increase application. The Procuring Officer is professionally accountable for all actions and must ensure that commercial judgement is used and ensure that any price variation (up or down) is justifiable before informing suppliers and customers. Suppliers should protect Falkirk Council from commercial factors out with its control, Falkirk Council is under no obligation to accept a variation in terms. Detailed written record of all negotiations and discussions with suppliers must be maintained and retained on file for audit purposes. Regard should be had to the terms of CSO 15 – Variations to Contract Values and Claims to ensure that its requirements are adhered to.
    4. In amplification of the provisions detailed above in the particular case of a framework agreement, the parties should not substantially amend the terms laid down in a framework agreement. It is acknowledged that the parties may need to make non-material changes to the terms - for example, to change the time for supply of the relevant products. However, parties are not entitled to make a material change to the terms (for example, by adding a new product) to the extent that it might affect the identity of the suppliers capable of meeting the requirements. This prevents the distortion of competition: if requirements have changed then the Council ought to procure a new framework rather than amend the terms of an existing framework.

Regard requires to be given to Regulation 72 of the Public Contracts (Scotland) Regulations 2015 which contains grounds permitting public contracts, including framework agreements, to be lawfully varied.

One ground is that modification has been provided for in the initial procurement documents in clear, precise and unequivocal review clauses. Such clauses need to state the scope and nature of possible modifications as well as the conditions under which they may be used. The clauses must not allow for modifications that would alter the overall nature of the framework.

Another ground is where the change is not substantial. A substantial change is one which:

* + - Renders the contract or the framework agreement materially different in character from the one initially concluded.
    - Introduces conditions which, had they been part of the initial procurement procedure, would have allowed for the admission of other candidates than those initially selected.
    - Allows for the acceptance of a tender other than that originally accepted or attracted additional participants in the procurement procedure.
    - Changes the economic balance of the contract or the framework agreement in favour of the contractor.
    - Extends the scope of the contract or framework agreement considerably.
    - Replaces a contractor in cases other than those provided for in Regulation 72.

Any modifications made require to be clearly documented and recorded by the relevant Chief Officer along with any consequential pricing variations.

* 1. Should a variation be necessary, a template can be found within the Contract and Supplier Management Procedures document. This can be found within the guides section of the CPU intranet webpage.
  2. Mini competitions carried out under a framework agreement require to be carried out in accordance with the provisions for mini competitions set out in the framework. The rules provided for in a framework agreement for making any call off contract should be clear and transparent and in line with the Regulations.

It is recognised that the terms of a framework may need to be supplemented in certain limited situations. In respect of single supplier frameworks this is achieved by requiring the supplier to supplement its original tender. This will be conducted at the request of the contracting authority as part of a written consultation exercise during the award of a specific contract, but it should be assumed that the application of these supplemental provisions will apply only in respect of that award. Making such a request should be considered carefully and may require legal advice.

Where the Council is running a mini competition under a multi-supplier arrangement, it may itself supplement the terms. In these circumstances, the Council would do so where it needs to amend the terms to ensure that they capture the requirements more precisely or provide additional terms on the basis that these have been referred to in the framework. Under no circumstances shall there be substantial modifications to the terms laid down in that framework agreement.

Any supplemental terms should align with and be based on the terms referred to in the framework agreement or the original request for tender***.***

* 1. In accordance with CSO 15.2, for all contracts, any increase in expenditure beyond the Contact Value shall be authorised by the Chief Officer of the Contracting Service. The Chief Officer shall report the matter by way of the Information Bulletin as soon as possible if the cumulative effect of such increase in expenditure is to increase the Contract Value by:
     + £50,000 if the Contract Value of the original contract is £500,000 or less; or
     + 10% if the Contract Value of the original contract is over £500,000.

# APPENDIX 1 - Specific Considerations & Rules for Care and Support Contracts

**Guidance on Contract Renewal and Direct Award without Competition**

An organisation should analyse the benefits and risks to people who use services, and also to service delivery, of advertising the requirement and awarding the contract or framework agreement by competition. For existing services, this will require consideration, through consultation with people who use services and their carers, of the impact that any change in service provision or provider will have on:

* + - people who use services and their carers;
    - continuity of care;
    - the quality of the service and the outcomes delivered;
    - the cost of the service;
    - the market; and
    - the workforce.

This analysis may suggest that, where an organisation is satisfied with the quality of a service and that best value is being achieved, the existing supplier / service provider should continue to deliver the service. If an organisation’s contract with the existing supplier / service provider includes an extension option that is within scope, the contract may be extended for the specified period. In the absence of an extension option, any decision by an organisation to renew (or ‘roll forward’) its contract with the existing supplier / service provider must be compliant with public procurement legislation. Legal advice should always be sought in respect of any procurement decisions.

Alternatively, the analysis may suggest that the requirement should not be advertised at the current time and that a staged approach should instead be adopted. If an organisation decides to adopt a different timetable for advertising the requirement, it should describe this in relevant procurement documents and set out how it intends to move towards competition in the future.

**Summary of the rules that apply to care and support contracts at different thresholds**

|  |  |  |
| --- | --- | --- |
| €750,000 | Must be advertised in OJEU and the light touch provisions in | |
| and above | [The Public Contracts (Scotland) Regulations 2015](http://www.legislation.gov.uk/ssi/2015/446/contents/made) apply | |
|  |  |  |
| £50,000 - | May award without | May choose to seek offers: in |
| €750,000 | seeking offers, but | which case all provisions of the |
|  | should consider the | [Procurement Reform (Scotland) Act](http://www.legislation.gov.uk/asp/2014/12/contents) |
|  | TFEU fundamental | [2014](http://www.legislation.gov.uk/asp/2014/12/contents) apply |
|  | principles where relevant. |  |
|  | For contracts |  |
| Below | Non-regulated procurement |
| over £50,000, a contract |
| £50,000 | award notice must be |  |
|  |  |
|  | published on PCS |  |
|  | and certain other |  |
|  | rules apply |  |
|  | (see [paragraph 8.12 of Guidance on the Procurement of Care and Support Services 2016 (Best-Practice](https://www.gov.scot/publications/procurement-care-support-services-best-practice-guidance/pages/2/#:~:text=Specific%20rules%20for%20care%20and%20support%20contracts%20between%20%C2%A350%2C000%20and%20%C2%A3663%2C450%20%2D%20award%20without%20advertising)). |  |

***Diagram 3 Care and Support Thresholds***

**Risk of legal challenge for breach of the procurement rules**

A public body should assess the risk of legal challenge if it decides not to advertise the requirement and proceeds to award the contract or framework agreement without competition. A legal challenge may have serious implications for procurement activity and future service delivery. For example, for a ‘light-touch’ contract with a value of at least £663,540, if a court grants an ineffectiveness order together with damages, legal costs and/or compensation, this may divert monies from service provision and may cause significant disruption and uncertainty to people who use services. Also, standstill rules apply to care and support contracts of that value. The relevant legislation is [part 3 of the Public Contracts (Scotland)](http://www.legislation.gov.uk/ssi/2015/446/part/3/made) [Regulations 2015](http://www.legislation.gov.uk/ssi/2015/446/part/3/made).

**Application of legal remedies to contracts and framework agreements services covered under the ‘light-touch’ regime**

The award of a contract or framework agreement for one of these services may be challenged on the basis that a public body has failed to ensure publication of the contract opportunity on the OJEU and follow a procedure sufficient to ensure observance of the TFEU fundamental principles. In relation to a contract or framework agreement worth at least £663,540such a challenge would be pursued as a commercial action.

**Specific rules for care and support contracts between £50,000 and €750,000 – award with advertising**

For contracts or framework agreements with a value of £50,000 or more, but less than £663,540, an organisation should decide, on a case-by-case basis, whether or not to seek offers in relation to the proposed contract.

The flowchart at the end of this document provides some illustration of the sort of things that might be considered by an organisation when deciding whether to seek offers for contracts of this value. A number of factors may influence this decision, as explained below, but are not limited to:

* + - the estimated value of the contract;
    - the application of the procurement rules, procurement policy and benefits and risks to people who use services and service delivery;
    - application of local financial regulations and standing orders; and
    - the specifics of the sector concerned (for example, the size and structure of the market and commercial practices).

Where an organisation chooses to seek offers in relation to a contract, then as with all contracts with a value of £50,000 or more, it must be advertised on the [Public Contracts Scotland (PCS) website](http://www.publiccontractsscotland.gov.uk/). **All** of the provisions of [the Act](http://www.legislation.gov.uk/asp/2014/12/contents) will apply in that case.

**Specific rules for care and support contracts between £50,000 and £663,540 – award without advertising**

Where an organisation decides to renew an existing contract, or to award a new contract without competition, it should ensure that:

* + - its decision is based on sound and objective business reasons and that this is fully documented;
    - its decision not to award the contract or framework agreement by competition is permissible (see threshold diagram 3) and compliant with the public procurement Regulations and the TFEU fundamental principles;
    - its decision is consistent with local financial regulations and standing orders and local policy and procedures for the procurement for care and support services;
    - it is able to demonstrate that best value has been achieved; and
    - the decision is subject to regular review. For example, a decision not to advertise and tender a contract because of its low value will need to be reviewed should the total sum to be paid under that contract increase.

For contracts of this value, an organisation may choose to award care or support contracts, or framework agreements, without seeking offers in relation to the proposed contract. This is consistent with the provisions of [section 12 of the Act](http://www.legislation.gov.uk/asp/2014/12/section/12) and this best-practice guidance should be read together with that. Under the Act, there are some provisions that still apply when an organisation chooses to award without advertising. These are:

* + [Section 23(2)](http://www.legislation.gov.uk/asp/2014/12/section/23) of the Act: An organisation must publicise a contract award notice on PCS;
  + [Section 27](http://www.legislation.gov.uk/asp/2014/12/section/27) and [Section 28](http://www.legislation.gov.uk/asp/2014/12/section/28) of the Act: An organisation must consider whether any of the mandatory exclusion grounds referred to in [The](http://www.legislation.gov.uk/asp/2014/12/contents) [Procurement (Scotland) Regulations 2016](http://www.legislation.gov.uk/asp/2014/12/contents) apply in respect of the potential contractor/service provider; and
  + [Section 35](http://www.legislation.gov.uk/asp/2014/12/section/35) of the Act: An organisation must keep and maintain a register of contracts (a ‘contracts register’).

In addition to these minimum requirements, a public body, when not seeking offers in relation to a proposed contract, should also consider, where applicable, the general duties ([section 8 of the Act](http://www.legislation.gov.uk/asp/2014/12/section/8)); technical specifications ([section 30 of the Act](http://www.legislation.gov.uk/asp/2014/12/section/30)); and charges for participation in the procurement process ([section 31 of the Act](http://www.legislation.gov.uk/asp/2014/12/section/31)).

**Specific rules for Care and Support contracts below £50,000**

Care and support contracts, or framework agreements, with a value below £50,000 are not regulated under the Act. As a matter of best practice a public body should however consider following a procurement process that is proportionate to the value of the contract.

**Light-touch regime**

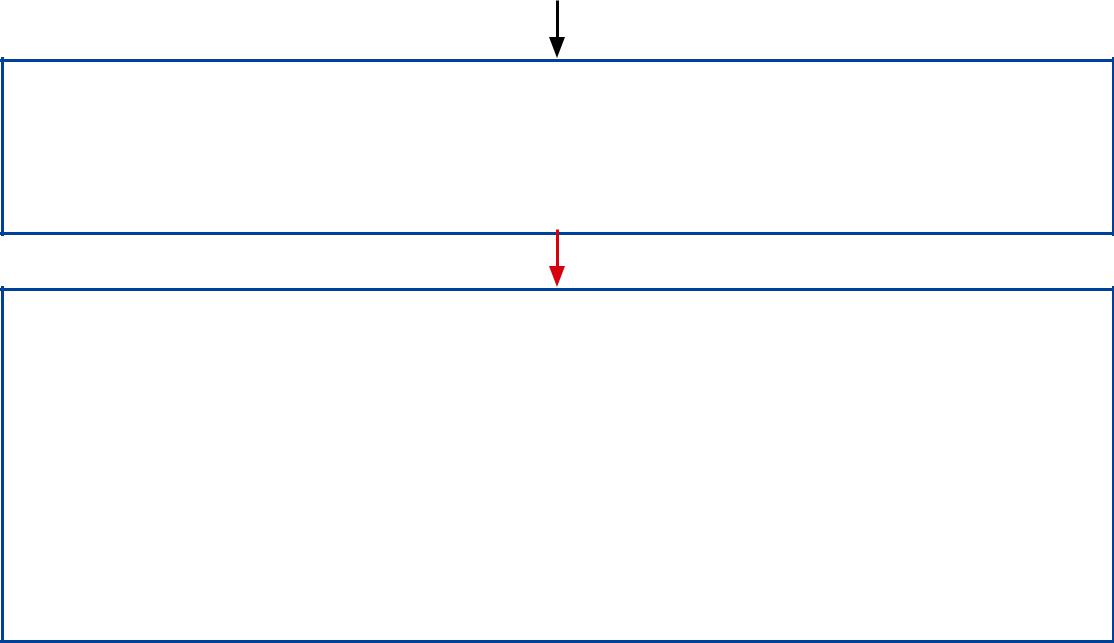
Procurement Officers should be aware that there are some other services covered by the ‘light-touch’ regime that are not health or social care. [Schedule 3 of the Public Contract (Scotland) Regulations 2015](http://www.legislation.gov.uk/ssi/2015/446/schedule/3/made) also describes those services. The ‘light-touch’ EU rules also apply to these other services for contracts above the threshold (i.e. above €750,000). For below that threshold any procurement of these services is regulated by [the Act](http://www.legislation.gov.uk/asp/2014/12/contents).

**FLOWCHART TO HELP DECISION MAKING FOR THE**

**CONTINUATION OF AN EXISTING SERVICE**

1. Analyse individual needs and intended outcomes to determine the type of service required and evaluate the existing arrangements for delivering the service.

* Involve people who use services and carers in defining their needs and desired outcomes and get their views on service improvement and continuity.
* Review information from people who use services and carers, contract management and service review, regulatory bodies and commissioning strategies to evaluate existing arrangements against best value principles.
* Assess the needs for improvement and service continuity.
* Consider available resources.

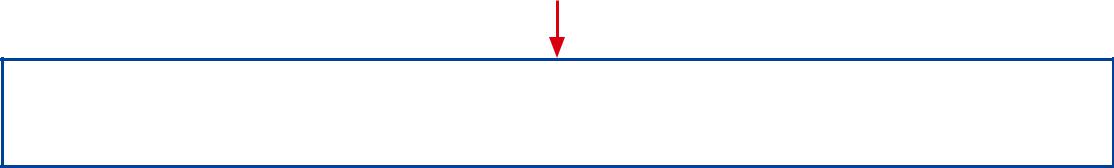


2. Consider the options for delivering the service.

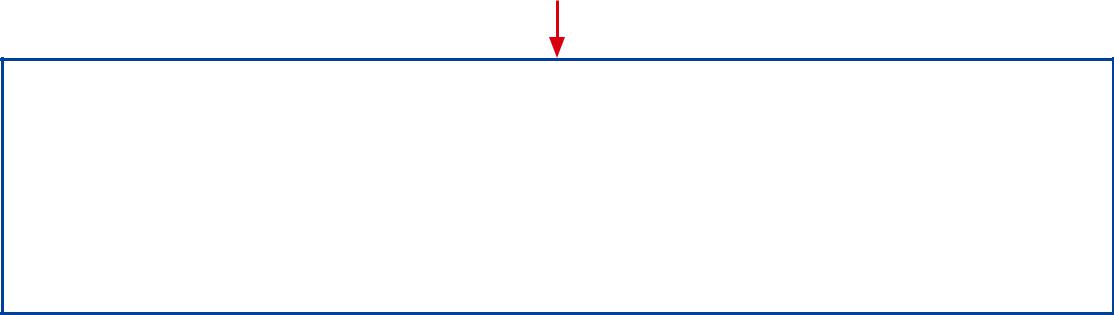
* Should the service be provided by means of another arrangement, for example in house?

1. Consider whether the TFEU fundamental principles and relevant legislation may require the contract to be advertised and awarded by competition.

* Is it possible to demonstrate that the contract is of no interest to service providers located in other member states?
* Is the total sum to be paid under the contract so low that service providers located in other Member States would not be interested in the contract?
* Is the service of such a specialised nature that no-cross border market of suitable service providers exists?



1. Do regulations and standing orders allow the contract to be awarded without competition.



1. Does analysis of the benefits and risks to service users and service delivery suggest that the contract should be renewed without competition.

* Does consideration of the impact that a change in service provision or provider will have on people who use services and carers, continuity or service, regulatory requirements, the quality and cost of the service, the market and the workforce suggest that the contract should be renewed without competition?
* A public body will want to consider the answers to all of these types of questions – and any other relevant considerations on a case-by-case basis – before reaching a decision about whether it needs to compete, or direct award, a health or social care services contract.

There is no discretion for a public body to directly award health or social care contracts that are equal to, or greater than, the EU-regulated threshold of €750,000 and which are regulated by [The Public Contracts (Scotland) Regulations 2015](http://www.legislation.gov.uk/ssi/2015/446/contents/made). See paragraph 8.8 for more details about the rules that apply at that level. A contract notice is required in all cases except where the circumstances described in [regulation 33 of The Public Contracts (Scotland) Regulations 2015.](http://www.legislation.gov.uk/ssi/2015/446/regulation/33/made)

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# APPENDIX 2 – Process and Reporting Requirements Summary

**With reference to Contract Standing Orders, the following reporting requirements should be followed for the award of a new contract1…**

| **Nature of contract** | **Estimated Contract Value2** | **Reporting requirement** |
| --- | --- | --- |
| * **Supplies** * **Services** * **Works** | **£1 to £4,999** | After having established that [**best value**](https://www.falkirk.gov.uk/services/council-democracy/policies-strategies/procurement/docs/Contract%20Standing%20Orders.pdf?v=202204041520#page=17) is being obtained for the Council, **Officers from the contracting Service should seek budget holder approval** before issuing a purchase order and entering into a contractual agreement.  No formal internal reporting is necessary before placing an order. |
| * **Supplies** * **Services** | **£5,000 to £49,999** | **PCS Quick Quote should be used to invite bids.** Following evaluation of the bids, **Officers from the contracting Service** must seek approval to award the contract from the **relevant Chief Officer3 (or officer with delegated authority).**  Successful and unsuccessful letters should be emailed to bidders to notify them of the outcome. Following agreement by the successful supplier(s), Officers must publish the award notice within **30 days** on PCS. Purchase orders can then be placed with the supplier(s).  The **Corporate Procurement Unit** (CPU) shall **extract award notice details from PCS** and report these to **Members (and the public)** via the Information Bulletin*.*  ***Note****:* t*he contract needs to be awarded within PCS to enable CPU to extract.*  **Where a decision has been taken not to use PCS Quick Quote,** approval to award the contract must be sought from the **relevant Chief Officer3 (or officer with delegated authority)** following the evaluation of the bids. Furthermore, where the value of the contract award is between £10,000 and £49,999 (or £10,000 and £249,999 for Works), it is the **responsibility of the contracting Service** to add the contract awarddetails to the [**Information Bulletin Report – Contract Award spreadsheet**](https://falkirk365.sharepoint.com/:x:/s/FC-INT-InformationBulletinReports/ET3ih_ZHdAFKjbCk18cVnZ0B6aFo5d4vmzeqBuACxnku9Q?e=ibJSlI) which can be accessed through the[**Information Bulletin Reports Teams Channel**](https://teams.microsoft.com/l/channel/19%3aFW7QXoeZAOnJ4_r5JjWIvvS2KBrV44mwsDKAVtnpKMI1%40thread.tacv2/General?groupId=11ee401f-aeb7-43f1-9ef1-159c25f319f9&tenantId=614a3a29-7253-4dd8-a5c0-4261e39f28d0). This will allow CPU to extract the data for reporting through the Information Bulletin.  *Note: It is important that data is only added to the Information Bulletin spreadsheet once the* ***contract award process has been completed****.* To request access to the Information Bulletin Teams channel, please contact [cpu@falkirk.gov.uk](mailto:cpu@falkirk.gov.uk). |
| * **Works** | **£5,000 to £249,999** |
| * **Supplies** * **Services** | **£50,000 to £499,999** | Following evaluation of submitted tenders or decision to call off from an external framework, approval to award the contract must be received.  The **authorised Service lead**, including Place Services, in conjunction with CPU where appropriate, must draft a report which is **approved by the relevant Chief Officer**3 permitting the contract award.  Following agreement by the successful supplier(s), purchase orders can then be placed with the supplier(s). The **procurement lead** should ensure that an **award notice is published** **within 30 days** on PCS.  The contract award details need to be included within the next publication of the Council’s Information Bulletin. The **procurement lead** should ensure that contract awarddetails are added to the [Information Bulletin Report – Contract Award spreadsheet](https://falkirk365.sharepoint.com/:x:/s/FC-INT-InformationBulletinReports/ET3ih_ZHdAFKjbCk18cVnZ0B6aFo5d4vmzeqBuACxnku9Q?e=ibJSlI) which can be accessed through the[Information Bulletin Reports Teams Channel](https://teams.microsoft.com/l/channel/19%3aFW7QXoeZAOnJ4_r5JjWIvvS2KBrV44mwsDKAVtnpKMI1%40thread.tacv2/General?groupId=11ee401f-aeb7-43f1-9ef1-159c25f319f9&tenantId=614a3a29-7253-4dd8-a5c0-4261e39f28d0). This will allow CPU to extract the data for reporting through the Information Bulletin.  ***Note****: It is important that data is only added to the Information Bulletin spreadsheet once the* ***contract award process has been completed****.* To request access to the Information Bulletin Teams channel, please contact [cpu@falkirk.gov.uk](mailto:cpu@falkirk.gov.uk). |
| * **Works** | **£250,000 to £499,999** |
| * **Supplies** * **Services** * **Works** | **£500,000 to £7.49m** | Before the procurement exercise can commence**, the Chief Officer3** of the contracting Service must **notify CPU** of their planned procurements. **CPU shall email** information onsuch procurementsto the **Executive** via the **Planned Procurement Bulletin (PPB)**. Any member of the Executive may, within 14 days of the date of circulation to them of the PPB, approach the relevant Chief Officer for further information if they consider that any of the planned procurements might be of significance. Following any such approach by a member of the Executive, the relevant Chief Officer shall consider if it is appropriate to refer the planned procurement to the Executive. Following on from this process, the Chief Officer will be authorised to start the procurement. The PPBs are circulated to the Executive in February, April, June, September and November. However, provision can be made for ad hoc PPBs if required by a relevant Chief Officer.  Following evaluation of submitted tenders or decision to call off from an external framework, approval to award the contract must be received.  The **authorised Service lead**, including Place Services, in conjunction with CPU where appropriate, must draft a report which is **approved by the relevant Chief Officer**3 permitting the contract award.  A **consultation report** must also be drafted and submitted to the **Chief Governance Officer** advising of the Chief Officer’s intention to award.  Following agreement by the successful supplier(s), purchase orders can then be placed with the supplier(s). The **procurement lead** should ensure that an **award notice is published** **within 30 days** on PCS.  The contract award details need to be included within the next publication of the Council’s Information Bulletin. The **procurement lead** should ensure that contract awarddetails are added to the [Information Bulletin Report – Contract Award spreadsheet](https://falkirk365.sharepoint.com/:x:/s/FC-INT-InformationBulletinReports/ET3ih_ZHdAFKjbCk18cVnZ0B6aFo5d4vmzeqBuACxnku9Q?e=ibJSlI) which can be accessed through the[Information Bulletin Reports Teams Channel](https://teams.microsoft.com/l/channel/19%3aFW7QXoeZAOnJ4_r5JjWIvvS2KBrV44mwsDKAVtnpKMI1%40thread.tacv2/General?groupId=11ee401f-aeb7-43f1-9ef1-159c25f319f9&tenantId=614a3a29-7253-4dd8-a5c0-4261e39f28d0). This will allow CPU to extract the data for reporting through the Information Bulletin.    *Note: It is important that data is only added to the Information Bulletin spreadsheet once the* ***contract award process has been completed****.* To request access to the Information Bulletin Teams channel, please contact [cpu@falkirk.gov.uk](mailto:cpu@falkirk.gov.uk). |
| * **Supplies** * **Services** * **Works** | **£7.5m and above** | Before the procurement exercise can commence**,** theChief Officer3 of the Contracting Servicemust report their proposed contract strategy, developed in conjunction with the **authorised procurement lead within CPU** or **Place Services,** to **Executive Members.**  This **Prior Consideration report** shall be discussed at a **meeting of the Executive** and after approval, the procurement can proceed.  Following evaluation of submitted tenders or decision to call off from an external framework, approval to award the contract must be received.  The **authorised Service lead**, including Place Services, in conjunction with CPU where appropriate, must draft a report which is **approved by the relevant Chief Officer**3 permitting the contract award.  A **consultation report** must also be drafted and submitted to the **Chief Governance Officer** advising of the Chief Officer’s intention to award.  Following agreement by the successful supplier(s), purchase orders can then be placed with the supplier(s). The **procurement lead** should ensure that an **award notice is published** **within 30 days** on PCS.  The contract award details need to be included within the next publication of the Council’s Information Bulletin. The **procurement lead** should ensure that contract awarddetails are added to the [Information Bulletin Report – Contract Award spreadsheet](https://falkirk365.sharepoint.com/:x:/s/FC-INT-InformationBulletinReports/ET3ih_ZHdAFKjbCk18cVnZ0B6aFo5d4vmzeqBuACxnku9Q?e=ibJSlI) which can be accessed through the[Information Bulletin Reports Teams Channel](https://teams.microsoft.com/l/channel/19%3aFW7QXoeZAOnJ4_r5JjWIvvS2KBrV44mwsDKAVtnpKMI1%40thread.tacv2/General?groupId=11ee401f-aeb7-43f1-9ef1-159c25f319f9&tenantId=614a3a29-7253-4dd8-a5c0-4261e39f28d0). This will allow CPU to extract the data for reporting through the Information Bulletin.  *Note: It is important that data is only added to the Information Bulletin spreadsheet once the* ***contract award process has been completed****.* To request access to the Information Bulletin Teams channel, please contact [cpu@falkirk.gov.uk](mailto:cpu@falkirk.gov.uk). |

**1 New contract**

Once a supply, service or work requirement has been identified, existing contracts should be assessed to determine their suitability before embarking upon a new procurement exercise, e.g. Quick Quote, invitation to tender, or call off from an existing ‘compliant’ framework accessible by Falkirk Council.

**2 Estimated Contract Value**

The estimated contract value determines which procurement route to follow, i.e. quotation or tender process. The estimated contract value (aggregate purchase value) is calculated as the value, excluding VAT, over the entire term of the contract (across the whole Council) including all permitted extensions and variations, e.g. if the contract term is three years, the estimated contract value will be three times the annual value. The duration of a Quick Quote contract should be no longer than four years.

**3 Chief Officer**

The Council’s Chief Officers are the Chief Executive, the Directors of Services and other officers holding posts recognised by the Council as having chief officer status including Heads of Service and Depute Chief Officers.

**If you have any questions regarding the above, please contact** [**cpu@falkirk.gov.uk**](mailto:cpu@falkirk.gov.uk)**.**