

## Pan Scotland Policy Forum Consolidated Response to the Policy Handbook & Participation Agreement Consultation Process

### Participation Agreement - Response Details

1. Clarity is required regarding the operation of the Participation Agreement - is it only required to be agreed once between each institution and a framework contractor or every time a mini competition is undertaken?
2. Separate emailed advice has been provided by Procurement Scotland regarding the order of precedence for resolving any conflict between the documents; is it contained in the framework agreement?

#### **Page 1 & top of Page 2**

1. Definitions have not been provided so it is unclear whether the title of 'public sector body' covers APUC as well as the FE & HE institutions, the assumption being it does. Has 'Authority' been defined anywhere?

#### **Page 2, point 4**

1. What does this paragraph actually mean? What is the 'Delivery Commitment?' Does it mean that goods cannot be ordered for same day delivery? It should be noted that delivery addresses cannot be fixed into contract documents.

#### **Page 2, point 5**

1. The clauses referred to have not been provided so we are unable to understand their meaning and applicability

#### **Page 3, point 9**

1. Does the main framework agreement state the detailed requirements i.e. above and beyond the details to be entered here?

#### **Page 3, point 10**

1. Is there guidance/details covering this i.e. timeframes for amending, address to where the Notice should be sent, required signatories etc?
2. Comment - listings i.e. embedding delivery addresses/ PO numbering changes into contract defeats benefit of ePS

#### **Page 4**

1. If the document is to be web enabled, is an electronic signature acceptable?

## **Policy Handbook - Response Details**

### **Title**

1. as proposed and discussed at the last Policy Forum, the document needs renaming to e.g. "Scottish Policy Framework" to reflect that it is a framework for standards and behaviours across the Scottish public sector, as detailed in paragraph 1 of the document. The revised title would also ensure that there is no confusion between any internal documentation e.g. staff handbook, procurement manual, various toolkits etc and the policy framework/handbook

### **Section 1**

1. first URL does not refer to the Policy Forum
2. add to footnote "as necessary to each organisation's governance or policy or its legal obligations"

### **Section 2**

1. it is not clear in the Handbook which are 'principles/policy content' and which are procedures. Procedures should be at local level to fit standing instructions etc.

### **Section 3.1**

1. para 1: third parties - should be defined given the case law on shared service vehicles with partial private investment
2. diverse range of contracting authorities and shared service agenda - add "including any outsourced procurement through other contracting authorities or joint/collaborative procurement"
3. para 3: will there be a manual for major IS projects per the OGC former CCTA project management toolkit?
4. para 4: after "on their behalf, they should" add "procure these as formal 'service contracts' under EU law including in the terms an obligation on provider to"
5. para 5: normal commercial disciplines - these really ought to be scoped in the Handbook and should be spelled out as above e.g. service definition, roles and responsibilities, risk and liabilities, fees and performance management rather than a vague statement
6. para 5: this should make clear the variety of contacting arrangements as shared services come into play and not assume one procurement structure per organisation. 'Normal commercial disciplines' ought to be defined e.g. service definition, roles/responsibilities, risk/liabilities, fees and metrics/performance management stated.

### **Section 3.2**

1. PPRB, Delivery Board, and Procurement Scotland (both in SPD and CoE sections) are not mentioned

2. replace the word "organisations" with "contracting authorities", "represented" with "included" and add "appropriateness of before "development"

### **Section 3.3**

1. the issues in this paragraph have been raised at the Policy Forum, Sub Group, and by the FE sector rep and APUC previously - they will be unattainable for the majority of colleges where no procurement function exists and so mandating it across the board is totally unrealistic. The addition of the text previously advised "The diagram represents a mature procurement function and as a result may not be applicable to all organisations" should alleviate the majority of the FE sector's issues. However, there is still an issue that the text relates to individual organisations and that a grouped approach e.g. sharing procurement resource between one or more colleges or universities will not be acceptable, although it has a proven record of success. The application of the Handbook and monitoring of this should be stated e.g. review by Audit Committee
2. internal policies such as financial regulations/handbooks need to be updated to reflect this procurement handbook - where is that stated?
3. replace "organisations" with " within an organisation (contracting authority)"
4. CEO Portfolio Holder - a more generic term such as 'board level owner of function' would be more appropriate and applicable across the sectors
5. add to the Organisational Owner Role box, after "skilled resources" words "and that function is recognised in updating organisational policy"
6. organisations should be encouraged to recognise the procurement function in updating any other policy e.g. financial, HR/skills, audit

### **Section 3.4**

1. there is a particular concern re section 3.4 'role of the procurement function', in which it is noted that 'each organisation' is expected to have or to have access to a dedicated procurement function. It would be extremely useful if a de minimis level was recommended i.e. spend threshold set to determine whether a procurement professional should be employed or procurement expertise assessed. The addition of the text previously advised "The diagram represents a mature procurement function and as a result may not be applicable to all organisations" should alleviate the majority of the FE sector's issues. However, there is still an issue that the text relates to individual organisations and that a grouped approach e.g. sharing procurement resource between one or more colleges or universities will not be acceptable although it has a proven record of success. It is understood that the Policy Forum rejected a suggestion by the FE sector representative to that body, for groups of colleges, e.g. the Edinburgh and Lothians Colleges Group, or the rural colleges group, to have a joint inter-college procurement function. The costs involved in each of the 43 colleges having a dedicated procurement function with an appropriately remunerated 'Head of Procurement' run counter to the quest for Public Value.

With a diverse range of contracting authorities and shared service agenda, add to 'have access to' the words "including any outsourced procurement through other contracting authorities or a form of joint/collaborative procurement"

The responsibilities of a Head of Procurement function and its relation to CoEs is not stated.

2. para 1: add after "level" the words "financial expenditure and policy autonomy/governance of"
3. para 1: HOP responsibility - are these stated in the Handbook eg full procurement cycle or just EU compliance?
4. add to footnote "and staff with p/t procurement roles"
5. add " encourage participation of users/feedback into relevant advisory groups (UiGs)"
6. add after "competencies" the words "in accordance with good staff development practices"
7. mature - some of the above list are not the 'de minimus' so maybe both lists should be reviewed again
8. competitions- add "including appropriate complex procedures eg competitive dialogue"
9. performance- add words " including BPIs and staff development"

### **Section 3.5**

1. suggest applying a value to prevent considerable time being spent on low value contracts. Wider policy requirements may include funding body constraints/obligations
2. line 2: 'enter into contracts' - does this include purchase orders? If not, define?
3. the roles are as defined in 'mature' above
4. bullet point 4: output based - add words "or business-relevant"
5. bullet point 6: wider policy requirements- add words "including funding body obligations"
6. bullet point 7: tax advantages - what about VFM if options are not cost-neutral on tax?
7. add to list "managing FOI requests on procurement matters in accordance with organisational policy"

### **Section 3.6**

1. para 1: formulating the requirement - add words "or the budget from which the requirement will be purchased"
2. bullet point 1: users' needs - add words " including identifying minimum and desirable elements"
3. bullet point 3: add to "funding is in place" the words "and be aware of any funding body expectations"

4. bullet point 4: add "or tender" between "contract" and "specifications"
5. last para: add "prior to" before "during the procurement"

### **Section 3.7**

1. para 1, line 2: is this for 'officers' or 'staff or for anyone involved in procurement in any way?
2. para 1, line 2: "add-value" before "investment"
3. para 2: "and reward" before "strategies"
4. para 3: for different - add words "with or" before "for"
5. para 4: spelling error - 'compliment' should read 'complement'.
6. para 5: add "AUPO" after "SOPO" and consult with them
7. staff development and transferable skills is part of a wider HR agenda and the Handbook should refer to this

### **General Comment:**

In section 3.7, 'procurement skills', it is noted that a Scottish Procurement Competency Framework has been developed and that a programme of professional training and development is to be established. While Scotland's colleges has an ethos of CPD for its staff, they are currently in the throes of implementing the outcome of the Review of Scotland's Colleges which called for further development of CPD for all staff, and are looking at the resources this will require. The availability of procurement skills development for staff will complement CPD provision for staff.

Staff development and transferable skills are on the HR agenda of a number of universities and some of the skills identified are not just 'procurement-related'

### **Section 3.8**

1. para 3: procurement risk - is there guidance in Handbook on assessing procurement "risk"?
2. para 3: minimum standards of governance - are 'minimum' standards published in this Handbook?
3. para 4: use of resources - add words "and may seek assurances on compliance with public procurement law"
4. para 5: Audit Scotland do not cover universities
5. clarification is needed on how audit will assess the suitability of what is put in place and on how to assess 'procurement risk' upfront. The issue of risk transfer to CoE /Procurement Scotland-led contracts should be clear e.g. for an Audit Committee right of access

### **Section 4**

1. 1<sup>st</sup> bullet: add "WTO obligations" after EC Treaty

2. 4<sup>th</sup> bullet: add "other UK or Scots law which refer to public procurement"

### **Section 4.3**

Will SPD or Procurement Scotland provide a link to relevant cases and interpretation eg via SPPN or on website/third party service?

### **Section 4.5**

1. line 1: add date to the Regs
2. line 4: add after "authority" replacing "or" with the words "in addition to"

### **Section 5**

1. line 1: add after "taxpayer" the words " or funding body allocating the award of public funds for the taxpayer"
2. para 2: user's requirement - add words "commensurate with the business needs of the organisation/ funding body"
3. para 3: whole life cost - add words "including any costs associated with sustainability or social responsibility and any related process efficiency"

### **General Comment:**

Scotland's colleges are keenly aware of the need to achieve value for money (Section 5), and as such have developed a number of collaborative working partnerships (the patterns and methodologies of which are the subject of a current ASC research project), many of which involve local arrangements (Section 7). Colleges have strong ties to their local communities, and universities have a long history of pan-UK collaborations and these may be better VFM for sector-related requirements; such collaborations should not be excluded. Procurement requirements which remove the option of local agreements could be problematic.

### **Section 6**

1. reasons - add words " compliant with the law"
2. para 3: self-employed - add "and third sector"
3. para 3: proportionate to - add "the risk in"

### **Section 7**

1. para 1: leverage - add "or encouraging competition or innovation in markets"
2. para 1: best practice - add "in buying and supplying"
3. para 3: local arrangement - add "or key requirements were not covered in the collaborative specification of service"
4. para 5: public sector - add words "although care must be taken not to skew limited markets or discourage competition especially from smaller locally based providers"
5. sector- add words "after due consultation to ensure needs can be met at this level of aggregation"

6. region - add words " or other affinity group/shared services not necessarily geographical or pan-sector"
7. footnote 10 - why not relate to EU thresholds?
8. best practice- what about other sectors?

### **General Comments:**

Clarification is needed regarding access by other sectors to any of the collaborative Category B contracts/frameworks put in place by a CoE. It is understood that CoEs can include in their OJEU Contract Notices that sector's Cat B requirements, but also open up access to the framework agreement by other sectors. How will these be classed i.e. Cat B1s? How are these then different from Cat A procurements? Text in this section does not reflect what now appears to be happening. In addition, how will these Cat B1 type arrangements operate e.g. in terms of applicability of a sector's Ts&Cs (which are tailored for that sector) to other sectors etc?

Text in the Cat B section should be added as appears under Cat A i.e. "unless there are compelling and objective business reasons to the contrary".

Where the Cat B/Cat A contract has not taken account of genuine organisational requirements it should be possible to add to the option for local arrangement the words 'or key requirements were not incorporated into collaborative specification of service or deliverables actually procured'.

### **Section 8.1**

1. para 5: after "bidding" add "competitively"
2. para 5: goods - add before words " with specified quality/delivery on"

### **Section 8.2**

1. repetition – suggest just referencing the relevant section of Handbook re advertising portal

### **Section 8.3**

1. why not reference the Seven Standards of Public Life and the CIPS Ethical code?

### **Section 8.4**

1. add to end "without undue influence of specific suppliers, sectors or competitors in accordance with transparency/accountability"

### **Section 8.5**

1. final bullet: enquiries- add " including meeting FOI obligations within organisational policies"
2. add new bullet: "encourage and demonstrate Standards of Public Life and CIPS ethical code"

## **Section 9**

1. generally, this section has too many external documents and guidance to refer to.
2. delete "consumers"
3. para 2, final sentence: particular contract - add sentence "Although organisations are also encouraged to publish these policies under FOI."

## **Section 11**

1. works - if not goods or services need to explain. What about the research purposes of FHE?
2. solutions - add words "Although for highly technical equipment reference to standards or benchmarks is also important"
3. refer to research purposes of further/higher education as an example

## **Section 12.1**

1. written delegated authority - from whom?
2. more positive statement needed on how authority is to be given out, managed, recorded and organized. Clarity is needed about who designates the authority, and how in small teams the role of separation works e.g. central approval of invoices, local order/receipt

## **Section 12.2**

1. maybe impossible for small research teams/depts. Can orders be placed by budget-holder if the procurement route/award is approved by a 'procurement officer' and after a formal tender?
2. clarity needed - can you order and receipt but not approve-to-pay?

The guidance has to reflect the reality of devolved multi-site procurement for research and the need to empower/develop and support local admin/academic staff.

Procurement tools including eTender/Quote will make this a routing issue only.

## **Section 12.3**

1. demand - insert words before " correct and due"
2. special approval - by whom?

## **Section 12.4**

1. volume - add words "or eTender"
2. objective business- add "and VFM and technical e.g. interfacing issues"

## **Section 13.1**

1. add to end "and this is without charge to participating organisations in Scotland."
2. either free of charge or at a reasonable cost/VFM for participating.

## **Section 13.2**

Comment: when will the web portal actually be available?

### **General Comment:**

Given that some colleges are small organisations, there is some concern that the proposals in section 13.2 on performance measurement and reporting could prove burdensome, if National Procurement Best Practice Indicators become more than a guide against which colleges can measure their performance against national trends.

Procurement BPIs related to these here are being tested for the UK HE sector and universities must be able to benchmark with peers, especially in research-led area.

## **Section 13.3**

1. should the Toolkit not have a section on collaboration and use of CoEs?

## **Section 13.4**

1. after two references to 'Manual', insert the URL
2. £5million - elsewhere the value refers to £2m for the Construction Procurement Manual – which is correct?
3. mission critical - by whom?

## **Section 14.3**

Annex A text does not refer to Procurement Scotland by name.