

PUBLIC PROCUREMENT POLICY FORUM THURSDAY 8 NOVEMBER 2007

Attendees:

Paul McNulty, Scottish Procurement Directorate (Chair)
Jessie Laurie, Scottish Procurement Directorate
Steve Patterson, Scottish Procurement Directorate
John Cosgrove, Fife Council
David Wares, Scottish Prison Service
Colin Elliott, Stirling University
Helen Foster, Advanced Procurement for Universities and Colleges
Lesley Horne, Association of Directors of Social Work (ADSW) Contracts and Commissioning Group
David Taggart, NHS National Services Scotland
Tommy Mann, Chief Fire Officers Association (Scotland)
Gordon Beattie, Greater Glasgow and Clyde NHS
Neil Dickson, VisitScotland
Barry Graham, Central Government Centre of Procurement Expertise
Liz Thomson, National Procurement Centre of Expertise
Ashley Gould, Highland Council

Apologies:

Dorothy Cowie, Scotland Excel
Calum Elliot, National Procurement Centre of Expertise
Jim Miller, NHS National Services Scotland
Ian Kelly, Strathclyde Police
David Alexander, Stevenson College Edinburgh

Welcome and Apologies

1. Paul McNulty opened the meeting and thanked members for attending. He confirmed that apologies had been received on behalf of Dorothy Cowie, Calum Elliot, Jim Miller, David Alexander and Ian Kelly.

Membership and Terms of Reference of the Policy Forum

2. Paul McNulty outlined the proposed terms of reference for the Policy Forum and core membership and sought comments from members. Gordon Beattie stressed the importance of sector involvement in the Forum in addition to representation from each Centre of Expertise. He suggested that the terms of reference should be amended to underline the Forum's role in ensuring that policy developments are effectively communicated to all procurement organisations. **Secretary's note: amended terms of reference are circulated with this minute.**
3. Barry Graham proposed and it was agreed that sub-groups of the Forum would be established where appropriate. The membership of sub-groups would be open to sector procurement staff to capture expertise on particular policy issues and to allow wider engagement with relevant sectors.

4. It was agreed that the Scottish Procurement Directorate (SPD) would in future publish one set of Scottish Procurement Policy Notes (SPPN) rather than adapting policy notes for different sectors. Wherever possible, SPPN would be cleared in draft by the Policy Forum and carry an endorsement to that effect. SPPN would in future be limited to policy developments and would not be used to disseminate more general information, e.g. relating to conferences/events. SPD would review published SPPN and draw up an index of “live” policy notes. **Action (SPD): SPD to introduce a single set of policy notes and a new series of information notes, and to draw up an index of “live” policy notes.**
5. It was agreed that minutes of the Policy Forum would be published on the SPD website. Any queries resulting from publication of the minutes would be discussed with sector representatives. Members agreed that the Forum would meet on a quarterly basis and would also deal with policy issues in correspondence.
6. Paul McNulty explained that a separate Best Practice and Benchmarking Forum would be established to facilitate the sharing of good procurement practices and processes across all sectors.

Update on current policy issues

7. Paul McNulty said that SPD was currently consulting on draft amendments to the Public Contracts (Scotland) Regulations 2006 and Utilities Contracts (Scotland) Regulations 2006. The draft amendments clarified that EC Treaty principles require not only adequate publicity of the contract to be awarded, the contract itself must also be awarded in line with Treaty principles. The consultation was due to end on 21 December.
8. One respondent to the consultation had suggested that the requirement on contracting authorities to ensure adequate publicity of lower-value contracts should be subject to a threshold. Introduction of a threshold would create certainty. It would, however, be difficult to decide on an appropriate level.
9. Members advised that the threshold for competition adopted by different organisations and/or sectors varied and that it would be extremely difficult to agree on a limit. Members considered that any threshold set by Scotland could be challenged in court, given that the European Commission had declined to set a threshold. Decisions on competition should instead be based on the availability of a market for the commodity/service in question.
10. Paul McNulty said that the European Commission had circulated a draft regulation modifying the application thresholds of Directives 2004/17/EC and 2004/18/EC and providing the corresponding values in Pound Sterling. The new thresholds would come into effect on 1 January 2008. **Action (SPD): SPD to circulate draft regulation to members.**
11. The European Council was expected to formally adopt a new Remedies Directive in the near future. SPD would be taking a fresh look at the remedies available in the Public Contracts (Scotland) Regulations 2006 and Utilities Contracts (Scotland) Regulations 2006 and considering options for strengthening the system. SPD would consult members on the options at the Forum’s next meeting. **Secretary’s note: the Remedies Directive was adopted on 15 November and will be published shortly.**

12. OGC had circulated outline guidance on the competitive dialogue procedure and offered to share this with members. **Action (SPD): SPD to circulate outline OGC guidance. Secretary's note: OGC are currently developing the outline guidance referred to. The draft guidance will be circulated in the New Year.**
13. SPD had produced guidance on community benefits clauses following evaluation of five pilot projects. The report would address practical issues relating to the inclusion of social clauses in contracts. It would be published in the New Year by the Cabinet Secretary for Finance and Sustainable Growth. SPD hoped to finalise the report shortly and would send it to members for their comments. **Action (SPD): Jo Mitchell to circulate the report and guidelines on community benefits clauses.**
14. SPD would be developing a sustainable procurement action plan which would incorporate standards for the wider public sector. Members advised that it would be helpful to have a clear definition of sustainable procurement. Some organisations, for example the Scottish Prison Service, already had sustainable procurement groups within their own organisations. Paul McNulty said that it would be useful to tap into that expertise. SPD would circulate a note to update members. **Action (SPD): Dave Cook to circulate note on the sustainable procurement action plan.**
15. SPD had issued guidance on how EU public procurement rules impact on the provision of shared services (SPPN 1/2007: <http://www.scotland.gov.uk/Resource/Doc/1265/0051648.pdf>). He said that he was meeting with the Improvement Service to discuss the pilot shared services project in Orkney and would be interested in any practical examples that members could provide. **Action (members): members to provide practical examples of shared services.**
16. SPD had issued guidance on the use of invoice discounting and factoring by suppliers to the Scottish public sector. SPD would be interested to receive feedback on how it operates in practice. Helen Foster advised that the most recent contracts issued by Advanced Procurement for Universities and Colleges (APUC) included the recommended clause on assignment of debt. **Action (members): members to provide feedback on any practical issues regarding the new guidelines.**

Priority areas for policy development

17. Members suggested the following priority areas for policy development:

Freedom of information

- SPD to circulate existing FOI guidance. Forum to consider whether it remains fit for purpose. **Action (SPD and members): SPD to circulate existing guidance. Members to provide comments/suggestions.**

Working with Small and Medium Sized Enterprises (SMEs)

- How to frame PQQs, ITT and evaluation criteria in a way which does not discriminate against SMEs. Publication of contract opportunities. Encouraging larger suppliers to engage with SMEs as sub-contractors. Implications of aggregated contracts.

Local produce

- Whether/how it is possible to buy local produce within EU procurement rules. Paul McNulty advised that SPD had issued guidance on sustainable food procurement. A number of pilots were underway, including in East Ayrshire. SPD planned to produce revised guidance in the first half of 2008. **Action (SPD and members): SPD to circulate existing guidance. Members to comment.**

Corporate Social Responsibility (CSR) scoring

- The Commission for Racial Equality (CRE) has produced guidance on procurement and the equality duties. It would be helpful to have a policy steer from SPD. **Action (SPD and members): SPD to circulate existing CRE guidance. Members to comment.**

Operational framework agreements

- Best Practice. How to operate frameworks effectively in a collaborative environment. How to conduct mini-competitions. To be progressed by a sub-group of the Forum.

Clarification and negotiation

- What purchasers can say to suppliers by way of clarification pre-tender and negotiation post-tender. **Action (SPD and members): SPD to circulate existing guidance on dialogue with suppliers. Members to comment.**

Procurement Policy Handbook

18. Paul McNulty said that purpose of the Procurement Policy Handbook was to provide a standard framework of rules and behaviour applicable to all public sector procurement organisations in Scotland. The draft handbook was based on the text of the Scottish Public Finance Manual. He invited members to comment on the text of the draft handbook. **Action (members): members to provide comments on the text of the draft handbook by end November.** A working group would be established to progress the handbook.
19. Paul McNulty invited general comments on the draft handbook. Members commented that the handbook would have to recognise that individual local authorities are subject to the statutory duty of Best Value. The handbook should also include policy statements on partnerships and shared services. It was important to include individual organisations when describing the procurement policy landscape. The handbook should refer to the National Operational Standards for Procurement with Care. The definitions of Category A – C contracts and text on eProcurement Scotland should be revised.

SPD

November 2007