

# PROCUREMENT POLICY

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## **PROCUREMENT POLICY**

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### **1.0 INTRODUCTION**

- 1.1 The Procurement Policy establishes the framework for procurement that applies to the acquisition of property, buildings, building services, and maintenance work.
- 1.2 The particular characteristics of the types of procurement that are the subject of this policy are the sizable budgets involved, the range of activities, and the relative complexity of the contractual arrangements. The subject is further complicated by the inclusion of construction partnering, to improve dispute resolution; and by the acceptance that best value cannot be measured by price alone. The overriding principle that applies is that probity and accountability are paramount, and that the Association has to be sure that its systems protect these and deliver value.
- 1.3 Probity is the concept of fairness, transparency, and accountability, which ensures that an organisation obtains (and can be seen to obtain) the maximum benefits for its declared objectives, operating within the law and within the rules of its legal constitution.

### **2.0 PURPOSES OF POLICY**

- 2.1 To allow strategic planning and review of the effectiveness of the development, regeneration and planned maintenance processes. This is carried out in relation to the stated objectives in the Development Policy Statement, Property Services Policy and Procedures, and Wider Role Policy.
- 2.2 To provide a framework for departmental procedures consistent with the Association's Internal Management Plan and Financial Regulations.
- 2.3 Promoting equality in accordance with the Association's Equality and Diversity Policy; encouraging diversity in the Association's supply chain; and addressing respect for people issues in the construction industry.
- 2.4 Promotion of sustainable development.
- 2.5 To establish procedures for the appointment of consultants and award of contracts by the Development and Technical Sub Committee, as required by its remit to make a decision (identified in the Internal

Management Plan), and for development staff to follow in obtaining and/or preparing reports for other Sub Committees.

2.6 To ensure compliance with laws and regulations.

### **3.0 SCOPE OF POLICY**

3.1 This Procurement Policy applies to all building contracts and procurement actions in relation to building projects undertaken by the Association and requiring approval by the Development and Technical Sub Committee. It shall apply to each expenditure of funds by the Association in relation to such procurement, regardless of the source of funds. The term "procurement" as used in this Procurement Policy includes building contracts, professional appointments, and other purchase orders used to procure the following:

- a) planned maintenance projects;
- b) other work to the Association's stock where the value of the work exceeds £15,000;
- c) development projects;
- d) regeneration projects and Wider Role projects and activities;
- e) shared ownership provision/projects; and
- f) professional appointments in relation to the purchase and sale of land and buildings.

3.2 The following shall not be governed by this Procurement Policy:

- a) the purchase and sale of land and buildings;
- b) memoranda of understanding and development agreements; and
- c) procurement and contracts that are not within the remit to make a decision or recommendation of the Development and Technical Sub Committee (as identified in the Internal Management Plan).

3.3 In the event of a conflict between this Procurement Policy and any applicable law or regulation, the law or regulation will prevail.

### **4.0 OPERATION OF POLICY**

4.1 The Procurement Policy is at the apex of a hierarchy of documents in the Development Manual. It sets the policy framework in which the

following documents provide detailed operational and procedural requirements:

- Procedures for Appointment of Consultants and Contractors;
- Procedures for Value Based Selection of Consultants;
- Procedures for Value Based Selection of Contractors;
- Partnering Policy;
- Procedures for controlling variations to specifications and costs in development contracts;
- Defects Policy;
- Health & Safety: The Construction (Design & Management) Regulations 2015; Policy and Procedures;
- Post Completion Review Policy;
- Procedures for dealing with Claims and Outstanding Actions;
- Collateral Warranties Policy;
- General Conditions for Building Contracts; and
- The Design Brief.

## **5.0 PROCUREMENT POLICY**

5.1 It is important that the Association sets a clear brief for each project as the availability of briefing material informs all stages of procurement, and it is a policy requirement that one is issued. The brief should incorporate the Association's overall objectives and general requirements for consultants and contractors, and be sufficient for the application of value based selection procedures. For larger or more complex development projects the brief will take the form of a strategic brief and thereafter it will be developed into a detailed project brief by the lead consultant in close consultation with the Association. Alternatively a separately commissioned feasibility study may serve as the brief for the next stage. Whilst the strategic brief is likely to be issued by the Association, the project brief may be issued by the architect or lead consultant, and validated by the project team. This process may be streamlined for smaller environmental or refurbishment projects; and further simplified for single trades, planned and cyclical maintenance contracts. The Planning & Research Manager or Property Services Director as appropriate have authority to issue and/or approve the brief for each project. A checklist for the contents

of a project brief is provided as **Appendix 1**, and this may also identify key performance indicators (KPIs) and, where appropriate, targets for project performance.

- 5.2 In practice the Association's standard briefing documents are likely to form the basis of most briefs. These are the Design Brief and the Policy on General Conditions for Building Contracts. Both documents should be supplemented by project specific information when appropriate. The Design Brief is a policy document in itself and although responsibility for preparing briefs lies with the Property Services Director or Planning & Research Manager, deviations from the Design Brief in new build developments should be reported separately to the Development and Technical Sub Committee.
- 5.3 Development project briefing will be carried out in accordance with the flow chart in **Appendix 2**, which indicates key events in the project briefing process. This may be streamlined for smaller environmental, refurbishment or planned and cyclical maintenance projects.
- 5.4 The Association should identify, within a framework for risk management, the key risks that it faces when undertaking projects. Obtaining construction services involves risks that must be clearly identified and, when appropriate, arrangements should be made to manage or transfer these risks and to investigate their effects.
- 5.5 The Association's commitment to equal opportunities must be demonstrated. Consultants and contractors working for the Association are to be required to honour the Association's needs in respect of staffing, customer satisfaction, and equalities. Subject to questions that may be asked, for example when using the European Single Procurement Document (ESPD) or Public Contracts Scotland "Quick Quotes", these issues can be considered during the procurement process. Indicative requirements for building contracts are included in the policy on General Conditions for Building Contracts.
- 5.6 The Association is committed to continuous improvement and value for money. The policies and procedures for selecting consultants and contractors establish a balance of quality and price as the normal selection process. Best value techniques that challenge what the Association does, how it does it, and when possible compare the Association's performance against external benchmarks should be developed. The basis for this is the process of performance review set out in the Post Completion Review Policy.
- 5.7 There is a specific Partnering Policy, which requires that Non Binding Partnering Charters are entered into for all construction projects, except when the main contract itself provides for multi-tiered dispute resolution (partnering will only not be implemented if there is good reason as determined by the Development and Technical Sub Committee). In order for construction partnering to achieve requisite

standards of probity the initial selection of contractors and consultants for partnering is normally required to include a formal tender process.

## **6.0 THE FRAMEWORK FOR CONTROL**

- 6.1 The Association should have clear control systems for procurement. Where tenders are sought the procedures to be followed are set out in the Procedures for Appointment of Consultants and Contractors, Procedures for Value Based Selection of Consultants, and Procedures for Value Based Selection of Contractors.
- 6.2 Payment to contractors, when contracts are in place, should be on the basis of valuations or certificates as appropriate to the form of contract, issued by independent consultants; unless provided for otherwise in the contract, eg. In measured term contracts.
- 6.3 Payments to consultants should be on the basis of invoices submitted, and should be in accordance with any provisions for staged payments set out in the consultant's letter of appointment.
- 6.4 All commissions and appointments must be made in writing. In the case of consultants these should normally be on the basis of the letters set out in the Policy for Appointment of Consultants and Contractors and/or standard forms published by the relevant professional bodies (either may be varied by the Property Services Director or Planning & Research Manager). In instances when consultants are appointed to carry out studies, produce reports, or provide training or presentation material of a specialist nature, there is no requirement for conditions of appointment to be formally and explicitly confirmed in equivalent detail. However there should still be a written confirmation of the appointment, and work exceeding £5,000 in value must not be instructed on this basis. All appointments must be reported to the Development and Technical Sub Committee.
- 6.5 Contractors being appointed to carry out work exceeding £15,000 in value are to be appointed on the basis of a written building contract. No contracting company is to be appointed to work with an aggregate value of more than £15,000 in any one financial year without there being a written building contract in place. In the event that this requirement is to be varied the proposal to do so must be reported to the Development and Technical Sub Committee with justification for the recommendation, and approval obtained.
- 6.6 All staff and committee involved in procurement are required to declare interests. Any consultants involved in the selection of contractors on behalf of the Association must also be required to declare any conflicts of interest.

- 6.7 The Association will ensure that it complies with the Procurement Reform (Scotland) Act 2014 and its corresponding regulations, and with the EU Directive on Public Procurement; particularly with respect to procurement of consultants and contractors. Tendering opportunities should receive adequate publicity regardless of whether regulations apply (in practice this will normally involve advertising on the Public Contracts Scotland website).
- 6.8 Electronic procurement, including full electronic communication, shall be implemented when necessary to meet statutory requirements.
- 6.9 The number of bidders in a competitive selection process for consultants and contractors must be sufficient to ensure genuine competition. A minimum of 5 candidates (consultants and contractors) should normally be invited to tender at appointment stage. The number actually available to be invited to tender will depend on how many candidates meet the Association's minimum standards, but the intention should be to invite 5 or more. This may be reduced to 3 if appropriate for the award stage of a 2 stage selection process. The minimum requirement for being required to tender shall be satisfactory completion of the Association's standard form of prequalification (PQQ) and provision of generic company information, or completion of the ESPD, or participation in Public Contracts Scotland "Quick Quotes". Normally criteria for exclusion will include where a bidder has been convicted of a criminal offence, act of misconduct, failed to pay tax etc. To avoid the need for multiple pre-qualifications, development staff will hold a list of qualified companies.

## **7.0 IMPLEMENTATION – APPOINTMENT OF CONSULTANTS**

- 7.1 As client the Association will assume responsibility for the project, including the selection and appointment of the team of consultants and payment for services commissioned. The Development and Technical Sub Committee should receive reports from the Property Services Director or the Planning & Research Manager as appropriate about the cost of consultancy services. Where appropriate the appointment of consultants will be approved by the Development and Technical Sub Committee (refer to Appendix 2 of the Internal Management Plan).
- 7.2 A principal designer will be appointed at an early stage. Reference should be made to the Health and Safety (the Construction (Design and Management) Regulations 2015) Policy and Procedures. Project planning should make provision for implementation of the Association's policy.
- 7.3 Consultants will be appointed in writing, to include a schedule of services required, the project brief (when applicable), conditions of engagement and statement of fees and expenses, including the work stages at which fees will become payable. It should be understood that

in general terms an offer made on this basis, accepted by the consultant in writing, constitutes a contract for the purposes of the *Housing Grants, Construction and Regeneration Act 1996* as amended by the *Local Democracy, Economic Development and Construction Act 2009*. The parties will therefore be entitled to adjudication and the terms of appointment should acknowledge this and clarify the form of proceedings that would apply.

- 7.4 Selection of all consultants will comply with the Procedures for Appointment of Consultants and Contractors.

## **8.0 IMPLEMENTATION – APPOINTMENT OF CONTRACTORS**

- 8.1 Generally, contractors will be appointed using a quality based method of selection in accordance with the Association's Procedures for Appointment of Consultants and Contractors. Contracts should be entered into at as early a stage of the project as reasonably possible so that contractors may comment on health and safety, buildability and other value engineering/value management issues.
- 8.2 Appointment of contractors shall initially be confirmed in writing in the form of a tender acceptance letter by the Property Services Director/Planning & Research Manager, or by the appropriate appointed consultant. Prior to issue of this letter the staff responsible shall ensure that the expenditure has been authorised by the relevant Sub Committee and/or the necessary offers of grant are in place. The issue of a letter of acceptance will normally be followed by the signature of the formal building contract.
- 8.3 In instances where a contractor owns the site for a development project, and is proposing a design and build contract, the Association will normally negotiate and enter into a design and build contract. Other circumstances when it is permitted to negotiate with a preferred contractor are set out in the Procedures for Appointment of Consultants and Contractors.

## **9.0 PROCUREMENT METHODS**

- 9.1 There are a number of different procurement options open to the Association. It is important to select the appropriate procurement method for the type of project and to identify allocation of risks to the parties resulting from particular forms of contract.
- 9.2 Risk management and value management are key tools to best practice, and the project team should consider them in relation to each particular project or group of projects.

- 9.3 As well as working within the law, the selection of procurement method should be informed by a desire to ensure that best value is promoted and obtained, and the principles of sustainable development adopted.
- 9.4 The decision making process that identifies the procurement route to be used for each project or series of projects should involve all relevant members of the project team at as early a stage in the process as practical. It may also involve consultation with other stakeholders. Staff may seek independent advice on this issue.
- 9.5 The process of competitive selection may often be at the commencement of a strategic partnering agreement, or it may be undertaken on a project by project basis. Where a series of projects is procured from the same contractor or consultants (such as under a strategic partnering arrangement) it should be ensured that each project continues to deliver the benefits for which the contractor/consultant was selected. This should involve benchmarking of each project.
- 9.6 The Association will monitor and evaluate the outcome of projects (including consultant and contractor performance) in accordance with the Post Completion Review Policy. This uses KPIs, including the results of customer satisfaction surveys, to measure and assess project performance. Wider Role projects will be reviewed in accordance with the additional requirements of the Policy on Wider Action. In addition projects will be evaluated as required by funders, and/or from a "project management" point of view when appropriate, in which case they will be assessed against the objectives in the strategic brief.

## **10.0 PROCUREMENT METHODS**

- 10.1 When the Association expects to have significant procurement expenditure in the next financial year (i.e. £5,000,000 or more), a procurement strategy will be prepared or reviewed, setting out how it intends to carry out regulated procurements. The procurement strategy must conform to the relevant requirements of the Procurement Reform (Scotland) Act 2014 and regulations giving effect to the Act.
- 10.2 So far as reasonably practicable, procurements in a year for which a procurement strategy is in place must be carried out accordingly.
- 10.3 Annual procurement reports, complying with the Procurement Reform (Scotland) Act 2014 and regulations giving effect to the Act, must be produced and published for any year for which a procurement strategy is in place.

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### PROJECT BRIEF

#### 1.0 INTRODUCTION

- 1.1 A clear written set of initial requirements (a brief) to the designer or lead consultant is a pre-requisite for a successful project. The brief promotes good practice in instructing consultants and should reduce abortive work that arises because the Association's requirements have not been understood. It is of course likely that these initial requirements will be amended (to a greater or lesser extent) during the design process. What the brief allows is a clear and shared understanding of the starting point for the scheme.
- 1.2 The initial client requirements should include the items in the following checklist as a minimum. Staff will probably want to add other requirements in line with individual policy frameworks or project requirements.

#### 2.0 INITIAL CLIENT REQUIREMENTS – CHECKLIST

A set of initial client requirements should be provided to or agreed with the design/project team no later than RIBA Plan of Work Stage 1. These should cover: -

- The preferred dwelling mix and the degree of integration/separation of dwellings and tenure;
- The Association's standard design brief and other relevant documents, including contract standards and protocols;
- Confirmation of amendments to the Association's design brief arising from recent feedback on other schemes;
- Confirmation of the Association's standards for access to specified local facilities and services (e.g. post office, shops, schools, doctors, employment opportunities, etc);
- The proposed extent of any external consultation required at this stage;
- Any specific requirements that can affect the design, such as SAP (or National Home Energy Ratings or other energy ratings); the provision of non-housing amenities, etc;

- The status of specific standards (i.e. mandatory, strongly preferred, aspired to);
- A clear priority of design standards indicating which design brief standards are negotiable and which are not;

*Note: this allows the designer to resolve any conflicts in the knowledge of the Association's pre-determined preferences.*

- Legal or other encumbrances on the site that may impact upon the design.
- The relationship between brief, site/context, and project budget.

### **3.0 CONSULTATION/PARTICIPATION**

- 3.1 The review of the project brief and initial design should include comments from the Association's housing services staff.

Similarly, this review should take on board the comments of a residents' design panel/focus group (or equivalent) where one exists.

- 3.2 The record of decisions taken in respect of design should include details of the consultation process undertaken, and the reasons for adopting or not the comments received during this process.

### **4.0 KEY PERFORMANCE INDICATORS**

- 4.1 The brief should identify to consultants at an early stage the KPIs which will be monitored during the project, and where appropriate targets relating to these should be established.

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