



# The SKS Scotland Short Guide to Managing Procurement in Voluntary Organisations & Social Enterprise

Jim Bennett

[jimbennett@sksscotland.co.uk](mailto:jimbennett@sksscotland.co.uk)

Tel: 07932 736006



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**SKS Scotland** is a Community Interest Company specialising in business support. Its portfolio includes everything from consultancy in strategy, operations, finance and staffing to the provision of basic business services such as marketing, administration and book keeping. The SKS Scotland social mission is to find solutions to the employment needs of people with long term conditions; 80% of its work is carried out by people with long term conditions.

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**Jim Bennett** has more than twenty-five years experience in delivering community and economic development initiatives. His skills include: facilitation; business and organisational development; finance and funding; strategic and operational management. His skills and experience were mainly developed in the social enterprise sector and he is qualified in Community Development and Leadership. He was a founder senior member of staff of the £100 million charity, UnLtd and a co-founder of the Social Enterprise Academy and the Scottish Social Enterprise Coalition. He is an Investment Panel member for Social Investment Scotland and a Director of SKS Scotland CIC.

[jimbennett@sksscotland.co.uk](mailto:jimbennett@sksscotland.co.uk)

## 1.0 Introduction

Much has been written and talked about how voluntary organisations and social enterprises access the public sector procurement market. This short document aims to look at the reverse situation, outlining how the sector should let and manage its own contracts.

The author has been on both sides of the procurement process for many years and has submitted dozens of bids to private, government and voluntary sector organisations. In his experience, voluntary and social enterprise organisations have a wee bit of a journey to embark on to match the performance of other sectors! The aspiration for voluntary organisations and social enterprises should not simply be about their end product, but about the process of achieving that end product. In terms of procuring services, that means, amongst other things, transparent processes, clear communication and minimising waste.

This short guide aims at showing the general approach that should be adopted. It does not make any claim to be original, comprehensive or definitive. Quite the reverse! The contents have been culled from many different procurement sites and documents, much thanks to the UK government's 2005 guidance. Additional resources are noted at the end of the document.

## 2.0 Some Recent Poor Shows

My experience over the past year includes the following examples of bad practice in procurement by voluntary organisations and social enterprises:

- An organisation embarking on a large scale construction project appointed an independent specialist (so far so good) to their project management group to advise on construction costs and methodology. The organisation then proceeded to allocate that advisor uncontested contracts valued at over £30,000.
- At the other end of the spectrum, a small enterprise advertised publicly a tender with a value of £4000. They received 25 submissions, which took a week to assess. There was actually no need to tender publicly.
- A housing association received 15 bids for a consultancy contract they were offering. Following their decision-making process, they only informed the successful tenderer of the outcome, none of the other 14!
- A member of the Just Enterprise consortium (which should know better) advertised for consultants to work for them. A key criterion was that the daily rate should not be more than £200. They neglected, however, to tell that to tenderers. This meant that many organisations submitted bids which simply weren't looked at because they didn't meet this criterion, wasting everyone's time and money.

- A middle sized voluntary organisation advertised for consultants to assist with a business and premises re-organisation. Around 20 submissions were made. The organisation then decided that they couldn't afford the cost, thus wasting the time of all the bidders.

The issues involved stretch from ethics, to common sense, to simple politeness! The issue of good governance also looms large.

### 3.0 Procurement and Contracting

This section will outline the processes involved in procurement and contracting.

#### 3.1 Write a Specification

A specification is simply a clear statement of what you need, in what quantity and quality, and by when. A few points to consider:

- If you don't know how to specify what you want, then pay a technical specialist to specify it for you. An example might be a care organisation letting a contract for an advisor on the installation of renewable energy sources. Organisations such as Community Energy Scotland can advise on how to specify what you need.
- You should ensure that your specifications are clear and comprehensive but not discriminatory; for example, don't use brand names, use their generic equivalents.
- You should specify the level of quality which you require, looking at whole life costs as well as price.
- Be aware not to over-specify. Over-specification can limit the professional judgement of suppliers which you could benefit greatly from. Choose the detail of the specification to meet the circumstances e.g. I.T equipment may well require a detailed specification, whereas specifications for consultancy/advice can often benefit from explicitly asking the suppliers to apply their professional judgement in the tender.
- It is quite legal to specify a 'community benefit' clause in contracts of less than €50,000; for example, suppliers to be social enterprises, goods to be organic or fair trade, staff of suppliers to be paid a living wage, or suppliers to demonstrate carbon neutrality.

#### 3.2 Estimate the Cost, Get Approval for Spending

A realistic estimate of all phases of the service or product is essential as this will influence the procurement procedure to be followed and is important for budgeting purposes.

- Prepare a realistic estimate of all phases of the service or product.

- Establish whether funds are available to meet the purchase.
- Determine whether the estimate (exclusive of VAT) is over the relevant EU procurement threshold.

Secure approvals and funding:

- Once a realistic estimate of cost is available the board or other relevant body should be asked to approve the expenditure.
- You should ensure that all necessary approvals are sought and obtained in adequate time.

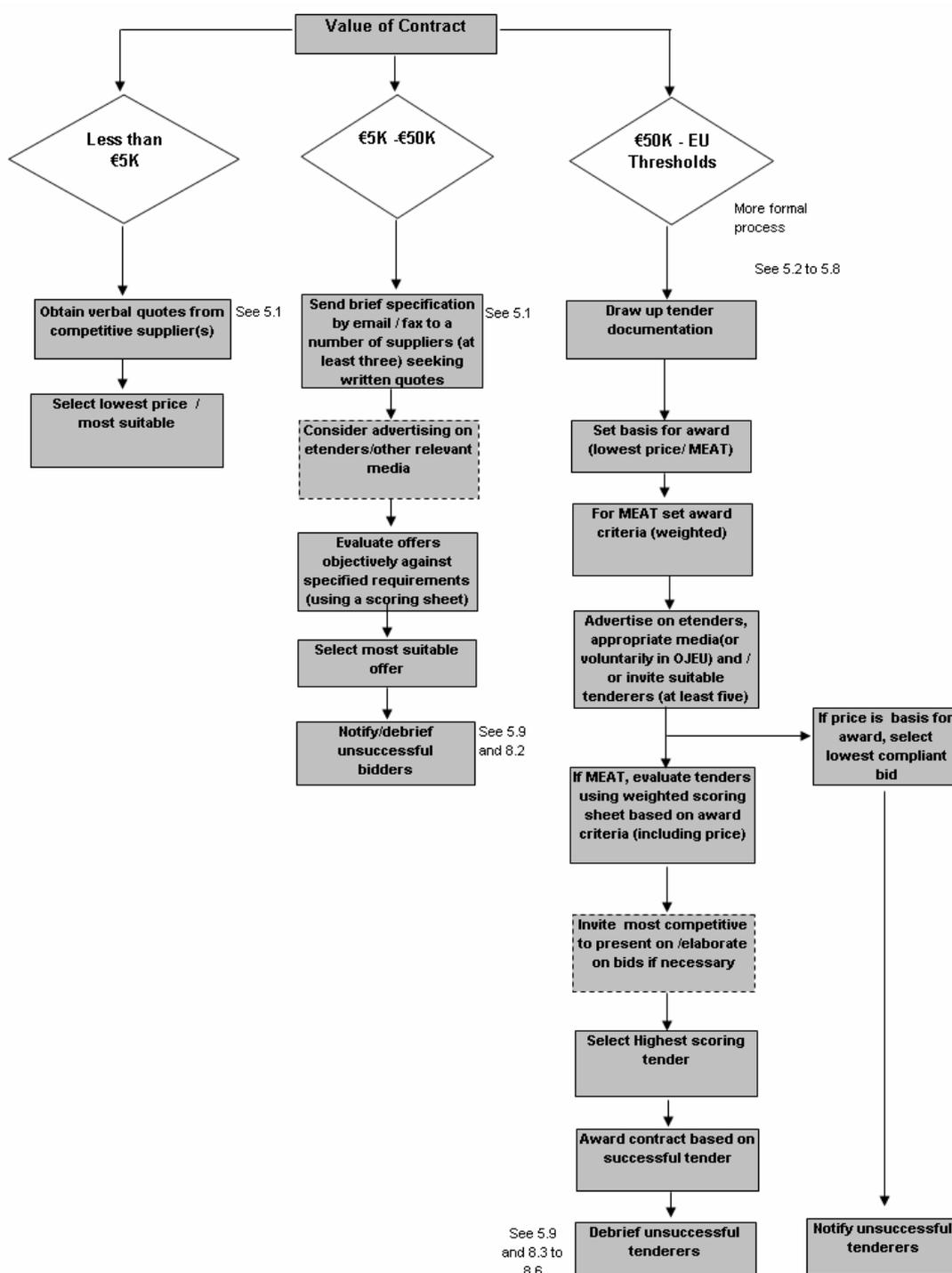
### 3.3 Decide on the Tendering Procedure

Following an appropriate competitive tendering procedure will help minimise your risk. The type of competitive process to be followed can vary depending on the size and characteristics of the contract to be awarded. There are three general types of procedure which may be used:

- A single tender action, where the value doesn't justify a formal tender. This is acceptable in certain circumstances for less than €50,000. Usually used for less than €5000 and/or where an existing satisfactory contractor relationship exists;
- A restricted procedure where only those deemed to have the necessary capacity and expertise are invited to tender, or where there are relevant local/thematic contractors. Used for contract value of €5000 to €50,000;
- For a value of €50,000 and over, an open procedure, where all interested parties are invited to tender, usually using sites such as <http://www.publiccontractsscotland.gov.uk/> or <http://readyforbusiness.org/tender.php>

There's always a lot of discussion about the need to advertise contracts. Basically, the two sites mentioned above are more than adequate to advertise any contract. However, the question should be asked internally about the need to advertise at all if the contract is relatively small. The Public Contract Scotland site has an excellent "Quick Quotes" service where a limited number of companies can be asked to bid in a simple specified format. This will save time and money for all involved but still indicates a good practice approach.

The EU has published some helpful procurement guidelines which are summarised in the table below. Whilst their use is not compulsory for non-public funds, where public funding is to be used to pay for the contract, it is all but obligatory to follow this procedure.



Where the contract falls under €50,000, all quotations supplied should include the following:

- quotes are in written/printed form (despite the EU verbal quote guidance above) and clearly originate from a reputable supplier who can deliver the items or work
- supplier's contact/business details are clear and legitimate
- quotes are based on specifications as described
- there are no missing elements
- cost calculations are up-to-date, correct and precise
- suppliers should confirm for how long the quote is valid for
- whether the price includes VAT at the appropriate rate.

### 3.4 Prepare your Invitation to Tender (ITT)

One should ensure that the ITT is clear and comprehensive. Clarity and completeness at this stage will help eliminate the need for clarifications later. Set out all the criteria that will be applied in the award process, together with the relative weightings of each and the budget available. These criteria will form the basis against which tenders will be comparatively evaluated and are the key to an objective, transparent award procedure. Specify any special conditions of tender, required format of tender responses, etc.

An example of criteria would be:

*"The factors that will be utilised in this evaluation will include:*

- Overall value for money
- Previous experience of working with public/community partnership groups
- Experience of undertaking reviews and wider development strategies
- Specific expertise or knowledge of LEADER, Scotland's rural development landscape and the development of rural community activity
- Understanding of project requirements
- Methodology and approach proposed

*There will be a price/quality ratio of 20% price, 80% quality (criteria 2 to 5 will have a weighting of 15% each and criterion 6 will have a weighting of 20%)"*

Special conditions might include:

- Community Benefit Clauses e.g. 15% weighting for the tenderer being a social enterprise
- Requirement to provide Equal Opportunities or health and safety policies.

To stay on the right side of the law, Social Firms Scotland have pointed out that all you have to do is make sure that:

- The community benefits you seek fit with your strategic objectives.
- The community benefits form part of the "core purpose" of the contract.

- Use of the community benefits still represents value for money/Best Value for your organisation.

### 3.5 Allow sufficient time for submission of tenders

You should allow suppliers sufficient time for submitting the necessary information and preparing the tenders (taking into account holiday periods, etc). The complexity of the contract will have a bearing when fixing the timescale for submitting responses.

### 3.6 Issuing Tender Documents and Clarifications

- Responses to requests for information, requests for tender documents and other supporting documentation must be issued without delay.
- Ensure that additional information supplied to one party, in response to a request, is supplied to all interested parties if it could be significant.

### 3.7 Receipting and Opening tenders

- Return late tenders unopened to the tenderer and record their existence and time of arrival.
- Open all tenders received on time as soon as possible after the designated latest time and date set for receipt, and all at the same time.
- Arrange for the opening of tenders to take place in the presence of at least two officials.
- Ensure that a clear report of the tenders received is produced.

### 3.8 Clarifying Tenders

You may seek additional information in clarifying submitted tenders but ensure that any clarification of tenders does not result in substantive alterations to bids after the deadline for submission has passed.

### 3.9 Evaluating Tenders

The evaluation and award process must be demonstrably objective and transparent and based solely on the criteria published in the ITT. This is best achieved by the use of a scoring system based on all the relevant weighted criteria, indicating a comparative assessment of tenders under each criterion.

- Arrange for the evaluation of tenders to be carried out by a suitably competent professional if you cannot make the assessment unaided.
- Evaluate price exclusive of VAT.
- If price is the sole criterion, award the contract to the lowest priced bid complying with the specified requirements.
- If the 'most economically advantageous tender' is the basis for award, award the contract to the tender that best meets the relevant published criteria.

### 3.10 Notifying Tenderers

- Unsuccessful tenderers for any contract should be informed of the results of the tendering process without delay.
- In the case of contracts covered by the EU Directives, allow a 14 calendar day interval between notifying unsuccessful tenderers of the outcome of the tendering procedure and the formal award of contract.

### 3.11 Debriefing unsuccessful tenderers

- Offer unsuccessful tenderers debriefing.
- In the debriefing, provide an objective assessment of the comparative strengths and weaknesses of the unsuccessful tender.
- Give due regard to commercial sensitivity and the need to avoid compromising the rights or competitive situation of other tenderers.

### 3.12 Awarding the contract

The contract should be awarded to the supplier or service provider that is best able to fulfil requirements (selected in accordance with the award criteria), whose bid is within budget and in all other respects complies with the ITT, approval requirements, public procurement law and national guidelines.

- Record in the contract document(s) all terms and special conditions that apply, including health and safety requirements, insurance, etc.
- Attach a specification to the contract document(s) which reflects the solution proposed by the successful tenderer.
- Ensure that the contract specifies clearly the roles and responsibilities of both the client and the supplier/service provider – what needs to be done, by whom and how much it will cost.

### 3.13 Managing the contract

The management stage of a contract is where value for money gained during the preceding stages is realised. A contract needs to be effectively managed by the user, not just left to the supplier. Proactive involvement in the management of the contract is essential to maximise value.

- A contract folder should be held which will hold all contract documentation
- For larger works, it may be necessary to engage a technical specialist to draft the contract
- Written, timescaled actions with named lead individuals should be agreed and signed off with the contractor
- An inspection of progress regime should be agreed with the contractor, undertaken, and details recorded
- Where appropriate, an external technical specialist should be engaged to assess work progress

- Where remedial action is deemed necessary, this should be noted to the contractor in writing, with details of improvements necessary and timescales noted.

At the conclusion of the contract, review the whole procurement process, not just the supplier's performance but also the effectiveness of the earlier stages. This review process can provide information for future procurements, in respect of developing and specifying needs, supplier selection and contract management.

#### 4.0 Resources

- **Tendering for Public Sector Contracts** – this is a practical guide for social enterprises and other third sector organisations that want to understand the procurement process and increase their skills when tendering.
- **Better Value: Purchasing public services from the social economy** and the accompanying case studies in **Better value: The social economy delivering public service contracts** – these guides are intended to demonstrate to the public sector the advantages of contracting with the social economy.
- **Developing consortia** – this guide is for social enterprises and other third sector organisations aiming to develop consortia to deliver public services
- **New approaches to commissioning** – this report outlines developments in commissioning around more collaborative approaches to purchasing services.
- **Making the Case: Social Added Value Guide** – this guide stresses to social enterprises and third sector organisations the importance of proving their social added value and describes some of the tools that can be used to measure this.
- **Investing in Impact: Developing Social Return on Investment** – this report outlines the lessons learned from using Social Return on Investment as an impact measurement tool.
- **Buying for Good: Housing Associations, Social Firms and Community Benefits in Procurement** – This guide shows Housing Associations how to use community benefit clauses in procurement and has a particular focus on contracting with Social Firms and other social enterprises.
- **Commissioning Public Services**: the good practise approach towards commissioning public services
- **Buying for Good**, Social Firms, Housing Associations and Community benefit Clauses

The above are available from:

<http://www.socialfirms.org.uk/resources/resourceprocurement.asp>

## Appendix 1: Ethics in Procurement

Adapted from the *National Public Procurement Policy Unit / Government Contracts Committee June 2005*

### 1. Introduction

The purpose of this note is to provide information to assist you to conduct purchasing in a way that satisfies probity and accountability requirements.

### 2. Guiding Principles

It is very important that the public procurement function is discharged with probity, transparency and accountability in a manner that secures best value for public money.

- Probity requires the purchasing process to be conducted ethically; honestly; and with fairness to all participants
- Transparency and accountability require that the basis for decisions is demonstrably clear and objective and that the purchaser is held to account for the conduct of the procurement process
- Contracting must be cost effective and efficient in the use of resources while upholding the highest standards of integrity.

### 3. Probity

In the context of procurement, the aim should be that individuals and organisations are trusted and respected by those with whom they deal and that business is conducted by all parties not only efficiently but in a fair and reasonable manner. Some of the practical implications of ensuring probity in procurement are set out in the following sub-sections.

#### 3.1 Legality

There is an obligation on staff to exercise their powers lawfully. They must be aware of the provisions of the various Acts, Directives, regulations, policies and procedures that are relevant to their function.

#### 3.2 Disclosure of Interest

Any form of personal interest which may impinge, or might reasonably be deemed by others to impinge, on impartiality in any matter relevant to his or her duties should be disclosed in writing to management. Personal interest includes an interest of a relative or connected person. The management must then decide if the exercise should be dealt with by another member of staff or seek further advice.

#### 3.3 Gifts

Staff/contractors should not accept benefits of any kind from a third party which might reasonably be seen to compromise their personal judgement or integrity.

- The actions of staff/contractors must be above suspicion and not give rise to any actual or potential conflict of interest and their dealings with commercial and other interests should bear the closest possible scrutiny.
- It is not possible to give guidelines for every conceivable situation that may arise but if a doubt arises about a particular situation line management should be consulted. The following general guidelines provide a framework within which decisions in this area can be made or local rules formulated:
  - Gifts must never be solicited, directly or indirectly.
  - Subject to local rules, an official may accept and retain gifts of low intrinsic value. Any gift of more significant value should be refused.
  - Cash, gift cheques or any vouchers that may be exchanged for cash may not be accepted regardless of the amount.
  - Staff must not seek or accept special facilities or discounts on private purchases from contractors, suppliers or service providers with whom they have official dealings.

### 3.4 Hospitality

Normal business practice may occasionally justify accepting routine / modest hospitality from suppliers provided that:

- The frequency and scale of hospitality is not allowed by the recipient to reach a position whereby he or she might be, or might be reasonably deemed by others to have been, influenced in making a business decision as a consequence of such hospitality.
- The number of staff availing of the hospitality is kept to a minimum.
- Invitations do not include provisions deemed to be excessive, such as significant travel, overnight accommodation or trips abroad.
- Availing of the hospitality does not identify the contracting authority in a public way with any particular contractor, supplier or service provider.
- Offers of hospitality should be reported to line management. Particular care should be taken where suppliers are in the process of tendering for business. In this regard there should be no acceptance of gifts or hospitality from contractors, suppliers or service providers involved in a current tendering process.

### 4.0 Transparency and Accountability

Procurement transactions and decisions must in all respects be fair, equitable and ensure value for money. You must be able to justify decisions made and actions taken. In organising the procurement function, management in contracting authorities must ensure appropriate separation of duties within the procurement cycle. For example, insofar as possible, ordering and receiving goods and services should be distinct from payment for goods and services.



Accurate written records (including computer records) are essential in demonstrating that proper ethical standards have been observed. Therefore, appropriate records should be maintained throughout the purchasing process. These records should provide an audit trail of the reasons for making a particular procurement decision. The type and detail of information that is recorded should be specified in local procedural guidelines and will depend on the complexity or sensitivity of the particular purchasing issue.

### *5.0 Confidentiality of Information*

The basic rule is that commercially sensitive information must be kept secure and never used for personal gain or to prejudice fair competition. Information on individual contracts must not be given to the media or any other enquirer (except the individual contractor concerned), without the authority of line management. Disclosure of supplier and tender information relating to the tender process prior to contract award, and in particular to another interested party, is strictly prohibited.