

Audit Committee, 5 September 2017

Review of procurement policy

Executive summary and recommendations

### **Introduction**

HCPC's procurement policy was approved by Audit Committee in September 2015 and by Council in December 2015. It is due for review at least every three years and is being brought forward for review now as part of the review of the corporate governance framework scheduled for September's Council meeting.

The only proposed changes are increases in the thresholds for signing contracts, as set out in table 1. Currently, individual directors can sign contracts with an estimated lifetime value of up to £50k, the Chief Executive can sign contracts up to £100k, and over £100k, the Chief Executive signs with the approval of the Chair.

Those thresholds require the Chief Executive and the Chair to be involved in relatively low value, non-strategic contracts. The proposed changes would increase the threshold for individual directors to £100k and the threshold for the Chief Executive to £250k. Contracts with an estimated lifetime value over £250k would be signed by the Chief Executive signs with the approval of the Chair. A 4 year £250k contract is an average of £63k a year or only 0.2% of our operating costs.

### **Decision**

The Committee is asked to review the policy and agree to recommend the proposed changes to Council.

### **Resource implications**

None

### **Financial implications**

None directly

### **Appendices**

Current procurement policy, with proposed changes tracked

### **Date of paper**

22 August 2017

# Procurement policy

Approved by Council [\[20/21 September 2017\]](#)~~2 December 2015~~

## 1. Introduction

- 1.1. The Procurement Policy is approved by the Council and is consistent with the Financial Regulations and the Scheme of Delegation.
- 1.2. The policy applies to the purchase of all goods, services and works by or on behalf of the HCPC.
- 1.3. The policy applies to all those involved in procurement activities for or on behalf of the HCPC (referred to as Persons), which may include Council and Committee members, Partners or other suppliers as well as HCPC employees.
- 1.4. The policy sets out the standards which Persons must adhere to in relation to procurement activities. Procedures setting out the application of the policy are included within the Procurement Manual on the Finance Department intranet site.
- 1.5. The policy aims to ensure that all procurement activities conducted by the HCPC:
  - achieve good value for money;
  - are conducted in a fair, objective and transparent manner;
  - are compliant with relevant law and regulation;
  - effectively manage commercial risk; and
  - meet the short and long-term objectives of the business.

## 2. Responsibilities

### Budget holders

- 2.1. Budget holders must familiarise themselves with the policy and the related procedures. Where budget holders have delegated responsibility for procurement activities to members of their teams or other Persons, the budget holder must ensure all Persons involved in the procurement are also familiar with the policy and the procedures.
- 2.2. Budget holders are responsible for ensuring that all procurement funded from their budgets complies with the policy and achieves good value for money.

### Relationship owner

- 2.3. The relationship owner is normally the main HCPC contact with the supplier. The relationship owner can be the budget holder or the role can be delegated by the budget holder. The role of the relationship owner is to manage the supplier's performance. In particular, in accordance with HCPC's Information Security Management System manual, the relationship manager is responsible for the ensuring that the supplier has appropriate data security controls in place and

that the supplier's responsibilities in relation to data security are documented within the contract<sup>1</sup>.

### **Tender panel members**

2.4. Members of a tender panel are responsible for familiarising themselves with the policy and the related procedures, and evaluating bids in accordance with the policy. Guidance on the composition of the tender panel is included in the Procurement Manual.

### **Purchase Order authoriser or contract signatory**

2.5. The act of authorising a Purchase Order in the HCPC purchasing system or signing a paper contract binds HCPC to the contract. The person who authorises the PO or signs the contract is responsible for obtaining prior assurance that this policy and the associated procedures have been followed. If the PO authoriser/contract signatory has not been involved in the procurement he/she should ask for briefing before signing in enough detail (relative to the value of the procurement) to understand the purpose of the procurement and the rationale for the selection of the supplier.

### **The Procurement function within the Finance Department**

2.6. Procurement is responsible for advising Council, the Executive Management Team and budget holders on the policy, and for supporting HCPC's procurement activities.

## **3. Compliance with the policy**

3.1. Our procurement is subject to audit by both our internal and external auditors. The Procurement function within Finance will also periodically check compliance with the policy. The policy will be covered within the induction process for budget holders. Breaches of the policy may be regarded as misconduct or gross misconduct.

## **4. Legislation**

4.1. As a public body, the HCPC is subject to the Public Contracts Regulations 2015 (the Regulations) as updated or amended from time to time. Procurements with a total value greater than the thresholds which apply to the Regulations must be carried out in compliance with the Regulations and applicable case law.

4.2. The 2015 Regulations incorporate UK-specific requirements designed to improve the access of small businesses to public sector contracts, known as the "Young Reforms". Other legislation also applies; see section 9 below.

## **5. Value thresholds**

5.1. Under the Regulations and this policy, requirements vary according to the value of the contract. The thresholds in this policy are stated including VAT, because HCPC is not VAT-registered so cannot recover any VAT. The thresholds in the

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<sup>1</sup> See HCPC ISMS Document A15

Regulations are stated excluding VAT, but the approximate VAT-inclusive value is shown in table 2.

5.2. The value of a contract must be measured as the aggregate amount HCPC expects to pay the supplier over the lifetime of the contract. Contracts must not be artificially disaggregated or shortened in order to avoid the application of the Regulations or this policy. If there is any doubt in respect of the value of the contract, Procurement must be consulted.

**Table 1 Procurement routes and value thresholds**

<b>Total estimated contract value including VAT</b>	<b>Method of selection</b>	<b>Internal authorisation level – who can approve the selection of the supplier</b>	<b>Method of acceptance</b>
£0 - £1,000	Budget holder's discretion	Budget holder or Director	Approved purchase order (PO)
£1,001 - £10,000	Competition with evidence of comparison of at least two suppliers, or use of a framework agreement	Budget holder or Director	Approved PO
£10,001 - £25,000	Competition with minimum of three written quotations, or use of a framework agreement	Director	Contract signed by Director
£25,001 <sup>2</sup> - £100,000	Use of a framework agreement, or formal written tender	Tender panel and Director	Contract signed by Director
<del>£50,001 - £100,000</del>	<del>Use of a framework agreement, or formal written tender</del>	<del>Tender panel and Chief Executive</del>	<del>Contract signed by Chief Executive</del>
£100,001 but less than relevant EU threshold	Use of a framework agreement, or formal written tender	Tender panel and Chief Executive	<del>Contract signed by Chief Executive with</del>

<sup>2</sup> Note that the 2015 Regulations introduce new requirements that apply when a procurement opportunity with a value above £25k is advertised. If a budget holder intends to advertise a procurement opportunity through any channel, he/she must first check with Procurement

Total estimated contract value including VAT	Method of selection	Internal authorisation level – who can approve the selection of the supplier	Method of acceptance
Above relevant EU threshold	Use of an EU compliant framework agreement unless, exceptionally, no appropriate framework exists in which case a regulated tender is required following advertisement in the OJEU pursuant to the Regulations (unless specifically exempted).	Budget holder must involve Procurement at the outset and throughout the process.  Legal advice required if a framework agreement is not used  Tender Panel makes final selection.	<del>the approval of the Chair of Council</del> <u>Contract value up to £250k, contract signed by the Chief Executive.</u>  <u>Contract value over £250k, contract signed by Chief Executive with the approval of the Chair of Council</u>

5.3. EU thresholds are modified from time to time by the European Commission. The current thresholds are available from <http://www.ojec.com/threshholds.aspx>. HCPC is an “Other public sector contracting authority”.

**Table 2 EU threshold values as at ~~September 2017~~ January 2016<sup>3</sup>**

Type of Contract	Threshold excluding VAT	Approx equivalent incl VAT
Services & Supply (includes supply, lease, rental or hire purchase of goods, excluding employment contracts)	£164,176	£197,000
Works (building & engineering, including capital works)	£4,104,394	£4,925,000

5.4. Procedures including flowcharts and templates are included within the Procurement Manual on the Finance Department intranet site.

5.5. In the case of any uncertainty the application of this policy or which procurement route should be followed, advice should be sought from Procurement.

## 6. Framework agreements

6.1. Framework agreements are contracts that have been let in compliance with the Public Contracts Regulations and EU procurement rules. The UK government's procurement service, Crown Commercial Services (formerly the Government

<sup>3</sup> Threshold values updated with effect from 1 January 2016

Procurement Service), has established a wide range of framework agreements covering almost all the goods and services bought by the public sector.

6.2. Typically, a framework agreement consists of a menu of goods or services or pre-agreed specifications and prices, provided via a standard set of terms and conditions. There may be a number of different suppliers providing the goods and services, but sometimes there is only one supplier.

6.3. HCPC policy is to use framework agreements for all procurements above the relevant EU threshold values. Use of framework agreements is also strongly encouraged for procurements below the thresholds. The reasons for using framework agreements are

- We benefit from prices that have been negotiated using the buying power of all central government. We are unlikely to be able to negotiate better prices acting alone
- Terms and conditions have similarly been negotiated using central government buying power and are therefore favourable to the customer, eg reasonable notice periods, reasonable supplier warranties, full data protection and FOI commitments by the supplier, appropriate intellectual property rights. It is therefore normally not necessary to engage our own legal advice on framework contracts
- We can have confidence that suppliers will have the capacity and the systems and processes to deliver good quality services consistently
- The framework procurement process is much quicker than conducting our own tender process and, because we do not need to take our own legal advice, it is much cheaper
- The framework procurement process is compliant with public sector procurement legislation, and is recognized as good practice in terms of value for money, and is therefore low risk.

6.4. Procedures within the Procurement Manual on the Finance Department intranet site set out the steps to be followed to enter a contract using a framework agreement.

## **7. Value for money**

7.1. Value for money is the optimum combination of whole life costs and quality, on appropriate contractual terms and with appropriate allocation of risk, to meet the HCPC's business needs and requirements.

7.2. HCPC's procurement must achieve good value for money. This is partly about getting the right price, but it is more important to buy the right product. See also section 11 below.

7.3. The extent of competition required depends on the value of the procurement, as set out in Table 1. For procurement of goods or services costing less than £1,000, the potential cost saving achieved from a competitive procurement process is unlikely to be significant and may be outweighed by the extra staff time involved in arranging a competitive process, so competition is not required below the £1,000 threshold.

7.4. To ensure value for money, contracts need to be retendered at appropriate intervals. For goods and services, contract terms should normally not exceed 4 years, but contracts may have an option to extend the term by one year.

7.5. Prices under framework agreements (see section 6 above) are normally fixed but they meet our requirement for competition because the framework prices have been established through a competitive process.

## **8. Fairness, objectivity and transparency**

### **Ethics**

8.1. All Persons involved in procurement activities are expected to behave ethically at all times. All Persons shall be open, honest, fair and impartial in their dealings with suppliers. In particular Persons must familiarise themselves with and comply with the Anti-Bribery, Gifts and Hospitality Policy and the requirements of the Bribery Act 2010.

8.2. Anyone involved in a procurement who has current or past business or close personal relationships with, or close friends or relatives employed by, potential bidders for HCPC contracts must disclose their interest to Procurement at the outset and may be excluded from the procurement process completely or restricted to a limited role.

### **Freedom of Information**

8.3. The HCPC is subject to the Freedom of Information Act 2000. This means that anyone who makes a valid request for information held by the HCPC will be entitled to receive it - unless all or part of that information can and should justifiably be withheld under the exemptions contained within the Act. All tenderers should be made aware at the beginning of the process that this is the case.

8.4. Suppliers may seek to prevent HCPC from disclosing information relating to their goods or services or pricing under the exemptions in the Act for confidential or commercially prejudicial information (sections 41 and 43 of the Act). In those cases, advice should be sought from the Information Governance Manager.

### **Equality and Inclusion**

8.5. The HCPC conducts business in accordance with the Equality Act 2010, which requires the HCPC to ensure that it does not discriminate on the grounds of age, disability, gender reassignment, marriage & civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

8.6. The HCPC will require suppliers, where appropriate, to be aligned with HCPC's corporate objectives for equality and inclusion as outlined in HCPC's Equality & Diversity Policy.

8.7. The HCPC will require suppliers and third party contractors, where appropriate, to adhere to any specific obligations or commitments as outlined in the HCPC's [Welsh Language Scheme](#).

## **Regularity and propriety**

8.8. Regularity and propriety are standards for the management of public money, which HCPC as a public body must meet. Regularity is defined as: compliant with the relevant legislation (including EU legislation), delegated authorities and following the guidance in *Managing Public Money* published by HM Treasury. Propriety is defined as: meeting high standards of public conduct, including robust governance and the relevant parliamentary expectations, especially transparency<sup>4</sup>.

8.9. Regularity is therefore a largely objective standard which will normally be met by application of this policy and the associated procedures.

8.10. Propriety is a subjective measure. Although HCPC does not normally receive funds voted by parliament, we are accountable to parliament and must manage our finances to the same standards as other public bodies. To assess whether a given procurement meets the propriety standard, budget holders should ask themselves “could I confidently and openly explain this to registrants, the media and parliament as a good use of registrants’ money?” On the other hand, if budget holders find themselves thinking more negatively, eg how they could *justify* or *defend* the expenditure as a valid use of registrants’ money, then it indicates that the procurement may not meet the propriety test.

## **9. Compliance with law and regulation**

### **Public Contracts Regulations**

9.1. As noted above, the HCPC is subject to the Public Contracts Regulations 2015 (the Regulations) as updated or amended from time to time. The 2015 Regulations transpose the 2014 EU Public Contracts Directive into English law. Procurements with a total value greater than the thresholds which apply to the Regulations must be carried out in compliance with the Regulations and applicable case law.

9.2. The Regulations also incorporate UK-specific requirements designed to improve the access of small businesses to public sector contracts, known as the “Young Reforms”. The main impact of the Young Reforms on the HCPC is where we advertise a contract with an expected value greater than £25,000. The steps to follow in that case are addressed in procurement procedures.

9.3. HCPC can have reasonable assurance of compliance through the use of an appropriate framework agreement.

### **Data Protection Act**

9.4. In the course of its business, HCPC processes or holds personal data about registrants, employees and others. Under the Data Protection Act, HCPC is the Data Controller in relation to this personal data, and must ensure that it is held and processed in accordance with the eight principles in the Act, which are that personal data must be:

- used fairly and lawfully;
- used for limited, specifically stated purposes;

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<sup>4</sup> Definitions taken from *Managing Public Money* <https://www.gov.uk/government/publications/managing-public-money>

- used in a way that is adequate, relevant and not excessive;
- accurate;
- kept for no longer than is absolutely necessary;
- handled according to people's data protection rights;
- kept safe and secure; and
- not transferred outside the European Economic Area without adequate protection.

9.5. HCPC's responsibilities under the Act apply equally to services we perform in house and those we outsource to suppliers. HCPC requires suppliers to have information security policies and procedures appropriate to the nature of the HCPC information the suppliers handle. Procurement procedures set out the process for determining the standard of information security we require from the supplier of a given service, and the method of determining whether bidders and existing suppliers meet that standard. Where it is determined following the procedures that a supplier is a Data Processor on behalf of HCPC, then the supplier's responsibilities will be documented within the contract<sup>5</sup>.

#### **Freedom of Information Act**

9.6. See paragraph 8.3 above

#### **Bribery Act**

9.7. See paragraphs 8.1 and 8.2 above.

### **10. Managing commercial risk**

#### **Terms and conditions**

10.1. Framework agreement terms and conditions have been negotiated using central government buying power and are favourable to the customer. Some tailoring of the standard terms is normally required; consult Procurement for advice.

10.2. HCPC's standard terms and conditions should normally be used in contracts for ongoing services that are not placed via framework agreements. Invitations to tender should include our terms and conditions so as to pre-empt any discussion over terms and conditions at the contract award stage.

10.3. Our standard terms and conditions ensure a reasonable transfer of risk to the supplier, for example through the clauses on price changes, termination, intellectual property, and supplier's liability.

10.4. Procurement procedures set out the steps to follow if a supplier seeks to impose their own terms and conditions.

#### **Legal advice**

10.5. It may be appropriate to seek legal advice on a procurement issue, but only if the risk on which the advice is taken has a greater potential cost than the cost of the advice itself. Disagreements with suppliers over terms and

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<sup>5</sup> See also HCPC Information Security Management System manual document A15

conditions should be seen in the context of the contract value and the worst case impact of the disputed terms.

- 10.6. Budget holders should note that the correct use of Framework Agreements substantially reduces the legal risk, and so legal advice will normally not be required on any procurement via a Framework Agreement.

### **Business continuity**

- 10.7. The financial failure or lack of capacity of a key supplier could have a significant impact on the delivery of HCPC's functions, and therefore HCPC requires suppliers to have financial and economic standing, and technical capacity and ability appropriate to the nature of the service they will provide to HCPC. Procurement procedures set out the process for determining the level of financial health and capacity we require from the supplier of a given service, and for evaluating the financial health and capacity of bidders for that service. Procurement will also periodically re-evaluate the financial health and capacity of existing suppliers of key services in order to identify business continuity risks.

## **11. Meeting the objectives of the business**

### **Planning and specification**

- 11.1. Retendering of existing contracts is planned on the basis of the expiry dates recorded in the suppliers database. Procurement and Relationship Owners are jointly responsible for identifying expiry dates and planning the retender process.
- 11.2. Tendering for new goods and services is planned primarily on the basis of the major projects portfolio, which will capture most new procurement by value. Project managers are responsible for discussing requirements and routes to market with Procurement.
- 11.3. Budget holders who intend to purchase new goods or services are responsible for advising Procurement in advance so that Procurement can support the tender process from the outset.
- 11.4. To achieve value for money it is essential to buy the right product. The specification is therefore a key part of any invitation to tender, and it must be accurately and completely incorporated into the contract.

### **Managing contracts**

- 11.5. The Relationship Owner is responsible for managing the supplier's performance under the contract, and ensuring that the supplier delivers to the agreed specification, so that HCPC achieves value for money.
- 11.6. Contracts that are above £50,000 in value and/or have been assessed as high risk in terms of our requirements for information security or supplier financial health should be subject to a documented review at least annually.

### **Recording**

- 11.7. All contracts made by or on behalf of the HCPC must be documented in writing. For contracts below £10,000 in value that do not involve the supplier in

handling HCPC information, an HCPC purchase order (PO) will normally be sufficient documentation. By sending the PO to the supplier, we offer to purchase the goods or services under the terms and conditions referenced on the PO. By delivering the goods or services, the supplier accepts our offer.

- 11.8. Contracts above £10,000 should be signed by both parties to ensure clarity over the terms and conditions. If the supplier will handle HCPC information, a signed contract including appropriate obligations on the supplier is required regardless of the value: see paragraph 9.5.
- 11.9. All contracts above £10,000 must be recorded in the suppliers database. Contracts above £25,000 are disclosed proactively under our Freedom of Information publication scheme.
- 11.10. The process to set up a new supplier (which is essential before a new supplier can be paid) includes confirmations that the contract has been recorded, that the appropriate selection process was followed, and that the data security and business continuity requirements have been met.
- 11.11. Contracts will be retained on the suppliers database in accordance with the HCPC's Document Retention Policy. Procurement will retain copies of all tender documents and relevant correspondence for procurements over the relevant EU threshold.
- 11.12. Budget holders are responsible for retaining documents for procurements under the EU threshold. Documents retained must include the invitation to tender, all tenders submitted, the evaluation of bids and correspondence with successful and unsuccessful bidders. Documents must be retained until the end of the financial year following the award of the contract.

## **12. Exceptions**

- 12.1. If a budget holder considers that an exception to this policy needs to be made in relation to a procurement with a value greater than £10,000, he/she must consult Procurement before any commitment is made to a supplier.
- 12.2. An exception form must be completed by the budget holder and approved by Procurement to document the reason for the exception.
- 12.3. Legal advice will be required on any proposed exception to policy in relation to a procurement above the relevant EU threshold.

## **13. Further information**

- 13.1. Advice on any aspect of this policy can be obtained from Procurement and the Director of Finance. Further guidance is available on the Finance Department section of the HCPC intranet.