

SEEDA PROCUREMENT POLICY AND GUIDELINES

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1 Introduction

1.1 *Context and Definition*

This document is prepared in the context of both the legislative requirements for public sector procurement, and the need to support the aims of the Regional Economic Strategy:

- to ensure that all SEEDA procurement complies with the conditions of the Business Enterprise and Regulatory Reform (BERR) Financial Memorandum, The Public Contracts Regulations, Office of Government Commerce (OGC) best practice, and the EU procurement directives. These are all embodied in SEEDA's Procurement rules and guidelines. As well as being compliant with the above rules, the process must be sufficiently documented and robust to withstand any challenge resulting from a Freedom of Information Act enquiry, or internal or external audit.
- to ensure that SEEDA procurement policy and procedures are designed to support the Regional Economic Strategy, and Corporate Plan actions and delivery. The process of continuous improvement for procurement and contracting is to ensure that the process, procedures and systems are consistent with the aims and objectives of SEEDA and thereby supporting the RES, Corporate Plan strategies, suppliers/contractors and our partners.

Procurement is the process of acquiring goods, works and services. Most of SEEDA's expenditure is actually the provision of grant funding, which is not procurement as such, but in some cases such as discretionary grants awarded by competition, and specific external grant management, procurement practises are applicable. SEEDA's object is to pursue fair, open, and competitive procurement and to achieve value for money by selecting the supplier with the most economically advantageous offering.

Procurement should be considered as including the whole process from identification of needs, through to the end of a service contract, or to the end of the useful life of an asset and its disposal.

1.2 *Procurement Responsibilities*

In SEEDA, procurement is conducted by each Team or department within each Directorate by following the laid down guidance. Anyone who is responsible for any form of procurement is therefore a "Procurer".

Procurers must be constantly aware that they are responsible for the spending of public funds, i.e. taxpayers money, and must ensure that any procurement is absolutely necessary, is fairly procured, and can demonstrate value for money.

Procurers have a duty to be fully aware of the rules and procedures which apply to any procurement that they wish to undertake.

They must also be aware of requirements to satisfy SEEDA's objectives in the areas of Diversity and Sustainability, and the need to support Small Medium Enterprises (SMEs) and other organisations within the south east region.

Training in all aspects of the SEEDA procurement process is provided by the Business Management Support team, HR training courses, and advice and guidance is provided by the Procurement Team within Finance Dept.

1.3 ***Procurement Team***

The Procurement Team perform a governance function to ensure that all procurement is carried out effectively and in compliance with the SEEDA's procurement rules, and also provide a comprehensive procurement advice and guidance service.

Responsibilities include:

- Ensuring that that all procurement complies with the SEEDA rules.
- Providing advice and guidance on procurement methods and procedures
- Providing advice on contracts
- Ensuring that SEEDA's rules are maintained in line with changes in external procurement directives
- Maintaining procurement procedures, guidelines and templates
- Assisting with development of procurement training
- Reviewing invitations to tender for compliance and suitability
- Reviewing tender evaluation scoring for fairness and anomalies
- Reviewing purchase order requisitions for compliance with SEEDA rules

2 Competitive procurement

2.1 *Value thresholds*

Before undertaking any procurement activity, it is necessary to understand the procedure which needs to be followed, and this is based on the expected value of the work to be contracted.

The current value thresholds and relevant requirements are below:

£1-£999	The recommendation is that three quotes should be obtained wherever possible, but this is left to the discretion of the budget holder.
£1,000-£1,999	A minimum of three verbal quotes is required
£2,000-£9,999	A minimum of three written quotes must be obtained
£10,000 and over	A formal Competitive Tender process is required
£139,000 and over	EU Tender process is required for Services and Supplies.
£3,495,000 and over	EU Tender process is required for Works contracts.

2.2 *Competitive Tenders*

2.2.1 **Standard Procedure**

This is a formally controlled procedure under the overall management of Procurement.

The team/department requiring the tender provide a signed “Approval to Tender” form, an invitation to tender specification, and a “Form of Offer”.

The documents are reviewed for compliance and commercial soundness and then posted in the Procurement area on SEEDA’s website. Links may also be posted on partner websites and special public procurement websites such as Supply2Gov and CompeteFor.

Sealed Tenders are received by Procurement and placed in secure storage. Once the deadline has passed, tenders are opened and registered by Procurement, witnessed by a Finance officer. Tenders

received after the deadline, or non-compliant in other ways are not accepted.

The tenders are then individually evaluated by a panel consisting of a minimum number of three evaluators, nominated by the originating team/department, using the criteria stated in the tender specification. The supplier with the highest score will then be selected.

Procurement will review the score-sheets for fairness and anomalies before the result is announced.

2.2.2 EU procedure

The EU procedure is used where the expected cost is above the EU threshold. The first step is the posting of a “Contract Notice” on the website of the “Official Journal of the European Union” (OJEU) and also on the SEEDA website. This notice invites expressions of interest and gives a deadline for responses.

Once the deadline has passed, responses may be short-listed from the completion of a Pre-Qualification questionnaire.

After the shortlist has been established, the invitation to tender will be emailed/posted to the shortlisted suppliers, and managed as for the standard tender procedure above. However, the timeframe allowed for responses will be as specified for OJEU, and once the suppliers have been informed of the outcome, there is a 10 day standstill period before contracts can be signed. This is to allow for any challenge by an unsuccessful supplier.

2.2.3 Single Tender Action

In unavoidable cases, where the rules in 2.1 above would normally apply it may be necessary to proceed without a competitive process. This is known as “Single Tender Action” and can only be justified on the basis of unique skills of the supplier (no other supplier can provide the service), and/or extreme urgency. The justification needs to satisfy the rules laid down for the EU Negotiated Procedure.

Single tenders up to £3,000 must be approved by the appropriate Executive Director. From £3,000 up to £100,000, they must be approved by the Chief Operating Officer, and above £100,000 they must also be approved by SEEDA Board. Single Tender Actions over £250,000 must be approved by BERR.

An annual report of STA contracts over £50,000 is reported to BERR.

3 Framework Panels

3.1 ***Definition***

Where there is a regular requirement for a certain type of work, e.g. legal advice, land and property advice, programme evaluation etc., a system of pre-tendered Framework Panels can be used. Each panel consists of a minimum of three suppliers who have been selected by competitive tender (usually OJEU), and have been contracted for a maximum of four years to provide the specific services defined, at agreed rates, and terms and conditions.

The use of a panel to contract for an individual piece of work saves the time of going through a full tender process.

Panels can only be used for the specific type of work outlined in the contract.

In using a panel, if the assignment is expected to be over £50,000, it is required that proposals/quotes are obtained from all capable panel members. This is known as a mini-competition. However, with some panels a lower threshold has been set for mini-competitions.

3.2 ***SEEDA and External Panels***

SEEDA has established a range of panels which can be used to save time in the procurement process, but there are other public sector framework panels which SEEDA can use.

The Office of Government Commerce (OGC) has a range of panels which can be used by any public sector body, and these panels come under the collective name of “Catalist”.

Panels set up by other public sector bodies can sometimes be used by SEEDA, depending on the terms of the contracts. Where it is possible to use another public sector panel, this is usually arranged by an informal agreement, or in some cases it is necessary for SEEDA to sign up to terms and conditions for use of the panel.

4 Sustainable Procurement

4.1 **Definition**

The UK government's Sustainable Procurement Task Force published the following definition:

"Sustainable Procurement is a process whereby organisations meet their needs for goods, services, works and utilities in a way that achieves value for money on a whole life basis in terms of generating benefits not only to the organisation, but also to society and the economy, whilst minimising damage to the environment.

(Sustainable Procurement should consider the environmental, social and economic consequences of: Design; non-renewable material use; manufacture and production methods; logistics; service delivery; use; operation; maintenance; reuse; recycling options)."

4.2 **Government Policy through Procurement**

Sustainable Procurement is classified as "Policy-through-procurement". This is where public procurement is seen as a lever to achieve wider UK government policy objectives. These include environmental or "green" issues; the creation of jobs and wealth in regeneration areas; opportunities for Small and Medium Enterprises (SMEs) and Black and Minority Ethnic Enterprises (BMEs); fair trade and the inclusion of developing countries; adult basic skills; disability, race and gender equality; innovation; and the promotion of ongoing and contestable supplier markets.

Like other public sector organisations SEEDA has a duty to pursue fair, open, and competitive procurement, and to achieve value for money. Sometimes there can be seen to be conflict of interest between value for money and sustainable procurement¹. But, and especially given SEEDA's role in providing exemplars to others in the region, and stimulating markets through its own procurement, this may mean that SEEDA may wish to place contracts that aim particularly at driving policy change and

¹ The Office of Government Commerce offers the following guidelines:

"There is scope to take account of sustainability issues in line with UK policy and EU rules under a strict set of circumstances. It is crucial that the Government's Value for Money policy, set out in Chapter 22 of Government Accounting, is adhered to. In addition, under EU law, the requirement must be:

- *relevant to the subject matter of the contract*
- *non-discriminatory and transparent*
- *consistent with what the directives say about the criteria allowed at each stage of the process (this means that sustainable procurement objectives should be taken into account as early as possible in the procurement process i.e. in the business case); and*
- *tested critically for cost effectiveness, efficiency and affordability in using public expenditure*

addressing market failures around environmental sustainability and social inclusion.

The following sections provide further clarification and guidelines.

4.3 ***Diversity and Equality***

All SEEDA contracts include a clause requiring the organisation and relevant sub-contractors to comply with current legislation on diversity and equality, and to act consistently with SEEDA's Race and Diversity Equality Strategy.

In procuring from an organisation, it is also reasonable to request copies of their policies on Diversity and Equality. However, these should not be used as part of the criteria for selection unless they are specifically relevant to the requirements of the work to be done. To do so would be to exclude organisations such as SMEs who may not have a written policy, and this would not be "fair and open" competition.

Organisations may also be asked if they have been prosecuted under Diversity and Equality laws. It is a risk to SEEDA's reputation to be seen supporting such organisations, but sensible judgement must be made in each individual case.

4.4 ***Sustainable aims of Regional Economic Strategy***

The Regional Economic Strategy includes the objective of "Sustainable Prosperity", and this contains targets and aims under the headings of:

- Climate Change and Energy
- Sustainable Consumption and Production
- Natural Resources and the Environment
- Sustainable Communities

The 'Smart Growth' objective is also relevant, particularly the priority in the RES Implementation Plan of:

- Increasing economic inclusion and making the most of the skills of South East residents

And the 'Global Competitiveness' objective with the priority of:

- Achieving a double dividend of growth and sustainability through innovation and creativity

It is important that SEEDA is seen to be leading by example, and therefore Procurers must be aware of the details of these aims in any procurement that they undertake. These may not be applicable in all procurement activities, but procurers should consider the following:

- that the procurement supports the specific environmental and social objectives and targets of programmes and projects such as energy efficiency of new buildings and equipment.
- that service providers have the capability to meet the technical environmental aspects of projects.
- how goods are to be obtained, used and ultimately disposed of or recycled. For example through stipulating the use of reclaimed resources rather than virgin materials; requiring evidence of re-use and re-cycling.
- where appropriate, request information from suppliers on the environmental and social impacts of the products and services being supplied. In particular look for evidence of good practice such as certification and labels.
- where appropriate, request information on any sub-contracting to ensure that suppliers' own procurement practices are socially inclusive and environmentally friendly.
- encourage suppliers to minimise the environmental impacts of their operations, products and services by asking questions and thereby demonstrating the importance that the SEEDA places on addressing the whole-life aspects of resource use.

4.5 *Environmental Management System (EMS) and ISO 14001*

Under SEEDA's Environmental Management System and ISO 14001, there is a requirement for procurement of all office based activities to satisfy environmental legislation, best practise, and mandatory standards.

4.6 *Small Medium Enterprises and Black and Minority Ethnic Enterprises*

SEEDA is active in the promotion of SMEs (firms with less than 250 staff) and BMEs within the region.

In procurement, this means that any tender process should not, by its nature, unfairly exclude SMEs and BMEs. Procurers should ensure:

- all tenderers have equal access to relevant information
- the tender process is proportionate: ie as short as possible and with minimum bureaucracy, to minimise time and costs to suppliers

- criteria for pre-qualification and evaluation do not unnecessarily exclude SMEs and BMEs
- criteria relating to financial standing are not set to a level which would unreasonably exclude newer/smaller businesses
- criteria relating to capacity should be reasonable and appropriate to the work required

5 Grants and Sponsorship

5.1 **Grants**

Grants are the provision of funding to assist or enable some form of external project. They are not strictly procurement since SEEDA receives no direct benefit from the project, and the grants are usually applied for or requested. However, grants are conditional on “outputs” which show that the funding has been used appropriately, and that the project has achieved planned results. These may be the creation of jobs, completion of research, or satisfaction of other aims.

There are two situations where procurement processes may apply:

5.1.1 **Managed funding**

Grant funding can be given to a non-public body for management and distribution and in this case the managing organisation will charge a management fee. In these cases, the Management Organisation is providing a service to SEEDA and therefore they must be procured and selected via the Competitive Tender process. The value of this tender will be based on the management fee only, and not include the total grant value.

5.1.2 **Grant competitions**

Where a fixed amount of grant funding has been made available to support a certain type of project, then a competition can be arranged, allowing organisations to propose their own projects. This competition can be managed by using the standard competitive tender process, since this contains all the necessary elements for fair competition.

5.2 **Sponsorship**

Sponsorship is a non-conditional payment to support an event or piece of work. SEEDA will get no direct benefit from this payment, but the activity will normally support SEEDA’s general aims within the region. Limited conditions are allowed, such as SEEDA logo on marketing materials, attendance at the event etc. Sponsorship is normally fairly low value e.g. mostly under £10,000, and is offered by letter. However, where significant

values are required, then it should be treated as a grant, and a grant contract should be used to protect SEEDA's interests.

5.3 *Partnerships and grant recipients*

Project Managers and procurers must notify partners and grant recipients that when using the grant for procurement of goods and services, they are obliged to comply with SEEDA Procurement Policy, i.e. to pursue fair, open, and competitive procurement, and to achieve value for money by selecting the supplier with the most economically advantageous offering.

6 Contracts

6.1 *Contract Templates*

Any procurement or grant over £10,000 must use a formal contract. Below this amount, a letter of Instruction or Letter of Offer can be used, supported by a purchase order which refers to SEEDA's standard terms and conditions.

SEEDA has a set of standard contract templates which will satisfy most requirements. Apart from the essential completion of the contract schedules, which detail the purpose of the contract, the standard wording of the contracts should not be changed. Any request for modification must be put forward to Procurement. Minor changes may be accepted, but anything significant would need external legal advice.

New contracts must be registered with Procurement using the appropriate forms.

6.2 *Declaration of Conflicts of Interest*

Where the contract is for consultancy, a Declaration of Conflict of Interest form must be signed by the consultancy, and this together with a Consultancy register form must be provided to Procurement.

7 Purchase Orders

Before signing a contract or placing an order for any procurement, a purchase order must be raised. With grants, the purchase order must be raised immediately after the contracts have been signed.

The purchase order must be for the whole value of the contract, or the portion that will fall within the current financial year.

Where a contract extends into the next financial year, a new purchase order must be raised as early as possible in the new financial year.

8 Financial Vetting

When contracting with a supplier who is new to SEEDA, where the contract value is £50,000 or greater, a Financial report must be obtained from Experian. The reason for this is to ensure that we have evidence of the financial status and risk of the company before committing to a contract.

There are staff in each Directorate as well as Procurement, who are authorised to request these reports. Copies of the reports must be sent to Procurement to be held on central file.

New suppliers to SEEDA are set-up on the accounting system by Finance, on advice from Procurement.

9 Recruitment vs Procurement of staff

9.1 *Background*

There are a variety of ways in which SEEDA can acquire staffing resources, such as permanent staff, temporary staff, interim staff/managers, consultants, contractors, and these can be engaged via either a recruitment process or a procurement process.

The process that needs to be followed is dependent on the type of contract relationship, but acquisition of all types of staff resource, other than consultants and temporary resources required for 3 months or less must be authorised by Human Resources (HR).

9.2 *Procurement of ex-employees as consultants, contractors, interims, and temporary staff.*

Where an ex-employee has been paid compensation either by redundancy payment or payment in lieu of notice, the Agency will not engage them in another status for a period to be notified to staff in their letter of termination. This ruling applies to both direct contract with the ex-employee and indirect contract through a limited company or agency.

Any procurement of ex-employees must be by a fair and open competitive process.

9.3 ***Types of contract relationships***

9.3.1 **Resourcing supported by HR**

Employment contract. This can be a normal open-ended or a fixed term contract, and the employee is paid via payroll. The employee is recruited under SEEDA's Recruitment Policy.

External Secondment contract. Employee working for SEEDA but paid by another public sector body. SEEDA pay the other body to cover salary costs. These arrangements must be arranged through and authorised by HR. Procurement process must be followed and a purchase order must be in place. Procurement Compliance require that a current secondment contract must also be in place.

Contract with Recruitment Agency for temporary staff required for more than 3 months (or extended beyond 3 months). This applies to temporary staff and interim staff employed by the recruitment agency. Procurement process must be followed and a purchase order must be in place.

Contract with Recruitment/Contract Agency. Where a contractor is employed by his/her own limited company, the agency has a contract relationship with the limited company and is subcontracted by the agency for interim or project work. Procurement process must be followed and a purchase order must be in place.

Overseas representatives. Where the representative is considered to be an employee, but must be paid through a local agency in order to comply with local employment legislation. Procurement process must be followed and a purchase order must be in place.

HR must be involved in all contracts covered by this section. Currently all require the authorisation of the Chief Operating Officer.

9.3.2 Procured by any department

Consultancy service contract with consultancy company or similar.

Where the consultant is employed by the consultancy company and has been contracted to deliver a specific project rather than fulfil a role. This is subject to a competitive process following normal procurement procedures and rules.

9.4 ***Deemed Employment***

Deemed employment is where a non-employee working for SEEDA is in a situation where they are able to claim employment rights. This is a risk to SEEDA as it can incur considerable costs. This can occur where the non-employee is directly managed by SEEDA in the same way as an employee, rather than being engaged purely to provide a specific deliverable.

Guidance on deemed employment should be sought from HR.