

To: POLICY & RESOURCES (FINANCE & CUSTOMER SERVICES) SUB COMMITTEE		Subject: Procurement Reform Bill
From: HEAD OF REVENUE SERVICES		
Date: 21 OCTOBER 2013	Ref: BC/GP	

1. Introduction

- 1.1 The purpose of this report is to set out a summary of the key implications for Council of the draft Procurement Reform (Scotland) Bill, introduced to the Scottish Parliament on 4 October. A copy of the Procurement Reform Bill is available from within the members library.

2. Background

- 2.1 The Policy & Resources (Finance & Customer Services) Sub-Committee meeting on 28th November 2012 approved a response to the Scottish Government's consultation paper on the Procurement Reform Bill.
- 2.2 The Public Contracts (Scotland) Regulations 2012 set the threshold levels, above which EU law applies, for central and local government bodies for purchasing products and services. The draft Procurement Reform (Scotland) Bill seeks to create a legal framework for contracts below the thresholds required by European law.
- 2.3 The progression of the Bill through Parliament will provide opportunities for future consultation and submission of evidence and the Council will participate at the appropriate times as these arise.
- 2.4 As the Bill has only just commenced its journey through the parliamentary process there is no indication of the commencement date(s) for the introduction of any parts of the Bill's proposals.

3. Procurement Reform Bill proposals

- 3.1 The Bill looks to create a national legislative framework regulating procurements above specified financial thresholds and below the EU limits applicable through the Public Contracts (Scotland) Regulations 2012.

	Procurement Reform Bill	EU
products and services	£50,000	£175,000
public works contracts	£2,000,000	£4,350,000

- 3.2 The Bill introduces a number of duties and administrative requirements for contracting authorities with the aim of promoting good, transparent and consistent procurement practice.

3.3 The Bill consists of 4 main parts as summarised in the sections below:

Key Concepts and Application

3.3.1 The Bill will apply to contracting authorities, including Local Government, and to regulated contracts where the estimated total value of the contract exceeds the thresholds as indicated in paragraph 3.1.

General Duties and Procurement Strategies

3.3.2 The Bill requires contracting authorities to carry out regulated procurement in a non-discriminatory, transparent and proportionate manner. Allied to this is a duty to consider how, in conducting the procurement process, the outcome could improve the economic, social and environmental wellbeing of the authority's area in respect of matters that are relevant to the items / services being procured.

3.3.3 The Bill also makes provision for the preparation and publication of procurement strategies and annual plans by contracting authorities where the estimated total of their regulated procurement is expected to exceed £5m for the year.

Specific Duties

3.3.4 The Bill introduces a range of duties which are summarised below:

- Use of Public Contracts Scotland (PCS) website to advertise the seeking of offers and award of contracts
- Requirement to consider Community Benefit clauses in contracts over £4m and include such in the contract notice
- Scottish Ministers may issue guidelines for areas including:
 - Requiring the exclusion from participation in a procurement process on the grounds of criminal activity where evidence of a conviction is known.
 - Selection of tenders with regard to minimum standards
 - Procedure to be followed to determine to exclude or not an economic operator and the basis of criteria eg
 - Conviction of an offence
 - Failure to pay tax
 - Misconduct as specified by regulation
 - Economic operators collude or take actions to distort competition, etc
 - The use of technical specifications
 - Requiring procurement of specific goods/services to include a proportion of recycled/recyclable products
- Prevents the operation of a charge to an economic operator for participating in any part of the process of a regulated procurement
- Requirement to provide explanation to excluded and unsuccessful tenderers
- Maintain a Contracts Register with regard to all contracts entered into as a result of a regulated procurement

Remedies

3.3.5 The Bill provides for an economic operator the opportunity to seek remedy, as specified in the Bill in the sheriff court or Court of Session, where a contracting authority is in breach of its procurement obligations

4. Implications for the Council

4.1 The Bill will provide a standardisation for the manner in which the Council undertakes procurements within the threshold values indicated in para 3.1.

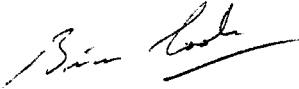
4.2 Generally the requirements of the proposed Bill as indicated in para 3.3.2 & 3.3.3 are consistent with the requirements the Council operates to at present within the Best Value regime and in procurements over the EU thresholds and should not prove too onerous. The

Council will need to implement a more organised approach to its forward procurement planning and strategy than is currently operated in the Local Authority sector.

- 4.3 The majority of specific duties outlined in para 3.3.4 are in place within the Council at present (e.g. use of PCS, Community Benefit clauses, no charge for participation in tender exercises, contract register) however the Bill will require these to be in place for all regulated procurement exercises. The Bill provides Scottish Ministers the power to introduce guidance and until these are known there is no indication of the extent of the requirements or the state of compliance with them. The Bill looks to strengthen the explanation to those excluded and unsuccessful in the award of regulated procurement exercises.

5. **Recommendations**

- 5.1 It is recommended that the Committee notes the report

A handwritten signature in black ink, appearing to read 'Brian Cook', with a horizontal line underneath.

Head of Revenue Services

Members wishing further information please contact Mr. Brian Cook, Head of Revenue Services, Tel:- 01698 – 403929.