

Procurement
Policy and Procedures

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Procurement Policy and Procedures

Version Control Record

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❖ Policy

PROCUREMENT POLICY STATEMENT

The Group¹ is dedicated to operating a Procurement Management System in accordance with all relevant industry and legislative requirements, in order to demonstrate its commitment to the provision of a quality procurement service.

This will incorporate:

- Timely delivery and value for money
- Supplier management
- Best procurement and commercial practice
- Protection of Group interests
- Full recognition of safety and environmental concerns
- Compliance with Specification
- Ethical, social and environmental responsibility

We will establish mandatory procedures and controls that adhere to all applicable policies and legislation to ensure all holders of delegated procurement authority act within the aims of the Group Procurement Policy and Procedures.

We will develop stable, long term relationships with key suppliers and at the same time encouragement will be given to appropriate new suppliers in order to maximise the benefit of competitive procurement.

Contracts will be awarded to suppliers who meet the specified quality, reliability and safety requirements that represent the best overall value to the Group. These will be based on 'whole life' costs that also consider factors such as technical compliance, operating costs, warranty and product support, inventory and distribution costs, pricing and payment schedules.

Holders of Delegated Procurement Authority will be subject to frequent review and audit to verify compliance with the instructions contained in the Group Procurement Policy and Procedures.

All Group Managers are accountable for ensuring that the Procurement Policy and Procedures are where applicable briefed, understood and implemented at all levels within the Group.

Group Chief Executive

¹ The Group means the Northern Ireland Transport Holding Company and all companies under its ultimate control (including its main operating subsidiaries Northern Ireland Railways Company Limited, Ulsterbus Limited and Citybus Limited), either collectively as a corporate group or individually.

❖ Context and Scope

The Purchasing Department is part of the Finance Division. The Department performs a central core purchasing and purchase ledger (invoice processing) function for the Translink Group. The terms “Translink”, “Translink Group” and “Group” are deemed to be interchangeable and for the avoidance of doubt each means the Northern Ireland Transport Holding Company (NITHC) and all of its subsidiary companies including Citybus Limited, Flexibus Limited, NIR Travel Limited, Northern Ireland Railways Company Limited, Travel NI Limited, Translink NI Limited, and Ulsterbus Limited.

The Procurement Policy Statement set out and its procedures apply to the Group in its entirety.

The Group Financial Memorandum & its accompanying Management Statement specifies the financial framework within which NITHC and its operating subsidiaries are required to operate and is intended to encompass amongst other things, finance, performance, accountability and control; these documents are taken account of in the Group Procurement Policy and Procedures.

The Group shall follow when it is appropriate to do so the Central Procurement Directorate's Procurement Guidance Note's. However the Group has full authority to use its own judgment and discretion on which aspects of Guidance notes to follow.

To ensure compliance with procurement legislation and to retain the Group's Status as a Centre of Procurement Expertise all Procurement, tender action and contract placements must be authorised by the Purchasing Department unless delegated authority has been granted.

All Group employees are subject to and must follow the Group Procurement Policy and Procedures. Line managers have accountability for their staff and must ensure that they are aware of and adhere to the Group Procurement Policy and Procedures. Each employee is also accountable for ensuring that they comply with Group Procurement Policy and Procedures. All Group employees who are involved in Procurement must comply with the 12 Principles of Public Procurement:

12 Principles of Public Procurement

1. **Accountability:**
Effective mechanisms must be in place in order to enable Departmental Accounting Officers and their equivalents in other public bodies to discharge their personal responsibility on issues of procurement risk and expenditure.
2. **Competitive Supply:**
Procurement should be carried out by competition unless there are convincing reasons to the contrary.
3. **Consistency:**
Suppliers should, all other things being equal, be able to expect the same general procurement policy across the public sector.
4. **Effectiveness:**
Public bodies should meet the commercial, regulatory and socio-economic goals of government in a balanced manner appropriate to the procurement requirement.
5. **Efficiency:**
Procurement processes should be carried out as cost effectively as possible.
6. **Fair-dealing:**
Suppliers should be treated fairly and without unfair discrimination, including protection of commercial confidentiality where required. Public bodies should not impose unnecessary burdens or constraints on suppliers or potential suppliers.
7. **Integration:**
In line with the Executive's policy on joined-up government, procurement policy should pay due regard to the Executive's other economic and social policies, rather than cut across them.
8. **Integrity:**
There should be no corruption or collusion with suppliers or others.
9. **Informed decision-making:**
Public bodies need to base decisions on accurate information and to monitor requirements to ensure that they are being met.
10. **Legality:**

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Public bodies must conform to European Community and other legal requirements.

11. **Responsiveness:**

Public bodies should endeavour to meet the aspirations, expectations and needs of the community served by the procurement.

12. **Transparency:**

Public bodies should ensure that there is openness and clarity on procurement policy and its delivery.

All Group employees must ensure that have the correct delegated financial authority before they commit the Group to commercial contracts and that these contracts are in writing.

Competitive Procurement & Value for Money:

The Group will always attempt to place contracts on a competitive basis and tenders accepted from suppliers who provided best value for money overall.

It is the Northern Ireland Executive's policy that the procurement of goods, services and works is based on best value for money principles and all requirements of the Group must be acquired through competition unless there are convincing reasons to the contrary.

The Group will always attempt to gain the best value for money option for works, supplies and services this is the optimum combination of whole life cost and quality (or fitness for purpose) to meet the customer's requirements and allow for the inclusion, as appropriate, of sustainable development goals within the procurement process (Management Statement and Financial Memorandum 2013).

Competition promotes economy, efficiency and effectiveness in public expenditure and is a useful means of ensuring that the market is fully tested. Procurement through competition remains the best way of achieving best value for money and will assist in demonstrating transparency and integrity.

The Group shall follow when it is appropriate to do so the Central Procurement Directorate's Procurement Guidance Note 02/04 - Evidencing Best Value for Money.

❖ Key points & Procurement Control Limits

As a Public Utility, Translink have flexibility to vary their PCLs in accordance with the appropriate thresholds and number of quotations they deem appropriate to ensure that accountability and value for money are achieved in relation to their procurement. Details of these limits have been submitted to the Department for information (Management Statement and Financial Memorandum 2013).

Continued below...

Procurement Policy and Procedures

The Group Procurement Procedures and Control Limits released September 2010

In all dealings employees of the Group must preserve the highest standards of honesty, integrity, impartiality & objectivity. A declaration of interest must be made where appropriate. Employees must take care when requesting Quotations / Selected Tenders to ensure there is equal treatment, transparency & non-discrimination. Employees must ensure that any Contractor/Supplier invited to Quote or Tender has the capability & capacity to deliver the requirement.

Value for Money must be capable of being demonstrated for all requirements. All original documents, including faxes & email quotations must be retained in hard copy for 7 years. Where timings, costs or specifications differ from that which was originally approved, e.g. where timing is delayed by 24 months, costs vary by more than 10% or where there are significant changes to the specification then revised approval should be sought immediately.

Disaggregation: The deliberate splitting of a requirement into multiple requisitions of lower monetary value to avoid the Group procurement procedures is not permitted.

No commitment should be entered into for goods, works or services prior to a Requisition & an Order being approved and an Order should always be raised prior to the receipt of an invoice. Retrospectively raising a requisition to pay an invoice should not be necessary.

Contractors/Suppliers should be advised that invoices must be sent to the Group Purchasing Department, Purchase Ledger Section, 3 Milewater Road, Belfast, BT3 9BG & must not be addressed to or sent to individuals.

Existing arrangements, e.g. Contracts or frameworks must be used in the first instance if appropriate.

The Group shall collaborate internally & with other public sector organisations where appropriate. If an employee becomes aware of collaboration opportunities this should be brought to the attention of the employee's Procurement Projects Advisor (contact details can be found on Sharepoint at <http://sharepoint/Purchasing/default.aspx>).

Evidence of action taken & quote/tenders must be inserted in the internal text box of requisitions on Agresso. If any staff member requires further information please do not hesitate to contact a Buyer or a Procurement Projects Advisor. The information recorded should include, at a minimum, the following:

- Action taken to check for existing contracts, select lists or frameworks
- Vendor name(s);
- Net (ex VAT) value of quote(s) provided;
- Nature of obtained quote(s) i.e. telephone, email, fax etc.
- Vendor contact(s); &
- Date quote(s) obtained.
- The reason(s) for selecting the successful Vendor.
- Approvals required & the date those approvals were obtained.

It may not always be possible to obtain the required number of quotations. In this event a detailed reason must be noted on the relevant documentation including the options explored & actions taken to obtain the required quotations. Single tender action i.e. Proposals to award a contract(s) without a competition are subject to the approval of the Group Chief Executive and agreed with the DRD therefore the internal text box of requisitions on Agresso must list that this approval has been obtained.

The Purchasing Department may vet the detail(s) of a quotation(s), requisition(s), order(s) or Tender(s) at any time.

Written quotations/selected tenders means inviting offers from selected contractors/suppliers without public advertisement. It should be noted that procurement by quotation is usually on the basis of the contractors'/suppliers' terms & conditions. For procurements which need to cover risks such as insurance, IPR (intellectual property rights), confidentiality, security, etc or in the case of service contracts where it is important to cover issues such as non-performance or disputes, it is always advisable to issue written conditions of contract. If bespoke terms & conditions have been applied to a requirement the external text of any requisition raised on Agresso must reference this & include the date & document reference.

The Procurement Projects Advisor for the Divisional area will discuss a requirement of any value with any Group employee; please do not hesitate to contact them. Queries regarding purchasing can also be addressed to the Group Purchasing Manager at 3 Milewater Road, Belfast, BT3 9BG Tel. 02890 354 026.

Estimated Value of Order (excluding VAT)	Number of Quotations/Selected Tenders Required
Up to £1,499	Minimum of 2 quotations where possible & practical sought by Requisitioners.
£1,500 to £9,999	Minimum of 3 or more written quotations where possible & practical sought by Requisitioners.
£10,000 to £29,999	Minimum of 4 or more written quotations / selected tenders where possible & practical.
Procurement Projects Advisor must be contacted prior to communications with Contractors/Suppliers for requirements at or above the following values	
£30,000 – OJEU Thresholds	Advertise on Website, eSourcing NI & industry journals where appropriate.
Over OJEU Thresholds	Full OJEU Tender Process.

The Group shall follow when it is appropriate to do so the Central Procurement Directorate's Procurement Guidance Note 03/10- Procurement Control Limits however the Purchasing Department with the Department for Regional Development (DRD) determine specific suitable limits for the Group which may not mirror Guidance Note 03/10.

Part 1 – Centre of Procurement Expertise and Internal Clients

❖ What is a Centre of Procurement Expertise (CoPE)

A CoPE is an accredited body for procurement, accreditation is granted by the Procurement Board for Northern Ireland.

The Purchasing Department of the Group achieved the award of Centre of Procurement Expertise on the 27th March 2007 with a letter of commendation from the Director of the Central Procurement Directorate (CPD) on behalf of the Procurement Board for Northern Ireland.

The Group Purchasing Team should be given the authority to influence all purchasing requirements especially those that are critical to the operation of the Group. They are encouraged to adopt a proactive and strategic approach to focus their expertise on higher value and more strategically important procurements. It is therefore essential that the Purchasing Department plan adequately for such procurements and that business areas of the Group invite the Group Purchasing Team into their strategic planning at the earliest opportunity.

Procurement best practice dictates that skilled and appropriately trained procurement staff should be involved from the outset to ensure they have the opportunity to become familiar with the market conditions, in particular the latest technological solutions; identify the risks and develop risk management strategies; assist in defining specifications that at least detail the outputs required from the contractor; and define the evaluation criteria and those to be used to monitor the contractor's performance throughout the contract period.

The Group must support their Purchasing Department to look for new and innovative approaches to improve procurement performance and should provide the opportunity of training and development in this area to build up expertise and ultimately to achieve best value for money on strategic procurements. Development of staff should also include secondment to other organisations and through professional bodies which span both the public and private sector should this be appropriate.

The Principles of procurement good practice adopted by the Group include:

- **Early planning and clearly agreed requirements with the Purchasing Department**
- **Manage Risks with the Purchasing Department**
- **Seek continuous improvement with the Purchasing Department**
- **Monitor performance with the Purchasing Department**

❖ The procurement life cycle; what is covered

The Group Purchasing Department cover the entire procurement life cycle – from supplier sourcing to managing the contract through to asset disposal.

❖ Unique portfolio

The Department performs a central core purchasing and purchase ledger (invoice processing) function for the Group. The Group is responsible for operating public transportation services within Northern Ireland (NI). This role provides the Group with a unique portfolio of spend – Please refer to the diagram below.

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Infrastructure



Permanent Way
Ballast
Signalling & Telecoms
Property construction
Property maintenance
Specialist railway vehicles
Infrastructure professional support services

Operations



Rolling stock, fleet procurement & disposal
Public Service Vehicles fleet procurement & disposal
Energy including gas, fuel & electricity
Facilities management including security, catering, cleaning
Operational professional support services

Mechanical Engineering



Rolling Stock,
fleet maintenance – parts (Rail)
Public Service Vehicles
fleet maintenance – parts (Bus and Coach)
Mechanical Engineering professional support services

Human Resources



Clothing
Training
Labour

Information Systems



Information system hardware
Information system software
Telecommunications

Finance



Financial & legal professional support services
Insurance provision and professional support services
Ticketing solutions

Marketing



Advertising and research
Production and Website
Communications
Contact Centre

Total value of contracts from:

£606.8 Million Inc. VAT

between 01/09/2009 to 31/08/2013

PUBLIC PROCUREMENT, ENGLAND AND WALES
PUBLIC PROCUREMENT, NORTHERN IRELAND

The Utilities Contracts
Regulations 2006

❖ Organisation structure & procurement planning

An Integrated approach

The Group is a closely integrated organisation with the Finance Division (of which the Purchasing Department is a part of) performing as a central core function to; the Northern Ireland Transport Holding Company (NITHC) and all of its subsidiary companies including Citybus Limited, Flexibus Limited, NIR Travel Limited, Northern Ireland Railways Company Limited, Travel NI Limited, Translink NI Limited, and Ulsterbus Limited.

The Purchasing Department view the companies within the Group as one entity in procurement terms and is integrated to such an extent that within the Group there are no 'customers' in a traditional sense. The Purchasing Department professionals now become integrated project team members of each Division.

The following diagram illustrates the Group's approach to the Purchasing Department structure. The way in which the Department is organised reflects centralised procurement for major decisions and raising low value requirements is a decentralised task. This structure enables policies to remain consistent and standardised for high value items whilst remaining flexible for lower value items. The diagram illustrates the Purchasing Department structure and at the same time reflects the way in which the wider organisation is structured and this is recognised by the Chartered Institute of Purchasing and Supply (CIPS) to be an acceptable model on which to base Purchasing Structure.

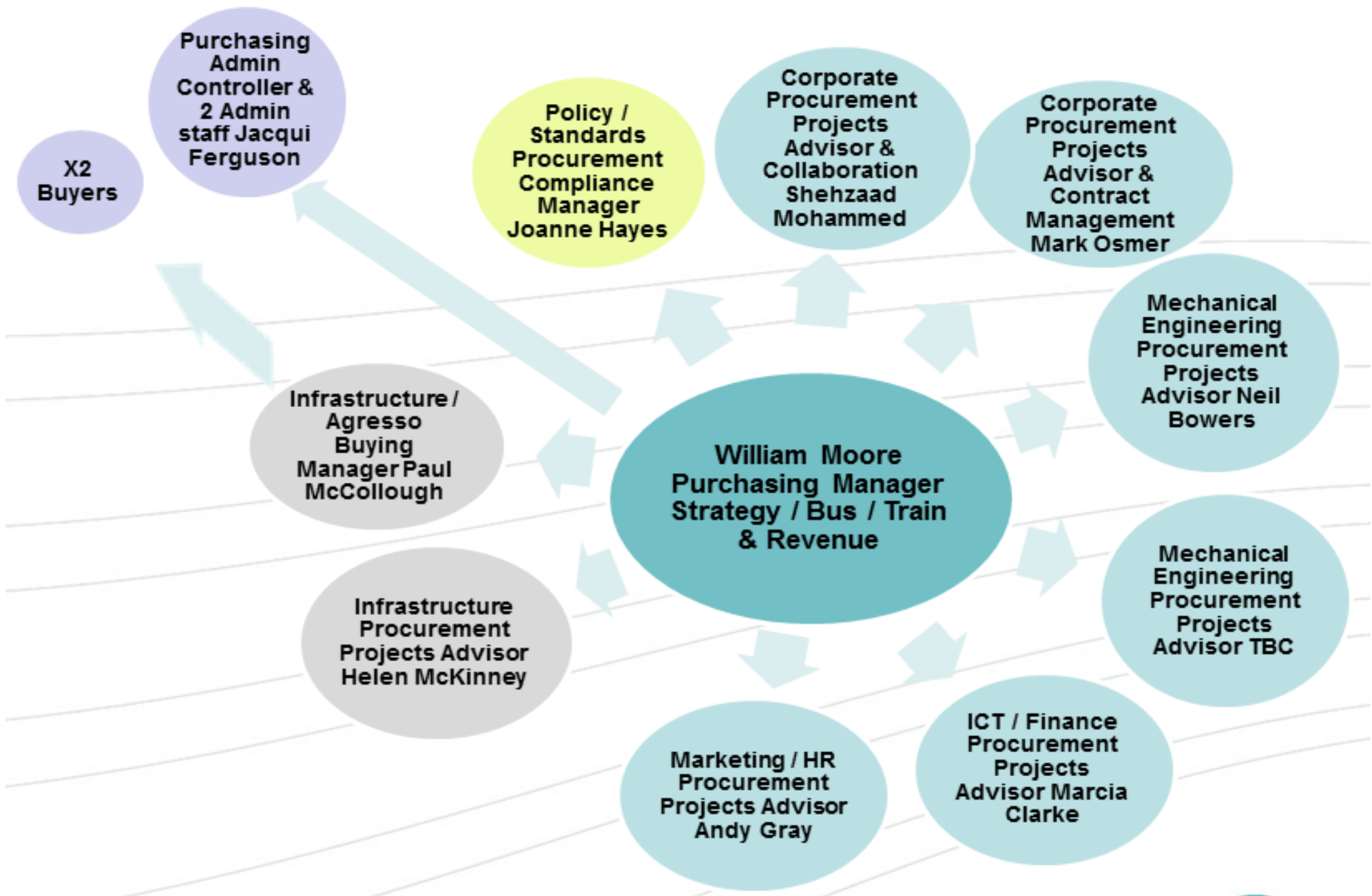
The diagram addresses 2 main service requirements of the Purchasing Department:

1. To participate and add value on Integrated Project Teams in relation to Procurement and Commercial matters
2. To ensure customers have a professional service and relationship with the Purchasing Department

The Purchasing Department is, in the first instance organised in a customer centred way around internal customer groups. This is illustrated by individuals being matched with specific Divisions (illustrated in the diagram). This enables key Procurement professionals to develop very close working relationships with Project Managers. Procurement professionals should be increasingly viewed as integral members of those Divisions for which they are accountable.

The Purchasing Department is, in the second instance, and in most cases by default (due to the types of Divisions) organised by Divisional requirement category, therefore the principles of Category Management are also applied by the Purchasing Department. This helps to mitigate the largest risk to being structured in a customer focused way i.e. the risk of missing the opportunity to aggregate common items of expenditure (as listed by the CIPS Knowledge Works guide on Category Management).

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The Category Management approach taken by the Purchasing Department requires an understanding of spend and future demand. It means developing sector sourcing strategies that enable supplier management and if required, in the longer term, more collaborative relationships between purchasers and suppliers. This also means creating greater coordination and synergy between them.

To ensure that categories of requirements are robustly managed the Purchasing Department takes a number of proactive steps:

1. The Procurement Professionals are accountable for discussing an annual forecast of forthcoming requirements each year looking for aggregation opportunities and then forthcoming requirements are released onto the public website.
2. The Procurement team are accountable for informing the Purchasing Manager and the rest of the senior Purchasing team about new requirements within good time of receiving them if they view the requirement as one which may have overlap.

An additional risk coming from the Category approach is that the Procurement Professionals become stale, over-focused and may experience an unbalanced workload. It is therefore a requirement that Procurement Professionals working with Divisions are flexible and may undertake duties outside their normal area of responsibility. This requirement for flexibility means that Procurement Professionals are permitted to receive training in areas that are outside their immediate focus and this continuous professional development is supported by the Purchasing Manager.

However this flexibility also requires the team to have similar skill levels and working pace to avoid inequalities in outputs which can be divisive and therefore decisions on changes in workload must be carefully scrutinised by the Purchasing Manager.

The Purchasing team utilise a master work load planning list (also known as the Gantt Chart) to schedule in recurring and new requirements.

Customer Service feedback procedures

The Group Purchasing Department is committed to offering a high standard of service to all of our internal and external customers and is committed to continuous improvement. With such a relationship focused structure and integrated organisational culture it is not deemed that a formal Service Level Agreement (SLA) is required with the internal organisational Divisions nor therefore is it deemed appropriate to have Customer Service Surveys. The Purchasing Department do however have feedback measures in place should they be required. These include;

- Internal feedback procedure from the Senior Management Team:
The Senior Management Team has sight of all major Procurements via Tender Reports that are included on monthly Matters for Approval. These Tender Reports make reference to the Procurement process and will be rejected if it is deemed that aspects of the project are not satisfactory. In addition the open nature of the organisation means that feedback can also be obtained on an individual basis.

- Internal feedback procedure to the Purchasing Department:

The Purchasing Department are interested in the opinions of our work colleagues. The Purchasing Department will listen and, where appropriate, act upon suggestions/comments. If you have any comments on the Procurement process or the service you are receiving from the Purchasing Department you should contact the Purchasing staff member you are dealing with or who is allocated to your Division in the first instance. If the member of staff with whom you are dealing and/or the Divisional contact has not been able to resolve the issues you may then stop in with, call, or put your case in writing to the Group Purchasing Manager briefly setting out the details of your feedback. If you remain dissatisfied having heard from the Group Purchasing Manager, you may then put your case in writing to the Director of Finance who is also designated as the Head of Procurement.

Our contact details are:

Purchasing Manager
The Translink Group
3 Milewater Road
BELFAST
BT3 9BG
028 9035 4026
William.Moore@translink.co.uk

Director of Finance
The Translink Group
3 Milewater Road
BELFAST
BT3 9BG
028 9025 8117
Stephen.Armstrong@translink.co.uk

❖ Professional Teams – Procurement and non-procurement

Today's operating environment demands flexibility; however Public Procurement is a highly regulated area with a great deal of European and Government regulation and policy surrounding it. This along with the requirement to add value and protect the commercial interests of the Group has required the Purchasing Team to become professionally qualified; currently the majority of the Purchasing Department hold full membership status with the Chartered Institute of Purchasing and Supply (CIPS).

The Group's Purchasing professionals are now working within integrated project teams (IPT's - cross-functional teams formed with the responsibility and authority to see a project through to its conclusion). These developments have led to changes in the skill sets required within the Purchasing profession. Most of the Group's senior Procurement team have undergone training in Prince 2, ranging from foundation to practitioner standard.

The Group's non-procurement staff for high value requirements are guided and given advice by a one to one service from the Group's professional procurement team.

Periodically the Purchasing Team conducts road show learning events for those who conduct low value purchasing and holds training for Contract Owners. All Group Managers are accountable for ensuring that the Procurement Policy and Procedures are where applicable briefed, understood and implemented at all levels within the Group.

❖ Compliance - Audits and Records Management

Audits

Internal Audits are carried out to ensure that the Procurement Standards continue to meet the needs of the Group whilst complying with legal requirements.

The frequency of Internal Audits will depend upon the Internal Audit programme of work.

Areas for review found at internal audit and recommended actions to address these areas are collated into an Action Plan for the Group to address. The Purchasing Manager will discuss the report with the relevant employees and appropriate action nominee(s) will be identified. The action nominee will be tasked with establishing a satisfactory outcome for the area for review. A target completion date will be agreed.

Corrective / preventative action and target completion dates will be reviewed on a regular basis at the department management team meetings.

Records Management

The most current Procurement Policy and Procedures are held on Sharepoint for all Group staff to access.

The Regulations Part 8 Section 41 lay out certain conditions on confidentiality of information which Utilities can use or must conform to. The Group may stipulate that information provided to economic operators during the procurement process is restricted and confidential. The Group must however not disclose information that the economic operator has designated as confidential including items which are technical or trade secrets.

The Group will at times have copies of supplier documents. These documents must be held securely at all times i.e. access must be restricted to Group employees only unless an alternative instruction has been given & permission has been gained.

Documents which contain confidential or commercially sensitive information must be disposed of accordingly to ensure that supplier information which has been provided to the Group is protected.

The Purchasing Department use the eSourcingNI platform for tender processes. This platform is the equivalent to any other Electronic Data Management System the Group may be using and therefore tender documents are held on the platform and not on any other Electronic Data Management System.

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The minimum retention period for procurement information is a period of **7 Years** (The Group Financial Memorandum). Contracts should be kept for this period or for the period in which the contract is still live including warranties, Commercial Exploitation Agreements and or Intellectual Property Rights remain valid, whichever is longer.

There may be occasions where DRD stipulate different retention periods, if this is the case DRD must expressly alert the Group Purchasing Department to this extra requirement in order for them to take any necessary action.

Retention of documentation relating to EU programmes for audit inspection (NITHC will need to retain such documentation for **9 years** from when the programme finishes e.g. programme 2007-2013 all documents to be retained until 2022); (The Group Financial Memorandum).

When the Purchasing Department records are destroyed after the retention period it must be done in a secure manner to prevent disclosure of confidential information.

Records must not be released from the Department or made available to third parties without the permission of the Purchasing Manager or the Director of Finance and any information released must be recorded. The information released must be a copy of the original documents only the originals must not leave the control of the Purchasing Department.

❖ Data – management information systems

The Purchasing Department has developed a Contrax database system to manage the tendering process and post award contract details and monitoring. This system has the capability to record savings, sustainability actions, legal challenges and complaints.

The Purchasing Department has developed a spread sheet system to record details of contracts awarded without a competition.

The Purchasing Department use the eSourcingNI platform under the CPD contract and rely on CPD to develop reporting systems from this platform on areas such as reporting on Small to Medium Enterprises.

The Purchasing Department use the Agresso system to conduct spend analysis and to detect patterns of spend that may indicate fraudulent activities.

❖ Controls – Internal Audit, Risk, Approval Levels, Quality Management

In addition to the regular scheduled Internal Audits covering procurement activities, regular reports to the Group Chief Executive are written by the Purchasing Manager on current Purchasing issues and risks. In addition the Group Chief Executive meets with the Head of Procurement regularly to ensure that procurement plans are monitored and any recommendations from Internal Audit are being progressed.

The Finance Division also holds a risk register of on which any current procurement related risks can be added and managed.

The Purchasing Manager holds regular briefing sessions with key procurement team members in which current risks are discussed and managed. The Group has in place a Group Scheme of Delegation which sets out financial approvals.

❖ Engagement with the supply base

The Group has in place a comprehensive system to engage with the supply base. The company website provides proactive information for suppliers and potential suppliers, including information on:

- Current Tenders
- Group Procurement and how to register on eSourcingNI
- Opportunities in the future
- Contracts Recently Awarded
- Our commitment to Procurement
- Previous Tenders
- Feedback
- How to Contact Us

The main mediums used for advertising requirements are:

1. The Group Website <http://www.translink.co.uk/Corporate/Procurement/>
2. The Group Twitter Feed <http://twitter.com/#!/Translinkb2b>
3. eSourcingNI Listings <https://e-sourcingni.bravosolution.co.uk/web/login.shtml>

The Purchasing Department will speak freely to any potential supplier on doing business with the Group and if deemed to be appropriate will hold supplier information sessions. The Purchasing Team also attend Meet the Buyer Events. The Group write output based specifications to ensure that market capabilities can be taken advantage of.

The Group attends and participates in engagement meetings with industry representatives regularly through a CPD co-ordinated approach.

Part 2 – Procurement – the fundamentals

❖ Ethics, Bribes, Gifts, Fraud, Interests, Confidentiality and Bid Rigging

The Group expects the high standards of ethical conduct from employees involved in Procurement and from the suppliers and contractors the Group has dealings with. Procurement specialists are expected to observe and comply with codes of conduct set out by the Chartered Institute of Purchasing and Supply.

Procurement Department members and other employees who are involved in procurement are particularly vulnerable in the areas of Bribery, Fraud and Gifts and Hospitality.

Employees operating in the area of procurement are expected to be particularly observant to and comply with codes of conduct set out by the Group policy accessible via the Group intranet site on:

Fighting Bribery in Public Procurement – The basic requirement is that employees should prevent the use of any form of bribery or improper offers of payment to or from employees or organisations.

Gifts and Hospitality Policy - The basic requirement is that employees should conduct themselves with honesty and impartiality in the exercise of their duties and, as a consequence, that they should not receive benefits of any kind from a third party which might reasonably be seen to compromise their personal judgement or integrity.

Anti-Fraud Policy – The basic requirement is that employees at all times to act honestly, and with integrity and to safeguard the Company resources for which they are responsible.

Throughout the tendering process Group employees must act with to ensure even-handedness, fairness and strict equity between Tenderers; additional areas that must be complied with include:

Conflicts of interest – Any Group employee assisting with or involved in Procurement in which they believe there may be a potential conflict of interest they must declare that interest.

Confidentiality - The tendering process must be respected by all Group employees and no information in relation to the outcome of a competition should be disclosed until the agreed announcement date.

Bid Rigging – Any Group employee assisting with or involved in Procurement have an obligation to be vigilant when involved in tendering processes for Tenders which appear to be employing unusual pricing tactics or indulging in other anti-competitive behaviour.

❖ Legislation & Procurement, Legal Challenges & Complaints

The Group is classified as a Public Sector Utility and as such must comply with:

➤ *The Utilities Contracts Regulations*

The Utilities Contracts Regulations and any amendments to this including The Utilities Contracts (Amendment) Regulations 2009 and the Public Procurement (Miscellaneous Amendments) Regulations 2011:

Procurement law is driven by European directives, which are implemented in Northern Ireland through Regulations; The Utilities Contracts Regulations is one of these Regulations. The procurement regulations apply to all public bodies which are largely owned, managed or financed through public funds. This includes government departments and their agencies, non-departmental public bodies (NDPBs),

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hospitals and health sector purchasers, housing associations, education boards and institutions, various non-government organisations and district councils.

For the specific rules The Utilities Contracts Regulations must be referenced directly however from a high level perspective it should be noted that whilst different procurement procedures exist it is recommended that the Group should use the Negotiated Procedure with a call for competition. The reason for this approach is that this procedure allows more flexibility in the contracting process and as a Utility the Group do not need to justify use of this procedure, this flexibility also applies to Prior Information Notices which are not mandatory under The Utilities Contracts Regulations.

The Group policy on Part B services is to treat these as if they are a Part A under the Regulations; this is due to the proximity of the Group to the Republic of Ireland and therefore cross-border interest.

The latest Thresholds for procurement governed by The Utilities Contracts Regulations 2006 are available from the Purchasing Department directly; these change every 2 years.

Group employees shall not disaggregate requirements to keep proposed expenditure below the level which requires compliance with the EU Procurement Legislation or any other level determined (The Utilities Contracts Regulations 2006 11(8)).

The Purchasing Department is the only Department authorised to submit notices in relation to advertising requirements on behalf of the Group.

The Group shall follow when it is appropriate to do so the Central Procurement Directorate's Procurement Guidance Note 01/10 – Information Disclosure Throughout the Procurement Process and Application of the Rules on the Standstill Period.

➤ **European Union Treaty Principles**

There are particular legal principles that are to be respected by the Group for any public procurement, even when a tender process is not subject to the Regulations these include:

Equal treatment (non-discrimination/fairness):

The Group are obliged to treat both potential and actual tenderers in the same way, without favour or prejudice.

Transparency (openness):

The Group are obliged to have a degree of advertising (contact the Purchasing Department for the latest advertising threshold) to demonstrate transparency. The Group must also be clear with tenderers about the conditions for participation, selection criteria, award criteria and the reasons why they were or (more importantly), were not, successful.

Proportionality (being reasonable):

The Group must ensure that tender requirements are both relevant to the contract being procured and necessary.

➤ **Competition Law**

EU and UK competition law respectively regulate anti-competitive behaviour which may affect trade between EU Member States, or within the UK. The aim is to ensure a level playing field and free movement of goods and services.

The Competition Act 1998 and the aim to seek value for money creates an obligation for the Group to be mindful of anti-competitive practices. For example if there is a low response rate to an Invitation to Tender or if a Tenderer withdraws from a competition without providing a reason or there are odd circumstances it is recommended that the Purchasing Department try to establish why this was the case and investigate this further if required.

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If the circumstances appear to be unusual the Purchasing Manager should be informed of the situation without delay. If there is any doubt as to whether a competition will be genuine and effective a revision to the process may be required and new tenders should normally be sought.

Any anti-competitive practice such as price fixing is subject to control under the Competition Act 1998. If there is a strong reason to believe a Tenderer might be employing unusual pricing tactics or indulging in other anti-competitive behaviour at any stage in the Tendering process please refer to the Purchasing Manager for advice in the first instance after which consideration will be made of whether to seek advice from a Legal Adviser.

➤ **Late Payment of Commercial Debts Regulations**

The Group shall collect receipts and pay all matured and properly authorised invoices in accordance with contract terms and as provided for in Section 16.3 of Government Accounting Northern Ireland. The Group shall comply with the Late Payment of Commercial Debts (Interest) Act 1998 as amended and supplemented by the Late Payment of Commercial Debts Regulations 2002. The 1998 Act permits creditors to claim statutory interest and compensation on late payment of all commercial debts.

Further information at DAO (DFP) 12/98 Late Payment of Commercial Debts (Interest) Act 1998 and DAO (DFP) 19/02 Late Payment of Commercial Debts Regulations 2002 contain further information.

➤ **Freedom of Information (FOI) Act**

There is a general right under FOI of access to information about all public contracts and procurement activity held by public authorities, subject to certain conditions and exemptions. The Group's standardised Tendering documentation will take measures to protect commercially sensitive information and inform Tenderers of the FOI obligation.

Any person from anywhere making a written request for information, subject to certain exemptions, must normally be supplied the information within 20 working days if the Group hold it. Bank holidays, statutory closures etc. can be excluded from the response time. If a Contractor holds information for the Group we must ensure that that information can be accessed to enable us to meet any FOI request and this should be part of the contract. This is why one of the measures we take is to reference FOI in our terms and conditions of business.

The release of commercial information at the wrong time can cause serious harm e.g. programme delays if competitive processes need to be restarted or contract negotiations are hindered, it is important to be mindful of this.

If an FOI request is received by the Purchasing Department the following steps should be taken:

1. Check the latest version of the Group's FOI Policy and consult with FOI/EIR focal Point to ensure legitimacy and to check if the question has previously been answered or if it needs to be redirected. Clarify the question if it is unclear; the response time halts if you need to contact the person who raised it for further details.
2. If request is procurement orientated e.g. Tender/Contract information is it clear the information can be released without breaching confidentiality or causing harm? If so release it but only after you have informed any relevant 3rd party and giving them time to respond; if release will breach confidentiality or cause harm move to step 3.
3. May an exemption apply? either absolute or subject to the public interest test, to all or part of the information? Two commercial exemptions exist which are the most likely to apply;

Section 41 Information which has been provided in confidence (not subject to a Public Interest Test) however please note not all contract information is confidential; things to consider that may help clarify the situation:

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- Would it be likely that the Authority would be sued by another party if it released the information i.e. could it be an actionable breach of confidence?
- Is the information requested trivial or widely publicly available?
- Is the information subject to an obligation of confidence e.g. expressly via a confidentiality agreement or implied because it is routinely treated as confidential in the past.
- Labels of confidentiality, clauses or agreements may not ensure the exemption applies particularly if there is a strong public interest in its disclosure.
- The status of information changes over time; what once was confidential may no longer be confidential.

Section 43 where release of the information is likely to prejudice someone's commercial interests (will be subject to a Public Interest Test). Things to consider that may help you to decide if Section 43 applies:

- Is the information a trade secret? In this context a trade secret is not restricted to secret formulas for manufacture but can include information of a non scientific nature like estimating and pricing methodologies or customer names.
- Would it be likely that the disclosure would prejudice the commercial interests of any person including the Group? e.g. if disclosed to a competitor could cause real or significant harm like damage business reputation, competitiveness, future sales or cause damage to the Group when in a tendering process or if by disclosing it the Group would put off future suppliers from providing the information on the same or similar matter. Or there may be a situation where the Group is asked to confirm or deny if they hold information the consideration to disclose may also prejudice commercial interests and be contrary to public interest e.g. advanced knowledge of a takeover.

Information which would need to be carefully considered and may require consultation prior to release includes sensitive commercial information e.g.:

- Confidential information e.g. tenders, prices, cost structures, performance or financial reports and intellectual property.
- Tender evaluation reports and contracts.
- Submissions to Ministers about procurement matters

The Public Interest Test (PI Test): The PI Test is referenced in Section 2 of the FOI Act and it is worth noting that 'interest' means the 'greater good' rather than curiosity.

If a Section 43 exemption is going to be applied then a PI Test must be conducted. The test is to ensure that the public interest in maintaining the exemption outweighs the public interest in disclosing information. Where the disclosure interests outweigh or are evenly balanced with the withholding interests, the requested information must be disclosed as there is a presumption in favour of disclosure in the FOI Act.

Additional time may, in exceptional circumstances, be taken over the 20 working day response providing it is a "reasonable" time and that is for consideration of an exemption with the application of a PI Test. If this additional time is needed the applicant should be informed at the beginning of the process. In addition the extension of time must be claimed in the original 20 working days and the applicant must be told which exemptions may be applied and what the new target date is for a decision. If the Group reach this date and are still not ready to respond the Group must write again to the applicant giving another revised date.

It is important to note that information and its accessibility is not static and may change over time.

4. If the information that is requested is exempt inform the applicant of this decision; they will have a right of appeal; if it is not exempt the names of individuals should be removed from released documents unless it is obvious or permission has been obtained from those individuals. If after the reply has been sent and if the applicant requests further information it is important not to get drawn into releasing new information at this point. Instead invite the applicant to enter a new FOI request in writing or if they are unhappy with the previous answer remind them of the appeals procedure.

➤ ***Environmental Information Regulations (EIRs)***

Unlike the FIO Act EIRs cater for oral requests, all exceptions to EIR disclosure are subject to the PI Test.

Some Exceptions to the EIR include:

- Protection of Intellectual Property Rights
- Economic Interests where information was supplied under a duty of confidence
- Information provided voluntarily by a 3rd Party that disclosure of which would adversely affect that 3rd Party.

If an EIR request is received by the Purchasing Department it should be forwarded without delay to the Group Records and Information Manager for action.

Under the EIRs, environmental information is a defined term. It does not mean any information which can be subjectively described as environmental. The general position is that although some information used in certain procurement exercises will be caught by the EIRs, there are no grounds for a view that an application under the EIRs would lead to information relevant to a procurement exercise being disclosed which would not otherwise be disclosed.

➤ ***Data Protection Act (DP)***

In contrast to FOI and EIR requests the DP Act applies to information held about an individual and requested by that individual. DP queries should be redirected to the Group Records and Information Manager and great care in this area should be taken; the consequences for incorrect disclosure can be serious.

The most likely risk to Purchasing is the unlawful disclosure of personal data that is held in confidence such as information provided under Transfer of Undertakings (Protection of Employment) Regulations. The information released can be a summary of data but must not readily identify the individuals.

The other situation that may arise is from the element of fairness (although this is a vague concept) for example we might inadvertently disclose when releasing information some personal information (e.g. a person's name) and it could be argued that this would disclosure cause unnecessary distress or damage to the individual. Care must be taken when releasing documents which may include such information.

➤ ***Transfer of Undertakings (Protection of Employment) Regulations (TUPE)***

The Group must concern itself with employment law around TUPE for contractor to contractor re-lets most importantly to protect the Group's commercial interests by ensuring that that we run sound tendering exercises that produce realistic and competitive bids but in addition a moral responsibility lies with the Group to ensure that the employees of our contractors are treated in accordance with the law when we have a contractor to contractor re-let situation. In addition it is important that our position is made clear in Tender documents and in the main contract on the liability around TUPE and that this rests with our service providers.

It is recommended that in the event of TUPE applying to Group staff as a result of a Procurement Strategy to outsource a function, the HR Department must be consulted at the outset and specialist legal advice should be sought if required. The guidance that follows is purely for contractor to contractor re-lets.

The TUPE regulations 2006 introduced key changes including provision to ensure that TUPE will "comprehensively apply" to service provision changes. It is designed to bring an end to disputes about whether or not TUPE applies, particularly on contract re-lets. It clarifies the circumstances where dismissals will be automatically unfair under TUPE. More importantly, there is a regulatory obligation on the transferor to provide information regarding staff that are to transfer, and failure to do so may lead to a

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case being taken to an industrial tribunal. The following is a quote from our Group Solicitor (Employment Law section) in July 2010 explains how TUPE applies to Northern Ireland (NI):

"On the issue of whether TUPE 2006 (as in the Transfer of Undertakings (Protection of Employment) Regulations 2006) apply in Northern Ireland, yes, the vast majority of it applies directly and the intention was that all of it would apply directly (as was the case with "old" TUPE 1981). What happened in 2006 when TUPE was revised was that there was a (very technical) drafting error by the parliamentary draughts people. The effect of the error was that some of the new elements of TUPE 2006, namely the new rules on service provision changes, didn't capture Northern Ireland. When the government realised this, it immediately introduced the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006 to plug the gap.

So to get the full TUPE picture in Northern Ireland, you have to look at both pieces of legislation. TUPE 2006 covers "business transfers" (in GB and NI, as well as "service provision changes" in GB) and SPC 2006 covers "service provision changes" in NI. For convenience we normally just refer to TUPE 2006. The combined effect of TUPE 2006 and SPC 2006 in NI is exactly the same as the single effect of TUPE 2006 in GB, so it is incorrect to say that NI is exempt from TUPE."

What Contracts may be subject to TUPE considerations:

Any service contract which has an "organised grouping" of the service provider's employees whose "principal purpose" is to provide services to the Group. This means that the employees need to be "essentially dedicated" to our requirement. This is a question of fact to consider in each case, although guidance from current case law indicates that this may mean spending 60-70% of their time on our requirement (however, the threshold may be as low as 50 %). It is also important to remember that we cannot just bring a requirement back in for our staff to do the same job without serious consideration; if we did so TUPE may apply to the Contractor's staff which would mean they would transfer to the Group. Contractors can manage their TUPE risk and will actively do so with staff they consider too good to risk letting go; typically this is done by moving that staff member out of the scope of our requirement or making sure they are not essentially dedicated (this is likely to be the case with professional services such as legal advisors).

The following list gives some examples of services that are likely to be affected by TUPE:

- ❖ All cleaning contracts e.g. Offices, Stations, Trains and Buses
- ❖ All security contracts e.g. Security Guard Services
- ❖ Vehicle maintenance contracts e.g. CAF Trains
- ❖ Parts maintenance contracts e.g. tyre maintenance for Buses
- ❖ Catering contracts e.g. cafes and shops in stations
- ❖ Sub contracted bus services e.g. airport routes
- ❖ All professional services e.g. Solicitors

For example if a security contract involves:

- an organised grouping of employees who are essentially dedicated to the provision of security services to the Group,
- not falling within one of the very limited exemptions (supply of goods, contract for one-off event etc),
- and there is a change in contractor, or an in- or out-sourcing, then it is highly likely that TUPE 2006/SPC 2006 will apply.

Managing TUPE:

The Group has the ability to influence the application of TUPE in our procurements and it is important to note the following guidance released by the Equality Commission for NI and CPD in May 2008:

"It is especially important that the public authority monitors and seeks guarantees of fair treatment for the initial transfer and also any contracts that subsequently change hands. In particular, public authorities should not attempt to design service specifications for procurements so as to evade the application of TUPE when the procurement involves the contract changing hands between different external

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contractors.” (Equality of Opportunity and Sustainable Development in Public Sector Procurement)

Actions to be taken in the Tendering Process

Before the end of the current contract

First check to see if you think there is a strong chance of TUPE applying; use the **key criteria** recorded on Sharepoint under Letters_TUPE_template_pack. (All Annexes referenced below sit within Sharepoint under Letters_TUPE_template_pack) If you think TUPE may apply you should run the rest of the tendering exercise on that assumption.

When we are re-tendering a contract which had no specific TUPE clauses in it previously, but to which we think that TUPE applies we must try to obtain in advance of any advertisement some basic information to assist in the re-tendering exercise which will help ensure the prices in bids are realistic. If TUPE has been included in the contract with the incumbent it is important to take note of these clauses.

The law in relation to contract re-lets puts the onus directly between the original employer and the incoming employer to manage the flow of information. However the time-limit for the supply of this information is only 14 days prior to the actual date of transfer. For this reason it is important to impose additional obligations on the contractor to require them to provide employee information well in advance of the transfer date, to assist with the procurement process. This requirement should ideally be built into the contract terms and conditions.

The incumbent should be asked to provide the necessary information prior to the start of any tendering process to enable this information to be included in the ITT to help bidders to come to their own view and price.

Firstly the outgoing Contractor should be asked to supply information about the total number of employees (including third party/sub-contractor employees) that are currently wholly or mainly assigned, other than on a temporary basis, to undertake the work covered by the contract requirement. If it is apparent from the answer provided, that there **may** be a TUPE transfer, then additional information should be requested.

Please note that where the Group then requires information for an ITT and in the event that there are no contractual obligations (which you should always check first) requiring the outgoing Contractor to provide such information the Group should seek to obtain this using the draft **Letter 1** in **Annex B** of the TUPE Forms with an excel return sheet. For reference where information is being obtained from the current contractor for inclusion in an ITT, the contractor must warrant the accuracy of the information provided prior to use. Should the Contractor fail to provide the information requested in Letter 1 then **Letter 2** in **Annex B** should be considered.

At PQQ stage

The Group must be careful not to impose its own view of the application of TUPE on a third party, who may then seek indemnities/additional pricing from the Group which it is usually inappropriate to provide.

TUPE should not be considered as a question or set of questions at PQQ stage for straight forward contractor to contractor re-lets as establishing fair criteria which can be clearly and fairly marked is difficult to achieve.

However in the event of outsourcing a Group function this would need to be reconsidered e.g. we may wish to consider a Tenderer's TUPE and industrial relations track record. The advice of the HR section should be sought to determine any personnel issues which require further clarification. The intention would not be to penalise previous poor performance but to ensure that potential problems are highlighted at an early stage and resolved.

At ITT stage

It is recommended that should TUPE apply, the clause at **Annex C** should be included in the ITT Part A1 - Instructions to Tender.

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Any **information gleaned** from the incumbent on TUPE **should be included** in the ITT Part C in a relevant section or as part of the information supplied in the Pricing schedule.

The clauses suggested at **Annex D** must also be included in the ITT at Part C1 Contract Data under Section 2.1 Additional Conditions of Contract to ensure they will then be incorporated into the Contract in order to protect the Group. If in doubt always seek professional legal advice on the area of TUPE.

Legal advice may need to be sought where non-TUPE tenders are submitted when it is suspected that TUPE does apply; this is to ensure the non-TUPE tender is soundly based and care should be taken if it is proposed to award a contract that will transfer work but not the staff.

At award stage

It has already been pointed out in this document that the onus is not on the Group to concern itself with the employment law around TUPE for contractor to contractor re-lets. However it can benefit the Group to facilitate TUPE transfer by prompting actions to take place. Some wording that you may want to but do not have to include in letters of award are shown in **Annex E**.

TUPE provides for that the information may be passed directly (i.e. incumbent to replacement provider) or via a third party. A third party (like the Group) must make sure that neither Contractor seeks to discharge its obligations via the Group and therefore should insist that statutory employee liability information is passed directly between the Contractors when it is time to do so.

Post Contract Award - Disputes on Applicability of TUPE between Contractors:

In exceptional circumstances, where following contract award there is disagreement between outgoing and incoming contractors on the applicability of TUPE, every effort must be made to resolve the issue prior to Vesting Day ("Vesting day" is the date when employees, and their contracts of employment, will automatically transfer to the new contractor). The Group should attempt to facilitate (although caution should be applied) agreement but in the event that no agreement can be reached the issue should be escalated within the Group.

➤ **Waste Electrical and Electronic Equipment (WEEE) Directive**

The WEEE Directive is an EU legislative instrument which aims to reduce the impacts of electrical and electronic equipment on the environment during their life and when they become waste. It was incorporated into UK law on 2nd January 2007 with full producer responsibility beginning 1 July 2007.

The Directive makes producers responsible for financing the collection, treatment, and recovery of waste electrical equipment, and by obliging distributors to allow consumers to return their waste equipment free of charge.

The WEEE Regulations apply to electrical and electronic equipment (EEE) which falls within the 10 product categories:-

- Large household appliances
- Small household appliances
- IT & Telecommunications equipment
- Consumer equipment
- Lighting equipment
- Electrical and electronic tools
- Toys leisure and sports equipment
- Medical devices
- Monitoring and control instruments
- Automatic dispensers

The WEEE Regulations will apply to the following groups:

- Producers (any business that manufactures, imports or rebrands electrical and electronic products)
- Retailers and Distributors (any business that sells electrical and electronic equipment to end users)

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- Local authorities
- Waste management industry
- Exporters and reproprocessors
- Businesses and other non-household users of EEE

The WEEE Regulations will impact on a wide range of products the Group purchase particularly the sourcing strategies. WEEE is the fastest growing waste stream in the UK. The WEEE Regulations aim to reduce the amount of this waste going to landfill, and increase recovery and recycling rates.

There are certain requirements for WEEE relating to: Separate collection, disposal and recycling standards for its treatment at authorised facilities collection, recycling and recovery targets.

The regulation will set a framework in which the allocation of responsibility for disposal can become a factor in transactions for the purchase of electrical and electronic equipment.

The requirements disposal plan should address the issue of disposal in terms of whether the equipment comes under the scope of WEEE. The contract documentation should then set out what the arrangements for disposal are to be, including responsibility, adjusting the price to remove any fee included for the disposal, etc.

This allows the Group and its contractor to decide on the most cost-effective disposal method. For example the Group must gain an assurance from the contractor that any WEEE that falls within the scope of the legislation is sent to an authorised treatment plant for recovery.

Further information on WEE can be found at:

http://www.ehsni.gov.uk/waste/regulation-and-legislation/regulations_ weee.htm

➤ **Supplier / Contractor Legal Status & Name Changes**

The legal entity

Before the Group enters into a contract the legal contracting entity of the other party needs to be accurately established at the outset.

Types of entity; some of the frequent entities include:

Limited Liability Companies: Private Limited Companies (Ltd.) & Public Limited Companies (plc.). A company formed under the various Companies Acts is a separate legal entity, contracts are made with the company not its members or management.

Partnerships & Sole Traders

The business name itself is not usually a separate legal entity and as such contracts should be made with the owner(s) or partners:

E.g. Mike Smith as (or t/as) M&M Building Services.

E.g. Mike Smith and Mark Morris trading as M&M Building Partnership.

E.g. 3 Partners or more: Mike Smith and partners as (or t/as) M&M Building Partnership.

Checking the company name and registration number:

A useful way to check the company name and registration number match. Sites such as those shown below can be useful here.

UK - <http://www.companieshouse.gov.uk/>

ROI - <http://www.cro.ie/en/homepage.aspx>

Action to take first steps when asked or informed of a company change in name or legal entity:

The following information should be requested and the Sponsors/Project Managers should then immediately be consulted.

- A written statement from the company on the circumstances,

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- If a change of legal entity has/will be made and the precise names and registration numbers concerned.
- A list of all the contracts held with the Group.

Change of company name or form:

There are 3 main types of change in relation to companies.

Novation - Transfer of Contracts; The benefits and obligations of the contracts are transferred from one legal entity to a completely different one. Requests for Novation may arise because of a company reorganisation or the company being made into a separate independent company, acquisition by a new company or the sale of part of the company and the new company wanting to take over Group contracts. The Group must treat these situations with care. The contractual relationship is between the Group and the original company and therefore the Group is not obliged to Novate the contract.

The options must then be examined on how to move forward for example if a Novation Agreement is considered it may be necessary make an evaluation similar to that done at Prequalification (PQQ) Stage e.g. The basic details of the organisation address and Legal Status; Financial information with a check on the Financial Status; Banking details; Business activity details; Professional and Business standing; Quality Assurance; Health, Safety and Environment details; Equal Opportunities; Insurance details; Capacity and Capability details. It may also be necessary to seek advice on ownership of Intellectual Property Rights (IPR) and investigate order points that have been reached and so on.

Change of Company Name – Companies may change their names at any time as often as they like by Special Resolution. A change under this procedure does not usually affect the company's legal entity and the company registration number does not change so no formal transfer of contracts is needed via Novation, instead a formal amendment to the contract should be made to reflect the current company name and to ensure correspondence is addressed correctly.

Change of Company Ownership – A change of ownership can arise when the controlling interest in a company passes from one party to another. These changes by themselves do not always mean the company legal entity changes too it may be just the shareholding position has changed. The Contract Sponsor/Project Manager should be informed as the new ownership may cause future issues.

➤ **Legal Challenges**

Should the Group receive a legal challenge via a Claim form (a Writ in Northern Ireland) or a threat of legal challenge the Purchasing Department must be informed as soon as possible to ensure that appropriate steps can be take e.g. automatic suspension of award procedure for over Threshold requirements.

The details of Legal challenges to procurement processes and outcomes shall be recorded by the Purchasing Department and lessons learned shall be implemented.

➤ **Complaints – Feedback Procedure for Procurement Activities**

A feedback process for Economic Operators is available on the Group website. This process should be followed if a supplier and or potential supplier feels that the Group have fallen short of the procurement principles set out on the website and wish to complain.

The details of formal complaints to procurement processes and outcomes shall be recorded by the Purchasing Department and lessons learned shall be implemented.

❖ Financial Approvals and Delegated Authority

The delegation of procurement authority allows the procurement of goods and services to be undertaken at the most appropriate level in the organisation, striking a balance between freedom of action of the “user” and the need to retain adequate control over the procurement process, the need for which will be dependent upon the nature of the requirement and the anticipated total value of the commitment. Financial approval levels are set out in the Group Scheme of Delegation. The Group Scheme of Delegation sets out the governance applicable to the Group and role of Accounting Officer within this.

Delegated Procurement Authorities should be exercised within a framework of sound effective controls, whereby no single individual has exclusive authority and control over any significant transaction or group of transactions. Consequently, it is essential that the three main areas of delegated authority are clearly segregated:

- **Expenditure Authority**
Authority to approve expenditure from approved budgets.
- **Procurement Authority**
Authority to approve entering into contractual commitments with third party suppliers or contractors to supply goods or services
- **Payment Authority**
Authority to approve invoices for payment

Capital & Revenue expenditure:

Where it becomes likely that project timings or costs or specifications differ from that for which approval was originally granted, the **approval should be re-sought immediately**. (Where timing is delayed by 24 months, costs vary by 10% or where there are significant changes to the specification of the project).

Grant Aid and Letters of offer from Department for Regional Development (DRD):

The Group shall follow when it is appropriate to do so the Central Procurement Directorate’s Procurement Guidance Note 01/07: The Use of Grant for Procurement.

The Group is classified in Category 1 under Guidance Note 01/07 and therefore may have conditions related to the Grants it receives for procurement. The Grant is normally flowed down in the form of a Letter of Offer from DRD. The Letter will usually have the conditions attached to the Offer.

It is important to note that sometimes the Letter of Offer will contain special conditions that may need to be addressed through the procurement cycle. These conditions must be checked and it must be established if and where these need to be built into the cycle and consequently any contract which results.

❖ Single Tender Action and Rolling Contracts

The Group shall record the details of contracts awarded without a competition including those permitted under the Regulations. Please refer to the Group Scheme of Delegation which sets out the approval values and who has the authority to approve Single Tender Actions (STAs).

The Group shall follow when it is appropriate to do so the Central Procurement Directorate’s Procurement Guidance Note 03/11- Award of Contracts Without a Competition and any subsequent guidance from the Central Procurement Directorate when it is appropriate.

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The use of rolling contracts is not regarded as best practice and nor is it an approved method for contracting for Group requirements.

The Group shall follow when it is appropriate to do so the Central Procurement Directorate's Procurement Guidance Note 03/06: Use of Rolling Contract.

The Group should at all times be in a position to demonstrate that Value for Money shall or has been achieved and the adoption of the principle of No Acceptable Price; No Contract.

❖ Risk, safety and Procurement

Main aspects of Risk, Safety and Procurement

The Group must ensure that the Procurement Process includes aspects of safety. The performance of Contractors is within the scope of safety monitoring and auditing processes and the responsibility for managing Contractors in the area of safety falls directly under the remit of the person accountable for the management of the Contract.

Risk associated with the Use of Contractors

The Group recognises the potential risks that can be imported by the employment of Contractors, and seeks to control these risks by the implementation of robust tendering processes and taut contract terms and conditions.

The main contractor is accountable for subcontractors; the work that is done by its subcontractors will be no different from that which the main Contractor accepts when using its own employees to carry out the work. It should be noted that it must be expressly stated in the contract if the Group would like to prevent the main Contractor from subcontracting parts of the contract.

The Group conditions should always state that the Contractor will ensure that subcontractors must comply with all the internal policies of the Group (this is usually listed under the condition of Personnel). The conditions should also state that the Contractor is responsible for performing the contract as if he had not subcontracted it at all and that the contract will apply as if the subcontractor's employees and equipment were the Contractors.

The Group's safety related arrangements for the selection & management of Contractors includes:

Insurance – Employers' Liability Compulsory Insurance (ELCI): It is a legal obligation on employers to insure against the costs of providing compensation for those employees who are injured or made ill at work through the fault of the employer. The other insurance levels and any limits on liability should be determined by the nature and location of the work.

The Group shall follow when it is appropriate to do so the Central Procurement Directorate's Procurement Guidance Note 01/06: OGC Guidance - Liability in Government Contracts.

The completion of a RCA Form by the Accountable Person establishes the main areas of risk and insurance cover associated with a particular contract in a project. This form identifies if the contracted supplies, works and/or services in a project are classed as safety critical or safety related. The Accountable Person must also highlight any legislative requirements over and above those specified in the Health and Safety at Work Order (NI) 1978 and associated regulations or Group Divisional Standards and Procedures that will apply to the work. The Accountable Person must ensure these are included from the outset when starting the pre-qualification process.

The Group's New Supplier Set Up form is used to set up suppliers on the Agresso system. The form can act as a check on the required insurances and business standing of Contractors that supply items which are not procured through the full tendering process and therefore escape the need to complete the entire Pre-Qualification

Procurement Policy and Procedures

Questionnaire (PQQ). The Accountable Person must approve that the content on the form is adequate to ensure that the Group's risk is kept to a minimum in relation to their requirement.

The Purchasing Department provides a process of assessment on supplier competence to undertake the work, based on an evaluation of their previous performance. The use of a PQQ as a selection tool is an established method for highlighting safety issues for examination. For example it may be a mandatory requirement of any resulting contract that the Contractor's staff on site hold a Personal Track Safety Certificate for work on or near a railway and therefore compliance to this must be checked at the outset of a tendering process.

If it is appropriate the Invitation to Tender (ITT) must be structured to ensure that Tenders received set out the methodology for safe systems of work & proof that adequate insurance cover is in place.

In the Contract the Purchasing Department must ensure that processes are in place for the management of Contractors in relation to safety if this is appropriate. For example clarifying site access procedures, alcohol and drugs policy, applicable 'due diligence' checks of Contractors.

The Contract Owner should brief the Contractor on their role in the event of an emergency before they commence any work on or near to parts of an operational railway, or in bus yards or other Group properties in accordance with the appropriate Group or Divisional Standard and Procedure.

The Group recognise that interfaces can exist with a significant number of other organisations and Contractors. Additional co-ordination of these bodies may be required if interaction between them is very high and could impact on safety management, in this situation the contracts may require a Joint Working Agreement to be added.

Emergency contracting

Pressures of urgency will inevitably be brought to bear on Purchasing or Group employees in a crisis and it is important to ensure that Group employees understand their authority to commit under the Group Scheme of Delegation and that they take care not to over commit the Group or take action that may unnecessarily weaken the Group's negotiating position. If an emergency requirement emerges and the Purchasing Team is unavailable Group employees should take reasonable steps to relieve the emergency requirement in the short term and as soon as is practical consult with the Purchasing Team on the necessary follow up paper work.

It is important from the outset of the emergency a common sense team approach is taken and it must be recognised that early consultation with Purchasing Staff can achieve a quick conversion of requirements into formal contracts that can enable safety to be considered during the times of an emergency. The Purchasing team shall act appropriately given each situation without rigid application of normal contractual procedures where these can be relaxed without undue risk.

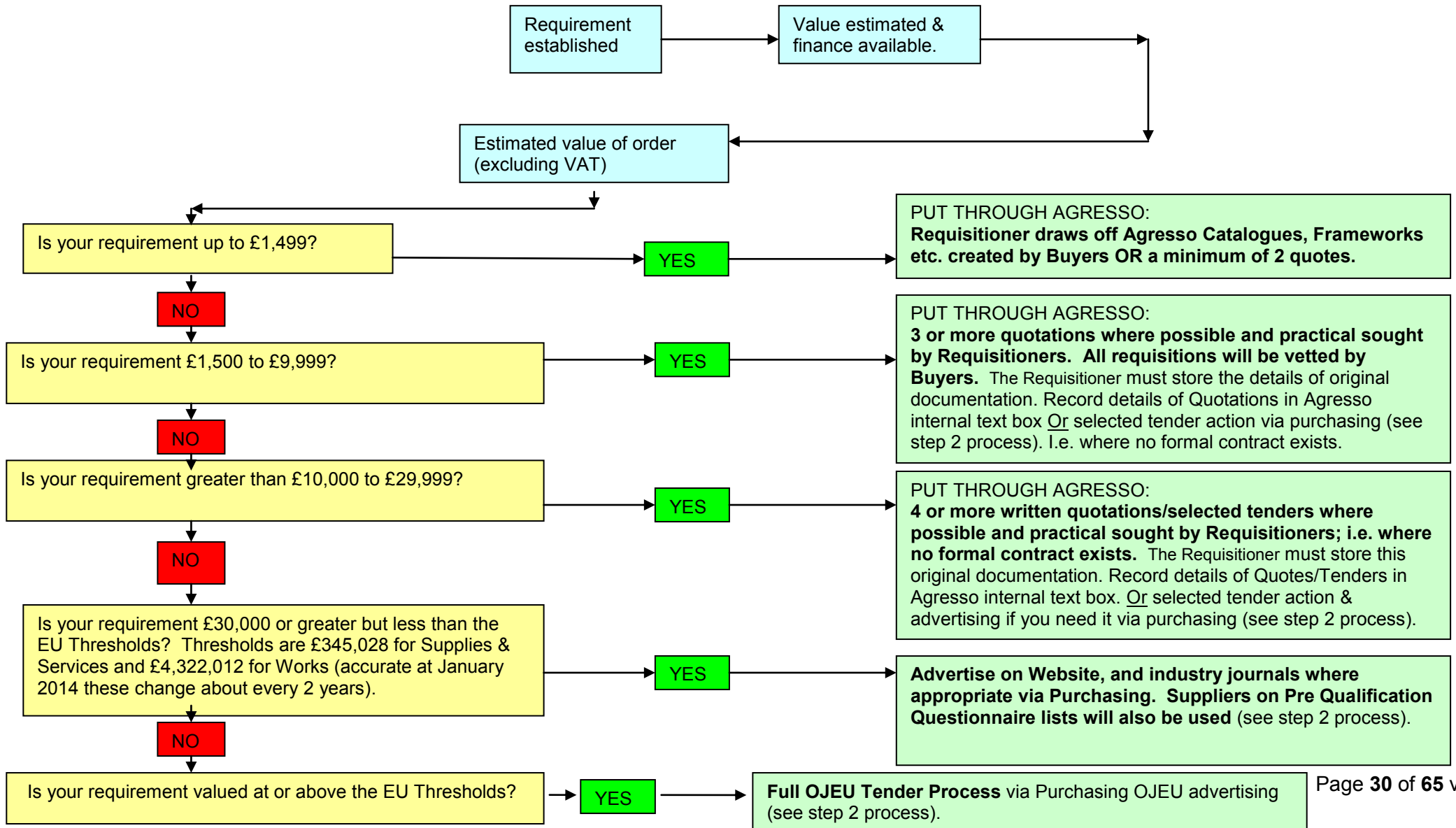
❖ Procurement Process Maps

Starting the Procurement Process

Step 1 - What do I do?

What is a quotation? A quotation is when you have a straight forward requirement to which you can get a price/delivery date and just say 'Yes I will go with that' (it is usually on a suppliers terms & conditions according to the CPD definition so care should be taken (if practical) to request that the quotation is made on the Group Terms instead.

What is tender action? Tender action is usually automatically used when you have a **more** complex requirement and you need to evaluate evidence that the suppliers are capable and Invitation(s) to Tender are issued these will normally be based on the Group Terms and Conditions.

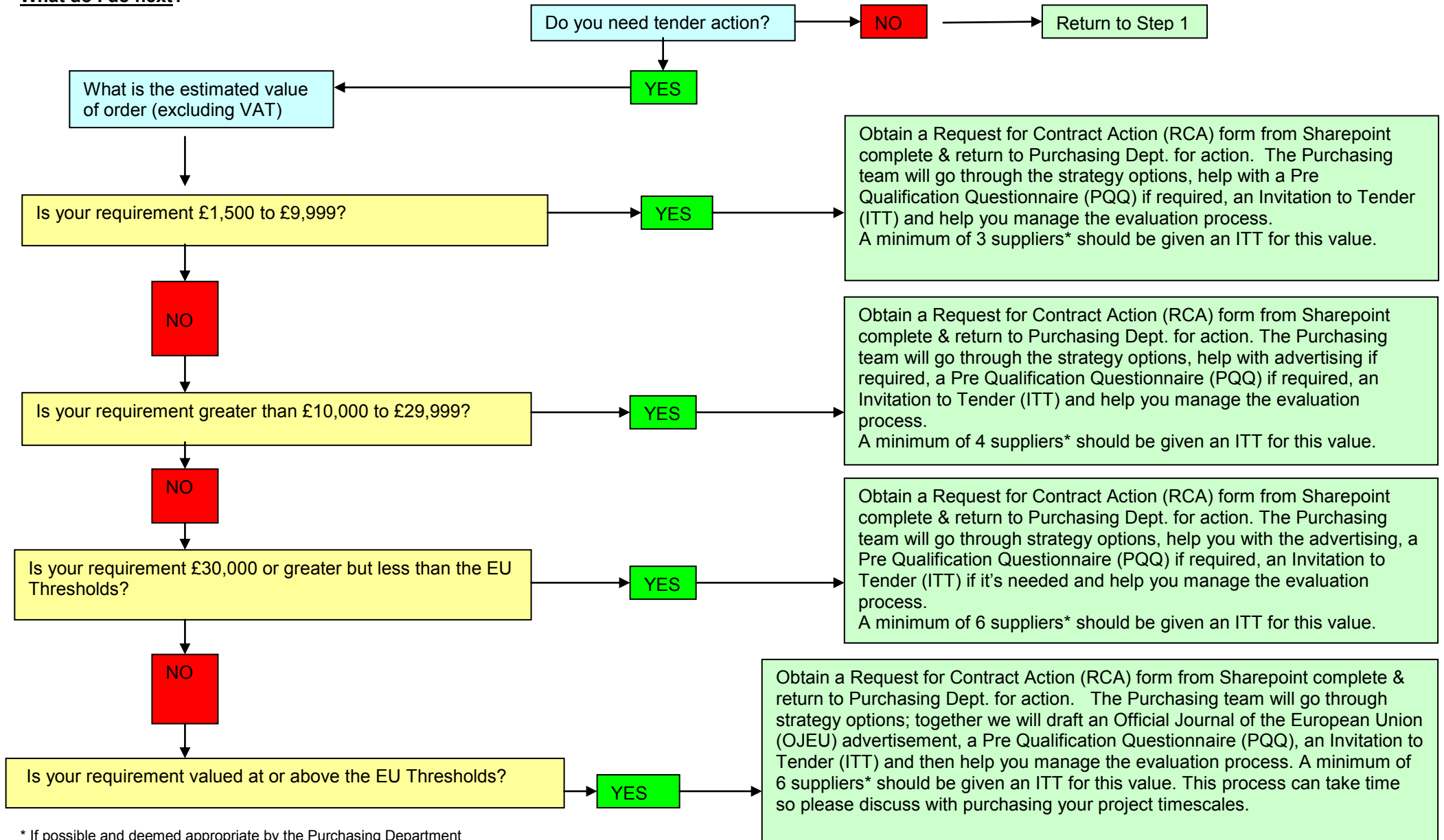


Procurement Policy and Procedures

The Procurement Process Step 2 - I need tender action

What is tender action? Tender action is when you have a complex requirement and you need to evaluate evidence that the suppliers are capable and Invitation(s) to Tender are issued.

What do I do next?



* If possible and deemed appropriate by the Purchasing Department

❖ Timescales

Procurement Timescales: Please note: these activities and timescales are dependant on values and complexity of the requirements. Where scope exists to run activities concurrently this will reduce timescale. Yellow denotes Official Journal of the European Union (OJEU) mandatory timescales	
1	
2	
3	Procurement procedure
4	
5	Competitive Contracts - Subject to Advertising in the OJEU: Negotiated Procedure with a call for competition
6	
7	Definition of requirements/Statement of Need
8	Project Identification Document (PID)
9	Issue Prior Information Notice in OJEU if possible
10	Write Business case /Economic Appraisal
11	Business Case /Economic Appraisal Approval
12	Procurement team set up (evaluators etc)
13	Board approval to proceed with tender action
14	Review of lessons learnt other projects
15	Final Specification Drafting
16	Estimated project delivery schedule
17	
18	<div> <div>Week</div> <div>34 weeks = 8.5 months to the point that contractor is on Contract</div> </div> <div> <div>1</div><div>2</div><div>3</div><div>4</div><div>5</div><div>6</div><div>7</div><div>8</div><div>9</div><div>10</div><div>11</div><div>12</div><div>13</div><div>14</div><div>15</div><div>16</div><div>17</div><div>18</div><div>19</div><div>20</div><div>21</div><div>22</div><div>23</div><div>24</div><div>25</div><div>26</div><div>27</div><div>28</div><div>29</div><div>30</div><div>31</div><div>32</div><div>33</div><div>34</div><div>35</div><div>36</div> </div>
19	Preparation of Procurement Strategy - inclusive of tendering process plan and complete a Request for Contract Action (RCA) form
20	Develop information requested at expressions of interest (EOI) stage by developing the PQQ and the areas for evaluation
21	Develop evaluation criteria & marking process for submitted tenders
22	Prepare Contract notice / documentation & confirm PQQ return date
23	Dispatch Contract notice to OJEU requesting PQQ completed, allow Companies 37 calendar days to respond*
24	Contract notice published in OJEU (Give this 5 days to be published)
25	Receipt of EOI & PQQ
26	Evaluation of EOI & PQQ
27	Issue letters informing parties who have or have not been down selected
28	Informal challenges may be required to be dealt with
29	Prepare ITT documents (e.g. Specification, Terms & Conditions, Instructions to Tenderers, Pricing Mechanisms), review evaluation criteria & confirm tender return date
30	Issue ITT - try to allow Companies at least 24 calendar days to respond. This will not be released unless Executive Team / NITHCO Board approval has been obtained to proceed to tender.
31	Completed Tenders received
32	Tender evaluation & Clarification Questions
33	Presentations (in exceptional cases only)
34	Tender Assessment Panel (TAP) Sits
35	Post tender negotiation (only if required)
36	Tender Report Written and 'Preferred Bidder' recommended. For higher values a Tender Report must submitted to Translink Executive Team for Contract Award Approval 1 week before the team sits.
37	
38	Revisions and alterations to Tender Report (if required)
39	Tender Report resubmitted to Translink Executive Team if required. For higher values the Tender Report must submitted to NITHC Executive Board for Contract Award Approval 2 weeks before board sits.
40	
41	Approval at appropriate level must received
42	Notify all Tenderers of award decision including preferred bidder(s)
43	Implement a mandatory minimum standstill period of 10 calendar days after notification of award decision
44	Issue Offer/Acceptance of Contract
45	Receive Acceptance/Acknowledgement of Contract
46	Set up Contractor on AGRESSO for payment
47	Send Contract Award Notice to OJEU within 2 Months
48	Initiate contract management & complete project handover to contract management team
49	Conduct Post Project Evaluation if required
50	
51	* Periods may be reduced in exceptional circumstances - see The Utilities Contracts Regulations.

❖ Planning and Requests for Contract Action

If the Purchasing Department are made aware of requirements as soon as these are foreseen it helps resource planning. For all items at or above the advertising threshold including new purchases, or for requirements which have contracts coming to an end a Request for Contract Action (RCA) form must be completed and sent to the Purchasing Department.

A plan should then be developed by the Project Manager and the Purchasing Department, and agreed with key stakeholders e.g. Users, Sponsor, Budget Holder, and Project Team as appropriate.

The output of the planning phase should result in a procurement strategy which will define the type, size and phasing of the procurement in the context of Group activities and in light of other contracts that may be already in existence. This will then enable the Contracting Strategy to be determined for example the purchasing procedure to be used and if the contract will be a Framework. The use of contract options must always be included

It is the responsibility of the Purchasing Department, in consultation with the Project Team members to ensure, before purchasing action is taken, that the requirement is complete and clear for the purpose of placing a satisfactory contract and that time scales are fair and realistic.

Expenditure that would entail contractual commitments to significant levels of spending in future years for which plans have not been set will require special approval (Management Statement and Financial Memorandum 2013).

Supplier sourcing is the identification and where necessary development of possible sources of supply. It is the process of identifying suppliers who are able to supply the goods, works and or services this task is much easier when the requirement is clearly defined. If the specification development in the planning stage of procurement is conducted with care it will help the Group to achieve the 5 rights:

The right
Quality
Time
Location
Quantity
Cost

The role of the Purchasing Department is to ensure that a proactive contribution is made to procurement strategy in the form of researching contractors from a commercial perspective and understanding the market by gathering information that supports the Project Managers and engage with suppliers in line with Government policy and Procurement Regulations.

The Group shall follow when it is appropriate to do so the Central Procurement Directorate's Procurement Guidance Note 07/04: Strategic Procurement

The Guidance note defines strategic procurement and sets out the role that procurement staff should have in relation to strategic procurement. It also provides direction to contracting authorities on what constitutes a comprehensive procurement strategy and outlines the principles of good practice that should be adopted for all strategic requirements

Part 3 – Special areas in Procurement

❖ Gateway Review Process

The Group shall follow when it is appropriate to do so the Central Procurement Directorate's Procurement Guidance Note 03/09: Procedures and principles for application of threshold limits as part of the Gateway Review process.

Guidance Note 03/09 sets out the de minimis limit to be applied for application of the Gateway Review Process. This limit will apply in all cases where a Departmental Accounting Officer does not make a specific ruling. The guidance also includes an upper value limit above which the Gateway Review Process will be mandatory.

❖ Programme / Project Management

The Group shall follow when it is appropriate to do so the Central Procurement Directorate's Procurement Guidance Note 01/09: Best Practice in Programme /Project Management.

Procurement Guidance Note 01/09 sets out the parameters within which NI public sector programmes and projects must be conducted. It widens the previous focus on ICT enabled change programmes and projects and consolidates its remit to cover all programme/project types.

❖ E-Business, Agresso and Purchasing Cards

Website

The Purchasing Department have their own web page on the Group website. The Group publish aspects of the Tendering process and general supplier information on the website. For example, all procurements that require advertising are listed on the site along with a copy of the standard Terms and Conditions and information for suppliers such as forthcoming requirements, tender awards, feedback procedure and purchasing policy.

Twitter

The Purchasing Department have obtained the Twitter address @TranslinkB2B; all procurements that require advertising are tweeted with a link back to the Group purchasing webpage via the @TranslinkB2B address.

E-tendering

e-Tendering is the complete tendering process from the advertising of the requirement through to placing of the contract, by electronic communication. e-Tendering can provide for faster and better exchange of information, increased security and integrity of tendering and automation of the evaluation process.

The Group utilise eSourcing NI which is an e-Tendering platform and all submissions to the Group for requirements over the advertising threshold should be received via eSourcing NI unless there are justifiable reasons for permitting hard copy submissions. PQQs and Tender procedures for under this value can still be conducted through eSourcing NI at the discretion of the Purchasing Department. eSourcing NI provides the Applicant with the most secure and transparent system for submitting documentation to the Group and protects both the Applicant and the Group under the Procurement Rules.

Online Auctions

Procurement Policy and Procedures

Auctions are competitions held 'on-line', with the bid prices visible to all bidders, unless a ranked auction is held in which bidders only know their rank relative to other bidders, but are not privy to actual bid amounts. The Purchasing Department may use Auctions where appropriate.

Agresso

Agresso is the Group's purchase to pay tool. It enables electronic ordering, receipting and invoicing. Agresso enables an electronic order for goods and services to be sent to an approved supplier and an electronic receipt to be held and linked to the order for goods and services. The order, receipt and invoice must be matched, permitting payment to the supplier.

Once a requisition has been entered onto Agresso it follows an approval route depending on the nature and value of the requirement, refer to the Group Scheme of Delegation for Agresso approval levels. Orders will only be generated when all necessary approvals have been received.

Purchase orders and authorised responsables

A Purchase Order must be raised for all procurement unless it is agreed otherwise through the Purchasing Department.

Purchase Orders will only be raised once a requisition has passed through the Agresso Web-based approval process. The despatch, amendment or cancellation of Purchase Orders will be sole responsibility of the Purchasing Department. Buyers may only approve or reject requisitions, they cannot amend details.

All authorised responsables are linked to a department and location on Agresso. This information will default to the Web-based requisition creation facility. Approvers should if possible advise the Agresso Helpdesk (Ext 5582) of any forthcoming absence greater than 5 days to enable a temporary responsible to be setup.

The Agresso Product Masterfile is made up of Specific and Generic products. Where possible, responsables must use a specific product. Responsibles must in the first instance use the product search engine or send a Request for Quotation (RFQ) to locate an appropriate specific product.

Under no circumstances must the Requisition number be given to a Supplier. This is for internal company use only.

Responsibles should make use of the 'internal text' field for providing information to the Buying Team such as the details of other quotations obtained or a clear statement that Board approval has been obtained and the date that approval was provided (this information does not appear on the Purchase Order). The internal text box of Requisitions should contain the information set out in the Key Points section of this document.

Responsibles will only be created on the Agresso Financial System on the authorisation of their relevant Executive. Executives will be asked to set requisition and invoice approval Authority levels for their staff. Responsibles must clearly define the required specification of goods and services e.g. plant, equipment, spares, components and tools, on the purchase requisition or Request for Quotations (RFQ's). Responsibles must also define the criteria, in advance, for accepting the product or service.

Only duly authorised responsables in the Purchasing Department may request a new supplier to be added to or old suppliers removed from the Supplier Master File on Agresso. Suppliers will only be added to the database once a New Supplier Form has been completed by an authorised responsible; this form is available on the Group intranet.

Those suppliers identified as either Safety or Business critical will only be added to the Supplier Master File on Agresso once the supplier has been pre-qualified.

Once the Supplier has been approved for setup on the Supplier Master File on Agresso, Purchasing will request BACS information and advise the Supplier on the Group's ordering procedures. The physical adding, deleting or amending details on the Supplier Master File on Agresso is the responsibility of the Treasury Department.

Responsibles are expected to receipt any goods or services against these orders so invoices may be processed in a timely manner.

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Types of order

Agresso will automatically allocate a number in the range 310000000 to 319999999 to all requisitions which complete the full approval workflow process for non-stock orders. This process works on a 30 minute cycle. All orders are despatched to suppliers via email or printed and posted first class twice daily. Therefore responsables must ensure the full delivery address and any special order instructions are clearly stated on requisitions.

If a Contract Order is set up on Agresso it will be allocated a number in the range 380000000 to 389999999. Those Contracts set up by a member of the Buying Team within the Purchasing Department. These orders will not be subject to the approval process via workflow but will be strictly controlled within the Purchasing Function.

The Agresso Stock Ordering System will select the desired stock bins due for ordering based on parameters set within the system by the Stores Department. Agresso will automatically allocate a number in the range 350000000 to 359999999.

Amendments to computer details of stock held in the bins (Product Master File) are the responsibility of the Materials Manager. Information received by the Purchasing Department regarding a Supplier's individual ordering procedures such as minimum order quantities will be supplied to the Materials Manager or the relevant Stores Manager for them to amend the records on the Agresso Product Master File.

The Materials Manager will be expected to adjust minimum, maximum stock and reorder levels to reflect these on a timely basis so avoiding unnecessary and time consuming expediting.

Amendments to Orders

The only amendment that can be made to orders is for the quantity and the unit price to be alternated to assist the Purchase Ledger staff when registering multiple invoices against an order. Excluding the above situation no amendments will be made to orders by any member of the Purchasing Department.

However, if an error has been made in the order, the Buyers can "terminate" the order, thereby allowing the Requisitioner to use the "Copy Requisition" facility to copy their previous requisition and then correct their error. With respect to amendments, only the value of the amendment itself will be considered in determining the approved authority level.

Copy orders will only be sent on the request of either the relevant responsible or supplier and will be clearly marked as such.

Purchasing Cards

Purchasing Cards are similar to personal credit/debit cards and may be issued in exceptional circumstances. The terms of use for each Purchasing must be agreed with the Purchasing Department.

❖ Savings

The Group shall keep an annual record of savings achieved as required by the Group Director of Finance.

❖ Sustainability

The Sustainable Development Strategy for Northern Ireland (NI) has adopted the following widely used definition of sustainable development: - *"Development which meets the needs of the present without compromising the ability of future generations to meet their needs"* (Our Common Future - The Brundtland Report). This definition encompasses economic, social and environmental considerations - the three fundamental pillars of sustainable development.

The Northern Ireland (Miscellaneous Provisions) Act 2006 and Sustainable Development: Section 25 of this Act places a statutory duty on Northern Ireland Public Sector Employers (the Group) to carry out their

Procurement Policy and Procedures

functions in a way which contributes to sustainable development. In fulfilling this statutory duty, the Group must also have regard to:

The Northern Ireland Sustainable Development Strategy and
The Cleaner Road Transport Vehicles Regulations 2011

The Group must ensure that all procurement activities are carried out in accordance with:

Section 75 of the Northern Ireland Act 1998 (the NITHC Equality Scheme is listed on the website www.translink.co.uk). Section 75 requires NITHC, to carry out policy checks (screening) in functional areas, the Purchasing Department is one of these functions and as such will be proactive during these periods of review. In line with Sustainable Development guidance from the Equality Commission for Northern Ireland the Purchasing Department shall attempt to consider Sustainable Development at the procurement planning stage and key decision points in the procurement process to enable the requirement to be flagged if required for screening or an Equality Impact Assessment (EQIA).

The Group shall follow when it is appropriate to do so the Central Procurement Directorate's Procurement Guidance Note's:

02/11 - Helping SMEs and SEEs access PS contracting opportunities
01/11 - A Guide for Social Economy Enterprises
01/08 - Integrating Sustainable Development into the Procurement of Food and Catering Services
01/07 - The Use of Grant in Procurement
04/06 - Procurement of Timber and Wood Products
02/06 - Procurement of Fair Trade Products
04/04 - Integration of Environmental Considerations into Public Procurement
03/04 - Integration of Social Considerations into Public Procurement
01/03 - Employment Opportunity Scheme – Pilot

For all construction contracts, sustainable procurement will follow guidance of the Infrastructure Manual of Project Management Procedures, which are based on the Achieving Excellence in Construction Procurement Guides, including Sustainability.

❖ Use of Consultants, 3rd Parties and Auditor Conflicts

Use of External Consultants

NITHC will adhere to the guidance issued by the Department in relation to the Use of Professional Services including External Consultants. NITHC will ensure that anything that falls within the agreed definition of "external consultancy" must be approved by the Minister and is subject to the delegated limits as communicated from time to time, please ensure the Group Scheme of Delegation is referenced. Care should always be taken to avoid actual, potential, or perceived conflicts of interest when employing consultants (Management Statement and Financial Memorandum 2013).

For the most recent version of guidance on the Use of External Consultants and summary guidance on Consultancy expenditure should be referenced as it contains important information regarding Agresso codes please contact the Director of Finance. For guidance on the approvals aspects please refer to the Group Scheme of Delegation.

e.g. DFP Guidance – Use of Professional Services Including Consultants FD (DFP) 07/12 was the current version at 20th April 2012; the following extracts are taken from this guidance:

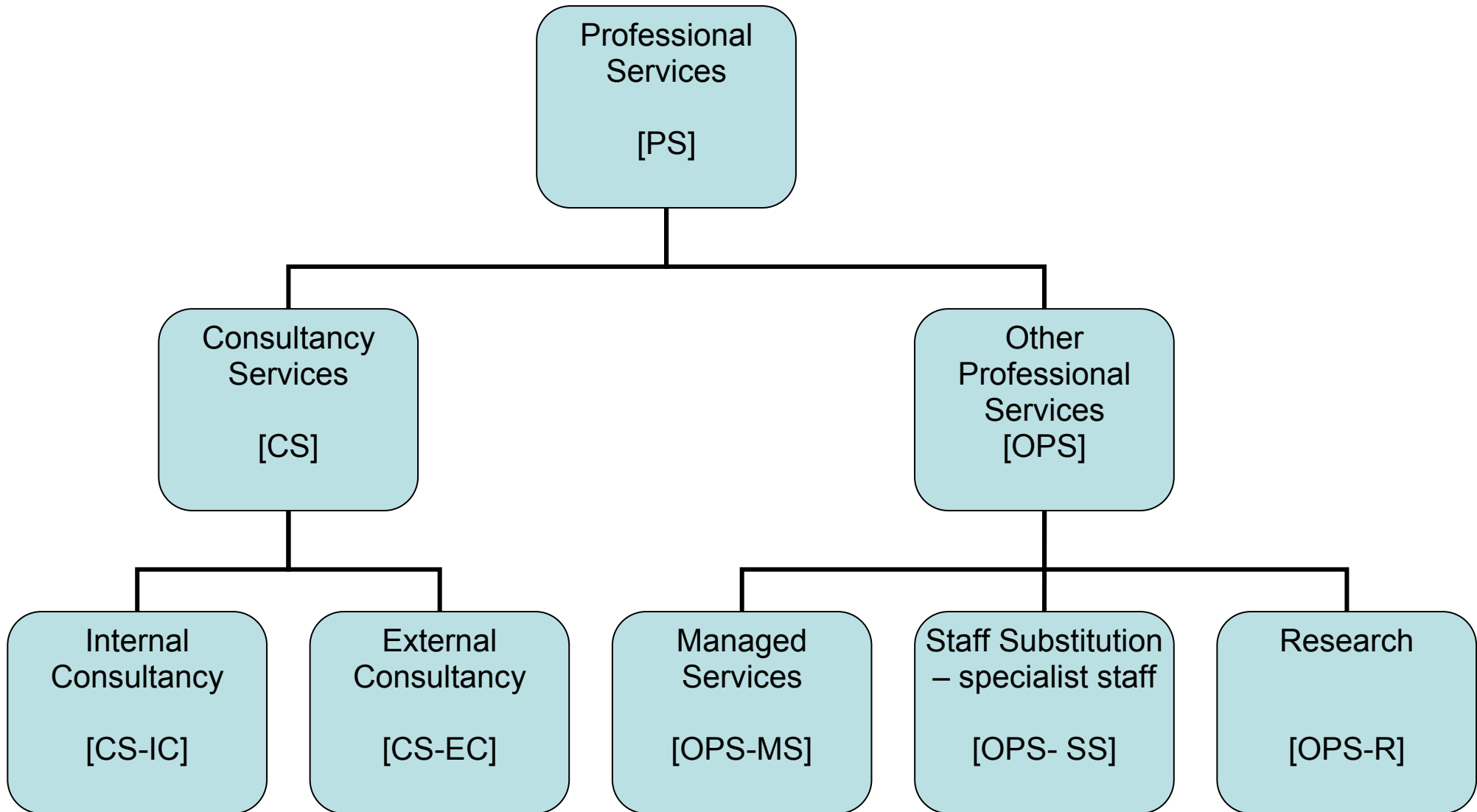
Key Principle 1

There should be a common understanding of the different categories of external professional services, especially what constitutes external consultancy.

Procurement Policy and Procedures

Please contact the Head of Financial Planning for Guidance on classifications.

Figure 1: Broad Classification of Professional Services



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- Professional Services can be defined as unique, infrequent, or technical functions performed by external providers or by specialist internal sources of expertise, and can be sub-divided into two broad categories namely:
 - a) **Consultancy Services:** ad hoc consulting requirements to provide **advice** and **identify options**; and
 - b) **Other Professional Services:** related to the **routine business** of a department, steady state operations and the **implementation** of advice or options identified by consultants (2.1.1).
- Internal Consultancy is defined as a service provided by one department or sponsored body to another e.g. by DFP's Business Consultancy Service (BCS). Information on the services provided by BCS can be found on their webpage. Before approaching the external market consideration should always be given to the potential services available from the many and varied other sources of internal professional services (2.1.2) – Please note that the Translink Group should consider the BCS but as part of a wider tendering exercise as there is a lack of clear guidance for arm's length bodies on if a direct award to BCS would be permissible.
- External Consultancy is defined as :

*"The provision to management of objective **advice** relating to strategy, structure, management or operations of an organisation, in pursuit of its purposes and objectives. Such advice will be provided outside the 'business-as-usual' environment when in-house skills are not available and will be time-limited. Consultancy may include the identification of options with recommendations, or assistance with (but not the delivery of) the implementation of solutions." (2.5.1)*

Consultancy will generally be a specific, finite or "one-off" task or project which provides advice and/or identifies options.

- External consultancy services are expected to either provide additional skills or expertise which are not available within the organization and are engaged to carry out activities such as investigating problems, providing analysis or advice, or assisting with the development of new systems, new structures or new capabilities within the organisation. They can also be called upon when an independent (i.e. outside government) assessment of a particular function, situation or project is required (2.5.2).

Key Principle 2

External Professional Services should be engaged only after a business case has been prepared and full consideration has taken place, including consideration of the appropriate use of in-house capacity.

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- Please contact the Head of Financial Planning for Guidance.

Key Principle 3

Appropriate procurement advice should be sought from a Centre of Procurement Expertise in respect of any proposed assignment for external professional services.

- Contact the Group Purchasing Department as early as possible in the planning stages. CoPEs can assist departments in the procurement of these services to ensure a collaborative approach is taken across the NICS and seek to avoid duplication (4.1.1).
- The Group Purchasing Department should check if use of external consultancy frameworks let by GPS and or CPD are viable options (4.1.2) and decide upon the appropriate sourcing strategy (4.2.2) please note consideration of the Business Consultancy Service (BCS) (2.1.2).
- The Group Purchasing Department will manage the procurement process and contractual matters, including:
 - deciding if EU legislation applies to planned expenditure on external professional services;
 - inserting appropriate notices in the Official Journal of the European Union or local press;
 - inviting tenders and facilitating the evaluation of bids;
 - agreeing contracts between a department and the providers employed; and
 - all contract variations, change controls and extensions (4.2.3)
- The Group Purchasing Department shall take account of relevant Procurement Guidance notes when considering the procurement of professional services. A decision by a department, or one of its sponsored bodies, to award a contract for external consultancy without competition (Direct Award Contract (DAC) must, in all cases irrespective of value, have the prior approval of the departmental Accounting Officer, (usually the Permanent Secretary) (4.3.1)
- Requests seeking departmental Accounting Officer approval of DACs should incorporate Head of Procurement advice, and legal advice where appropriate, together with consideration of the circumstances and an assessment of the risks involved...(4.3.2).
- Any variation or contract change, including contract extensions, should not take place without consultation with the Group Purchasing Department. Full consultation is necessary to ensure that the proposed variation/extension is within the scope of the contract. It will also ensure that both parties to the contract are clear on the terms and conditions associated with the proposed variation/extension, should these differ from that of the original contract. Should a contract variation or extension breach the accepted criteria then it would fall to be classified as a Direct Award Contract in its own right, and hence bring with it the associated approval implications (4.3.4).
- In all cases where it is intended to award a contract for external consultants without competition (including those involving former public servants) the relevant departmental Accounting Officer, normally the Permanent Secretary, must grant prior approval. In addition, as with any engagement of external professional service providers, departments will wish to ensure that there is appropriate professional indemnity in place (4.5.2).

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Key Principle 4

Once appointed, external consultancy assignments need to be carefully and actively managed and where appropriate, steps taken to ensure knowledge transfer takes place.

- all external consultancy assignments are supported by a contract let by the Group Purchasing Department;
- all contracts must be recorded on Account NI (or equivalent financial system for NDPBs and other ALBs) and all associated procurement processes complied with;
- in addition, information held on Account NI (or equivalent financial system or NDPBs and other ALBs) is supported locally by additional information; and
- the contract is performed in line with Terms and Conditions and agreed outputs (5.1.1)
- Appointment of an individual (or team of people as appropriate) with responsibility for managing each assignment (organisations may wish to nominate Contract Managers for projects costing over the EU threshold). It is important that staff managing contracts ensure that conflicts of interest or potential conflicts, including acceptance of gifts and hospitality are brought to the attention of senior management so that they can be managed in a transparent manner.
- Regular liaison with the consultant to fulfill information requirements and resolve problems.
- Interim milestones/targets are agreed and monitored for the duration of the contract.
- A formal action plan has been drawn up for implementation (5.2.1).
- External Consultancy expenditure tends to come under intense scrutiny. It is essential therefore, that departments and their associated bodies retain an audit trail of all key documentation relating to individual external consultancy assignments. This includes:
 - business cases and approvals;
 - tendering documentation;
 - signed contracts;
 - project planning and performance management information; and
 - post project evaluations (5.3.1)

Key Principle 5

Classification of expenditure as external professional services should be on the same basis as classification of in-house expenditure.

Please contact the Director of Finance for Guidance.

Key Principle 6

There should be comprehensive and consistent reporting of expenditure, especially to elected representatives, on the basis of standard definitions.

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Please contact the Director of Finance for Guidance.

Key Principle 7

Where expenditure on external professional services is to be capitalised, departments/sponsored bodies must ensure that this course of action is justified and that such expenditure can still be captured and reported as part of overall external professional services expenditure.

Please contact the Director of Finance for Guidance.

Using 3rd Parties in the Procurement Process

Consultants and or External 3rd Party Companies (3rd Parties) engaged to manage any aspect of the Procurement Process on behalf of the Group e.g. drafting technical specifications the Project Manager should take account of the following information.

3rd Parties must be informed that when acting on behalf of the Group they must at all times if it is appropriate comply with current Group Purchasing Policy, The Utilities Contracts Regulations 2006 including any subsequent amendments and European Union Treaty Principles.

Material received from Suppliers or potential Suppliers (this term includes Contractors) in relation to a procurement process is usually classified as commercial in confidence. The Project Manager may need to instruct 3rd Parties in this area.

Project Managers must ensure that 3rd Parties have no conflicts of interest and it must be clearly agreed who is authorised to communicate with Suppliers or potential Suppliers. Standardised Group procurement templates should be used by 3rd Parties unless an alternative is agreed.

The Purchasing Department are the only Department in the Group authorised to approve and release a Pre-Qualification Questionnaire (PQQ) or an Invitation to Tender (ITT) unless this has been otherwise agreed by the Purchasing Manager or his representative.

No contract must be entered into verbally. No contract should be entered into in writing other than that those which have been approved by the appropriate levels in the Group.

Any request for debrief must be directed to the Purchasing Department in the first instance.

The Purchasing Department will not be responsible or held accountable for documentation or decisions appertaining to any step of a procurement process of which they have not been informed.

Guidance around the appointment of work to private sector firms who are also the Group Auditors

Care must be taken and consideration should be given to requirements which are to appoint Auditors or requirements that may attract the Group's Auditors to such an extent that they may choose to compete for this work.

Prior to tendering any relevant Dear Accounting Officer (DAO's) in relation to this area should be referenced e.g. 'DAO (DFP) 10/07 Appointment of Private Sector Firms to Internal Audit within the Public Sector'. DAO's are published by the Accountability and Financial Management Division (AFMD). AFMD is a division of the Department of Finance and Personnel (Northern Ireland Civil Service) and publications can be accessed online at www.afmdni.gov.uk.

❖ Procurement of Works – Construction

Construction Procurement has specific requirements and whilst the Group Purchasing Policy and Procedure must be followed so also must the Infrastructure Project Control guidance on Procurement.

Most notably the Construction Industry Forum Northern Ireland (CIFNI) agreed from the 1st October 2006 that all public sector contracts below the OJEU thresholds can only be awarded to Constructionline registered suppliers. This means that the Group must ensure that when selecting suppliers for construction contracts below the Thresholds that they have Constructionline registration; see www.constructionline.co.uk.

Pre-Qualification Questionnaires utilised in this area are standardised across Centres of Procurement Expertise.

NEC contracting terms are normally utilised; standardising use of this comprehensive suite of contracts should help to deliver efficiencies across the public sector and promote behaviours in line with the principles of Achieving Excellence in Construction.

Contact Infrastructure Project Control for the latest guidance.

The Group shall follow when it is appropriate to do so the Central Procurement Directorate's Procurement Policy Framework for Construction Procurement including Procurement Guidance Note 06/10 – Procurement of Construction Works and Services.

❖ Procurement of Fuel, Gas and Electricity

NITHC shall not make any investments in traded financial instruments outside established policy without the prior written approval of the Department and, where appropriate, DFP. If the policy changes then NITHC must obtain the relevant approvals (Management Statement and Financial Memorandum 2013). The Group Scheme of Delegation should be referenced which sets out who can approve Fuel Hedging/Derivative Transactions.

Liquid Fuels play a large part in the operating input costs of the Group and therefore the process of procuring these is of vital importance, the following explains how the Group manages the risk.

The Group uses Diesel Engine Road Vehicle (Derv) mainly for the running of Buses and uses Gas Oil for the running of rail locomotives and heating.

For the purposes of this document fuel is classed as a commodity. The price in commodity markets may not have a relationship to the cost of production as it is usually influenced by other external factors e.g. political decisions and international agreements through bodies such as the Organisation for Petroleum Exporting Countries (OPEC). This in turn means that price has no certainty. For the Group this price uncertainty proposes a serious business risk as the price of fuel for the Buses and Trains has a direct impact on the price of fares that the Group must charge its customers, therefore the Group will endeavour to stabilise or off set the risk of this volatility.

To minimise the risk the Group use Commodity Markets such as the International Petroleum Exchange (IPE) in London as a framework to manage price and supply risk Bus and Train fuel. The timing of buying commodities is important and the Group recognise that when buying a commodity there tend to be 2 levels of market; the Physical or Spot Market and the Futures market. The Group seek to offset the risk in both price and supply and therefore currently use 2 separate transactions Physical Purchase and the Futures Market to achieve this.

The Group will have a contract for supply of fuel with a Physical Distributor i.e. a supplier who delivers fuel to the Group at the required intervals and to an agreed service level at an agreed firm price to cover the supplier margin. The price for the actual fuel is charged to the Group 1 month in arrears and the Group pay this invoice after checking the figures against those recorded in the market. This is the supplier "spot buying" for the Group's delivery. This supplier is chosen via a call for competition in accordance with the Procurement Rules.

The Group may then use financial transactions in the Futures Market to manage price risk and because the Group are dealing with relatively predictable consumption levels on high volumes of a commodity. The Group

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seeks additional expertise in this area through the form of a professional organisation which acts as a broker. While brokers may be used this is not a mandatory requirement. The broker is chosen via a call for competition and the relevant fees for providing this market intelligence and monitoring service represent a very low value in comparison to the European Thresholds. Separately each trade will attract a fee for carrying out the transaction.

The role of this broker is to work with the Director of Finance and the Purchasing Manager of the Group to limit risk through market knowledge and having an understanding of market mechanisms such as Hedging. Hedging is a traditional way of managing commodity price risk. The Group uses Fuel Hedging which means it makes purchases of fuel contracts and then sells them on the appropriate futures exchange. The theory being that if prices rise, the profit on the sale of the contract largely offsets the increase in the cost of the physical volumes purchased from our fuel supplier. Where circumstances of working via a Fuel Hedge are not appropriate the Group will consider the option of buying forward a fixed quantity of fuel(s) at a fixed litre price, to be drawn off during the appropriate coverage period.

To manage risk in this way can help to prevent unfavourable movements having a negative effect upon the Group however the action may also prevent the Group from taking advantage of favourable movements for that same period. The duration that the Hedge or volume purchase will cover therefore depends on the market conditions at the time of placing the Hedge and the Group's ability to notice and track changes in the market position will trigger when a Hedge or volume purchase should be undertaken.

The Group Energy Procurement Strategy

Management of Liquid Fuel Price Exposure

Purpose of Submission

To outline the strategy relating to the management of fuel price exposure relating to Derv and Gas Oil used by the Group in the delivery of public transport services in Northern Ireland

Separate procurement arrangements are in place for the physical delivery of fuel stocks.

Introduction

The Group, covering Ulsterbus, Metro and N I Railways annually uses almost 40 million litres of fuel, 70% being Derv to a blend of 95/5 bio-diesel. The remainder is Gas Oil, currently 1000ppm. The approximate annual fuel bill is £32m. and represents approximately 30% of operating input costs. The policy is designed to reduce the risk of fuel price movements in the forthcoming business period.

Coverage

The Group will ensure that at all times a rolling minimum of at least 5 quarters forward fuels coverage is in place. It is recognised that that this will overlap annual financial accounting periods.

It is anticipated that any such protection that is put in place will cover a minimum of 90% of the anticipated volumes to be used during the relevant period and up to a maximum of 95%.

Protection may be taken on both Derv and / or Gas Oil, according the state of each particular market at the point in time. Cover may be taken as a financial hedge with a financial institution or via a forward purchase contract directly with a supplier.

To ensure that the strategy is fully up to date the Purchasing Manager, or his nominated appointee, will monitor the market on a regular basis. The Director of Finance will be regularly informed of market developments.

Should market conditions be favourable, action to cover forward for a period in excess of 5 quarters may be taken at any time under the authority delegated to the Director of Finance. Such period of cover would not exceed 8 quarters.

Legal Obligations

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At all times the Group will operate within the EU Procurement Regulations as implemented in the United Kingdom by the Utilities Regulations 2006.

The Group will keep advised its sponsoring department, namely the Department for Regional Development of any such commitments made within strategy.

The Group will only contract with recognised United Kingdom based financial institutions for hedging arrangements or with reputable credit worthy companies for forward purchase contracts. All contractual documentation for relevant contracts will be authorised by the Director of Finance on behalf of the Group.

Professional Advice

The Group will seek external independent advice as to the integrity, effectiveness and timing of any such proposal to protect the long term fuels pricing position. The professional advisors will go to the market on behalf of the Group, having received instructions from the Group, to secure best terms for the instructions.

The professional advisors are remunerated by means of an annual fee, payable by the Group.

Approvals Process

Authority is delegated to the Director of Finance to authorise such actions as will commit the Company to enter into financial arrangements to protect the long term fuels pricing position. Where practical the Director of Finance will appraise the Group Chief Executive of the position prior to commitment

Such actions will be reported by the Director of Finance at the earliest opportunity to the Group Executive Team and NITHC Board.

Management of Gas and Electricity Price Exposure

Purpose of Submission

To outline the strategy for the management of energy price exposure relating to Natural Gas and Electricity used by NITHC/Translink in the delivery of public transport services in Northern Ireland. Separate procurement arrangements are in place for Gas Oil, DERV and other physical fuel stocks.

Introduction

NITHC/Translink, covering Ulsterbus, Metro, N I Railways and NITHC annually uses circa 15 Million KWh of electricity, and 6.5 Million KWh of natural gas. The approximate annual energy bill for facilities is £2m, this represents approximately 2% of operating input costs. It is corporate policy to minimise financial exposure on as many of the significant input costs as possible.

Coverage

NITHC/Translink will ensure that electricity and gas prices are fixed on an annual basis. Forward prices will be reviewed on a monthly basis with a view to securing energy prices for a further 3, 6 or 12 month period on a rolling basis. It is recognised that that this may conflict with annual financial accounting periods.

It is anticipated that protection that is put in place will cover > 80% of the volumes to be used during the period.

Protection may be taken on both Natural Gas and Electricity, according the state of each particular market at the point in time. NITHC/Translink will reserve the right to award separate or combined energy price exposure.

To ensure that the strategy is fully up to date the Purchasing Manager, or his nominated appointee, will monitor the market on a regular basis. The Director of Finance will be regularly informed of market developments.

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Should market conditions be favourable, action to cover forward in line with the strategy may be taken at any time under the authority delegated to the Director of Finance. Advice shall be sought from suppliers and the energy team as to whether prices are “favourable”.

The Director of Finance shall notify the Executive Group should Translink purchase energy outside a fixed price agreement (exposed to market prices).

Legal Obligations

At all times NITHC/Translink will operate within the EU Procurement Regulations, 2004/17/EC as implemented in the United Kingdom by the Utilities Regulations 2006.

NITHC/Translink will keep advised its sponsoring department, namely the Department for Regional Development of any such commitments made within the strategy.

NITHC/Translink will only contract with companies licensed to supply natural gas and electricity within Northern Ireland. This is currently governed by OFREG.

All contractual documentation will be authorised by the Director of Finance on behalf of NITHC/Translink

Approvals Process

Authority is delegated to the Director of Finance to authorise such actions as will commit the Company to enter into financial arrangements to protect the long term fuels pricing position. Where practical the Director of Finance will appraise the Group Chief Executive of the position prior to commitment

Such actions will be reported by the Director of Finance at the earliest opportunity to the Translink Executive Team and NITHC Board. This may involve retrospective notification.

Market Verification

NITHC/Translink will undertake independent verification of prices quoted by the supply market as appropriate.

❖ Procurement of Information Technology Systems and Equipment

IT projects present risks which differ from those arising from capital expenditure generally. CPD Guidance Note 01/09 as amended on Best Practice in Programme / Project Management deals with IT enabled projects and should be consulted at the outset of any IT procurement. IT projects should be the subject of competitive tendering unless exceptionally, there are convincing reasons to the contrary. The form of competition should be appropriate to the value and complexity of the project and in line with the Procurement Control Limits (Management Statement and Financial Memorandum 2013).

ICT or information related contracts that use information systems do not only sit within the IT Department. Therefore any contract in which information and communication systems are utilised will require enhanced measures to protect the Group information they handle. The definitions listed below are used by the Group to define Sensitive Data.

Sensitive Data Definition

The Group categorises ‘sensitive data’ into three distinct groupings, being:

- (1) Sensitive personal data as defined by the Data Protection Act 1998, which covers information concerning a person’s:
 - Racial or ethnic origin;

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- Political opinions;
- Religious beliefs or other beliefs of a similar nature;
- Membership of a trade union;
- Physical or mental health condition;
- Sexual life;
- Commission or alleged commission of any offence; and
- Involvement in proceedings for any offence committed or alleged to have been committed.

(2) Personal data (i.e. names, address, contact details, journey details etc.) relating to customers within vulnerable groups i.e. young people, the elderly and any other group of persons which may be deemed as vulnerable.

(3) Commercially sensitive information relating to the organisation or the activities of the organisation – this includes all information which, if accessed by the wider public, could prejudice the commercial interests of the Group – for example information relating to route profitability.

For further information on the Definition's above please contact the Records Management Section of the Group.

Information Assurance in Procurement

Every Government Department should be taking suitable precautions to safeguard its information. Therefore every Information Communications Technology (ICT), or information related service contract must contain Information Assurance (IA) requirements. Indeed IA extends beyond ICT contracts, since for example even in construction projects there is likely to be an ICT system used in designing, managing or communicating about the project, and this will have IA requirements.

What is Information Assurance?

Information Assurance (IA) is the confidence that information and communication systems will, through their life cycle, protect the information they handle (i.e. ensure the information's Confidentiality and Integrity), and will function as and when they need to (i.e. information is Available as required), under the control of legitimate users. This confidence is vital, as UK government and business all depend on such information systems.

Why is IA needed?

Information is fundamental to the business of government. Effective IA is core to ensuring that this asset is safeguarded appropriately.

The continued growth throughout government in the use of ICT systems, all linked together, carries with it increased vulnerability. In addition these ICT systems are under threat of attack from foreign intelligence services, criminal gangs, and even individuals inside the organisation.

Protection against such threats and vulnerabilities is essential.

Assurance is the confidence that may be held in the security provided by an ICT system or products supporting a service. CESG (the UK National Technical Authority for IA) has developed an Assurance Framework which is intended to stimulate 'good practice' thinking about the assurance of an ICT solution throughout its lifecycle, from inception to decommissioning. The framework is not a prescriptive process, a 'badge' or a 'check list' – it is a tool for organisations to use within their risk management process.

IA is therefore something that should not be considered as a separate entity in the procurement process, but must be integral and is key to meeting the business objectives, preserving reputation, and legal compliance etc.

Government Security Policy

The Manual of Protective Security (MPS) sets out HMG policy on all aspects of protective security (including physical, personnel, communications and information security matters). The MPS in turn references other IA

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standards, including IS1 and IS2 covering risk management. The MPS applies to all government departments, and to any other organisation involved in handling government assets.

International Standards ISO/IEC27002 and ISO/IEC27001 may need to be referenced in a Contract.

How does a Model ICT Contract for Services deal with Information Assurance (IA)?

The Information Assurance requirements must be explicitly stated in the contract specification. The terms and conditions of the contract must ensure that failure to deliver any aspect of the IA requirement will be at the supplier's risk. However failure by the supplier will invariably have a knock on effect on the department's business function and reputation. Tender evaluation must explicitly assess the suitability of the proposed Information Assurance solutions.

If in doubt appropriate advice should be sought at departmental level, from CESG for technical IA advice, www.cesg.gov.uk

Specific IT Conditions of Contract may need to be used after consultation with the Group IT Department and the Group Records Management Section as there is reference to security policies, staff vetting policy and disaster recovery plans which need to be in place for the conditions to be effective.

Recommended clause		The Group's Position
<ul style="list-style-type: none"> Contractor Personnel – Staffing Security 		Insert into ICT/ information related contracts as required.
"Staff Vetting Procedures"	the Authority's procedures and departmental policies for the vetting of personnel whose role will involve the handling of information of a sensitive or confidential nature or the handling of information which is subject to any relevant security measures, including, but not limited to, the provisions of the Official Secrets Act 1911 to 1989;	<p>The Group's Vetting Procure for employees whose role will involve the handling of information of a sensitive or confidential nature or the handling of information is to take up employee references prior to offering the post (current at August 08 HR Division). Therefore the Group's Contractors whose role will involve the handling of information of a sensitive or confidential nature or the handling of information shall also be required to comply with the Group policy on 'taking up references'.</p> <p>The Staffing Security clause will need to be amended by the Group by adding after the last line "Group Vetting and Recruitment Procedure for those whose role will involve the handling of information of a sensitive or confidential nature or the handling of information can be obtained by contacting the Group HR Division".</p> <p>If a requirement with highly sensitive information is considered then enhancements to this vetting policy and the detail of which is held within the contract may be required. The Group Records & Information Manager should be consulted.</p> <p>For further information about Staff Vetting please contact the Group Records & Information Manager in the first instance and the Human Resources Division in the second.</p>
<ul style="list-style-type: none"> Authority Data 		Insert into ICT/ information related contracts as required
<ul style="list-style-type: none"> Protection of Personal Data 		Evaluate, review and omit if required the Group standard Condition on Data Protection Act 1998.
<ul style="list-style-type: none"> Freedom of Information 		This is the same as the Group standard FOI clause and no changes are required.
<ul style="list-style-type: none"> Confidentiality 		This is the same as the Group standard Confidentiality clause and no changes are required.
<ul style="list-style-type: none"> Warranties 		Insert into ICT/ information related contracts as required
<ul style="list-style-type: none"> Security Requirements 		Insert into ICT/ information related contracts as required If we use this we must enclose IT Security Policy
<ul style="list-style-type: none"> Security Requirements Plan (schedule) 		Insert into ICT/ information related contracts as required
<ul style="list-style-type: none"> Malicious Software 		Insert into ICT/ information related contracts as required

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WEEE Regulations

Those involved in the Procurement of IT must ensure they have awareness of the following Special requirements which are placed on the IT Department and also make sure that the WEEE Regulations are also considered when considering the Disposal of IT Equipment.

Processing of credit card information

The Group is obliged under existing contractual agreements with its Bank and payment service providers, to be compliant with the Payment Card Industry Data Security Standard (PCI DSS).

Compliance is mandatory for all merchants who process, transmit and store payment card details and is an annual requirement that involves an assessment of controls in place to mitigate the risk of cardholder data loss or breach.

Where the Group enter into agreements with service providers, they are also required to manage those service providers and require status reports on their PCI DSS compliance.

Contact the Group's Treasury Manager for the full and up to date compliance statement for ITT's/contract terms.

ICT Databases

The Group ICT assets should be interoperable and open for re-use in order to maximise return on investment, avoid technological lock-in, reduce operational risk in ICT projects and provide responsive services for citizens and businesses.

For this reason please ensure that non-standard Databases – hardware or software are not used.

Business cases in respect of IT projects should be consistent with the requirements of DAO (DFP) 33/03 – Information Communication Technology (ICT) – Enabled Business Change, Guidance on Management, Justification, Evaluation and Responsibilities. The thresholds for which should be referenced in the Group Scheme of Delegation.

The Group shall follow when it is appropriate to do so the Central Procurement Directorate's Procurement Policy Note 01/09 Best Practice in Programme/project Management.

❖ Public/Private Partnerships (PPP)

NITHC shall seek opportunities to enter into Public/Private Partnerships (PPP) where this would offer better value for money over conventional procurement. Prior Departmental / DFP approval must be secured for all PPP arrangements and the Department should be consulted on all such proposals at an early stage (Management Statement and Financial Memorandum 2013).

❖ Entering into a Lease

Before entering into any lease as lessee (including an operating lease), NITHC shall demonstrate that the lease offers better value for money or is otherwise the better option than purchases. Prior Departmental approval may also be required and the Group Scheme of Delegation should be referenced for approval values.

Part 4 - Quotations and the Tendering Process

❖ Terms and Conditions (T&Cs) including Payment Terms

For all goods, works and services it is important that the Group ensure risks such as insurance, intellectual property rights, confidentiality, security etc are covered and therefore when it is possible and appropriate goods and services should be on the Group's T&Cs; Works are usually on NEC T&Cs.

Supplier Payment Terms

NITHC will aim to adhere to the Executive's prompt payment policy (Management Statement and Financial Memorandum 2013).

The appropriate method of payment for supply contracts must be evaluated at the Procurement Planning stage and risk assessed at this point. When inviting tenders or quotations two payment options may be considered:

- Standard Payment on delivery
- Milestone based / incentivised pricing mechanisms

Stage Payment Terms shall only be considered for high value goods and services, where it may be advantageous to the Group. Payment must be on clearly defined deliverables/milestones. It may be important to retain an element of the contract price payable only on satisfactory acceptance of goods, completion of service or contract.

Advance Payment

In very rare circumstances it may be imperative for commercial reasons to pay suppliers in advance of clearly defined deliverables. Such advance payments should only be considered if an Advance Payment Bond is in place. An Advance Payment Bond must be included in the ITT and must be approved by the Purchasing Manager. Advance Payment Bonds can be used provided that:

- value for money is demonstrated (including discount for advance payment).
- the supplier will accept the cost of the Bond being guaranteed by a UK bank or insurance group of substance. These Bonds protect the Group when advance or progress payments have been arranged before the contract has been completed. The Bond, usually issued by the supplier's bank provides for the repayment of the advance or progress payment should the supplier fail to perform to the terms and conditions of the contract.
- wherever possible an element of the contract price should be retained payable only on satisfactory acceptance of goods, completion of service or contract.
- advance payments are kept to a necessary minimum.

Foreign Currency Payment

All Transactions should be in GB Pounds Sterling any requests for payment in a foreign currency irrespective of their value should in all cases be referred to the Purchasing Manager before any contract is awarded.

Alternative Financing

Where financing methods other than outright purchase are being considered, the Purchasing Manager must be consulted before the contract is awarded.

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Payment Responsibility

The Group Conditions of Contract should clearly state payment terms, Project Managers are responsible for ensuring that suppliers are provided with any clarification and/or guidance on payment terms and timescales which they may request when interpreting Conditions of Contract.

Any payment complaints or disputes should be referred to the Purchasing Manager to ensure that appropriate action is taken.

Suppliers must also be promptly advised if it becomes apparent that invoices, or parts of invoices, require clarification or are to be contested.

Change in Payment Terms after Contract Award

In rare cases it may be necessary for payment terms on an existing order or contract to be amended, the Purchasing Manager must be consulted for guidance before a Variation order is agreed.

❖ Invitations to Tender and Requests for Quotation

When inviting a potential supplier to tender or quote the Group should be prepared to contract with that company should it be judged to have submitted a compliant tender or quotation which offers best value for money. This makes the supplier selection process vital, a comprehensive pre-qualification exercise will help to deliver sound decisions and ensure that standards and legal obligations are complied with.

Competitive Supply: procurement should be carried out by competition unless there are convincing reasons to the contrary both at prime and subcontract level. No more than 6 should be invited to tender for a requirement, this ensures the process is more manageable, minimises effort and ensures costs are reduced for both the Group and potential suppliers.

In exceptional circumstances it may be necessary to seek a tender or quotation from a single supplier. Formal approval for this course of action must be obtained from Purchasing Department and the Single Tender Action section of this guidance consulted.

Contracting authorities should group together their planned expenditure so that they can consider the appropriate thresholds for procurement. The sub-division of a procurement order with the objective of avoiding the seeking of the appropriate number of quotations / tenders specified in the above table runs contrary to procurement guidance and is not permitted (Management Statement Financial Memorandum).

The Group shall follow when it is appropriate to do so the Central Procurement Directorate's Procurement Guidance Note:

01/10 Information Disclosure Throughout the Procurement Process

04/10 Selection and Pre-Qualification of Contractors

02/09 Procedures and Principles for the Evaluation of Tenders

The criteria for the award of a contract

The following action points are mandatory for all Group tenders:

1. Maintain a distinction between selection criteria and award criteria for procurements.
2. Make available to suppliers details of criteria and sub-criteria, scoring, weights and pass marks used in evaluating pre-qualification questionnaires and invitations to tender when these documents are released.

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It is also important to have a rational for evaluation criteria; weightings and the quality price ratio that is applied.

The Group shall award contracts on the basis of the offer which is the most economically advantageous if this is appropriate. Any exceptions to this subject to the formal approval of the Head of Procurement.

In relation to OJEU requirements the Group must (Part 5 Section 30 of the Regulations) use criteria linked to the subject matter of the contract to determine the most economically advantageous tender (MEAT) reference Regulation 30 (2).

Requests for Quotation

What is a quotation?

A quotation is when a supplier provides a price for a straight forward requirement usually with the price being based on the suppliers Terms and Conditions (T&Cs) (this is a CPD definition of quotation). However all quotations requested by the Group should hold a caveat that any orders resulting from quotations will be on the Group standard Terms and Conditions and that the quotation provided should be based on the Group Terms and Conditions were appropriate.

The number of quotations needed are set out in the Procurement Process Maps section of this Document. It may not always be possible to obtain the required number of quotations. In this event a detailed reason must be noted in the Agresso internal text box including the options explored and actions taken to obtain the required quotations (Management Statement Financial Memorandum).

Requests for Quotations (RFQs)

Requests for Quotations are usually straight forward and can be obtained by Group employees when required provided that these are requested and evaluated in accordance with the principles of equal treatment; transparency and proportionality. If a previous competitive quotation exists this may be used subject to a revalidation of prices and Terms and Conditions.

The request for quotation should include the following information provided:

- Technical Specifications and/or drawings
- Delivery method required
- Delivery dates, programme or contract period
- Conditions of contract
- Deadline for submission of quotation

The following information is a suggestion but is not a limited list of what may be requested from the supplier if appropriate:

- Price excluding VAT (GBP)
- A Price breakdown including any charge for delivery, Discounts / volume discount structure
- Minimum order quantity
- Payment terms options
- Delivery date / programme
- Statement of Acceptance of the Group terms & conditions of contract
- Quotation validity

The Tendering Process

What is tender action?

Tender action is when you have a **more** complex requirement and you need to evaluate evidence that the suppliers are capable to meet the requirement and the Group want a price based on the Group's Standard and at times tailored T&Cs to ensure risks are covered. This process will invite tenders to be submitted.

Pre-Qualification Questionnaires

Pre-Qualification Questionnaires (PQQs) utilised in construction works and services are standardised across Centres of Procurement Expertise.

The Group have a standardised Pre-Qualification Questionnaires (PQQs) which is utilised in supplies and services areas.

For all advertised requirements a Prequalification Questionnaire should be used as the Group's preferred down selection tool to enable management of supplier responses to advertisements.

A supplier's expression of interest will not provide sufficient information for a fair evaluation consequently the Group use a PQQ to enable an objective evaluation of a suppliers suitability to be invited to tender. The PQQ enables the Group to seek structured information to assist in the selection of tenderers to be invited to the next phase. The use of a PQQ should save both the Group and the potential supplier time and money, and reduce unnecessary tendering costs.

The main purpose of a PQQ is to assess the applicant's ability to carry out the project and therefore when using a PQQ it is important to ensure this is adequately addressed. The main function of the PQQ is to assess capacity, capability and financial standing and this should be clearly satisfied by the PQQ question sets. The importance of using a PQQ should not be underestimated because if the Group are using most economically advantageous tender (MEAT) criteria at Tender stage the criteria at the latter stage must be linked to the subject matter of the contract only; not to the capability, competency and financial standing of the company.

As with all selection processes all the information in a PQQ should be evaluated consistently and objectively according to a defined model. It is mandatory to provide to Economic Operators evaluation criteria and weightings at PQQ stage. When structuring a scoring scheme or methodology it is important to ensure that scores are proportionate and appropriate to the particular project in question. The recommended approach is based on the familiar "weighted scoring approach", in which the Procurement Staff and Project Managers score responses to the PQQ questions according to a pre-agreed scoring system – typically being scored 0-5². The separate sections are then multiplied by a weighting factor on the basis of its importance relative to other sections. The weighted scores for the sections are then added together to give a total weighted score for the PQQ response.

It may not be considered appropriate to score each part of the PQQ response. For example, an assessment of company financial information does not lend itself to scoring. In these cases it may be considered more appropriate to evaluate the responses on the basis of risk (e.g. low financial risk to contract performance, medium risk, and high risk) and to consider these ratings along with the total weighted score awarded to that PQQ response before deciding whether to invite that supplier to tender.

It is important to list in the evaluation criteria if a question and if the PQQ application has a pass/fail threshold or if a fail on a particular question will exclude the applicant from further consideration. It can also be useful to include a maximum number of the highest scoring applicants that the Group wish to take through to ITT and how this will be decided in the event of a tie.

² This can be varied on a case by case basis if required.

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If the responses provided in the completed PQQ raise doubts about some aspect of a supplier's suitability, but that supplier appears to be otherwise appropriate, the Procurement Lead / Project Manager may wish to seek further information or clarification from the supplier concerned before proceeding.

Some information that may be requested in the PQQ:

Organisation Details

This section of the PQQ allows the Group to gather some basic contact details about each supplier and to establish the legal entity with which any resultant contract would be agreed.

For registered companies, the buyer may wish to confirm company identity and basic details with Companies House - basic company details can be accessed on-line and without charge at:

<http://www.companieshouse.gov.uk/info/>.

The website to check companies that are registered in the Republic of Ireland is:
<http://www.cro.ie/search/>.

The same applies to charities registered with the Charity Commission at <http://www.charity-commission.gov.uk>

Any concerns which arise over the supplier's company details may give rise to questions as to whether they should be invited to tender.

Professional and Business Standing

The supplier should provide an answer that clearly indicates no issues or that problems have been resolved and that steps have been taken to prevent any recurrence. This is criteria set out in the Regulations regarding business conduct.

Financial Information

These questions are intended to gain a basic indication that the supplier is not in financial trouble. For many low value or short-term contracts the financial health of the supplier may not be critical to the buyer, but nevertheless a financially troubled supplier could still represent a risk to satisfactory contract completion, and a non-scored risk-based approach to assessing this part of the PQQ response is suggested. The Group Finance section can assist in this area if required.

Turnover

The turnover should be checked to ensure that there hasn't been a drastic movement in the past two years. Allocating an arbitrary contract limit based on turnover is not recommended, but turnover should be checked to ensure that it doesn't appear inconsistent with the value and importance of the proposed contract.

Banking Facilities & Loan Agreements

These areas can be indicative of poor financial controls, cash flow problems, and / or problems servicing debt. In that case considerable caution should be exercised unless the supplier has provided clear explanations that matters have been put right.

Availability of financial details

Further financial reports on potential suppliers can be obtained from the Group Treasury Department.

Business Activities

On most occasions a Project Manager will want to establish that a supplier has experience and expertise in the field that is the subject of the proposed contract and that the work required would not be a new

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departure for them, or if the supplier would intend to sub-contract. Project Managers should check the information provided against the necessary levels of experience/expertise.

Quality Assurance

If the supplier has neither accreditation nor a quality system, this may give rise to doubts about its ability to provide goods or services of a consistent quality. As a minimum a supplier should provide information that it has appropriate controls to achieve and ensure consistent performance and intends to adopt such processes where appropriate.

Health, Safety, & Environment

Suppliers that employ five or more staff are legally required to have a written Health and Safety policy (The Group usually require confirmation that this exists not a copy of the actual policy).

If the supplier does not have a Health and Safety system, there may be doubts about its commitment and ability to meet Health and Safety requirements. However, the importance of this section, and therefore the weighting factor applied to scores, will of course vary widely according to the type of procurement being undertaken.

If a supplier lacks an environmental policy it may be difficult to establish whether it can provide the solution whilst minimising effects on the environment, or whether it can meet the requirements of environmental protection legislation.

Equal Opportunities / Other requirements

In order to demonstrate that equal opportunities are provided to all staff and discrimination is combated within their organisation, suppliers are asked to state whether they maintain a written equal opportunities policy. (The Group usually require confirmation that this exists not a copy of the actual policy).

If the supplier does not have a written equal opportunities policy, there may be doubts about its commitment and ability to fairly and equally manage its workforce.

This section also asks if the economic operator has been disqualified under the Fair Employment and Treatment (Northern Ireland) Order 1998. Article 64 of this Order states "The Order above restricts a Public Authority from entering into any contract with an unqualified person under this order" consequently if an economic operator has been disqualified you must seek immediate advice from the Purchasing Manager or his representative.

Insurance

It is not appropriate to apportion significant marks insurance as a review of the appropriate insurance requirements for each project can be made later in the procurement cycle by the Group's insurance broker if this is deemed appropriate however minimum standards prescribed by legislation should be illustrated.

Capacity and Relevant Experience

Establishing capacity is to enable the Project Manager to assess the level of relevant expertise and experience possessed by a supplier. Project Managers should check that the organisation has provided references that are relevant to their requirement and that the values of these are consistent with the likely size and value of the requirement. A newly set-up supplier might be unable to provide four concurrent contracts, and 4 other relevant contracts performed within the period specified by the Project Manager.

Of course, the suppliers' ability to make reference to comparable previous work will depend upon the Project Manager providing a good informative overview of its basic requirements in the information issued to suppliers with the PQQ.

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Requirement-specific Questions

These sorts of questions relate solely to the requirement itself. As such the scoring model should be developed by the Procurement Lead and the Project Manager based on the high-level specification, bearing in mind that any information requested in future evaluation stages should not duplicate any questions already asked.

It is likely that a high weighting factor will be applied to scores achieved reflecting the importance of requirement-specific supplier capabilities.

Conflict of Interest

This is required to gain an understanding about the supplier and any risks they may present if the Group contracted with them and a non-scored risk-based approach to assessing this part of the PQQ response is suggested.

Invitations to Tender (ITT)

Authority to release Tenders resides with the Purchasing Department; the Group has standardised ITT documentation which is used unless there is exceptional reasons to deviate from this.

Where there will be a prolonged delay in the issue of the ITT from the date envisaged when the contract notice was published in OJEU or if any fundamental aspect (e.g. price, quantity, duration) of the requirement significantly changes from the requirement previously advertised in OJEU it may be necessary to start the procurement procedure again by submitting a new contract notice to OJEU in order to avoid a breach of the Regulations it is important that this is considered by the Project Sponsor and the Purchasing Department.

The test for re-advertising:

- could the prolonged delay or changed requirement attract bidders that did not respond to the original notice or have affected the way in which bidders responded; or
- could the changed requirement call into question a decision made earlier in the process, such as the basis on which a potential supplier was not selected for inclusion in the tender list.

ITT's for competitive tenders must be identical and issued to all tenderers simultaneously and electronic tendering is the preferred option. Care however must be taken to avoid at all times inadvertent release of sensitive information particularly when releasing information electronically.

The Group must apply realistic timescales to the procurement process and therefore the issue of and the responses to an ITT. The Regulations set out the required timescales for over threshold requirements. However, potential tenderers should be allowed a reasonable period in which to prepare and submit their tenders not solely the time allowance indicated in the Regulations. This will help to avoid requests from tenderers for an extension to the tender return date. Considerations which affect the tender response time include:

- the complexity of the requirement,
- subcontracting activity involved;
- volume of the specifications/ drawings and information to be examined;
- the possible need for a Bidders' Conference.

The Regulations stipulate that some information must be included in an ITT (such as award criteria and weightings) it is important that this is referred to and checked prior to the release of any ITT. It is important to note that the Procurement Board of Northern Ireland has determined that by the end of March 2009 all contracts should be awarded on the basis of Most Economically Advantageous with any exceptions to this subject to the formal approval of the Head of Procurement the relevant Centre of Procurement Expertise.

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It is not Group practice to reimburse tender costs however the Group is conscious of the level of resource needed to respond to its ITTs. The Group will normally seek to contain tender costs by limiting the number of potential Tenderers by utilising down selection procedures such as Pre-qualification Questionnaire's (PQQs) to achieve this.

All queries from potential tenderers or tenderers must be handled formally and even-handedly. They should be directed in the first instance to, and managed by; the Project team member appointed to perform this role and this is usually the Purchasing Lead.

It is essential that ITTs are written clearly and contain adequate technical documentation defining the requirement and/or include a specification. The issue of incomplete or immature ITT documentation that will need amendment or explanation later in the tender process is not good practice and will, rightly, attract criticism from potential tenderers. The Purchasing Department must also ensure there is no ambiguity or conflict between the requirement documentation or specification and other ITT documentation. Getting it right first time at ITT issue stage helps to smooth the purchasing process it therefore can be very beneficial if members of the tender assessment panel act as a point of quality assurance to proof read the ITT prior to issue.

The Purchasing Department must not normally invite tenders (and should never place contracts) until they have received approval to do so. It is a fundamental principle of the tendering process that the Group has a serious intent to place a contract as a result of the tender exercise.

ITT's and competitive tenders received need to be rigorously safeguarded in order to preserve confidence in the integrity of Group procedures and to preserve equity between tenderers.

❖ Tender Receipt and Witnessing

The following applies to Single Tenders and Competitive procurement Tenders. All Group PQQs submissions and Tenders over the advertising thresholds for purchases should be received via eSourcing NI unless there are justifiable reasons for permitting hard copy submissions. PQQs and Tender procedures for under this value can still be conducted through eSourcing NI but this is at the discretion of the Purchasing Department.

eSourcing NI provides the Applicant with the most secure and transparent system for submitting documentation to the Group and protects both the Applicant and the Group under the Procurement Rules. Therefore any Applicant wishing to submit a proposal without using the eSourcing NI portal should first (if permission is not granted by the Group from the point of advertising) provide justification to and seek the prior approval of the appropriate Procurement Project Advisor.

When PQQs and Tenders are submitted via eSourcing NI the process for the Receipt and Witnessing of PQQs/Tenders no longer requires a Tender Opening Panel or any particular grade of staff member. This is due to eSourcing NI receiving and locking down the original documentation submitted automatically. This means any member of the Project Team who is a designated user of eSourcing NI can 'open' PQQs and Tenders.

In the event that hard copy tenders are received a Tender Opening Panel can be created by Purchasing Department and this Panel will operate strict procedures for the receipt, custody and witnessing of Tenders and Pre Qualification Questionnaires (PQQs).

The operation of a Tender Opening Panel is one of the processes that safeguards the Group from accusations of collusion and malpractice. The Tender Opening Panel procedures are auditable and transparent. The procedures are designed to ensure fairness, impartiality and confidentiality in the treatment of completed PQQs and Tenders that are received.

Any e-mailed copies of tender documents are not to be regarded as official submissions and are not to be used as the means of official tender submission.

In the event that hard copy submissions are the only means of submission the following must be considered:

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Membership of a Tender Opening Panel for submissions received in hard copy only

Membership of a Tender Opening Panel established to open full Tenders comprises of a minimum of one Manager from the Purchasing Department and another Group employee and in the event that the value is above the OJEU threshold another third observer is to be present. A Tender Opening Panel established to open PQQs comprises of a minimum of one member of the Purchasing Department or an authorised representative.

Auditable and transparent procedures

Tenders should always be received in sealed envelopes. A receipt to provide proof of delivery to the Group can be issued if requested. On receipt these submissions should be placed in a secure location within the Purchasing Department which should be checked and emptied by the designated Tenders Controller on a regular basis.

All Tenders received before submission date / time are to be securely stored within the Purchasing Department until the due date and time.

Opening of PQQs on the due date and after the due time

Opened PQQs should be stamped with a tender received stamp on the page containing the main company contact details and then this should be placed on the Purchasing Department requirement files.

When all the PQQs have been opened, the 'receipt and opening' form will be completed and signed by the person opening the PQQs.

A member of the Purchasing Department will update the relevant Project File to indicate the level of response received from each supplier i.e.

"NT" Not Tendering

"NR" No Response

"L" Late Tender

Opened tenders should then be passed to the Project Sponsor for evaluation.

Late Tenders (PQQs and Tenders of any sort) & Tenders deemed not to be received

Tenders received after the due time & date will not be considered and if received in hard copy will be returned to the Tenderer. The onus at all times lies with the applicant (the Economic Operator) to prove that submissions of both PQQs and Tenders of any sort have been delivered to the required full address at or before the required date and time. The eSourcing NI system will automatically prevent any submissions being uploaded to the system after the due date and time.

Late submissions (PQQs and Tenders of any sort) or submissions deemed not to be received by the Group will not be given consideration unless a valid proof of delivery to the Group's stipulated Tender/PQQ Return address (prior to the required date and time) can be produced.

Delayed Tenders

At times unforeseen circumstances can mean a tender is unable to be delivered in hard copy or via eSourcing NI before the closing date and time; if such exceptional circumstances are explained to the Purchasing Manager or his representative prior to the closing date and time and the Tenderer is granted special permission from this authority the Tenderer may submit the documents via e-mail or fax.

A hard copy should be forwarded as soon as possible and checked with the originally submitted version to ensure the documents are the same.

If possible proof of postage should be sought to ensure the Tenderer allowed good time for delivery in normal circumstances.

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If a Tenderer protests against the decision not to consider a late tender on the grounds that the tender was posted in time but was delayed in the post, the Tenderer should be advised to take the matter up with the postal courier service employed to deliver the tender.

Handling Late Tenders

A late tender should immediately be returned if it was received in hard copy to the Tenderer the envelope of the late tender should be retained if possible and put onto the file including the name of the Tenderer and an explanation about what has happened and action taken, this will provide evidence the Group with evidence if there is a dispute.

Tenders Opened In Error

If a hard copy tender is opened in error, the reason & date to be opened must be recorded on the envelope and file. The envelope is to be sealed again and stored in a secure location until the correct due date and time. On the date the tender is actually due the envelope is to be reopened and the error details must be recorded on the 'receipt and opening' form.

❖ Supplier Selection - PQQ and Tender Evaluation

The Utilities Contracts Regulations have specific areas on which potential suppliers can be rejected particularly in relation to convictions for offences. The Regulations also have specific criteria for the selection of potential suppliers, objective criteria and rules by which the Group determines must be used and made available to economic operators.

The Group in the first instance will take proportionate steps to assess the capability and capacity of any organisation which it intends to enter into a contract with and this is the objective of issuing PQQs.

The Group shall follow when it is appropriate to do so the Central Procurement Directorate's Procurement Guidance Note's:

04/10 Selection and Pre-Qualification of Contractors

02/09 Procedures and Principles for the Evaluation of Tenders

Group specific information

Evaluation Panels should be briefed by the Purchasing Department on the Group Tender Panel Information Pack prior the receipt of PQQ or Tender documentation and the Declaration of Interest Form should be completed.

Bid rigging: Procurement staff should keep themselves apprised of the Organisation for Economic Co-operation and Development (OECD) Checklists.



Criteria for rejection

Criteria for rejection of economic operators; Section 26 of the Regulations set out certain reasons for the rejection of an economic operators. If the Group has actual knowledge that an economic operator or its directors or any other person who has powers of representation has been convicted of the offences listed in Section 26 the Group may treat the economic operator as ineligible and may not select the operator to progress.

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Scoring, Recommendation and Authorisation

A robust and fair scoring mechanism including a formula (see example below) for scoring price must be utilised and the original scoring sheets should be placed on the Purchasing File as a record of the decisions made unless scoring was conducted and recorded via eSourcingNI.

Example Price scoring formula – Keep it simple...

$$\frac{\text{Lowest Tender Price}}{\text{Tender Price}} \times \text{Marks Available} = X \text{ Marks for the Price provided}$$

Taken from the CPD guidance September 2009

Care must be taken when using presentations as they can be subjective. If the term 'Presentation' is to be used Project Managers must be very clear about what they are using the presentation for and not confuse it with a clarification or a negotiation meeting. Presentations from Tenderers cost the Group and the Applicant resources therefore we must be sure to justify their appropriateness and what we would like to achieve by using them. If this is used during tendering it must be very clear what will be evaluated and in relation to which aspect of the evaluation criteria; please reference the CPD guidance note on this area.

The Project Managers and the Purchasing Department must consider reasonable timescales involved any project which is moving through a process of pre qualification and tender selection and communicate regularly with applicants on the progress being made.

Iterative tendering

There are two distinct types of iterative tendering, 'Revise or Confirm' tenders and 'Best And Final Offers' (BAFOs). Both should be used selectively.

Revise and Confirm:

Where there are many issues to be resolved and it is proposed to keep all, or most, of the original Tenderers in the competition, formal Revise and/or Confirm invitations should be issued detailing the specific areas of the tenders requiring attention (tailored if necessary to suit each Tenderer) and/or additional or amended information from the Group that the Tenderer needs to consider when re-submitting his tender (in the latter case this information should be forwarded to all Tenderers involved in the Revise or Confirm tender to ensure that there can be no claims of unfairness). Revise or Confirm tenders should be treated in the same way as initial tenders, submitted through eSourcingNI.

Revise and Confirm allows clarification with the Tenderer(s) to address or reveal that a mistake or misunderstanding has occurred; the Tenderer(s) can be invited to adjust their tender. Opportunity must be given to all Tenderers to Revise or Confirm their tenders. If the price offered after the Revise or Confirm stage is not considered to be realistic it may be necessary to revisit the Group's economic appraisal and to investigate the cause of the mismatch regarding price. Once this is clearly identified then the tender process can continue in the normal way.

Best and Final Offers (BAFOs):

The concept behind BAFOs is the search for better value for money through a further round of tendering either with all the compliant Tenderers in the preceding round, or with those most in contention for the contract (generally limited to two or three compliant Tenderers). Normally the emphasis will be on securing a reduction in the quoted prices, but this should not preclude seeking other improvements (e.g. on delivery, performance or enhanced specification). BAFO's should be used selectively and not be allowed to become the norm.

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Post Tender Negotiation

The Group utilise for the majority of the time the Negotiated Procedure which means a procedure whereby the utility negotiates the terms of the contract with one or more economic operators selected by it. However the goal of the Group is to obtain the best price first time via tendering.

Following evaluation, if it is felt that the terms of an offer can be improved by negotiation e.g. price, delivery, conditions, specifications etc, this should only be permitted by the Project Sponsor together with the Purchasing Manager or representative.

Post Tender Negotiations are intended to improve, in value for money terms, the tender submitted by the leading Tenderer. No contract should be awarded until a satisfactory price, and acceptable terms and conditions, have been agreed. The possibility of re-opening the competition remains. It should be made clear to the Tenderer with whom negotiations are to be held that contract award is dependent upon a successful conclusion to the negotiations.

The objectives of the negotiation must be clearly established and a strategy developed before meeting the Tenderer(s).

Details of the negotiation and the outcome must be recorded and retained.

❖ Tender Reports

A copy of all Tender Reports should be provided to the Purchasing Manager prior to submission to the Corporate and Divisional Meeting. General guidance on Tender Reports is set out below; the guidance is not a template nor are the suggested areas for inclusion mandatory.

When is it needed and where does it get submitted?

Typically it is high values that require a Tender Report but there are occasions when a report is needed for lower value items or purely as an update on a situation. Contact the Head of Financial Planning and refer to the Group Scheme of Delegation for further guidance as this sets out who can approve the making of a contract.

Who writes it?

The Project Manager is accountable for this report and therefore it is to be written by the Project Manager.

How long is the report?

Usually for supplies and services it should be limited to 1 or 2 A4 pages but this depends on the project value and complexity. It is a summary document to provide assurance to the Executive Team that the correct considerations were made and procedures followed. Appendices may need to be used and referenced; these should be attached to the report. It might be useful to have the recommendation on a signed front summary page and the detailed report appended to the summary sheet.

Examples of what Purchasing looking for when they get a report?

- That our procedures were followed and that we have an adequate audit trail of what has been completed.
- An idea might be to request that the tender report has the Purchasing Reference number on the report somewhere to ensure that we can easily look up the activities that have taken place.
- Check that the recommendation matches the companies invited to tender.
- Check Award criteria used was as published in ITT and that the evaluation matches the recommendation.
- Check final value against Letter of Offer/ Budget Approval.
- Check basic Specification; did we get what we originally asked for?
- Check for anything that jumps out as odd or suspicious and seek clarification.

What we would expect the content of the report to be?

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What	-	Briefly describe basic project
Why	-	Why we need these goods / service etc (particularly if the project is now costing much more than previous contracts for similar work).
How	-	How we arrived at our recommendation: OJEU – Date noticed released PQQ Tender/ Presentations How many applicants Weighting/ scoring Final range of Price(s)
Who	-	Recommendation Why (where possible give examples of main company strengths) Project Cost. Contract terms and conditions agreed If a company with a lower price has not been recommended as the company to proceed with it should be clearly explained why this is the case.
When	-	Commencement date / handover details

Extra information we would like to see: Value for Money (VfM) and Sustainability reporting:

It is helpful for reporting on value for money and sustainability if a short explanation on these areas in relation to the requirement is included on the Tender Board Reports.

Signed by – This varies by Division but can include the Evaluating Panel, the Project Manager and Purchasing Manager / Procurement Project Advisor – the Divisional Executive may also wish to sign the Report.

If the Purchasing Manager / Procurement Project Advisor has not been fully involved with evaluation of the project put in proviso that Project Advisor is 'signing' that the Procurement Procedures were followed. If the Purchasing Manager / Procurement Project Advisor has not been involved at all and is not comfortable with or has not had the opportunity to check the details provided in a timely manner is advisable that Purchasing do not sign the Report.

❖ Contract Award

Notification of Successful & Unsuccessful Tenderers

Tenderers must only be advised of an award decision formally by the Purchasing Department and Tenderers must not be advised of the award of contract until formal authorisation has been obtained from the appropriate party depending on the value of the contract and the associated necessary approvals process in the Group Scheme of Delegation which has a section on Making Contracts.

All Tenderers should be advised of the outcome simultaneously.

The Group makes applies standstill to all items over OJEU thresholds regardless of if they are Part B.

The Group shall follow when it is appropriate to do so the Central Procurement Directorate's Procurement Guidance Note:

01/10 Information Disclosure Throughout the Procurement Process

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Creating a Contract

Contracts may as a minimum be created by means of an Offer/Acceptance of contract letter with reference to the terms of contract or this may be a contract with tailored or construction terms and conditions authorised by the Project Manager. The letter will also usually request that the supplier accepts and acknowledges the letter. When it is deemed appropriate Offer/Acceptance may take place via physical contract signature.

On no account should verbal contracts be created all contracts placed must be written and authorised.

Raising a Purchase Order

A purchase order needs to be raised for all contracts (unless a Framework has been set up with multiple suppliers in which case purchase orders should be raised as requirements are called off) and care must be taken that when raising a purchase order it is highlighted on the order what it is for and what terms are applicable.

Contrax database

It is the responsibility of the Purchasing team to update the Contrax database when a contract has been placed over a certain threshold – the latest threshold can be obtained from the Purchasing Manager.

Tender feedback and debriefing

The Central Procurement Directorate's Procurement Guidance Note: 01/10 Information Disclosure Throughout the Procurement Process sets out that the use of the template letters and annexes in the Guidance Note should be sufficient to fulfil the disclosure obligations. All the required debriefing information should have been provided through this process there will not be any additional information to give to economic operators. There is therefore no need to hold face-to-face debriefs nor is there a legal obligation to do so.

❖ Contract Management Policy and Procedures

Once the contract is placed it is the Contract Owner is accountable for the management of that contract and should reference the Contract Management Policy and Procedures on the Group Intranet.

❖ Disposal of Surplus or obsolete equipment and materials

Asset disposals must be in accordance with the Group Scheme of Delegation which sets out specific requirements that the Group must comply with. Assets should be sold for the best available price, taking into account the costs of sale. Generally auction /competitive tender should be adopted unless otherwise agreed by the Department (Management Statement and Financial Memorandum 2013).

Before any item (this excludes property) is made available for disposal, it must first be formally established that it has no further use to the respective business or any other part of the Group. The contract relating to the purchase of the items which now require disposal must be checked to ensure the disposal complies with any contract conditions. All decisions regarding disposal should be recorded on the purchasing file relating to the original procurement if it is possible and practical.

The aims of the Purchasing Department are to:

1. To secure the best overall return to the taxpayer from the sale of the Group's equipment and stockholding.
2. To seek the optimum method and level of service of disposal for surplus material.
3. To help to ensure that disposals are compliant with current legislation, especially in the increasingly important fields of Health and Safety and environmental law.

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Some examples of the Categories of redundant assets the Group may have:

- Ferrous metals
- Non-ferrous metals
- Traction & Rolling Stock
- Traction & Rolling Stock Spares
- Permanent Way / Civil Engineering Equipment and spares
- Plant Equipment and spares
- Road Vehicles
- Buses / Coaches
- Fuel / Chemicals
- Uniforms, Safety & Protective Clothing
- Computers / IT equipment
- Office machinery and furniture
- Building materials and timber
- Paper

Delegated authority:

The respective businesses within the Group have no delegated sales authority to sell any redundant assets. The disposal of all such assets can only be undertaken by those listed in the Group Scheme of Delegation.

“Company Policy is now that no vehicles are being released for preservation to other than designated/registered preservation groups. The Company will ensure that an example of each main type of vehicle which has operated on service is offered to a registered preservation group.” (Frank Clegg, General Manager Bus Services (Acting), 5th November 2008)

Repetitive waste:

For repetitive waste such as scrap arising, such as ferrous and non-ferrous metal or batteries, there are established period contracts for the regular collection and removal of such material and these contracts should be utilised.

For items that must comply with the Waste Electrical and Electronic Equipment (WEEE) Directive please reference the Legislation & Procurement, Legal Challenges & Complaints section of this document.

For further information or help on any aspect of disposal, please contact the Purchasing Manager.