

15 NOVEMBER 2022

Burness Paull

# Whitepaper Procurement Conference 2022

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GRAEME PALMER - PARTNER

**How do you incorporate carbon and climate metrics into tender documents that ensure fairness and equity across bidders, and how do you score them?**

## CARBON & CLIMATE METRICS

- Context
  - *Sustainable procurement duty*
  - *Legislative provisions*
- How
  - *Pre-procurement*
  - *Selection*
  - *ITT and evaluation*
  - *Contract conditions and KPIs*

# Context

## Sustainable procurement duty

### Procurement Reform (Scotland) Act 2014

- Duty of a contracting authority:
- **before** carrying out a regulated procurement, to consider how in conducting the procurement process it can **improve** the economic, social, and environmental wellbeing of the authority's area,
- in carrying out the procurement, to act with a view to securing the **improvements** identified

## Climate change legislation

- **Climate Change (Duties of Public Bodies: Reporting Requirements) (S) Order 2015**
  - *Requires public bodies to report on their compliance with climate and sustainability metrics. They will be required to get data from their contract partners in order to report accurately.*
- **Climate Change (Duties of Public Bodies: Reporting Requirements)(S) (Amendment Order) 2020**
  - *adds in some more focused references to sustainability metrics*

## Sustainable procurement duty – statutory guidance

- “environmental wellbeing includes factors such as:
  - - *greenhouse gas emissions reduction*
  - - *the availability of clean air, clean water, clean streets*
  - - *the quality of the built environment*
  - - *the removal of objects considered hazardous to health*
  - - *protecting communities against the threat of climate change*
  - - *freedom from a high risk of flooding*
  - - *improving and promoting biodiversity and accessibility to nature*

## Greenhouse Gas Protocol

- model for measuring emissions and managing mitigation efforts
- Emission types:
  - *Scope 1 — the authority's own direct emissions from owned and controlled sources.*
  - *Scope 2 — the authority's use of purchased energy: electricity, heating or cooling.*
  - *Scope 3 — emissions attributed to suppliers and their suppliers.*

## Sustainable procurement duty

- must consider only matters that are **relevant** to what is proposed to be procured and, in doing so, consider the extent to which it is **proportionate** in all the circumstances to take those matters into account
- *Healthcare at Home v Common Services Agency* 2014
- *Hastings & Co (Insolvency) Ltd v AiB* [2013] CSOH 55

**How**

## Pre-procurement phase

- Market engagement
- Use of the various tools

## Pre-procurement phase

- Market engagement:
  - *Use of PINs*
  - *Signals intent*
  - *Understanding of market*
  - *New solutions*
  - *Capability of relevant market*

## Pre-procurement phase

- Focus on reducing total amount of carbon emissions:
  - *Sourcing*
  - *Utilisation – use and reuse*
  - *End of life – reusability or recyclability*

## Available tools

- Scottish Public Procurement Prioritisation Tool
- Sustainability Test Developed (Digital Tool)
- Scottish Flexible Framework (Digital Tool)

## Life cycle impact mapping (Digital Tool)

- raw materials (impact of obtaining these)
- manufacturing and logistics (impacts of this)
- use (impacts during use of product/service)
- disposal or end of life management (impacts at end-of-life/disposal)

## Contract notice

- Include statement re carbon reduction obligations
- Focus on desired outcome
- Set out minimum requirements

## Selection phase

- Priority contracts:
  - *Total value of £4m or more*
  - *Focus on commodities identified as climate change priorities by contracting authority*

## Selection phase

- SPD – model environmental management questions
  - *Environmental management measures employed*
  - *Steps taken to respond to climate emergency:*
  - *Non-priority ‘relevant’ contracts - bidder climate change plan and plans to reduce emissions. No need for calculated carbon emissions until 2025.*

## Selection phase

- SPD – model environmental management questions (Cont'd)
- For priority contracts
  - *demonstrate knowledge of the climate emergency and impact of their organisation (including scope 1 and 2 emissions)*
  - *Climate change action plan with calculated scope 1 and 2 carbon emissions and plans to reduce*
- For both types, must specify in contract notice

## Selection phase

- SPD – questions re experience in reducing carbon emissions
- environmental management standard (ISO14001 or equivalent)
- Relevant and proportionate to the subject matter of the procurement

## Specification

- Minimum requirements
  - *Minimum recycled content*
  - *Plastic marked for recycling (ISO 11469) and readily capable of recycling*
  - *Packaging materials*
  - *Construction materials*

## Specification

- Use of labels
  - *Exercise care – are all criteria relevant?*
  - *Consider use of underlying criteria or equivalent*

## ITT stage and evaluation

- Q: Bidder's approach to environmental sustainability
- A: how they will identify life cycle opportunities to reduce carbon
- How they will engage with authority to demonstrate reduction
- Quantification of carbon reduction
- How they will minimise use of new materials
- Sustainable production and closed-loop recovery

## ITT stage and evaluation

- How bidder will measure and monitor the carbon footprint (ISO 14076 and/or PAS 2050)
- Plastic content – in addition to minimum requirement – score greater use of recycled materials
- Construction contracts – score method statement re use of recycled materials and how assessed for re-use

## Contract conditions and KPIs

- Include carbon reduction obligations in contract
- Measurement and reporting
- Establish baseline
- Evidence of reduction / improvement

## Lifecycle costing

- Costs incurred by the contracting authority
- Costs imputed to environmental externalities:
  - *Cost of emissions and climate change mitigation costs*

## Lifecycle costing

- Method for assessment of costs re environmental externalities:
  - *Based on objectively verifiable and non-discriminatory criteria*
  - *Not unduly favour or disadvantage certain potential bidders*
  - *Accessible to all potential bidders*
  - *Data required can be provided with reasonable effort*
- Transparency re use of data and assessment of costs

**Graeme Palmer**

PARTNER

+44 141 273 6738

[graeme.palmer@burnesspaull.com](mailto:graeme.palmer@burnesspaull.com)

[burnesspaull.com](http://burnesspaull.com)

@BurnessPaullLLP

# Q&A

 Burness Paul