Southway Housing Trust

Procurement Policy

COR-POL-22

Version 1.7

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1. INTRODUCTION

Purpose

1.1 This policy provides a framework for all staff when they procure goods, services and works, so that:

1.1.1 value for money is achieved;

1.1.2 relevant law is complied with;

1.1.3 social value is obtained and maximised; and

1.1.4 probity and good governance are demonstrated.

1.2 This policy supports the objective in the Futures Strategy for Southway to be a Well Governed and Financially Strong Organisation. It also links to the Value for Money Strategy.

1.3 It should be read in conjunction with Southway's Financial Regulations, which sets out the relevant authorities.

Scope

1.4 This Policy applies to Southway Housing Trust and Southway DevCo, which is a 'contracting authority' as defined in the relevant procurement legislation. Throughout the policy 'Southway' refers to Southway Housing Trust and Southway DevCo.

1.5 This policy does not apply to Southway Plus, as it is not a 'contracting authority' for the purposes of the relevant procurement legislation. The Board of Southway Plus is permitted to put in place procurement arrangements to ensure value for money for that organisation is achieved.

1.6 All values quoted in the policy are inclusive of VAT, unless stated otherwise.

1.7 This Procurement Policy applies whenever Southway intends to spend £10,000 or more (in money or other payments in kind) under contracts or formal agreements for goods (supplies), services or works.

1.8 The policy does *not* apply to the following (the Financial Regulations should be referred to for further information):

1.8.1 contracts of employment;

1.8.2 acquisitions and disposals of land or buildings – unless related to a contract for works, services or goods (see also Section 8.2);

1.8.3 the seeking of offers in relation to financial services in connection with the issue, purchase, sale or transfer of securities or other financial instruments, in particular transactions by Southway to raise money or capital; and

1.8.4 any other type of contract that is exempted under the PCR 2015 or the PA 2023. Where the potential contract falls under the PA 2023, staff must comply with the requirements of the relevant exemption under Schedule 2, PA 2023.

Application

1.9 The Executive Director of Landlord and Community Services is responsible for Southway's approach to procurement. The Assistant Director of Corporate Services is responsible for the proper administration of all procurement exercises and compliance with the policy.

1.10 For each procurement exercise, there must be a named 'Lead Officer', who is responsible and accountable for carrying out the procurement in line with:

1.10.1 this policy;

1.10.2 Southway's Financial Regulations; and

1.10.3 any direction of a relevant Board, or of an officer to whom delegated authority has been given by the relevant Board.

1.11 In exceptional circumstances, certain elements of this policy may be waived with the authority of the Chief Executive, following the process set out in Section 7. Seeking such a waiver does not exempt Southway from complying with the General Principles set out in Section 2.

2. STATEMENT OF PRINCIPLES

Value for Money

2.1 Southway's Value for Money Strategy sets out our commitment to delivering value for money, by securing from suppliers the best mix of quality and effectiveness to deliver the requirements of the contract for the least outlay over the period of use of the goods or services bought and by:

2.1.1 understanding the drivers for cost, performance and customer satisfaction.

2.1.2 making sensible choices about how we spend our resources; and

2.1.3 making best use of our assets and financial strength.

2.2 These principles are fundamental to our approach to procurement and how we balance quality and cost when evaluating tenders.

Social Value

2.3 Southway's Futures Strategy commits to increasing social value from our contractors and suppliers.

2.4 In addition to this, the Public Services (Social Value) Act 2012 requires Southway to consider how to improve the social, economic and environmental wellbeing of the area it serves through procurement of services. Southway will consider whether consultation on social value matters is needed.

2.5 Southway will ensure that we maximise social value in all its contracts. This is supported by a Social Value Statement, which is appended to this document.

Legal Requirements

Compliance with legislation

2.6 As well as following this policy and the related procedural guidance, officers must ensure that every contract made by or on behalf of Southway complies with:

2.6.1 The Public Contracts Regulations 2015 ('the 2015 Regulations') where the procurement was commenced prior to 28 October 2024, or the commercial purchasing tool (framework agreement or dynamic purchasing system) being considered was set up under the 2015 Regulations.

2.6.2 The Concession Contracts Regulations 2016 where the procurement was commenced prior to 28 October 2024.

2.6.3 The Procurement Act 2023 ('PA 23') where the procurement was commenced after 28 October 2024.

2.6.4 The Procurement Regulations 2024 where the procurement was commenced after 28 October 2024.

2.6.5 The Procurement Act 2023 (Commencement No.3 and Transitional and Saving Provisions) Regulations 2024 where the procurement was commenced after 28 October 2024.

2.6.6 The National Procurement Policy Statement (as updated from time to time).

2.6.7 The Public Services (Social Value) Act 2012 ('the Social Value Act').

2.6.8 The Commonhold and Leasehold Reform Act 2002, and the Service Charges (Consultation Requirements) (England) Regulations 2003.

2.6.9 All relevant equality, diversity and health and safety law.

2.6.10 The Modern Slavery Act 2015.

2.6.11 Any other subsequent law that replaces or amends the above.

Section 5 of this policy sets out WTO/GPA Thresholds. There are additional legal requirements above these thresholds, which are covered in the Procedural Guidance document.

2.7 For avoidance of doubt, all officers must comply with the relevant procurement legislation and have regard to the applicable Cabinet Office guidance. Under the UK Government's transitional arrangements, procurements that commence after the entry into force of the PA 23 on 28 October 2024 must be conducted by reference to the PA 23 only (together with the regulations made under the PA 23 and any guidance published by the UK Government), whilst those that were commenced under PCR 2015 must continue to be procured and managed under those regulations. Any contracts awarded under the PCR 2015 will continue to be managed under the PCR 2015 until such a time as the contract or commercial tool (i.e. Framework, Dynamic Purchasing System ('DPS')) ceases to exist.

Procurement principles under the 2015 Regulations

2.8 For all procurements and contracts commenced under and subject to the PCR 2015 (i.e. above threshold, non-exempt contracts), Southway must continue to comply with the procurement principles that underpin that legislation until such time as the contract, or commercial tool (i.e. Framework, DPS) ceases to exist, in particular the principles of equal treatment, non-discrimination, transparency, and proportionality. This includes for any modifications and requirements for subsequent notices to be published on the relevant platform.

Procurement objectives under PA 23

2.9 For all procurements and contracts commenced on or after 28 October 2024 and therefore subject to the PA 23 (i.e. above threshold, non-exempt contracts), Southway will ensure it:

2.9.1 does not discriminate against suppliers and shall treat suppliers the same unless a difference between the suppliers justifies different treatment (in which case Southway must take all reasonable steps to ensure it does not put a supplier at an unfair advantage or disadvantage).

2.9.2 has regard to the importance of:

(a) delivering value for money;

(b) maximising public benefit;

(c) sharing information for the purpose of allowing suppliers and others to understand the Southway's procurement policies and decisions; and

(d) acting, and being seen to act, with integrity.

2.9.3 has regard to the fact that small and medium sized enterprises may face particular barriers to participation and consider whether such barriers can be removed or reduced.

2.9.4 has regard to the national procurement policy statement.

Governance and Probity

2.10 Southway's Probity Statement sets out the following principles:

2.10.1 Members, employees and involved customers should not gain financially by virtue of their position (other than that to which they are contractually entitled).

2.10.2 Members, employees and involved customers should be open transparent and accountable for their actions.

2.10.3 Members, employees and involved customers should not engage in fraudulent behaviour or conduct that suggests impropriety.

2.11 This policy ensures that procurement is conducted in line with these principles, as well as with the requirements of Southway's Fraud and Bribery Policy and Codes of Conduct (for Employees and for Board Members).

2.12 Risk will be considered in procurement exercises as relevant and in line with Southway's Risk Policy. Due diligence will be conducted when suppliers are awarded a contract.

2.13 Under the PA 23, Southway will take all reasonable steps to identify and keep under review any actual or potential conflicts of interest in relation to any procurement subject to the PA 23. This obligation includes Southway taking all reasonable steps to ensure that a conflict of interest does not put a supplier at an unfair advantage or disadvantage in relation to that procurement. Where any such unfair advantage cannot be avoided or the supplier will not take steps that Southway considers are necessary in order to ensure it is not put at an unfair advantage, Southway must exclude the supplier from the procurement. Before publishing a tender notice or transparency notice for the procurement, Officers must prepare a conflicts assessment in relation to the procurement and keep this under review and revise the assessment as necessary

3. PROCUREMENT GUIDELINES

Identifying the Appropriate Process

3.1 The Lead Officer for the procurement should identify the appropriate procurement process, with reference to the Procurement Guidance Document.

3.2 A summary of the process to be used is shown in the table below.

Contract Value	**Process**

£0 – £10,000	There is no formal procurement process and one supplier, can be appointed without competition, provided that the Lead Officer is reasonably satisfied that value for money has been obtained. Details of the decision must be recorded.
£10,000– £29,999	A minimum of three written quotes must be sought, and value for money must be demonstrated. Officers may also consider using a compliant framework, see 3.3 below. The Procurement Procedure and Guidance Document may be applied or referred to for guidance. Details of the decision must be recorded.
£30,000 – WTO/GPA Threshold	As above, however it is recommended that a full brief and specification is provided to ensure consistency of tenders.
Above WTO/GPA Threshold	If the value is above the relevant WTO/GPA Threshold, then a procedure that is compliant with PA 23 must be followed and reference must be made to the 'Guide for Above Threshold Procurements'.
Development Procurement (All values)	Development Procurement will usually follow the above routes. In the context of Southway's ambitious plans and the highly competitive market for works and services, additional flexibility is allowed in this area. See Section 8 for further detail

The PA 23 (Part 6) sets out the rules that apply when carrying out the procurement of a contract that is below the WTO/GPA Threshold (i.e. a below-threshold contract). This includes provisions relating to no selection stage being permitted, procurement procedures, duties, notices and implied payment terms. Regulation 24 of the Procurement Regulations 2024 sets out the information required to be included in a 'below-threshold tender notice'.

Frameworks

3.3 A procurement framework is an agreement put in place with a provider, or range of providers that enables buyers to place orders for goods and services in compliance with the 2015 Regulations or PA 23 (as applicable) without the requirement to carry out a new procurement process.

3.4 Using a framework can bring cost and time savings, and potentially Social Value benefits, providing that Southway is entitled to use the framework, the framework has been set up in a lawful manner and covers Southway's scope of requirements, the total estimated value of the framework has not been exceeded and the framework terms are acceptable. Frameworks set up by other public sector bodies should have been set up in compliance with the applicable procurement regulations. However, officers must make checks, before entering into them as it will be Southway not the framework providers who will be challenged for non-compliance when using the framework.

3.5 Officers will explain why they have chosen a framework when seeking approval to proceed and should still consider a competitive process (mini competition) as part of the selection process if that will bring greater efficiencies, value for money and/or lower cost.

3.6 Where either (a) a framework subject to the 2015 Regulations sets out the objective conditions and all the terms of the call-off contract or; or (b) a framework subject to the PA 2023 sets out an objective mechanism for supplier selection and the core terms of the call-off contract, it may be possible to award a contract to one of the framework suppliers without holding a further competition, however in all instances a full justification will be required and approved by the Chief Executive in line with their delegated authority to approve waivers and exceptions. See Section 8 of the policy.

3.7 Officers should note that the PA 23 has introduced the new concept of an open framework which is a scheme of successive frameworks awarded on substantially the same terms (meaning it is not permissible to make any substantial modifications for the successive frameworks in the scheme, including the award criteria for the award of the framework). This means that there can be no substantial amendments to the tender or transparency notice for the successive frameworks in the scheme, including the award criteria for the award of the framework. Unlike a standard framework, new suppliers can be added to an open framework when the open framework is re-opened at various intervals.

3.8 An open framework can be set up for up to 8 years and must provide for the award of a framework at least once during the initial period of three years beginning with the day of the award of the first framework, and at least once in each period of five years beginning with the day of the award of the second framework.

3.9 Officers should seek advice if considering using or setting up an open framework.

Alternative Approaches

3.10 Alternative approaches include:

3.10.1 Procuring jointly with another organisation or a group/consortium of organisations. This can provide efficiencies through bulk buying power and economies of scale through larger contracts, as well as sharing of skills and other qualitative benefits. Southway will remain responsible for compliance with the applicable procurement regulations where it carries out a joint procurement.

3.10.2 Approaching an existing supplier with whom Southway has a long-standing relationship. In certain circumstances it might be appropriate to approach such a supplier, provided value for money can be demonstrated and aggregation and procurement rules, particularly those relating to making a direct award of a contract under Regulation 32 of the 2015 Regulations and Chapter 3 of the PA 23 (as applicable) are not breached. In such circumstances it may be advisable to check if they are part of any existing compliant frameworks. This must be done in compliance with the 2015 Regulations/PA 23 (as applicable). The Procedural Guidance Document contains more detail on this.

3.10.3 Sourcing works and services from within the Southway Group.

4. ESTIMATING THE CONTRACT VALUE

4.1 To decide on the appropriate procurement process when estimating the contract value, officers must comply with Section 4 and Schedule 3 of the PA 23. The general rules in relation to contracts is that Southway will:

4.1.1 estimate the value of a contract as the maximum amount expected to be payable under the contract including, where applicable, amounts already paid.

4.1.2 take into account all of the facts which are material to the estimate and available to Southway at the time it makes the estimate;

4.1.3 where the goods, services or works to be supplied under two or more contracts could reasonable be supplied under a single contract, aggregate the estimated values of those contracts unless there is good reason not to do so; and

4.1.4 where the estimated value of a contract is unable to be calculated, treat that contract as having the estimated value of a contract more than the WTO GPA threshold for the type of contract.

4.2 When estimating the amount Southway could expect to pay under a contract, officers must consider the following:

4.2.1 the value of any goods, services or works provided by Southway under the contract other than for payment;

4.2.2 amounts that would be payable if an option in the contract to supply additional goods, services or works were exercised;

4.2.3 amounts that would be payable if an option in the contract to extend or renew the term of the contract were exercised;

4.2.4 amounts representing premiums, fees, commissions or interest that could be payable under the contract; and

4.2.5 amounts representing prizes or payments that could be payable to participants in the procurement.

Aggregation Rules

4.3 Aggregation is the process of calculating the estimated total cost of what Southway will pay for goods, services, or works. Aggregation requires the total amount of any procurement to be carefully and objectively estimated. This is to prevent officers from knowingly or unknowingly breaching policy, or procurement legislation.

4.4 When estimating the value of two or more contracts, and the goods, services or works to be supplied under the contracts could reasonably be supplied under a single contract, the value of each contract must be estimated as including the value of all of the contracts for the purposes of assessing the applicability of the PA 23, unless there are good reasons not to do so.

4.5 Southway officers must

4.5.1 Not enter separate contracts nor select nor exercise a choice under a valuation method with the intention of avoiding the application of the PA 23.

4.5.2 Make aggregation decisions and assess the likely value of a contract at the start of the Procurement Process and record this.

4.5.3 Consider the likelihood that a contract is likely to require extension or variation

4.5.4 Ensure that tenderers have a clear brief as to what is required to maximise the accuracy of process quoted.

4.6 Where, because of the aggregation rules, it is estimated that a contract would exceed the WTO/GPA Threshold, the contract must be procured in compliance with the PA 23 (even if the individual contract being considered is below the threshold) or through a compliant framework. Further guidance can be found in the Procurement Guidance document

5. PROCUREMENT THRESHOLDS

5.1 As of 1 January 2024, these thresholds are:

Type of Contract	**Threshold (£)** (inc. VAT)
Works	£5,372,609
Supplies (i.e. Goods) and/or (most) Services	£214,904

5.2 "Goods" and "Services" are not defined in the PA 23, but "Works" are defined as the activities which fall within the CPV codes listed in Schedule 3 to the Procurement Regulations 2024. The relevant CPV codes should be consulted to determine the relevant category that the procurement falls within.

5.3 These values are inclusive of VAT and officers must note that for the calculation of estimated contract value for determining whether the contract meets the threshold should also be inclusive of VAT. For all procurement above the WTO/GPA Threshold the lead officer should refer to the Procedural Guidance Document.

5.4 There is a separate category of "light touch" services in the PA 23 for certain social, health, education and other public services which are subject to more flexible procurement rules. The following examples may be relevant to Southway:

5.4.1 education and training services.

5.4.2 catering services.

5.4.3 certain legal services; and

5.4.4 investigation and security services.

5.5 There is a significantly higher threshold for such services (£663,540 inclusive of VAT as at 1 January 2024), meaning that the below threshold procedures will apply more often. The "light touch regime" will apply if the contract is valued above the WTO/GPA Threshold. Please refer to the 'Guide for Above Threshold Procurements' for further information on the "light touch regime".

6. ISSUES TO CONSIDER

Prior to Commencing Procurement

Living Wage

6.1 Southway is an accredited UK Living Wage Employer. This means that, as well as paying the Living Wage ourselves, we will ensure that all staff who are contracted to work regularly on our premises receive the Living Wage while doing so.

6.2 We will include payment of the Living Wage as a quality assessment criterion in the Tender evaluation process and weight this accordingly. We will employ suppliers who do not pay the Living Wage, only if there is no viable alternative, but we will use the Procurement process to promote and increase payment of the Living Wage.

Service Charge Consultation

6.3 Section 151 of the Commonhold and Leasehold Reform Act will apply where work or services that are recharged to tenants and/or leaseholders require consultation prior to commencement.

6.4 Landlords can recharge any works up to a value of £250 (including VAT), and services up to £100 (including VAT) without consultation. Above £250 full consultation, in accordance with the Service Charges (Consultation Requirements) (England) Regulations 2003 is required. Failure to consult in the correct way could mean that landlords cannot collect or recover service charges above the level of the minimum amounts allowed by law (that is, £100 per leaseholder per year for a long-term contract, or £250 per leaseholder for work to the building)

6.5 Section 20 consultation must be carried out where the landlord intends on entering into a Qualifying Long-Term Agreement (QLTA) for works or services that are usually communal or affect the external envelope of a communal block of properties. This includes services supplied to leaseholders, such as electricity supply to communal external lighting, or a communal gas heating system.

Preliminary market engagement

6.6 Officers should consider if preliminary market engagement would be beneficial before commencing a procurement. Some reasons why Southway may engage in preliminary market engagement could include:

6.6.1 to develop Southway's requirements and approach to procurement;

6.6.2 to design a procedure, conditions of participation or award criteria;

6.6.3 to identify suppliers that may be able to supply the goods, services or works required;

6.6.4 identify likely contractual terms; or

6.6.5 build capacity among suppliers in relation to the contract being awarded.

Under the PA 23, if preliminary market engagement is carried out then Southway will publish a preliminary market engagement notice to reflect the same or alternatively, state in the tender notice the reasons why a preliminary market engagement notice was not issued. Further, Southway will ensure that the preliminary market engagement is carried out in line with the procurement objectives, non-discrimination requirements and conflict of interest obligations.

Conditions of participation

6.7 Prior to commencing a procurement for a contract above the WTO/GPA Threshold, the Lead Officer should consider if it requires potential suppliers to complete a selection questionnaire before being invited to tender (if carrying out a competitive flexible procedure under PA 23) or at the same time as submitting their tender for a contract (if carrying out an open procedure under PA 23).

6.8 In setting conditions of participation, officers must be aware of the rules under the PA 23 which state conditions of participation may be set only if Southway is satisfied that the conditions are a proportionate means of ensuring the potential suppliers have the legal and financial capacity to perform the contract or the technical ability to perform the contract. In considering if the conditions are proportionate, Southway must have regard to the nature, complexity and cost of the contract.

6.9 Officers must be aware that conditions of participation may not:

6.9.1 require the submission of annual accounts (except from suppliers who are required to have accounts audited under the Companies Act 2006 or equivalent);

6.9.2 require insurance relating to the performance of the contract to be in place before the award of the contract;

6.9.3 require suppliers to have been awarded a contract by a particular contracting authority;

6.9.4 break the rules on technical specifications under section 56 of PA 23; or

6.9.5 require particular qualifications without allowing for their equivalents.

Award Criteria

6.10 The Lead Officer should consider appropriate award criteria, split between quality and price and wider criteria as appropriate, to identify the most advantageous tender. Quality is an important aspect of all procurements to ensure that Southway achieves value for money, its social objectives and high-quality goods and services. When setting criteria for the evaluation of price, all relevant factors should be considered, not just the initial cost of the goods/services being procured.

6.11 For contracts above the WTO/GPA Threshold, all criteria must:

6.11.1 relate to the subject matter of the contract;

6.11.2 be sufficiently clear, measurable and specific;

6.11.3 not break the rules on technical specifications contained in section 56 of the PA 23;

6.11.4 be a proportionate means of assessing tenders, having regard to the nature, complexity and cost of the contract; and

6.11.5 comply with all other requirements set out in section 23 of the PA 23.

6.12 In setting award criteria for a contract above the WTO/GPA Threshold, Southway will:

6.12.1 describe how tenders are to be assessed by reference to them and, in particular, specify whether failure to meet one or more of the criteria would disqualify a tender; and

6.12.2 if there is more than one criterion, indicate the relative importance by weighting each as representing a percentage of total importance, ranking them in order of importance or describing it in another way.

6.13 Officers should explain the reasons for their chosen cost and quality split before proceeding with any procurement and this must be approved by an officer with authority to incur the amount of expenditure. There may be good reasons to deviate from this guide, and this should be recorded when submitting the Approval to Proceed Form, outlining justifications for the quality / cost split. Advice on how to balance cost and quality is included in the Procedural Guidance Document.

Choosing a procurement procedure

6.14 Before awarding a contract above the WTO GPA tendering threshold, Southway will carry out the procurement under a competitive tendering procedure unless an exemption in the PA 23 applies or it is possible to award the contract in reliance on one of the direct award justifications in the PA 23. There are two competitive procedures which can be carried out:

6.14.1 Open procedure: This is a single stage procedure whereby any interested party can submit a tender and Southway will decide whom to award the contract to on the basis of that tender;

6.14.2 Competitive flexible procedure: This is any other competitive tendering procedure Southway considers appropriate for the purpose of awarding the contract. Officers must take advice from Southway's procurement and/or legal advisors prior to commencing a competitive flexible procedure.

6.15 When considering which procedure is the most appropriate, Southway will ensure it chooses the procedure that is the most proportionate, having regard to the nature, complexity and cost of the contract. Accordingly, the procurement procedure should not be overly burdensome.

At The Conclusion of a tender

Receipt of Tenders

6.16 All tenders, whether paper or electronic, shall remain within the custody of the Assistant Director of Corporate Services until opening.

6.17 Where the Assistant Director of Corporate Services needs to invite tenders for goods or services, the Chief Financial Officer will arrange for the receipt, opening and recording of any tenders submitted.

Opening and Acceptance of Tenders

6.18 The tender opening must be attended by:

6.18.1 the Lead Officer, or a An Executive Director, where the Lead Officer does not have sufficient authority to incur funds, (as determined by the contract value), and

6.18.2 a member of the Governance Team.

6.19 The contract title, the date and time of opening, the name of each tenderer and the tendered figure must be recorded, and the record signed by those present at the opening. Tenders invited but not received or received late must also be recorded as such

Assessment of Tenders

6.20 Tenders, whether received via a Framework or provided directly to Southway from suppliers, will be assessed by a Panel, which must comprise the Lead Officer and at least one other officer (the number and membership should be proportionate to the value and risks of the contract and procedural guidance should be referred to).

6.21 The relevant person with authority to incur funds will approve the award of any contract that has been determined by the Panel provided they are satisfied that:

6.21.1 the tender represents value for money.

6.21.2 Social Value has been sought and achieved.

6.21.3 the tender satisfies the relevant legal requirements

6.21.4 procedures around probity have been complied with; and

6.21.5 there is an approved budget/funding commitment for the work and the tender does not exceed that approved commitment.

Standstill Period, Challenges and Assessment Summaries

6.22 Prior to the award of a contract which exceeds the WTO/GPA Threshold and has therefore been carried out pursuant to a full competitive tender process, all tenderers who have had a tender assessed must be informed of the outcome of the tender process.

6.23 Southway is required under Section 50(3) of the PA 23 to provide an “assessment summary” which sets out information about Southway’s assessment of the tender and if different, the most advantageous tender (i.e. the successful tender) submitted in respect of the contract. Regulation 31 of the Procurement Regulations 2024 sets out the information that must be included in an assessment summary.

6.24 Each assessment summary must be provided prior to Southway publishing the contract award notice. Unless one of the exclusions apply in section 51(3) of the PA 23, Southway will observe a minimum 8 working day standstill period before entering into contract with the successful tenderer. Should a procurement challenge be raised during this period, officers must consult with internal legal at Southway to promptly identify any restrictions placed on contract award and what next steps to follow. A contract details notice must also be published in accordance with the requirements of the PA 23 and the Procurement Regulations 2024 once the contract is entered into.

Contracts

6.25 All contracts/agreements should be in writing and standard Southway forms of contract/agreement should be used unless there is a good reason not to.

6.26 Where a suitable form of contract/agreement is not available, the relevant officer should approve the contract/agreement and legal advice should be taken in its drafting.

6.27 When any contract with an estimated value of £30,000 or more - but below the applicable WTO/GPA Threshold is advertised (i.e. beyond a closed group of pre-selected suppliers or from one or more targeted individual suppliers), Southway must first publish a below-threshold tender notice on the central digital platform.

6.28 Where any contract is awarded of a value between £30,000 – WTO/GPA Threshold, Southway must publish a contract details notice on the central digital platform.

7. WAIVERS AND EXCEPTIONS

Contracts below the WTO/GPA Thresholds

7.1 The Chief Executive may waive the requirements of this policy (to the extent that they are lawfully able to do so) in genuinely urgent situations and/or where there is a sound legal, financial or Value for Money reason for doing so.

7.2 To do so, the Chief Executive must:

7.2.1 Record their reasons for doing so; and

7.2.2 Report the decision to the next meeting of the Audit and Risk Committee.

7.3 The following are considered acceptable reasons for seeking a waiver or exception from parts of this policy:

7.3.1 Quantifiable and significant cost and efficiency savings can be achieved through seeking an alternative route.

7.3.2 Reasons of extreme urgency, due to unforeseen circumstances mean that normal time limits cannot be met.

7.3.3 Southway would otherwise be exposed to immediate and significant financial, legal or reputational risk.

7.3.4 Only one contractor is objectively able to provide the works, services or supplies in question. Officers are still expected to undergo a tender process to seek alternative suppliers before this exception is applied.

7.3.5 Additional or new supplies, services or works are required which, through unforeseen circumstances, were not included in an existing contract and are necessary for the completion of the contract and/or cannot be carried out separately.

7.4 A waiver or exception will not be granted where this means Southway would be in breach of the PA 23 or any other applicable law.

Contracts above the WTO/GPA Thresholds

7.5 Unless otherwise permitted by the PA 23, Southway must carry out a competitive tendering procedure where the estimated contract value exceeds the WTO/GPA Thresholds. The PA 23 sets out specific circumstances in which a competitive tendering procedure is not required including but not limited to:

7.5.1 “Exempt” contracts: The contract is exempt due to the nature of the relationship between Southway and the other party of the contract, or the contract is exempt because of the subject matter of the contract (i.e. the type of contract is listed in Schedule 2 of PA 23 and therefore is “exempt”);

7.5.2 “Direct award”: A direct award justification applies and so, Southway is permitted to directly award the contract to a supplier provided it is not an excluded supplier (unless Southway considers that there is an overriding public interest in awarding the contract to that excluded supplier).

7.5.3 “Permitted modification”: Southway may modify a public contract (or a contract which will as a result of the modification become a public contract) if the modification is a permitted modification listed in Schedule 8, is not a substantial modification or is a below-threshold modification.

8. DEVELOPMENT PROCUREMENT

Purpose and Scope

8.1 This section applies to Development Procurement only, which is defined as the procurement of goods, services or works relating to capital investment in development projects, including (but not limited to) construction activities, consultant services and legal advice. Development procurement will usually follow the standard processes set out in Section 3; however, additional flexibility may be required in this area.

8.2 Contracts for the purchase of land (or leases of land) as opposed to public contracts for works fall outside the scope of the PA 23. Provided that Southway's Financial Regulations have been complied with, the purchase of land or completed homes (i.e., where Southway is purchasing 'off the shelf' homes and not having input into the design or specification) falls outside the scope of this policy, as in purchasing land and buildings Southway cannot have decisive influence over the specification and is not entering into a public contract for works, in line with Regulation 10 of the Public Contract Regulations and Schedule 2 para 8 of the PA 23. If in doubt about whether a public contract for works is being entered into, internal legal should be consulted.

8.3 This section of the policy can only be used with the approval of an Executive Director and in accordance with Southway's Financial Regulations.

Contracts below the WTO/GPA Thresholds

8.4 Where a proposed contract is below the WTO/GPA Threshold, all requirements for goods, services or works should still be carried out in accordance with Part 6 of the PA 23 and subject to competition to demonstrate value for money and probity.

8.5 Procurement via negotiation with one supplier shall be permissible where it is done so in accordance with the PA 23 and:

8.5.1 the contract is part of a package with a supplier already identified through a competitive process.

8.5.2 Value for Money can best be achieved by negotiating a follow-on contract; or

8.5.3 special circumstances preclude the competitive tendering process.

8.6 In all cases, the approval of the Chief Executive must be obtained prior to negotiation.

8.7 Details of negotiated contracts must be recorded in the Procurement Register, including the reasons for the negotiation and confirmation that value for money has been achieved.

Contracts above the WTO/GPA Thresholds

8.8 Procurement of contracts above WTO/GPA Thresholds should be carried out in accordance with the PA 23 and Procedural Guidance.

8.9 In very exceptional circumstances officers may directly award a public contract to one supplier where the one of the 'single supplier' justifications is met in Schedule 5 of the PA 23, including but not limited to:

8.9.1 where the public contract concerns the creation or acquisition of a unique work of art or artistic performance;

8.9.2 where a particular supplier is in possession of intellectual property or other exclusive rights and there are no reasonable alternatives, which means only the supplier with those rights can deliver the goods, services or works; and

8.9.3 where, due to an absence of competition for technical reasons and provided there are no reasonable alternatives, only a particular supplier can supply the goods, services or works required.

8.10 Where one of the 'single supplier' justifications (or any other justification for direct award under Schedule 5 of the PA 23) is relied on, Southway must publish a transparency notice containing all information required by the Procurement Regulations 2024 before the contract is directly awarded. In addition, Officers should record the following:

8.10.1 why it is strictly necessary to choose this route;

8.10.2 whether reasonable alternatives or substitutes can be considered;

8.10.3 an assessment of the risk of challenges; and

8.10.4 the approval of the Chief Executive must be obtained prior to negotiation and the decision reported to the next meeting of the Audit and Risk Committee.

9. GLOSSARY OF TERMS

Concession Agreement	A concession agreement or contract is an agreement under which the contractor or supplier has the right to commercially exploit those works or services to recoup its investment and make a return;
Development Procurement	Procurement of goods, services or works relating to capital investment in development projects, including (but not limited to) construction activities, consultant services and legal advice;
WTO/GPA Thresholds	The financial thresholds above which procurement via WTO/GPA will normally be required, as set out in Section 5;
Executive Director	Any one of the Chief Executive, the Chief Financial Officer, and the Strategic Directors;
General Principles	The General Principles set out in the Statement of Principles in the Procurement Policy;
ITT	Invitation to Tender;
Lead Officer	The named officer who will be responsible and accountable for carrying out a procurement in line with this policy and the related procedural guidance, including obtaining necessary approvals at the relevant points in the process;
WTO	The World Trade Organisation;
GPA	The Agreement on Government Procurement;
PQQ	Prequalification Questionnaire;
PA 23	the Procurement Act 2023;

Relevant Officer	The officer with sufficient Authority to Incur Funds (according to the Financial Regulations), identified within the Procedure;
2015 Regulations	The Public Contracts Regulations 2015;
Social Value Act	The Public Services (Social Value) Act 2012;
Southway	Southway Housing Trust and Southway DevCo;
Value for Money	The optimum combination of whole-of-life costs and quality (or fitness for purpose) of the goods, works or services to meet Southway's requirement;
VAT	Value Added Tax.

<table>
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<tr><td colspan="2">Previous versions
(Version number – approved by – approval date – title if different)

v1.0 – Parent Board – 21/06/2016 v1.1 – Parent Board – 13/06/2017 v1.2 – Parent Board – 02/01/2018 v1.3 – Parent Board – 04/06/2018 v1.4 – Parent Board - 16/06/2020
v1.5 _ Chief Exec (minor textual changes to reflect ending of EU regs- 26/01/2022</td></tr>
<tr><td>Date of last EIA:</td><td>N/A</td></tr>
<tr><td>Review lead by:</td><td>Matthew Maouati
Assistant Director of Corporate Services</td></tr>
<tr><td colspan="2">Main points or amendments made and reasons</td></tr>
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