

## **PROCUREMENT**

### **NON-COMPETITIVE ACTION FORM**

#### **Introduction**

It is UHI North, west and Hebrides (NWH) policy that all contracts for Goods, Services and Works must be awarded on the basis of Value for Money (VFM) following a genuine and effective competition.

However, the institutions procurement policy recognises that there may be occasions where appropriate to award a contract for Goods, Services and Works without following a competitive tendering process. This procedure is known as Non-Competitive Action (NCA) and can only be applied in **exceptional** circumstances.

NCA will only be approved when a genuine business need exists that complies with the exemptions listed below. All evidence in support of NCA must stand up to scrutiny or challenge.

The following guidance has been put together to provide information about NCA and the process for obtaining approval to use this procedure. These should be read prior to any NCA request being submitted.

#### **Exemptions where Non-Competitive Action applies**

- Extreme urgency - competition is not required when a contract needs to be put in place urgently to respond to a circumstance which is 'unforeseeable' by, and out with the control of, (e.g. severe and unprecedented weather conditions). However, any contract awarded through the NCA process must only cover the urgent (immediate) need.

**Note: This does not include situations where there is an extreme urgency to award a contract on the basis that the customer was aware of the requirement but has failed to factor sufficient time into their workflow/work planning to allow a genuine and effective competition to be undertaken.**

- Single Source Supplier – For some products and services there is only one supplier in the market and in these circumstances a direct award can be made. Care should be taken to ensure that although there may only be one manufacturer there may be distributor options, and therefore this exemption would not apply. Evidence is required to support the decision that there is not an alternative or equivalent product or service available in the market which will meet your needs. This exemption would also apply to acquisition of land or mortgage/rent payments.
- Amendment to existing Contract - after a contract has been awarded, additional requirements which have arisen through genuine and unforeseen circumstances and were not included in the original specification, may be able to be added through the amendment to contract process. However, careful consideration should be given at the outset of the contract to avoid this circumstance. The additional value must not exceed 50% of the original contract value.
- Research and Development – For contracts procured under the Procurement Reform (Scotland) Act 2014, and where the principal purpose of the contract is to acquire goods, works or services solely in connection with research or development. (regulation 15 & section 4(1)(c) of the Act).

- Supported Business – For contracts procured under the Procurement Reform (Scotland) Act there is a provision allowing public bodies to restrict participation in the tendering process to Supported Businesses only.

**For all projects that are externally funded, the funding criteria set out in the offer letter should always be the main consideration. If additional procurement requirements are listed these should be adhered to, this will prevent any funding being revoked at audit stage.**

**If the reasons above do not apply to your Purchase, please refer back to the Procurement Policy and the Procurement Rules that apply to the value of your purchase.**

#### Reasons that are not acceptable

- Contract is about to end but there is an ongoing requirement - it is important that you take account of future needs at the earliest opportunity as a failure to plan for future requirements will not support the approval of NCA;
- There is not sufficient time to carry out a competition - this will not support the approval of NCA. The time taken to run a competitive process will reflect the value, nature and complexity of the purchase;
- I am under pressure to award this contract quickly - unless the pressure has arisen through an urgent unforeseeable situation (see above) then you will need to award the contract following a genuine and effective competition;
- I have used this supplier before and like what they can do – The institutions policy requires that contracts are awarded through a genuine and effective competition. In the absence of a competition it may be difficult to demonstrate VFM;
- I have been approached by a supplier and like their idea - any such approach will not result in the supplier simply being awarded a contract on a non-competitive basis. If the proposal is consistent with the business need, there are competitive dialogue options that can be investigated and would comply with the procurement regulations.

#### Additional Information

Any external consultancy contracts with a value of £100,000 aggregated over 4 years must be approved in advance by the Scottish Funding Council. (\*This only applies to incorporated colleges, delete if not appropriate).

Requirements must not be 'split' into contracts of lower value, or reduced in duration, to avoid the need to follow the Internal Governance Rules. The institutions Internal Governance Rules can be found in the link below.

Under the non-competitive Action process, where the proposed purchase for Goods and Services is over £50k (reoccurring over a 4-year period or a one off spend), it is best practice for the institute to publish an award notice on Public Contracts Scotland. For spend over £189,330 (reoccurring over a 4-year period or a one off spend) a VEAT (Voluntary Ex-Ante Transparency) Notice should be published on the Official Journal of the European Union. This will provide an open and transparent audit trail contracts awarded under the Non Competitive process, outlining the exemption and reasons.

All Non-Competitive Actions will be recorded by the Procurement Team and included in the Procurement Annual Report.

#### **Linked Policies:**

- Procurement Policy
- Step by Step Guide

- Procurement Strategy

If your business requirement complies with the Non-Competitive Action criteria, please complete the form below and return to:

Procurement Manager and the Finance Director will review and return a decision within 7 working days.

What happens if my request is not approved?

If you cannot demonstrate that there are objective and justifiable grounds to support NCA then competition will be necessary. The level of competition will depend on the value, nature and complexity of the purchase.

### **Part 1 NCA Request Details**

**Department** Environmental Research Institute\_\_\_\_\_

**Requester Name** Benjamin Williamson\_\_\_\_\_

**Budget Holder Name/Job Title** \_\_\_\_\_ Barbara Bremner Operational Manager (Finance)  
ERI\_\_\_\_\_

**Proposed Supplier** \_\_\_\_ Echomaster Marine Ltd \_\_\_\_\_

**Value of Purchase\* Request:** \_\_\_\_\_ £60-70,000 \_\_\_\_\_ (tbc) \_\_\_\_\_  
\*Purchase value is the one-off capital cost or contract value over 4 years

### **Brief Description of the Goods/Services Required:**

#### **Type of Purchase:**

- ☐ One off  
☒ Recurring Spend

#### **Category of Non-Competitive Action**

- ☐ Extreme Urgency  
☒ Single Source Supplier  
☐ Amendment to Existing Contract  
☐ Research Exemption  
☐ Supported Business

**Full details – Please provide full details below for request including specification of product or service and expand on reason(s) for Non-Competitive Action Category (as per list above).(Please do not provide web links as justification)**

Funding has been offered by Industry Partner to purchase equipment that will enhance existing research project titled 'Physics-to-Ecosystem Level Assessment of Impacts of Offshore Windfarms'. An essential part of this research project has been the deployment of low-power broadband multifrequency scientific echosounder as part of an integrated marine monitoring platform. This equipment would augment existing facility leading to enhanced datasets & research outputs.

The budget is approximately £70,000 including VAT which will determine the number of transceivers which are purchased.

The requirements specification is precise, requiring a specific set of frequencies, capabilities and very-low power consumption. Additionally, it is essential that the echosounder components can inter-operate with the existing hardware and software on the integrated marine monitoring platform. This necessitates procurement of a particular manufacturer echosounder (Simrad) so that the purchased hardware can inter-operate with the hardware already on the platform (also manufactured by Simrad) and use the same interface. This is critical to the research objectives. Hardware and software interfaces from other manufacturers are not interchangeable.

The original equipment manufacturer is Kongsberg Simrad, Norway. The UK distributor is Echomaster Marine Ltd.

The echosounder system comprises a transceiver and accompanying licence for three frequencies (38, 120 and 200 kHz) plus a transducer for 120 degrees (existing Simrad transducers for 38 and 200 kHz will be re-used):

- EK80 Mini-WBT Transceiver for 38 kHz Transducer ( £9,996.00 inc VAT)
- EK80 Mini-WBT Transceiver for 120 kHz Transducer ( £9,996.00 inc VAT)
- EK80 Mini-WBT Transceiver for 200 kHz Transducer (£9,996.00 inc VAT)
- EK80 Mini WBT Frequency Licence for 38 kHz Transducer (£9,996.00 inc VAT)
- EK80 Mini WBT Frequency Licence for 120 kHz Transducer (£9,996.00 inc VAT)
- EK80 Mini WBT Frequency Licence for 200 kHz Transducer £9,996.00 inc VAT
- ES120-7CD Depth Rated Split-Beam Transducer 7x7 deg beam opening £9,954.00 inc VAT
- Freight £144.00 inc VAT

We feel there is "...justification to utilise the excluded contracts exemption where the principal purpose of the contract is to acquire goods, works or services in connection with research or development undertaken by the contracting authority ERI, UHI North West and Hebrides". The principle purpose of this purchase is to acquire goods (equipment) solely in connection with research.

Requester Signature: B. Williamson

Date: 25/01/2024

Budget Holder Signature: Babademner

## **Part 2 Procurement Review – To be Completed by Procurement Manager**

**Date Received** 30 February 2024

**Reviewed by (Name)** Julie Fraser

**Position** Procurement Manager

**Signature** *Julie Fraser*

**Date** 30 February 2024

**Procurement Recommendation:**

Based on a one-off purchase at a contract value > £50k, this procurement would be defined as regulated spend and therefore is required to complete one of the following options:

1. Conduct an open tender and publish the opportunity via the Public Contracts Scotland portal,
2. Conduct a call off from a National Framework Agreement,
3. Conduct a Non-Competitive Action (only if exemption applicable)

For this exercise, option 2 would be unavailable due to no suitable National Framework Agreement.

If NWH can demonstrate that no other supplier is able to provide the service, then a single source exemption via NCA is valid. I would recommend that if NWH wish to proceed with the NCA that an audit trail of any evidence relating to the single source justification is retained.

As this involves external funding from Scottish Power Renewable, I would also recommend that the Conditions of Grant are checked to ensure the funders do not have any clauses relating to specific sign off procedures for direct awards.

As this is regulated, a Contract Award Notice must be published on Public Contracts Scotland and added to the institutional Contracts Register. The Register will generate a Contract Ref Number which should be used on all communications including the purchase order.

**Part 3: Finance Review – To be completed by Finance Department**

**Value of Purchase:** \_\_\_\_\_

**Reviewer Name:** \_\_\_\_\_

**Position:** Director of Finance

**Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Approved:** ☐ Yes ☐ No

**Finance Comments:**