Specification

When developing your specification it is important to engage as early as possible with the supply base. This is important in terms of:

- identifying the desired outcomes;
- identifying risks and issues; and
- early supplier feedback on how the outcomes might be achieved, the risks and issues as they see them, feedback on timescales, feasibility and affordability.

It is important to consider and include requirements that meet the objectives of your organisation and wider policy drivers. Commercial, Social and Environmental objectives and policies must be balanced as part of the specification. As part of this, there are two concepts that must be applied in order to comply with the sustainable procurement duty:

- life-cycle impact mapping
- a risk and opportunity-based approach to considering all components of public procurement.

Further information on the areas above can be found in the **Sustainable Procurement Tools**.

It is best practice to ensure that suppliers are contractually required to provide line item spend details as this will form part of the contract management process.

The specification must:

- be set out in the relevant **Procurement Documents;**
- clearly describe what is required;
- detail the characteristics required;
- not refer to the following:
    - brands or trade names;
    - any particular process that is specific to a supplier in the market place;

    - trademarks, patents, types, or a specific origin or production. (unless it is justified by the subject-matter of the contract). Alternatively on an exceptional basis where a sufficiently precise description of the contract subject-matter is not possible. In such cases you must add “or equivalent” to the reference.
- provide equal access to bidders. Do not write the specification in a way that distorts market competition, creates obstacles or limits entry for bidders;
- take account of relevant policies e.g. are community benefits relevant? For procurements whose estimated contract value is equal to or greater than £4,000,000, you must consider whether to include a community benefit requirement as part of your procurement;
- consider opportunities for sustainable procurement. Organisations must comply with the **Sustainable Procurement Duty set out in the Procurement Reform (Scotland) Act 2014**;
- take into account accessibility criteria for persons with disabilities. Or you may design your specification for all users, except in justified cases, including a conformity assessment e.g. ensuring a web site meets accessibility standards through specifying appropriate font sizes; and
- consider any cyber risks, with reference to the Scottish public sector **Guidance Note on Supplier Cyber Security** and guidance within **SPPN 02/2020**.

Possible Issues from a Flawed Specification

If the specification is wrong or not detailed enough it may result in:

- a breach of procurement rule;
- failure by the Organisation to meet its objectives;
- wasted money;
- unsuitable tenderers;
- unsuitable bids;
- misinterpretation of requirements;
- major difficulties in evaluating the bids;
- wrong or unsuitable products/services supplied;
- claims of unfair treatment being made by tenderers;
- difficult contract/project management; and
- inability to resolve contract disputes.

The **award criteria** must be clear and linked to the specification. The award criteria must be relevant to the subject matter of the contract and not discriminatory.

Types of Specification

Open or close

Technical Specifications and Standards

Within a technical specification you must avoid a reference which has the effect of favouring or eliminating particular suppliers. For example, by asking for a specific make or source, or referring to a particular process, or trademark, patent, type, origin or means of production e.g. do not specify "Hoover" when we mean a vacuum cleaner or "Intel" when we mean a Central Processing Unit of a PC.

Such reference may only be justified if either:

- the subject of the contract makes using this kind of reference unavoidable; or
- in exceptional circumstances where the subject of the contract cannot be described in a way which is precise and understood by all bidders.

In either of the above circumstances, such must be accompanied by the words "or equivalent".

The Public Contracts (Scotland) Regulations 2015 set extensive rules on how organisations may define and incorporate technical specifications and standards.

Output/Performance Specification

The specification should be written in "performance" terms, which focuses on the product function or service output required. This means building the specification around a description of what is to be achieved rather than a fixed description of exactly how it should be done. This encourages marketplace innovation, allowing and encouraging suppliers to propose modern (including environmentally preferable) solutions.

Design Specification

In very exceptional circumstances and for a very limited number of products or services, a "design" specification may be unavoidable because of the nature of the requirement.

This kind of specification starts with exact details of the physical dimensions, the materials used, power input and output, the manufacturing processes required, and so on.

However, this should always be tested and guidance sought, as a design specification can greatly restrict competition.

Who Provides the Specification?

Open or close

The User Intelligence Group (UIG) is responsible for developing the specification.

Given that the structure and membership of any UIG varies significantly from exercise to exercise, you should ensure that other end users, stakeholders and technical specialists are consulted where appropriate. Part of the role of the UIG is to challenge accepted thinking. At the specification stage, the UIG should explore opportunities to include economic development and **sustainability considerations**.

A good specification is created through the planning and research undertaken before writing begins and it is essential that you allow sufficient time to create the specification.

It is useful to discuss the specification with a range of potential tenderers during its development. This must be done in a fair and transparent manner to avoid distorting competition and/or giving any potential tenderer an advantage. Care must be taken to avoid unfairness, but also the impression of unfairness, to some tenderers. Under no circumstances should any commitments be made during this process.

Following marketplace discussions, be careful that a supplier's innovative ideas and approaches are not disclosed during the specification development. Such innovations may provide a supplier with a competitive edge e.g. proprietary methods or Intellectual Property Rights (IPR).

You should consider how you can encourage the production of innovative goods and services, which will assist the Organisation to deliver evolving policies and strategies e.g. sustainable low carbon products.

As with all aspects of the Procurement Journey, the activities at this stage must be carried out in a carefully managed manner that supports the **Principles of Procurement**.

Suppliers should not experience unnecessary costs through casual bid enquiries. You are responsible for ensuring that best Value for Money is achieved through the procurement process.

Review and sign-off

Open or close

The key criteria that the User Intelligence Group (UIG) needs to ensure are met when completing the specification are that:

- the requirements are complete and accurate;
- stakeholders needs are taken into account;
- future developments have been taken into account;
- there is consistency with the Organisations' requirements and objectives. This includes: business case; the **Procurement Reform (Scotland) Act 2014**, the **Public Contracts (Scotland) Regulations 2015**, the **Procurement (Scotland) Regulations 2016** and other

relevant legislation; procurement and contracts strategies; sustainability objectives; and evaluation strategy; and
- a suitable risk assessment is completed to ensure that related risks are closed or managed.

Quickfire Guide

Quickfire Guide

Specification Contents

Go to Quickfire Guide Links to content

A list of what you should include in your specification, where relevant to your procurement exercise.

Specification Changes

Open or close

Once a contract is awarded, the scope to make changes to the specification is very limited. For example asking the contractor to deliver more or less than was specified at the time of tendering.

Any such changes may be challenged in the Courts. If the supplier cannot deliver in line with the requirements in the original contract (perhaps due to specification omissions or errors), the contract may have to be terminated and a new procurement undertaken.

Variants

Open or close

You may authorise or require variants on the contract requirements, as long as it has been specified in the Contract Notice.

The Procurement Documents must set out the minimum requirements and how any variant will be evaluated. Variants cannot be considered unless this has been done, they are linked to the subject matter and they meet the minimum requirements.

Where it is relevant, you should also consider whether to allow bidders to set out different TUPE scenarios within their bids. If you elect to include this in your tender, you should provide clear directions to tenderers to ensure that bids can be compared on a like-for-like basis.

All variant bids must be evaluated using the same criteria as the standard bids and compared on a like-for-like basis.

Early Market Engagement

Open or close

You can conduct market consultation. This will help you prepare both the procurement itself and the market for the coming process.

To undertake market consultation you can speak with independent experts, regulatory authorities or suppliers to the market. You can then use any advice received in the planning and execution of your procurement process.

Organisation can issue a Prior Information Notice (PIN) as a means to seek information from suppliers to the market when developing a procurement.

You must make sure there is no distortion of competition and no negative effect on the principles of non-discrimination and transparency.

All suppliers / bidders who join the process at a later date must be provided with the same information as those who engaged prior to the tender. This will ensure a fair process.

Equality Duty

Open or close

The Public Sector Equality Duty requires organisations to assess new or revised policies and practices to evaluate how they will impact people with different

protected characteristics.

You must take into account the three needs of the Public Sector Equality Duty, to:

- eliminate discrimination;
- advance equality of opportunity; and
- foster good relations between people with different protected characteristics.

The protected characteristics are:

• age	• disability	• gender reassignment	• Marriage and civil partnership	• pregna and matern
• race	• religion or belief	• sex	• sexual orientation	

You should also integrate human rights into your impact assessments to help suppliers meet their obligations under the **Human Rights Act 1998**. Further information on how to conduct equality impact assessments is available on the **Equality and Human Rights Commission (EHRC) website**.

Intellectual Property Rights (IPR)

Open or close

The technical specification can specify whether the transfer of Intellectual Property Rights (IPR) will be required.

This is important as suppliers are likely to find the contract much less attractive if any intellectual property they create would be the property of the buying organisation. This may be an unnecessary barrier to competition to some suppliers who supply similar goods or services to other customers. The Organisation, however, may legitimately ask for access to intellectual property which they require.

Whole Life and Life Cycle Costing

Open or close

You can apply a number of different costing models such as Whole Life Costing or Life Cycle Costing, as part of the specification and subsequent evaluation.

Further information on the costing models can be found in **Additional Resources**

Life Cycle Impact Mapping

Open or close

Focuses on social and environmental impact rather than cost. It helps the user identify and assess impacts. For example, it may help to focus attention on the disposal phase before the procurement is carried out. This would allow you to build end-of-life management requirements into successful contractor performance clauses and your own internal management procedures.

Please note: Life Cycle Impact Mapping can be used alongside Life Cycle Costing as part of the procurement process.

Labels

Open or close

If you purchase goods or services with specific environmental, social or other characteristics, labels can be used as a means of proof. The label can show that the supplied goods or services correspond to the required characteristics. For example, Fair Trade addresses workforce issues and is provided by the Fair Trade Foundation.

To use this approach it is necessary to meet the following criteria:

- the labels can only concern criteria that are linked to the subject matter of the contract. These must be appropriate to define characteristics of the supplies or services;
- they have to be based on objective and non-discriminatory criteria;
- the label itself is established in an open and transparent procedure. It can be accessible to all interested parties; and
- the label requirements are set by a third party over which no potential bidder has decisive influence

It is more proportionate for you to specify which label requirements bidders need to meet for you, rather than using a broad “all applies” basis. This approach will reduce the burden on bidders and could also expand the number of capable bidders for your process.

Equivalent labels must be accepted if the bidder can show it has not been possible to obtain either the label or other equivalents, through no fault of its own. You must accept other appropriate means of proof.

Using Samples, Patterns, etc. in Specifications

Open or close

Samples or patterns may be issued or requested from bidders when you cannot produce a detailed description of the requirement. It is important not to request anything that is not going to be core to the evaluation and not to put bidders under financial or operational pressure to provide samples.

If you request samples and you rely on these for quality assessment as part of the tender a "sealed sample" must be kept for later comparison with the products supplied.

Samples, patterns and drawings may also form part of a design specification.

Any samples provided by bidders that are no longer required should be returned to the bidder.

Care should be taken that copyright is not breached when using samples, patterns etc. for specification purposes. Consideration needs to be given to the Intellectual Property Rights of the bidders.

It is very important that you state clearly as part of the tender documents how the samples and any other provisions from the bidders will be used as part of the tender evaluation and indeed any subsequent contract management.

Simplification and Variety Reduction

Open or close

Simplification and variety reduction techniques can help in reducing costs and in obtaining better Value for Money (VFM).

Specification simplification and variety reduction involves removing design complexities. For example, by removing different design types, sizes, grades etc. of products.

At its simplest this might be seen as the reduction in the:

- number of item colours purchased; or
- sizes of envelopes purchased and kept in stock

This can be a valuable tool when creating a specification for large collaborative procurements.

Contract Implementation/Contract and Supplier Management

Open or close

You must consider how the contract quality, sustainability and performance of goods and services will be measured as you develop your specification, especially an output specification.

These factors should be reflected in the **Management Information** (MI) and Key Performance Indicators (KPIs) that you require from your supplier(s). MI and KPI requirements should be included in your ITT and Terms and Conditions.

It is also best practice that suppliers are contractually required to provide line item spend detail as part of their contract support, and this should be communicated as part of the tender documentation.

Demand Management

Open or close

Demand should be regularly assessed. In some business areas internal customers or budget holders may under or over specify e.g for consultancy services, specifying a Partner when an Associate could deliver the brief: where they are suitable and can

deliver at less than half the day rate. It could be more cost effective to have a fixed term appointment than having an interim who stays in place for much longer than the initial contracted period.

In order to avoid scope creep, it is essential to ensure that a robust scoping process is undertaken at the earliest opportunity. Otherwise a supplier may offer additional services which are not required. Supplier-led scope creep can occur and should be demand managed. An example is an IT project aimed at buying a records management system which links, shares and allows the updating of records. If a project like this is not fully scoped and requirements understood early on, suppliers may exploit planning gaps. The supplier may add additional products or services as a 'problem resolution tool'. This would increase the scope, cost and timescales of the initial project.

Care and Support Services

Open or close

Whilst all the guidance in this station should be considered when procuring **Care and Support Services** specific Care and Support Services guidance can be found in **Developing the Service Specification** and the Procurement of care and support services: best practice guidance.

Rights of the Child

Open or close

Consider how relevant Rights of the Child provisions are to the specification and ensure inclusion when relevant and proportionate in accordance with UNCRC guidance.