

Guidance on procuring waste services for public bodies and their contractors

Good practice guidance to prevent crime
July 2015

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1 Foreword



Calum MacDonald

Calum MacDonald, SEPA Executive Director, Chair of the Environmental Crime Taskforce

On behalf of the Environmental Crime Taskforce, which includes:

- Scottish Environment Protection Agency (SEPA)
- Police Scotland
- Crown Office and Procurator Fiscal Service (COPFS)
- Her Majesty's Revenue and Customs (HMRC)
- The Scottish Government (Justice and Environmental Quality Division)
- Zero Waste Scotland
- Society of Local Authority Chief Executives and Senior Managers (UK) (SOLACE)
- Traffic Commissioner for Scotland
- UK Border Force

Crime associated with waste services is a problem across the UK and beyond. It is one that Scotland in particular is taking increasingly seriously. The Environmental Crime Taskforce and the Scottish waste industry are working together to tackle what has become a multi-million pound criminal enterprise. A recent study^[1] estimated that crime associated with the waste industry impacts on the UK economy in the region of £568m per year. These economic impacts are felt by the public sector through lost tax income, and through the costs of clearing up and remediating illegal waste sites. At the same time, legitimate operators lose out on business through being undercut by criminals, who don't have to meet the costs of handling waste properly.

We want to make it more difficult for organisations that do not respect environmental regulation or the law more widely, to operate in the waste sector.

Our vision is a waste sector largely free from crime, and where any new criminal activity is rapidly uncovered and rooted out. This will free legitimate operators to undertake work in fair competition with one another, at prices that are reasonable and enable waste services to be carried out in full compliance with all legal obligations.

Through this guidance, we aim to spread the message of the need to be aware of criminality in the waste sector so that it reaches public bodies, private businesses and the community at large. We also aim to provide public bodies with the tools they need to design effective procurement processes that deliver the waste services they require while protecting as far as possible from the risk of awarding contracts to those engaged in crime.

Public bodies have an important role to play in achieving this vision through taking proactive measures to support legitimate operators in the way that they procure and manage waste services. By acting boldly and adopting the good practice for procurement and contract management set out in this document they can help to ensure that money does not find its way to criminals, whether directly or indirectly. In doing so, they will be contributing significant support to Scotland's strategy to tackle serious and organised crime "*Letting Our Communities Flourish*".^[2]

Working together, SEPA, local authorities and other public bodies can make a real contribution and show leadership in the prevention of crime associated with waste services.

Waste crime has a negative impact on legitimate waste operators.

Waste operators that plan to deliver services in line with the law will incur compliance costs that criminals can undercut. Crime can therefore cost legitimate operators the chance of obtaining work if they bid at normal prices.

2 Why do public bodies need to be concerned about crime when procuring waste services?

No public body would knowingly purchase services from someone undertaking illegal activities. However, waste contractors can be associated with crime in ways that are not easy to identify. An apparently legitimate contractor may use a criminal organisation as a sub-contractor; or may be a means by which money is laundered from another criminal enterprise.

The risk therefore remains of such purchases occurring inadvertently, whether because the public body is not aware of the possibility of waste crime occurring, or because of defects in the design of a waste services procurement process which means that organisations wilfully or carelessly engaged in waste crime cannot be excluded fairly.

Where a public body does contract with an organisation associated with crime, it will give rise to reputational risks. However, it also raises concerns about the health and safety of the contractor's staff, the quality and reliability of service, continuity of service and the possibility of having to incur the cost and delay of a further tender – not to mention the clean-up costs that may be incurred. Public bodies have a duty of care to ensure their waste is disposed of appropriately, in an environmentally safe manner and in compliance with the law. Purchasing waste services from an organisation that is involved in crime is not compatible with fulfilling this duty.

It is vital that public bodies are aware of the risk of crime when contracting for waste services. However, it is important to bear in mind that waste management is a complex and heavily regulated industry.

Normally law-abiding waste management companies may accidentally, in the course of their operations, breach licence conditions and waste management rules. Provided that swift action is taken to remedy them, occasional breaches, even when subject to regulatory action, cannot be taken to be evidence that the contractor is inherently criminal.



An apparently legitimate contractor may use a criminal organisation as a sub-contractor; or may be a means by which money is laundered from another criminal enterprise.

3 Examples of crime

Criminal behaviour in the waste sector has a range of causes. Otherwise law-abiding companies may break the law through a lack of awareness of regulation or a failure to take proper steps to prevent breaches, while some waste companies systematically and deliberately flout the rules, or are run by organised criminal gangs. SEPA has produced a compliance and engagement spectrum that usefully illustrates the range of behaviours (**Figure 1**).

Crime associated with the waste industry takes many forms. Some are specifically related to waste, while others are more general forms of criminality that can be harboured within waste businesses. A non-exhaustive list of examples of waste crime that may arise in connection with a variety of common waste services is provided in **Table 3.1**.



An example risk of crime is waste being deposited at unlicensed sites, or hazardous waste being collected and delivered to unsuitable treatment or disposal facilities

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Compliance and engagement spectrum

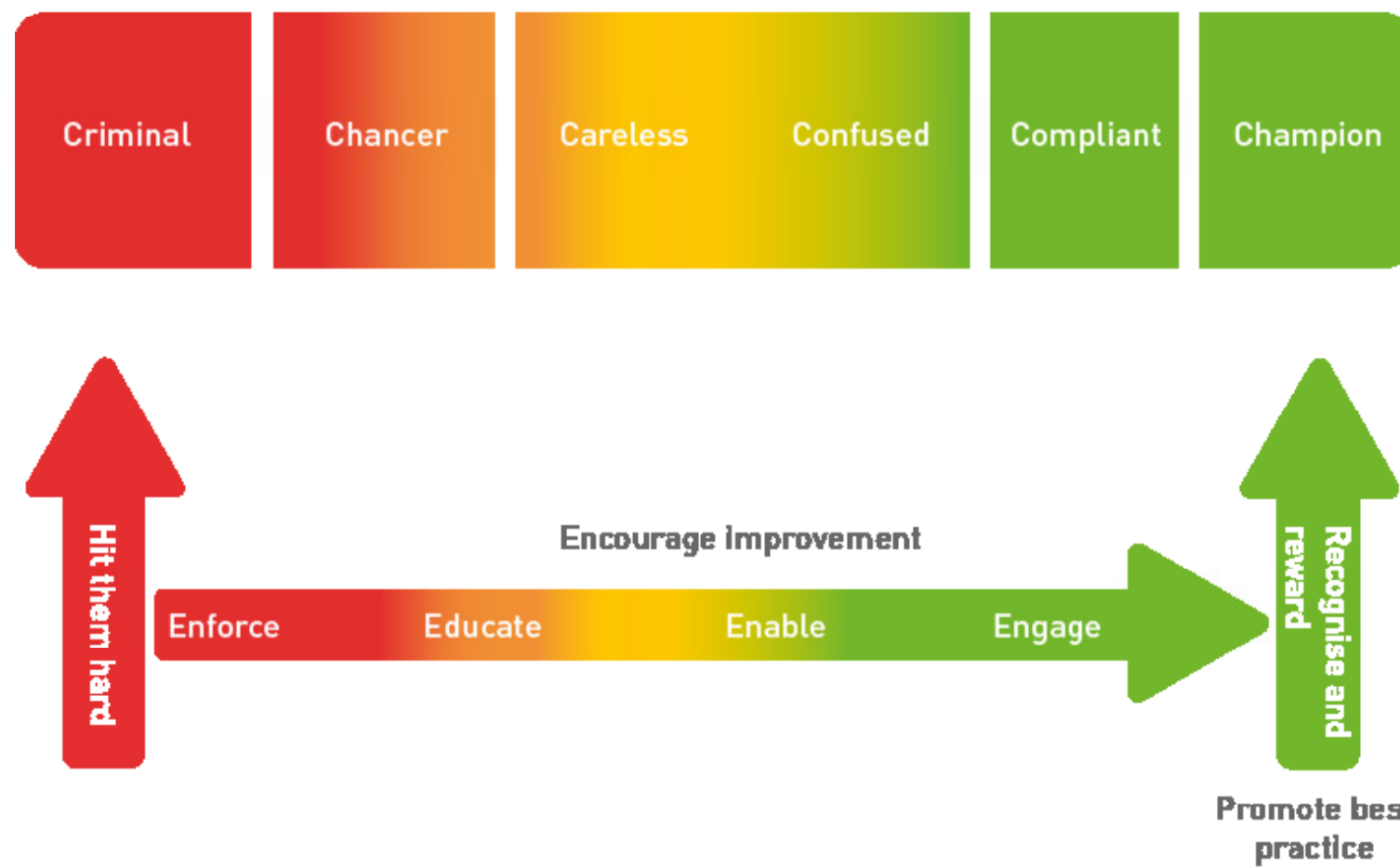


Table 3.1 Crime associated with the waste industry takes many forms. Some are specifically related to waste, while others are more general forms of criminality that can be harboured within waste businesses. Below is a non-exhaustive list of examples of waste crime that may arise in connection with a variety of common waste services.

Service type	Example crime risk
Waste collections from public bodies (commercial waste)	<ul style="list-style-type: none"> ■ Fraudulent waste transfer notes are prepared. ■ Waste is flytipped or deposited at unlicensed sites. ■ Vehicles are not properly licensed. ■ Hazardous waste is collected and delivered to unsuitable treatment or disposal facilities.
Local authority collection services (including haulage)	<ul style="list-style-type: none"> ■ Waste is deposited at unlicensed sites. ■ Hazardous waste is collected and delivered to unsuitable treatment or disposal facilities. ■ Vehicles are not properly licensed. ■ Cash in hand' commercial waste collections are carried out which the local authority has to pay for to dispose.
Local authority facility operation (e.g. HWRCs)	<ul style="list-style-type: none"> ■ Valuable material (e.g. copper wire) is stolen and sold. ■ Potentially hazardous material is taken for treatment or disposal at sites, whether in the UK or overseas, that are not licensed to or capable of handling it safely.
Local authority residual waste treatment/disposal	<ul style="list-style-type: none"> ■ Material is deposited at sites that are not licensed. ■ Material is deposited at sites that are in breach of licence conditions. ■ Material is stored in greater quantities than the contractor's permit allows.
Local authority treatment/sorting/ recycling services (e.g. dry recycling, organics, bulky waste, WEEE, HWRC materials)	<ul style="list-style-type: none"> ■ Recyclable materials are sent for disposal or energy recovery. ■ Material is stored in greater quantities than the contractor's permit allows. ■ Stored materials are burned on site in breach of permit ■ Contractor has had unusually serious or an unusually large number of health and safety issues. ■ Contractor's key staff are engaged in criminal activity (e.g. metal theft, sale of narcotics) that is separate from their waste activity.
Local authority clinical waste treatment/disposal	<ul style="list-style-type: none"> ■ Material is deposited at sites that are not licensed for clinical waste

Note: Many of the examples used above could apply to more than one service type.

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4 About this guide

This non-statutory guidance has been commissioned by Zero Waste Scotland and SEPA, and is designed for use by all parties involved in public sector waste services procurements. It has been developed with input from regulators, public bodies, Police Scotland, waste businesses and their representative bodies. Whilst it has been developed for use in Scotland, it may be relevant to public bodies across the UK.

This guidance aims to highlight 'red flags' that may be indicative of a risk of crime: aspects of a procurement process or a bid which public bodies may be able to identify during procurement or subsequent contract management, enabling them to investigate and exercise proper caution.

Public procurement law is complex, and public bodies can be concerned that the rules limit their scope to avoid awarding contracts to businesses about which they have concerns. This guidance is designed to:

- Highlight ways in which the risk of crime can be managed within procurement rules.
- Capture good practice that is already available and in use within the industry.
- Provide suggestions about how to design crime prevention measures into a proportionate procurement process for waste services.
- Suggest ways to ensure that, if a contract is awarded to an organisation that is subsequently found to be engaged in criminal behaviour, appropriate action can be taken.
- Provide assistance to waste contractors looking to demonstrate their legal compliance within a public procurement.

It is written in a landscape that is far from static. Procurement law is changing and an overview of forthcoming developments is provided in Appendix A.

The guidance may be particularly useful to:

- Local authority waste officers, procurement officers and environment officers tasked with procuring waste collection, treatment or disposal services, or connected services such as the provision of household waste recycling centres.
- Facilities managers and procurement officers in public bodies tasked with procuring waste collection services.
- Waste contractors' bid managers tasked with the preparing responses to public sector waste services tenders.
- Any person tasked with managing a waste services contract once it has been let.

The production of this guidance is not intended as a signal that crime is rife in public sector waste contracts, or that public procurement processes are a key weak spot in the system. Many of the recommendations made would apply equally well in many other procurement contexts. It is also important that this guidance is interpreted within the framework of procurement law in Scotland, and nothing in this guidance should be read as advising public bodies to take action that is not consistent with good procurement practice. A number of sources of procurement guidance are highlighted in Appendix C.

The guidance is applicable to contracts of all sizes; however it should be applied in proportion to the level of risk inherent to the contract, which may relate to the nature of the services being purchased, the materials involved and the overall value of the contract.

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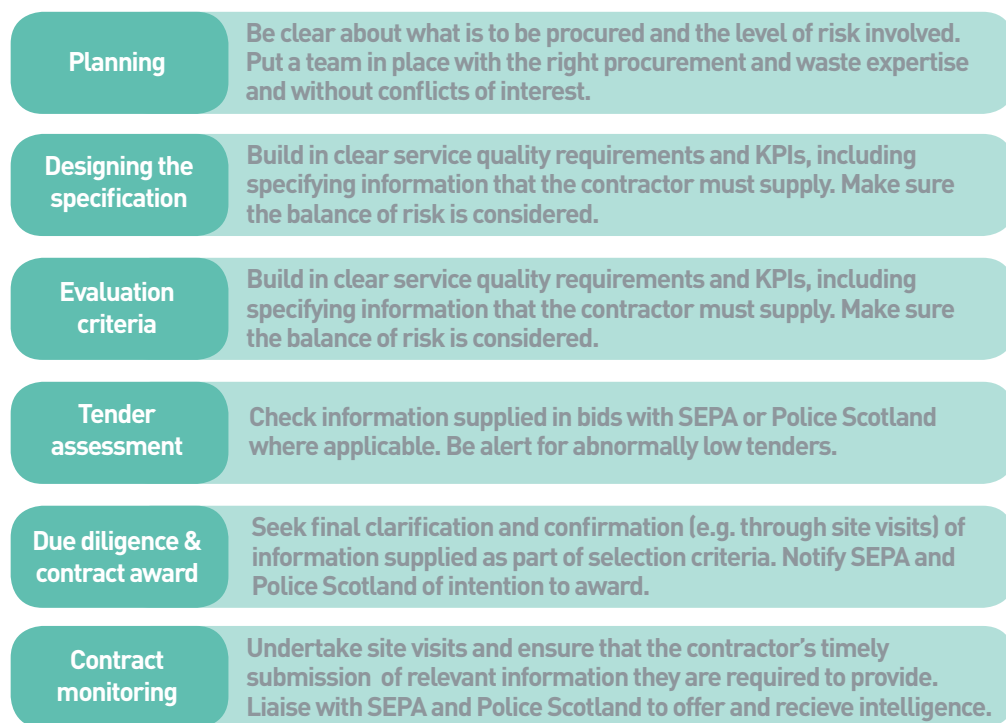
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The guidance will help public bodies to minimise the risk that a contract is awarded to a criminal – or to an organisation that may, deliberately or otherwise, allow waste to be passed on to criminals. It also suggests ways to ensure that if a contract is awarded to an organisation that is subsequently found to be engaged in criminal behaviour, appropriate action can be taken. Following the guidance may also help public bodies to meet their environmental obligations, including discharging their duty of care in respect of the waste they manage.

Figure 2 The SEPA compliance and engagement spectrum



Each local authority has a nominated officer who acts as the Single Point of Contact (SPOC) with Police Scotland for Serious Organised Crime issues. Local authorities should contact this officer in the first instance to discuss issues related to waste crime.

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5 Assessing the risk of crime

In order to ensure that the right level of priority is given to the issue of crime in the course of procurement, a first important step is to consider how significant the risk may be that the resulting contract is of interest to criminals. The procurement team will need to define in broad terms the service that is required and then consider the following key questions:

Does the work offer opportunities to inflate profits by cutting corners, e.g.:

- Will the work require the use or operation of regulated sites?
- Is any of the waste hazardous?

Is there known involvement of criminal organisations in the sector?

- Waste experts in the project team may be aware of concerns
- SEPA or Police Scotland may be able to supply information or reassurance

Is there scope for fraud or theft within the contract, e.g.:

- Material of value being stolen in the course of collection/treatment?
- Collections from “off the books” customers being paid for by the public body?
- Could the type of material be described inaccurately to avoid tax or disposal costs?
- Could the contractor benefit by inaccurately recording the quantity of material handled?

The answers to these questions will help in identifying whether there is a significant risk associated with the tender, and if so, the most likely nature of the risk. It will therefore help the procurement team to target the most likely forms of crime, and ensure that measures are put in place in the course of the tender to try to prevent it.

Red flags – characteristics of the service required

- Is the contract high value or long term?
- Would treating/disposing of the material illegally offer opportunities for the contractor to save money?
- Is the market price for the material volatile, and could this impact on the contractor's plans for its disposal or treatment?
- Is the work likely to require multiple contractors, or a contractor with multiple sub-contractors?
- Is the contract likely to result in potentially hazardous or mixed material being exported?

Public bodies should use their existing risk assessment tools to analyse the likelihood and potential impact of crime-related risks, alongside the other risks that the procurement might present.

6 Planning

6.1 Making sure proper systems are in place

In order to ensure that a tender minimises the risk of crime, it is important that the basics of a fair and transparent tender process are put in place.

Procurement legislation aims to make sure that this is done, helping to avoid risks such as:

- Done deals being pushed through by internal stakeholders.
- Inappropriate use of single source suppliers.
- Work being procured in disaggregated packages to avoid procurement thresholds.

Organisations need to prioritise good procurement practice and the prevention of fraud and crime at a senior level to ensure that an appropriate culture is disseminated. Measures that will help to implement this include:

- Ensuring that senior managers understand the importance of procurement and, crucially, the risk of fraud and crime across the procurement life cycle.
- If the organisation has a fraud and crime strategy, advertising this and making reference to it in OJEU notices and prior information notices.
- Engaging with the market and setting expectations with regards to the importance of crime prevention.
- Advertising other supporting policies, including whistle-blowing, to staff and contractors.
- Maintaining an active conflict of interest policy.
- Maintaining a policy on gifts and hospitality, including parameters and thresholds.
- Undertaking checks on procurement staff for potential conflicts of interest.
- Ensuring rotation of procurement staff and contract managers.

6.2 Choosing an evaluation team

An important factor is choosing the right evaluation team, to ensure that the right level and mix of expertise is included and that any potential for conflicts of interest (e.g. links with potential bidders) is understood and managed. Ideally the team should include no fewer than three members:

- One or more individuals with operational expertise, who will be well placed to identify strengths and weaknesses in the proposed delivery method (e.g. in a local authority, a waste management officer; in a hospital, a facilities manager).
- One or more individuals with a more strategic outlook who will be well placed to consider the wider implications of the bidder's approach (e.g. a senior manager).
- One or more individuals with procurement expertise, who can help to ensure that the prescribed process is followed carefully (e.g. a member of the organisation's procurement team).

Where the procurement raises complex issues or where there are strong relationships with an incumbent contractor, public bodies may wish to consider bringing in external, independent advisors and/or evaluators.

Best practice checklist - Internal controls

- Have you put in place a record of potential conflicts of interest?
- Is your corporate register of gifts and hospitality up to date, and have you reviewed it for any relevant entries?
- Are measures in place to ensure that there are no inappropriate links between bidders and evaluators?

7 Designing the contract

A public service contract will typically include:

- A set of conditions of contract, which set out the general rights and obligations of the contracting parties, including any payment mechanism;
- A contract specification, which defines the work to be carried out under the contract; and
- Any method statements or delivery plan produced by the contractor as part of their bid, which set out how they will carry out the work.

This section looks at the conditions of contract and the specification requirements that can be included in waste-related procurements to help minimise the risk of waste crime. It describes measures that can be implemented by public bodies and the actions that contractors can take to respond to them. Method statements are discussed in Section 8.2.

7.1 Defining the service to be provided

The starting point for the specification will be the initial planning work done to define the service to be purchased and to assess the associated risk of crime (see section 6). The contract will need to define the service the contractor will be required to provide, which offers opportunities to include specific requirements in that will help to provide assurance that the contractor is continuously achieving legal compliance and delivering good practice.

7.1.1 Specifying quality requirements

This section summarises the conditions of contract and the specification requirements that can be included in waste-related procurements to help minimise the risk of crime, many of which may already be familiar to public bodies. By agreeing to the contract, the contractor will be committed to undertaking work in line with the quality requirements. The public body can gain assurance regarding how the contractor will meet the requirements by requesting that relevant method statements are supplied for evaluation as part of the tender.

Top tips

Ensure the required quality of services is specified and that the specification includes measures to minimise the risk of crime associated with waste services.

7.1.2 Conditions of contract

Requirements should be included in the contract documents to define clear quality standards that the contractor will be required to meet in carrying out the work. The specific requirements will depend on the nature of the work, but may include the following:

- Make it a condition of contract that the contractor maintains any accreditations (e.g. ISO standards) that are a selection criterion of the tender.
- Make it a condition of contract that the contractor maintains all necessary permits and licences (although it is of course obliged to do this by law) so that failing to do so will constitute a breach of the contract.
- Make it a condition of contract that all waste must be handled in accordance with legislative requirements (although it is of course obliged to do this by law), including ensuring that waste transfer notes are available to cover all waste received and

disposed of. It may be preferable to require that waste transfer notes are available for each individual waste transfer, rather than using annual waste transfer notes, to ensure that material can be tracked more accurately.

- Make it a condition of contract that the contractor must:
 - proactively supply relevant documents (permits, waste transfer notes, etc.) when any change occurs, and on the public body's request;
 - put in place arrangements to allow the public body access to information regarding the criminal records of its key staff; and
 - allow the public body or its appointed representatives to undertake audits of sites used in performance of the contract.
- Make it a condition of contract that all drivers and equipment operators are properly trained and licensed.
- Make it a condition of contract that the contractor ensures its vehicles and plant are properly maintained, taxed and insured.
- Ensure that there are arrangements in place that will both incentivise compliance and protect the contracting body's position in the event of non-compliance. This may include:
 - the use of liability insurance with appropriate indemnity levels;
 - the posting of bonds; or
 - a parent company guarantee.

This will ensure that resources are available to rectify any failings that might arise. Such requirements might be particularly applicable where the contractor is receiving material such as residual waste, whose ultimate disposal will be costly.

- Make it a condition of contract that, where important parts of the contract work are delivered by a sub-contractor, they agree to a collateral warranty arrangement in respect of these audit and review powers. Such a warranty can be used to extend duties and rights under the contract to cover the sub-contractor, which could include the power of audit and document review. The contract should also require

that the same arrangements be extended to any new sub-contractor introduced during its lifetime.

7.1.3 Specification

- Specify that the contractor must submit a list of facilities that it will use, undertake prescribed checks on the facilities to ensure they are compliant with legal requirements, and that it must only deliver material to the facilities that the public body has approved.
- Specify that the contractor must allow site visits/inspections by the public body.
- Specify whether (and under what circumstances) key sub-contractors can be changed, and require the contractor to advise the public body of such changes (a contract variation mechanism).
- Specify the metrics and other information that the contractor must supply, and the frequency with which they must do so, such as:
 - the tonnage of each type of material received; and
 - the end destinations of materials.
- Specify that the contractor must maintain a full set of health and safety risk assessments covering all activities, safe working procedures and evidence of training of any persons identified as being at risk, together with details of nominated health and safety representatives.
- Specify that the contractor must maintain a Business Resilience Plan and put contingency arrangements in place for a range of foreseeable types of incident. This will help to ensure that prompt action can be taken if, for example, concerns arise regarding a sub-contractor, without harm to the service being provided to the client.
- Specify that the contractor must ensure it complies with all relevant legislation, such as the Waste (Scotland) Regulations 2012. This will include meeting requirements such as the following:
 - Recyclable materials must not be sent for disposal or energy recovery, although exceptions may be allowed where contamination in the material

supplied by the public body exceeds contractually permitted levels and prevents material from being recycled.

- Separated recyclables must not be mixed with other streams.
- Where a MRF is to be used to separate co-mingled recycling, it must be able to comply with the sampling requirements of the Scottish MRF Code of Practice, and that sampling information must be made available to the public body.
- Where co-mingled materials are being received by the contractor to be separated at a MRF, the public body's specific agreement is required if they are to be transferred to any third party prior to sorting.

- Specify that details are supplied of the vehicles that will be used to service the contract.

7.1.4 *Require the contractor to make proactive disclosures under the contract*

It is important that a public body should be made aware of any performance failures, or any other occurrences that may give rise to concern, as soon as possible to enable it to manage the situation and apply any relevant contract clauses. The public body should make it a contractual requirement that:

- The contractor must provide a report in a specified format to confirm at regular intervals whether any compliance issues have arisen – it may be useful to define a checklist; and/or
- The contractor must provide information as soon as possible regarding the occurrence of specific events, such as the identification during an inspection of licence deficiencies or breaches in respect of one of the contractor's sites; and/or
- The public body may request evidence from the contractor as to how these requirements are being adhered to at any point within the contract life. There should be a fixed period, unlikely to be longer than two weeks, within which the contractor must supply the information once requested.

Top tip

Requiring regular reports places the onus on the contractor to supply information, rather than responsibility sitting with the contracting body to initiate a review.

In addition to the range of quality requirements specified in Section 7.1.1, the contractor should be required to provide information regarding the following:

- Notification of any inspections of sites used in the delivery of the contract that are carried out by bodies including SEPA, Police Scotland, VOSA, planners, environmental health or the Health and Safety Executive – and their outcome.
- Any licence deficiencies or breaches in respect of these sites that are identified through inspection, the action required to address them and the timescale for this action.
- Any investigative or enforcement action taken, whether by SEPA or any other body with enforcement powers, including prosecution of the contractor, whether in respect of sites used in the delivery of the contract services or other waste sites in Scotland or elsewhere in the UK.
- Any conviction of the contractor, whether in respect of sites used in the delivery of the contract services or other waste sites in Scotland or elsewhere in the UK.
- Any prosecution or conviction of any person involved, or involved in the past year, in the running of the contractor or of any site used in the delivery of the services under the contract for crimes related to the operation of these sites.
- Any changes sought or obtained to the permits or consents covering sites used in the delivery of the contract.
- Any duty of care documentation received by the contractor in respect of the transfer of waste received from the public body.

The contract should make clear that failure to disclose information promptly will be a breach of contract, enabling sanctions to be deployed in line with the contract's performance framework.

7.1.5 KPIs

Key Performance Indicators (KPIs) are a useful way to define the quality of service that is required under the contract. Public bodies should consider whether there are KPIs that can be used to set quality requirements that the contractor must meet in the performance of the service. For example, the public body might require that:

- Sites to be used under the contract are unavailable within the agreed opening hours for no more than X days or parts of days per year.
- Downtime for key plant/services is no more than X days per year.
- The missed collection rate does not exceed X% of bins that are properly set out for collection.
- Contamination within paper separated by the contractor's MRF will be no more than X%.

Persistent failure to deliver the required standard of performance can be treated as a contract breach. Requiring a high quality service may make it more difficult for criminal organisations to succeed in tenders. However, they are primarily a way to ensure that

Top tip

Take a reasonable approach to sharing risk, giving the public body the level of protection in respect of its financial position that it requires, but ensuring that the contractor is in a position to manage the risk that is being transferred.

there is clarity regarding expectations for both parties and that the public body is able to enforce delivery of the standard of service it requires.

KPIs are typically used for aspects of the service where there is an expected performance rate that is less than 100%. It is therefore not recommended that KPIs should be used in relation to crime issues such as breaches of environmental regulations, each instance of which should instead be treated as a contract breach. More information on contract breaches is provided in Section 7.3.

7.2 Risk sharing

It is often the case that a public body seeks to obtain certainty about price through a contract, and to insulate itself from future price risk. Taking steps to manage risk or to transfer it to a private contractor is a legitimate aim that should not be discouraged. However, the cost of delivering a waste contract depends heavily on factors that may not be within the contractor's control, in particular:

- The cost of disposal/treatment of residual waste.
- The value of recyclables on the global secondary commodities market.

Top tip

Ensure that proportionate contract sanctions are available in the event that the contractor breaches the contract, including where it is found to be engaged in serious criminal activity or unacceptable numbers of less serious contraventions of environmental or other rules. These may include termination powers where this is the most appropriate sanction.

Contractors may be able to secure long-term, fixed price deals in order to protect themselves from price changes. However, in the event that the contractor's costs increase or income decreases due to changes in these factors, it may impact on the contractor's ability to service the contract and they may be driven to cut corners.

One potential way to address this is to allow for a price review to take place, either periodically or in the event that the contractor is exposed to increased costs or decreased income that exceeds a specified percentage of an agreed starting value. However, building in price reviews can encourage under-bidding, based on the expectation that prices can be subsequently reviewed and increased. To protect against this, price changes should always be evidenced either through open book accounting information or by reference to agreed indices.

It may be preferable for the contracting body to instead make sure that, if it wishes to transfer risk to its contractor, it has put in place measures to ensure that the contractor is in a position to manage financial risks, perhaps through requiring a parent company guarantee or similar assurance to be put in place that will enable the contractor to weather any downturn in the economics of the contract.

Red flags – risk sharing

- A contract that gives too much financial risk to the contractor to manage may result in an increased risk of crime during its lifetime.

A further important area of risk is legislative change. Contracts should be clear regarding with whom any financial risks resulting from changes in waste legislation lie. Again, it is open to public bodies to seek to transfer risk to a contractor, but in doing so it is wise to put in place requirements that will ensure that the contractor has the resources available to manage such risks should they arise.

7.3 Contract breaches

It should be clear within the contract that failure to deliver the required level of quality will be a contract breach. By making criminal activity a clear breach of contract, the public body ensures that it has contractual powers to take action to protect its position, alongside any other action that may be appropriate (e.g. providing information to SEPA or Police Scotland). It is important that the contracting body should be able to identify breaches when they occur and ensure that they are handled proportionately. It may be useful to highlight any breaches that are particularly serious ('material breaches') that may lead rapidly to contract termination; and to put other proportionate procedures in place to handle less major breaches.

The contract should make clear:

- What will constitute a breach (e.g. failing to provide information that is required under the contract, failing to achieve a KPI in two successive months, or any three months in 12).
- What will constitute a material breach (e.g. conviction of the contractor or any of its directors for a serious criminal offence).
- How a breach will be formally recognised (e.g. that a formal warning notice will be issued).
- A prescribed limit on the number of breaches that are permitted within a given period, or the period for which a breach may persist, beyond which level the total effect is a material breach of the contract.
- Where a material breach has occurred, that the public body may wish to ensure that the default option is to terminate the contract, although it may wish to leave open the option to consider actions other than termination where this is reasonable overall.

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Naturally, a public body will not wish to terminate a contract, and incur the costs and difficulties of having to re-tender a service, without good reason. Contract sanctions cannot take the place of effective contract management, the aim of which should be to encourage the contractor to deliver the service in line with the contract.

Real life example

In one UK organisation, a junior member of staff defrauded £100,000 by exploiting the weaknesses in purchasing and payments systems. In this role the staff member was able to exploit lax security arrangements to access supplier databases and create false supplier records. There was not further scrutiny by management.



An example risk of crime is the Contractor's staff being engaged in criminal activity (e.g. metal theft) which may be separate from their waste activity.

Best practice checklist - selection criteria checks

- Have you undertaken an assessment of the crime risk inherent in the service you wish to procure?
- Have you defined clear quality standards and KPIs for the service?
- Have you included measures in the service specification to minimise key risks (e.g. sub-contractors/waste treatment providers)?
- Have you considered how the contract shares risk between you and the contractor?
- Have you included relevant requirements regarding reporting and disclosure of licence breaches and other regulatory interventions?
- Have you built in appropriate contract sanctions?

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8 Designing evaluation criteria

A successful tender process depends on identifying criteria that are likely to be effective in selecting the contractor best placed to deliver the service that is required. This section describes selection criteria that will reduce the risk of selecting a contractor that is involved in crime.

Procurement law distinguishes between two different types of criteria that are applied in the course of a tender process.

- 'Selection' criteria focus on the bidder's suitability and capability to perform the contract tendered. The selection process can be conducted as a "pre-qualifying stage" and is a backward-looking process examining bidders' qualifications and capability, which should include criteria relating to experience and financial standing.
- 'Award' criteria assess the merits of each bid submitted, with the aim of identifying which of the eligible tenderers will deliver the best service for the contracting authority. Award criteria must relate directly to, and be proportionate to, the subject matter of the requirement.

The distinction between selection and award criteria is crucially important in the design of a successful tender, and must be maintained throughout the procurement process. The contracting authority must ensure that the selection and award criteria used are relevant, objective, proportionate and non-discriminatory. Criteria (and any sub-criteria) used by a public body, together with any weightings attached to them, must be published and made known to suppliers at the time of the issue of either the Pre-Qualifying Questionnaire (PQQ) (if the Restricted Procedure is used) or the Invitation To Tender (ITT).

- Criteria assessed in the 'Selection' stage must not be re-applied at the 'Award' stage. However, it can be permissible to review the same evidence at each stage, so long as the way that it is used is clearly different in each case and falls in line with the distinction between 'selection' and 'award'. For example, a public body might:
- Require that the bidder has one key member of staff with a particular qualification as a selection criterion, but;
- Include an award criterion that relates to how the bidder will use appropriately qualified key members of staff to undertake work to the required standard under the contract, and where the number of qualified people and the level of their qualification is a factor in evaluating responses.

8.1 Selection criteria

The selection stage can be extremely useful in excluding bidders that cannot demonstrate that they meet the public body's requirements, and carefully reviewing the information provided by bidders is important. The selection stage should focus on the factors that may exclude bidders that are not capable of undertaking the work and select those best able to carry out the work, while avoiding making it onerous for bidders to participate or for contracting authorities to assess applications.

Certain standard exclusion criteria must be applied to establish that bidders are legally eligible to tender. Other pass/fail questions regarding factors such as financial and economic standing must be included, while further pass/fail questions may be included, where there are clear, relevant criteria that the contracting body can apply.

Finally, the selection criteria should include an evaluation of evidence regarding the bidder's technical and professional capability.

It may be useful to refer to the Scottish Government's standard Pre-Qualification Questionnaire (sPQQ),² which sets out a standard approach to addressing selection criteria.

8.1.1 Small and medium sized enterprises

The Government is committed to ensuring that small and medium sized enterprises (SMEs) have fair access to public sector contracts in Scotland. Wherever possible, the selection criteria must be constructed in such a way that small and medium sized enterprises are not excluded, in terms of how financial standing and capability are measured. For example, a minimum turnover, or a minimum number of years of audited accounts, should only be stipulated if it is justifiable in terms of the particular requirement of the contract, and due regard should be given to whether there are alternative ways in which any such criteria can be met.

8.1.2 Using criteria

This guidance document seeks to supply additional criteria that may be of relevance specifically in the context of waste contracts. It is important only to ask for information that is relevant to a suppliers' ability to deliver the project. In the case of a waste contract, this may include evidence that the supplier is in a position to deliver the work in a way that is fully compliant with legal requirements. The public body should ensure that the information submitted is thoroughly reviewed at the selection stage, even if it is intended that further due diligence work may be carried out before the final award of a contract.

Table 8.1 Examples of selection criteria

Selection criterion	Example
Business probity and criminality checks	It is mandatory to require disclosure of offences connected with conspiracy, corruption, bribery, incitement, fraud and money laundering. In addition, specific, waste-related checks can be included as discretionary selection criteria, focusing on corporate breaches of licenses and individual convictions of senior staff for crime related to the service.
Technical and professional qualifications	For waste services, both industry or organisational standards (e.g. PAS402, ISO9001) and individual qualifications of senior staff may be relevant to demonstrating technical and professional qualifications.
Technical and professional qualifications	For waste services, both industry or organisational standards (e.g. PAS402, ISO9001) and individual qualifications of senior staff may be relevant to demonstrating technical and professional qualifications.
Capability, including experience	A useful way to assess such capacity is to rely on an external assessment of capability, in the form of a quality standard or qualification. As a minimum, the bidder should be required to demonstrate that they meet the 'fit and proper person' test under the Pollution Prevention and Control Regulations.
Economic and Financial Standing	Following the sPQQ, bidders should always be required to submit two years' audited accounts (or suitable alternative documentation such as bank references) to demonstrate their economic and financial standing.

These example criteria are explored in greater depth in subsequent sections of this guidance.

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8.1.3 Exclusion criteria

One form of selection criterion is an exclusion criterion. A bidder that fails an exclusion criterion may be ineligible to have their bid considered any further within the tender process.

The Scottish Government's sPQQ includes two types of exclusion criteria relating to criminal convictions and business probity:

- Mandatory criteria, where the law requires that bidders that have committed certain kinds of offence must be treated as ineligible; and
- Optional criteria, where the contracting authority can decide not to select bidders that fail.

You should refer to the sPQQ for details of the mandatory exclusion criteria.

The contracting body must ensure that the tender documents are clear about the criteria it will apply. Most crimes associated with waste services, whether at the organisational or individual level, would count as optional exclusion criteria, and public bodies will need to specifically include them in the selection criteria for waste tenders.

Example optional exclusion criteria that may be used in the context of waste services procurement are discussed in the following sections, including:

- Regulatory record
- Staff criminal records
- Vehicle seizure and restriction

8.1.3.1 Regulatory record

Public bodies should ask all bidders to disclose their environmental regulatory record, taking account not just of convictions but also any other action taken by enforcement

bodies. This may be assessed either as an exclusion criterion or as an additional pass/fail test. Bidders should be requested to provide the date and full details of any relevant regulatory action, including any sanction or penalty imposed. This may include prosecutions, but also formal notices and civil penalties. Bidders should also be asked to disclose their SEPA compliance score.

Regulatory record need not be limited to issues arising from waste management licences, but might also include considerations such as:

- Health and safety prosecutions; and
- Violations of vehicle licencing

Top tip

Require disclosure of information regarding the waste crime convictions and wider regulatory record of the bidders.

If a bidder has been required to disclose that all breaches, investigations and corporate convictions within a defined time period, the public body should:

- Ensure that as part of the tender, each bidder consents to the contracting body validating that the information supplied is complete and accurate by checking it with SEPA and Police Scotland (even if such checks may not be carried out in all cases).
- If the list is not complete, and serious matters are missing, and the contracting authority takes the view that the information has been withheld, this may be grounds to exclude the bidder for failing to make a full disclosure.

If treated as an exclusion criterion, the bidder's regulatory record should be assessed quantitatively, although it is likely to be appropriate to group any issues disclosed with reference to their seriousness.

The contracting body will need to set out in advance the criteria that it will apply to determine whether a bidder is eligible to participate in the tender.

Suggested wording: regulatory action

Please provide a statement of any regulatory action in respect of environmental legislation to which you have been subject in the past five years, including all breaches of licences, and the action taken to resolve the problems highlighted.

Top tip

Public bodies should be cautious in making all convictions for breaches of waste legislation exclusion criteria. Many larger waste contractors may occasionally be convicted of breaches, without this being indicative of systematic criminal behaviour. A more nuanced review of any breaches would have regard to:

- the seriousness of the offences (one conviction for a very serious crime might warrant exclusion, while three convictions for more technical breaches that caused little or no environmental damage might not); and
- the scale of the bidder's business (five convictions in respect of one site in a short period might warrant exclusion; five convictions in respect of 50 sites over a number of years might not).

A qualitative assessment for a pass/fail criterion might involve reviewing the information supplied regarding each incident, and taking account of the seriousness of the issue, whether it was a recurring problem, the approach taken by the bidder to resolving it, any convictions and the scale of any penalties imposed.

The requirement to provide details of the bidder's past regulatory record can be supplemented by also requiring the submission of a Declaration of Non-Involvement in Serious Organised Crime (see Appendix G for example text for such a declaration). If this declaration proves to be false, it will be grounds for termination of the contract.



Public bodies should ask all bidders to disclose the criminal records of their key staff. Public bodies can request bidders to submit information regarding whether their employees have criminal records.

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Top tip

A key optional selection criterion is to require all bidders to sign a Declaration of Non-Involvement in Serious Organised Crime (see Appendix G).

8.1.3.2 Disclosure of staff criminal records

Public bodies should ask all bidders to disclose the criminal records of their key staff.

Public bodies can request bidders to submit information regarding whether their employees have criminal records. Bidders are able to require employees to provide this information to them through Disclosure Scotland. The resulting information may be assessed either as an exclusion criterion or as an additional pass/fail test in the way described above. The contracting authority will need to ensure that it carefully considers how it evaluates information so as to avoid any unfair discrimination.

The contracting body may wish to check that:

- It has received a full list of key staff. This may need to be supported by organograms to show how the business is run and how the contract will be managed within the overall business structure.
- It has received up to date disclosure documents regarding each key staff member.
- It identifies any posts to which staff are to be recruited, so that it can request further disclosure documents when such posts are filled.

As part of the evaluation process, the public body will need to check whether the disclosure records contain reference to any convictions for crimes specified in the exclusion criteria. If any relevant convictions are reported, the public body will need to determine whether it can or wishes to take the bid forward.

Suggested wording: regulatory action

Please provide a statement of any criminal convictions of your directors or any other person(s) having powers of representation, decision or control of the organisation, or any member of key staff in the past five years.

8.1.3.3 Vehicle seizure and restriction

A further way to identify possible involvement in criminality is to require the bidder to declare whether any of their vehicles have ever been seized or restricted. The contracting body should also state that it will use publicly available records to check whether the bidder has been subject to action by the Traffic Commissioner. Serious vehicle offences or failure by the bidder to provide information regarding such action would be grounds to exclude the bid.

Suggested selection criterion wording: vehicle seizure and restriction

Please provide a statement of any seizure or restriction of your company's vehicles by any regulator or enforcement body in the past five years. We may check publicly available records to confirm information you provide.

8.1.4 Economic and financial standing

Following the sPQQ, bidders should always be required to submit two years' audited accounts (or equivalent evidence). Discussions with stakeholders have not indicated any specific questions related to financial standing that would be relevant to identifying or deterring bids from organisations engaged in crime.

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However, public bodies should always ensure that they are satisfied that the bidder's financial position is robust and does not represent an unacceptable risk to their ability to perform services required by the contract. The UK Government has produced guidance on assessing financial risk in the context of procurement.³

8.1.5 Technical and professional ability

The contracting authority should require the bidder to submit evidence of their technical and professional ability. This section provides suggested approaches by which bidders may be assessed in this regard.

As a minimum, for activities where a waste management licence is required, bidders should be able to demonstrate that they have been assessed to be fit and proper persons to hold such a licence. The fit and proper persons test requires those holding licenses to ensure that all staff engaged in carrying out waste management activity are provided with adequate professional technical development and training. However, contracting authorities may wish to consider putting specific technical and professional ability selection criteria in place.

8.1.5.1 Quality Standards

The sPQQ's suggested wording for an optional selection question on generic quality management is provided in the suggested selection criteria wording box. Bidders may respond either by supplying evidence of their audited quality management system, or by supplying details of their quality policies and how they are implemented. The bidder should also provide evidence regarding the quality policies of any sub-contractors that are featured in the bid.

Top tip

Consider the use of externally validated standards such as:

- At an organisational level, ISO14001 or PAS402; and
- At an individual staff member level, relevant qualifications and professional memberships as a means of assessing organisational technical and professional capability.

Suggested selection criterion wording: quality management

Explain how you manage communication with your clients to ensure continued delivery of a service or product that meets their needs. You should be able to demonstrate that your organisation communicates with their clients e.g. planned reviews, ad hoc meetings, and processes for communicating actions on a pro-active basis.

8.1.5.2 Scotland's Resource Sector Commitment

More directly relevant to waste management is Scotland's Resource Sector Commitment, a voluntary initiative for organisations in the resource management industry to demonstrate their support for Scotland's zero waste ambitions. Signatories of the scheme are subject to a regular review process to ensure they comply with nine standards, focussed on delivery of high-quality services consistent with legal requirements and excellent customer communication. Signatories of the Resource Sector Commitment show a company's commitment to delivering high quality resource management services and can be used as a standard in the selection process.

Zero Waste Scotland conducts periodic reviews of signatories' performance. Where failings are identified and measures to bring about improvement are not carried out, a signatory can be removed from the register. More details about the Resource Sector Commitment and how to apply can be found on the Zero Waste Scotland website.⁴

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8.1.5.3 PAS402

Publicly Available Specification (PAS) 402 is a standard under which waste and resource management organisations assess how they conduct activities, including how compliance with legal and other requirements is achieved. They publish information on their performance in an annual report. Copies of the standard can be obtained from the British Standards Institute.⁵

PAS 402 covers eight key areas of waste and resource management, and users are encouraged to consider the desirability of third party inspection of conformity to the standard.

Where a bidder can demonstrate that its compliance with PAS 402 has been externally validated, it will give a contracting body independent assurance regarding a bidder's competence and performance.

For other, more specialised areas of work, there may be other relevant standards. For example, the Zero Waste Scotland Revolve Accreditation Scheme may be applicable to re-use contracts, or PAS141 for contracts that involve Waste Electronic and Electrical Equipment.

8.1.5.4 Other criteria

Examples of other evidence regarding technical and professional capability that a public body might request from bidders as selection criteria include the following:

- The bidder or its staff having previously undertaken similar contracts – it may be desirable to obtain references or feedback from previous clients to verify that the contract was carried out.
- The bidder's staff having relevant qualifications, including relevant EUSkills or WAMITAB accredited qualifications, or membership of professional bodies.
- The bidder having sites that are licensed to undertake work of the type being procured (or having credible plans in place to obtain such a licence within the timescale required by the contracting body).

Suggested selection criterion wording: previous experience

Please provide two examples that demonstrate to the Authority experience that is relevant to this procurement exercise. Your examples must be from within the last three years. Please provide copies of completion certificates or customers' written declaration which validate the examples you have provided in response to this question.

- The bidder having available the technical resources, such as the plant, facilities and technical equipment, that will be required in order to deliver the work.

Suggested selection criterion wording: professional skills

Please provide a statement of the relevant professional and technical skills available within your organisation. Please provide copies of any certificates confirming relevant qualifications held by key staff who will be engaged in the delivery of the contract.

Suggested selection criterion wording: delivery of high quality waste services

Explain how you achieve high quality in the delivery of waste services. You should be able to demonstrate that your organisation: meets client quality expectations, communicates the outcomes of your work to clients and maintains compliance with environmental legislation. You may make reference to externally audited standards you hold.

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Suggested selection criterion wording: technical resources

Please provide a statement of the relevant technical resources such as the tools, plant, facilities and technical equipment available to your organisation. Please provide copies of any planning consents, licences or other documents confirming that the facilities referred to are able to be used for the delivery of work under the contract.

Public bodies should ensure that they receive a full list of the sites that the bidder proposes to use for the work. Bidders should be required to demonstrate that they have all necessary permits and licenses in place for the stages of the collection or treatment process for which it would be responsible.

Best practice checklist - selection criteria evidence

- Statement regarding legal compliance
- Details of regulatory breaches
- Criminal records disclosures
- Audited accounts (or equivalent evidence)
- Certificates confirming professional qualifications or quality management systems
- Waste carrier/broker registration, if required
- Permits/licences for sites and vehicles that will be used in the delivery of the contract services
- References

8.2 Award criteria

Award criteria assess the merits of each bid submitted, with the aim of identifying which of the eligible tenderers will deliver the best service for the contracting authority. The criteria identified must relate directly to the goods, services or works to be provided and not focus on the characteristics of the individual suppliers. Criteria should be designed to ensure that responses from suppliers clearly address the most critical aspects of the specification and allow a fair and equal comparison of bids.

Top tips

- Ensure that bidders are required to explain their approach to crime risk management, either within a dedicated method statement, or as part of each relevant method statement.
- In setting criteria, make sure that each serves a useful purpose, and that the aims of the procurement could not be achieved better by simply inserting a requirement in the specification.

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8.2.1 Method statements

The technical merit of bids is typically assessed through method statements supplied by the bidder in response to specific questions. The questions must be designed to elicit information concerning the detail of how the work will be carried out, whether by the bidder or their sub-contractors.

- It may be possible to obtain information about the bidder's approach to managing crime risk as part of the various method statements that explain how they will deliver the service. However, this approach will require careful consideration and application of the scoring criteria to ensure that waste crime risk is given due regard in evaluating each method statement.
- Alternatively, a specific question relating to waste crime may be asked. If this approach is taken, a public body will need to ensure that appropriate weight is given to this criterion in order to reduce the risk that a bidder that scores poorly on this criterion but well in other areas achieves the highest overall score.

A fixed set of method statement assessment criteria must be included in the tender documentation. These will include the weight given to each method statement, the scoring scale that will be used (e.g. 0-4 points) and a description in general terms of the characteristics of a method statement that will result in the score being awarded (e.g. "4 marks will be awarded where the bidder's method statement describes a method that, in the view of the evaluator, provides a high level of confidence that the bidder will be able to deliver the contracting body's requirements in full").

Example method statement requests

1. Please describe the steps that you will take to ensure that risks relating to crime are minimised in the course of delivering the services. You should take account of:
 - planning and licensing requirements.
 - duty of care (e.g. how you ensure that correct EWC codes are used for waste you dispose of).
 - managing your supply chain (e.g. what checks you carry out on your sub-contractors, how you trace waste to its end destination).
 - contingency arrangements to ensure service resilience.
2. Please explain the processes by which residual waste will be handed under the contract. You should explain:
 - the facilities that will be used to transfer waste.
 - the location(s) at and method(s) by which waste will be treated or disposed of.
 - how your proposed approach complies with the waste hierarchy.
 - how you will ensure that the risk of crime is minimised.

Best practice checklist - designing the evaluation criteria

- Have you included the mandatory exclusion criteria?
- Have you included specific crime related selection criteria, including any optional exclusion criteria?
- Have you included specific crime related award criteria?
- Have you required bidders to allow information to be validated with third parties such as SEPA?

9 Tender assessment

Evaluating bids is not straightforward. In order to achieve a robust result, good evaluation practice should be followed. The evaluation team should review the bids carefully, applying first the selection and then the award criteria that have been included within the tender process.

Assessment against the award criteria is intended to ensure that the public body obtains best value for money. Public bodies can award contracts either on the basis of the most economically advantageous tender (MEAT) or the lowest price, although under the new European Commission Procurement Directive 2014/24/EU, soon to be transposed into Scottish law, the Scottish Government plan to make rules to ensure contracts are not awarded on the basis of lowest price or lowest cost alone.

Awarding contracts on the basis of the MEAT allows public bodies to balance the quality of the goods, services and works they are procuring against price. Procuring a low quality service may prove to be a false economy: the contracting body is likely to be accountable for the service delivered, and poor quality may lead to dissatisfaction amongst those who receive the service.

Best practice checklist - selection criteria checks

- Have you reviewed the evidence supplied by the bidder regarding:
 - Their compliance with mandatory and optional exclusion criteria?
 - Their economic and financial standing?
 - Their technical and professional ability?
- Is the bidder properly registered as a waste carrier or broker, if they will be required to carry out these activities?
- Are up to date permits and licences in place for all sites that the bidder states in the tender they will use in the delivery of the contract services?
- Do the conditions on any permits or licences allow the bidder to deliver the services that the contracting authority requires – or does the bidder have a clear plan regarding how the relevant conditions will be amended prior to service commencement?
- Has all licence information required from sub-contractors been received and checked?
- If practicable, have you sought to confirm the statements made by the bidder (where you think additional validation is required) with SEPA and the police?

9.1 Abnormally low tenders

Whilst price is always a key consideration in tenders, a price can be too low to allow the contractor to deliver the required services legitimately.

The price quoted by each bidder will always be an important factor in deciding which tender is most economically advantageous over all. However, it is important to ensure that the winning bid is the one that achieves the right balance of quality and cost.

When assessing the price of a bid, the public body should consider whether the service is deliverable by legitimate means at the quoted price. If this does not appear to be the

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case, it is possible that the contracting authority may deem the tender 'sub-economic' or 'abnormally low'.

This process may be made easier if bidders have been required to break down their costs in some detail. However, bidders are wary of disclosing commercially sensitive information, and legitimate businesses may be deterred from submitting tenders if they are required to provide too great a level of detail.

An abnormally low tender will always be a cause for concern. In the context of crime, it may be an indication that a tenderer:

- Will not be able to (or possibly even plans not to) manage the waste in line with current laws and regulations;
- Plans to employ sub-contractors that will not handle waste legitimately; or
- May inadvertently find that they derive insufficient income from the contract to manage the waste legitimately which in turn increases the risk of crime.

While the Directives outline reasons why tender pricing may be abnormally low, for example non-compliance by the bidder with social, environmental or labour law, there is no prescribed definition of an abnormally low tender within the EU directives or within Scottish law. It is therefore open to each contracting authority to determine its own process within each tender.

In order to identify an abnormally low tender, a degree of technical and commercial knowledge is likely to be required amongst the evaluators, and the contracting body is likely to need an understanding of what a realistic price would be for the service.

It can be reasonable to consider a bid in which the quoted price is considerably lower than the average of all of the bids received as 'abnormally low'. However, in order to state with confidence that a bid is abnormally low, it is important to understand the expected service costs: bids below this level would be likely to be considered

'abnormally low'. An example would be a residual waste contract in which the total cost charged per tonne to be treated or disposed of is less than or equal to the value of the landfill tax payable on the material. However, a low residual waste treatment cost might be explained if the bidder could evidence that they had secured a very low gate fee at a treatment facility or were seeking to use spare capacity at marginal cost. In some cases, a bidder may submit a low price where they consider a contract to be strategically important.

The contracting body may wish to reach a view in advance regarding what it would consider to be an abnormally low price for the work it is tendering, although it will need to be ready to take account of the specific circumstances of the particular tenders.

The contracting authority may reject an abnormally low tender only if it has:

- requested in writing an explanation of the offer being abnormally low;
- taken account of the evidence provided; and
- verified the offer or parts of the offer being abnormally low with the bidder.

Under current legislation, this process is required only where the public body proposes to reject an otherwise winning bid as abnormally low. However, when Scotland implements the new EU Directive on Public Procurement (2014/24/EU), contracting authorities will be required to examine all abnormally low tenders, regardless of whether this affects the outcome of the tender. The new directive also states that rejection of a bid should be mandatory if the contracting authority establishes that an abnormally low bid results from non-compliance with environmental, social or labour laws.

Where a tenderer submits a bid that a public body deems abnormally low and is unable or unwilling to provide adequate evidence to explain its price the public body should advise SEPA, in case it is indicative of an ongoing breach of environmental legislation.

Top tips

- Ensure that any bidder that submits what appears to be an abnormally low tender is asked to provide an explanation of the price; and that if they are unable to do so, the tender is excluded. Information should then be passed to SEPA.
- If the price is too low to enable the service to be delivered to the standard the contracting body requires, the contractor may withdraw, or the parties could become embroiled in expensive contractual disputes.
- Make sure that the latest public procurement law is applied. When Scotland implements the new EU Directive on Public Procurement (2014/24/EU), contracting authorities will be required to examine all abnormally low tenders.

Best practice checklist – tender assessment

- Have you reviewed all of the information supplied by bidders regarding their legal compliance?
- Have you validated compliance information with SEPA and the Traffic Commissioner?
- Have you assessed whether any tenders appear to be abnormally low?
- Have you sought clarifications where a bidder's approach to tackling crime is unclear?

Red flags – characteristics of bids received

- Has the bidder disclosed significant or numerous licence breaches?
- Has the bidder disclosed that it is carrying out work for which it has no licence?
- Has the bidder disclosed that it has carried out work for which its staff are not qualified?
- Has the bidder disclosed that it has carried out work for which it lacks the necessary technical resources (plant, machinery etc.)?
- Has the bidder disclosed that key staff have relevant convictions for serious criminal offences?
- Have any of the bidder's vehicles been seized or restricted?
- Is the price significantly lower than expected, or out of line with others received?
- Is the bidder reluctant to allow you to undertake site visits at short notice?
- Has the bidder provided incomplete or unconvincing method statements describing how the service will operate?

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10 Due diligence and contract award

It is good practice to build a final due diligence stage into the tender process. Due diligence will be most effective where it takes place before any decision on contract award is made, although some due diligence work might conceivably be undertaken during the mandatory standstill period following the notification of bidders regarding the outcome. During the due diligence phase, the contracting authority should revisit any issue where there is any remaining lack of clarity regarding information supplied, especially regarding the selection criteria, or where circumstances may have changed since the bid was submitted.

Real life example:

In one UK case, a public sector works contract worth £1.5 million was awarded to a criminal tenderer because of the failure of these checks and balances.

Red flags – due diligence

- Is any of the information received in the tender unclear on key points that could affect the decision to award?
- Have any new prosecutions or convictions arisen during the time since the bid was submitted that might affect the appropriateness of awarding the contract to a particular bidder?
- Have there been any delays in obtaining licenses or planning consents that are required in order for the service to be delivered.

Due diligence should not offer an opportunity for any bidder's award scores to be improved.

There are three main ways to undertake this due diligence:

- Require the bidder to resubmit information that has changed;
- Undertake fresh site audits to check whether circumstances have changed; or
- Contact SEPA, Police Scotland and the Traffic Commissioner to check the current compliance status of the preferred bidder.

Top tip

Seek evidence that all requisite licences, planning consents and other pre-conditions of carrying out work legally are in place, or that there are robust plans to put them in place in advance of the commencement of the contract.

Best practice checklist – due diligence and contract award

- Ensure that the due diligence stage is built into the procurement process.
- Seek fresh information from bidders regarding any changes to documents previously submitted (e.g. licences, criminal records).
- Seek fresh information regarding legal and regulatory compliance, both from the bidder and from bodies such as SEPA and Police Scotland.

11 Contract monitoring

There is a good deal that public bodies can do to reduce the risk that a contract is let to an organisation involved in crime. However, this does not reduce the risk to zero. No system is fool proof and even an organisation that was acting in compliance with the law at the time when a contract was let may change its practices at a later date. It is therefore important that good procurement procedures are backed by an approach to contract management that helps to ensure that any criminal activity on the part of a waste contractor is likely to come to light.

Top tip

Make sure that contract reviews take place on schedule, and that the contractor submits information when the contract requires it. Use contract powers to undertake site visits at intervals.

A contract will only be effective in minimising the risk of crime if it is properly implemented and the public body acts proactively. During the course of the contract, the public body should ensure that it regularly conducts checks on the information it receives, follows up when information is not supplied in a timely way and undertakes audits where these are mandated by the contract.

Real life example:

A private contractor in the UK was awarded a contract for service provisions by a public body and submitted payment requests for work carried out. Payments were made on the basis that requests were valid and that the work was being carried out appropriately. Further substantiation was requested from the contractor to support payment requests and documentation was found to have been altered and signatures forged. The payments were in the region of £50,000.

11.1 Information sharing

Good information sharing is an excellent way to identify risk. It is worthwhile for a public body to provide information to SEPA who its waste contractors – and their sub-contractors – are, and to discuss its experiences with other public bodies in the same market.

Equally, regular contact between SEPA and public bodies that have waste contracts will enable SEPA to share information with public bodies if concerns emerge about a contractor with which they have a relationship.

While informal information sharing regarding concerns and suspicions is unlikely to ever justify withdrawing a contract, receiving it can legitimately prompt actions such as requesting data or undertaking an inspection or audit, which may draw out more tangible evidence. The results of a site audit might then allow the public body to take action under the contract. Otherwise, sharing information with SEPA will help to inform any investigative action the regulator may decide to take.

Where a public body suspects that a bidder or contractor may be involved in crime, they should in all cases report their concerns to the relevant authorities, which include SEPA, Police Scotland or HMRC.

Real life example:

A UK company run by organised crime was within 72 hours of obtaining a contract worth over £10 million. This was only averted by dedicated information sharing and intelligence exchange between regulators and law enforcement which identified that the organisation was bidding for a public service contract. Improved bid publicity would have greatly improved visibility and the changes of early detection.

Top tip

Each local authority has a nominated officer who acts as the Single Point of Contact (SPOC) with Police Scotland for Serious Organised Crime issues. Local authorities should contact this officer in the first instance to discuss issues related to waste crime

11.2 Regular and ad hoc checks

A public body should put in place regular contract management meetings with their contractors.

The public body should maintain a calendar that sets out when it should expect to receive information required by the contract for review, which may include:

- Annual financial statements.
- Waste management licences.
- Operator licences.
- Waste-related registrations and standards.
- Duty of care documentation.

The public body may also wish to set dates when it will check with the contractor whether any update is needed regarding ad hoc information:

- Changes to sub-contractors.
- Identified licence breaches by the contractor or its sub-contractors.
- Actions taken to address breaches by the contractor or its sub-contractors.

Compliance risks should be discussed at regular contract monitoring meetings and any actions to improve risk management should be recorded and followed up.

Where the public body is entitled to carry out short-notice site visits or audits, it will wish to monitor closely any information that might trigger such action; it may wish to put in place an audit programme that defines regular visit dates, and a plan designed to focus on crime risk factors (potentially considering criminal activity other than that directly associated with waste) at sites that are visited.

Advice on auditing a waste site is included in Appendix F.

Results of any audits should be recorded, and the findings should be discussed with the contractor as soon as possible after the visit. Where rectification is needed, specific and time-bound actions should be agreed. The contracting body should keep track of agreed actions and ensure that progress is monitored at regular meetings with the contractor.

If information comes to light that indicates that the contractor has breached the contract (e.g. they have not self-declared a prosecution), an urgent meeting should be called, and the sanctions available under the contract should be used, in line with the contract performance framework.

Top tip

If action is being considered against a contractor, it may be useful to prepare an impact statement for the Crown Office Procurator Fiscal Service which highlights the impacts of the contractor's activities on the local communities and environment.

11.3 Indicators

Where a public body has an existing relationship with an outsourced provider, certain indicators may suggest that there is a risk of criminal activity occurring within the arrangement:

- A contract has been extended in a way that is not mandated by the contract terms, or work has continued after the contract has ended; an indication that procurement impropriety has taken place may also suggest other problems with the contract.
- Contract or supplier management arrangements are absent or weak.

- Costs appear to differ significantly from market rates.
- Substandard service has not been addressed.
- Inflated and/or duplicate invoices have been submitted for services.
- Performance figures have been manipulated.

Where any of these factors is in place, it may merit closer investigation by the public body, and action to rectify any problems that are identified.

Red flags – contract management

- Has the contractor informed you of serious or recurring permit breaches that it (or its subcontractor) has committed?
- Has the contractor failed to inform you of a waste-related or other criminal conviction?
- Has there been a change in one of the key subcontractors (e.g. an organisation that receives a large amount of waste from the contractor)?
- Has the contractor failed to provide information when requested/scheduled?
- Is the contractor reluctant to allow access to its site for an inspection?

Top tip

Regular contract reviews provide an opportunity to address concerns about a service before they become serious.

Top tip

Ensure that even minor breaches are recorded to ensure that you are in a strong position to take action if problems are not rectified promptly.

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Best practice checklist – managing the contract

- Does the contractor supply the information that the contract requires regarding their legal compliance?
- Do you regularly review compliance information (e.g. waste transfer notes)?
- Do you regularly discuss the issue of legal compliance at contract review meetings?
- Do you have up to date information regarding any sub-contractors that are used to deliver the contract?
- Do you share information about your contractor with SEPA and with other public bodies? Do you encourage SEPA to share any concerns or information regarding the contractor?
- Are you making full use of your contract powers to push for better performance, or to enable you to take action if matters do not improve?



Make sure the contractor supplies information regarding their legal compliance

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12 Guidance for bidders

The best practice for public bodies included in this guidance will require bidders to alter the way in which they respond to tenders. This section is designed to explain more about what contractors can do to enable them to demonstrate compliance with their legal requirements in the way that public bodies require.

12.1 Selection criteria

The Scottish Government has made guidance available on how to complete the standard PQQ, based on consultation with business and the wider public sector.⁶ Contractors that frequently bid for public contracts can make the process of demonstrating compliance simpler by maintaining records that can easily be accessed when needed so that they are readily available to consult and supply as part of their response to selection criteria that public bodies are likely to apply.

Being prepared to respond will reduce the risk that accurate information cannot be obtained within the timeline required by a particular tender process. Contractors should ensure that they make accurate responses, as being found to have withheld information will be likely to result in the bid being invalidated or (if only discovered later) the contract being withdrawn.

Top tip

Familiarise yourself with the Scottish Government's standard Pre-Qualification Questionnaire (sPQQ), and ensure that you maintain up to date and easily accessible records that will enable you to meet its requirements.

Much of the information that is likely to be requested by a public body will be held as a matter of course, such as:

- Financial records
- Waste management licences
- Operator licences
- Waste-related registrations
- Duty of care documentation
- Records of regulatory inspections, actions required and any enforcement action taken

Top tip

Consider obtaining a quality management standard such as PAS402 or ISO9001

Some criteria may not be able to be met by way of information that will be held as a matter of course.

- Contractors may wish to ensure that they regularly request some or all of the details listed above from sub-contractors that they regularly work with, which may save time in the course of a bid and provide assurance that the sub-contractors continue to be reliable.
- The lead time for obtaining accreditation to any ISO standard or signing up to the Resource Sector Commitment may be longer than the timetable for a specific procurement. Contractors may therefore wish to consider whether to take such steps in support of a business strategy to seek public sector waste work. Contact

details for accrediting organisations can be found in Section 10. If obtaining an externally audited standard seems disproportionate, it may be worthwhile considering putting in place and maintaining documented processes that can be put forward as credible equivalents to externally validated standards.

- Contractors may wish to maintain records of past contracts and to obtain feedback from clients to validate their experience and demonstrate that work has been carried out to a satisfactory standard.
- Contractors should ensure that their recruitment process requires employees to disclose past convictions that are not spent. Any employer may request an employee to obtain from Disclosure Scotland a basic disclosure stating any unspent convictions. Disclosure Scotland expects to supply a basic disclosure within 14 days of receiving a request, so it should be possible to obtain fresh basic disclosures in a timely way when required.

Many organisations are familiar with public procurement processes, the steps involved and what they need to demonstrate. For those with less familiarity, some public bodies offer opportunities such as 'supplier surgeries' where businesses can find out more about what is involved. The focus of this guidance is on how to comply with the specific measures suggested in this document regarding tackling crime associated with waste services.

12.2 Award criteria

12.2.1 Method statements

When preparing method statements, contractors should seek to respond directly and concisely to, focusing on the practical actions that will be carried out. Describing generic organisational policies, or offering aspirational comments that are not specific regarding what will in practice be delivered are unlikely to score well.

The bidder must ensure that method statements respond to the specific questions that are asked and encompass any aspects of the work that will be delivered by sub-contractors.

In the context of crime, contractors should ensure that they are able to explain considerations such as the following:

- How any organisational policies on crime prevention will be applied specifically to the work being procured.
- How compliance will be monitored, and the actions that will be taken if a problem is identified.
- How the selection of any sub-contractors or waste treatment providers takes account of their compliance record, and how their compliance will be incentivised and monitored.
- How the client will be kept informed regarding any issues that arise.

Top tip

Make sure you have a clear corporate plan regarding how you will prevent crime, so that you can incorporate it into method statements for new work.

12.2.2 Price

Pricing a service is always a commercial decision, and setting a competitive price is often key to winning a contract. However, it is important that at the outset of preparing a bid, a bidder should look at the balance between price and quality that the tender calls for, and decide on the strategy it proposes to adopt in order to maximise its chances of winning. Where quality is given a high priority, it will need to be given due emphasis in

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the preparation of the service proposal, even if this means that the service cannot be delivered at a low price.

Bidders will naturally wish to price up a service carefully to ensure that the requirements of the specification can be delivered profitably. Where a bidder has a competitive advantage that they believe may enable them to offer a price lower than they expect competitors to be able to offer, this may be information that they regard as commercially sensitive.

Top tip

It may be in a bidder's interest to explain in their submission the reasons why they are able to offer a particularly low price, while withholding commercially sensitive details of the exact costs that will be incurred.

12.3 Contract management

During the lifetime of the contract it is important to maintain awareness not just of operational requirements, but also of the information that the contract obliges a contractor to provide to the client. Whilst the focus for all parties can often be on delivering the required operational outcomes, both types of contractual requirement are equally binding.

At the start of the contract, it may be useful to review the information that is required by the client and ensure that procedures are in place to make sure that both regular and ad hoc information requirements can be complied with promptly. If procedures have been put in place to ensure that information is available to feed into bids, these processes should supply most of what is required.

The key information you may be requested to provide includes:

- Annual financial statements.
- Waste management licences.
- Operator licences.
- Waste-related registrations and standards.
- Duty of care documentation.

The public body may also wish to set dates when it will check with the contractor whether any update is needed regarding ad hoc information, which will only be available when some specific action has taken place:

- Changes to sub-contractors.
- Identified licence breaches by the contractor or its sub-contractors.
- Actions taken to address breaches by the contractor or its sub-contractors.

In the event that of any form of regulatory action, it is important to ensure that public sector clients are alerted to this, especially where such notification is a contractual requirement. Failing to do so when required is more likely to be a serious breach of the contract than is a licence breach that is promptly remedied. Where problems arise, it may be wise to discuss them with public body clients, explaining the circumstances and the action being taken, and enabling the client to ask any questions and satisfy any concerns they may have.

13 Summary of key actions

The following checklist summarises the key questions that a public body may wish to ask when procuring waste related services in order to seek to minimise the risk of crime.

13.1 Designing the service

- Have you assessed the inherent degree of crime risk in the service you wish to procure?
- Have you included a clear emphasis on legislative compliance within the drafting of the specification?
- Have you included measures in the service specification to minimise key risks (e.g. sub-contractors/waste treatment providers)?
- Does the contract allow for effective monitoring of the contract, and regular and ad hoc reviews and audits of the contractor?
- Have you included relevant requirements regarding reporting and disclosure of licence breaches and other regulatory interventions?
- Has a bond or other financial guarantee been included in the contract to help manage risk?
- Have you built in appropriate contract sanctions?

13.2 Designing the tender process

- Have you included specific crime related selection criteria?
- Have you included specific crime related award criteria?

- Have you required bidders to allow information to be validated with third parties such as SEPA?
- Have you included the right mix of procurement and operational expertise in the procurement team?

13.3 Assessing tenders

- Have you appointed an assessment team that combines procurement, waste and strategic expertise?
- Have you reviewed all of the information supplied by bidders regarding their legal compliance?
- Have you validated compliance information with SEPA?
- Have you assessed whether the method statements supplied provide a clear assurance regarding the bidder's ability to comply with its legal obligations in full?
- Have you assessed whether any tenders appear to be abnormally low?
- Have you sought clarifications where a bidder's approach to tackling waste crime is unclear?

13.4 Managing the contract

- Does the contractor supply the information that the contract requires regarding their legal compliance in a timely and transparent way?
- Is the contractor managing its sub-contractors effectively?
- Do you regularly review compliance information (e.g. waste transfer notes)?
- Do you regularly discuss the issue of legal compliance at contract review meetings?
- Do you have up to date information regarding any sub-contractors that are used to deliver the contract?
- Do you share information about your contractor with SEPA and with other public bodies? Do you encourage SEPA to share any concerns or information regarding the contractor?

Appendix A - Contributors

We would like to thank the following people and organisations for their contribution to the development of this guidance:

- Robin Baird, Falkirk Council
- Peter Brown, Procurement Scotland
- Alan Dron, Police Scotland
- Bill Duncan, South Ayrshire Council/Local Authority Recycling Advisory
- George Eckton, Convention of Scottish Local Authorities
- Ian Flaherty, DJ Laing
- Stephen Freeland, Scottish Environmental Services Association
- Bobby Gavin, Valpak
- Robert Guthrie, SEPA
- Gary Mooney, Scotland Excel
- Linda Ovens, CIWM Scotland
- Peter Stapleton, Scottish Government
- Robin Stevenson, Wm Tracey

Appendix B - Glossary of acronyms

- HWRC – Household Waste Recycling Centre
- KPI – Key Performance Indicator
- MEAT – Most Economically Advantageous Tender
- PQQ – Pre-Qualification Questionnaire
- SEPA – Scottish Environment Protection Agency
- sPQQ – The Scottish Government's standard PQQ
- VOSA – Vehicle and Operator Services Agency
- WEEE – Waste Electronic and Electrical Equipment

Appendix C - Public resources

This guidance was informed by the following public sources:

Waste crime

- Report on the Outcomes of the Environmental Crime Task Force: <http://www.scotland.gov.uk/Resource/0043/00439328.pdf>
- Britain's Dirty Secret: http://www.esauk.org/esa_reports/ESAET_Waste_Crime_Tackling_Britains_Dirty_Secret_LIVE.pdf

Procurement legislation

- Procurement Reform (Scotland) Act 2014: <http://www.legislation.gov.uk/asp/2014/12/contents>
- European Commission Procurement Directive 2004: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32004L0018>
- European Commission Procurement Directive 2014: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014L0024>

Scottish procurement guidance

- Scottish Government Procurement Website: <http://www.scotland.gov.uk/Topics/Government/Procurement>
- Standard PQQ: <http://www.scotland.gov.uk/Topics/Government/Procurement/buyer-information/standardformsanddocs/sPQQ0214>
- Procurement Policy Note – Supplier Financial Risk Issues, February 2013, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/137569/PPN_Supplier_financial_risk_Feb-18.pdf

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Quality standards

- Zero Waste Scotland Resource Sector Commitment: <http://www.zerowastescotland.org.uk/ResourceCommitment>
- PAS402: <http://www.cewales.org.uk/cew/wp-content/uploads/CEW-Guide-to-PAS-402.pdf>

Appendix D - Key contacts

Scottish Environment Protection Agency (SEPA)

Strathallan House
The Castle Business Park
Stirling
FK9 4TZ
Phone 03000 996699

Police Scotland

Each local authority has a nominated officer who acts as the Single Point of Contact (SPOC) with Police Scotland for Serious Organised Crime issues. Local authorities should contact this officer in the first instance to discuss issues related to waste crime.

Alternatively, Police Scotland can be contacted at:

Police Scotland Headquarters

PO Box 21184

Alloa
FK10 9D
Phone 01786 289 070

Office of the Traffic Commissioner (Scotland)

Level 6
The Stamp Office

10 Waterloo Place
Edinburgh
EH1 3EG
Phone 0300 123 9000
Fax 0131 229 0682

Appendix E - Procurement reform

Although the precise dates are not yet known, a number of further developments that have a bearing on this guidance are expected over the course of coming years. Users of this guidance should bear in mind that changes in the legislative and procurement landscape in Scotland may take precedence over the advice provided here.

Several new pieces of legislation are expected to change the regulatory framework for public procurement across the Scottish public sector:

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- The Procurement Reform (Scotland) Act 2014, provides Ministers with new powers to make regulations and to issue statutory guidance, including regulations to require a contracting authority to exclude an economic operator from a regulated procurement (other than an EU-regulated procurement) if the operator or key people running it have been convicted of specified offences. The new duties will not come into effect until further Regulations are in place, likely to be towards the end of 2015.

■ Three new EU Directives:

- EU Procurement Directive (Classic) – on public procurement, which will introduce a number of changes to current procurement requirements, including the introduction of a new procurement type ('Innovation Partnership'), and will extend authorities discretion regarding the exclusion of potential suppliers on the grounds of poor track record, including criminal activity and "grave professional misconduct, which renders its integrity questionable".
- EU Procurement Directive (Concessions) – which will extend EU procurement principles to the award of concession contracts.
- EU Procurement Directive (Utilities) – on procurement by entities operating in the water, energy, transport and postal services sectors.
- Work on the development of those Regulations and the supporting Statutory Guidance is being taken forward together with work on the Regulations that are required to 'transpose' (implement) the three new EU Directives into Scots law. The new legislation is expected to be in place towards the end of 2015, but must be implemented in new Scottish Regulations by 18 April 2016.
- In addition, Scottish Procurement is working to develop a Scottish Materials Brokerage Service, which will in due course be available to public bodies in Scotland.

- Whilst these developments will alter the waste services procurement landscape in Scotland in ways that will help to prevent waste crime, there remain a wide range of actions that public bodies can take to minimise the risk that waste will end up in criminal hands.

Appendix F - Auditing waste sites

Auditing waste sites requires a significant level of planning in order to ensure that the process yields reliable results. A public body may wish to seek professional advice if considering undertaking audits.

In broad outline, the audit process may be summarised as follows:

Task 1: Initial scoping

Confirm the scope and timetable of the work, defining the objective of the audit and when and where it is to be carried out. This might, for example, be to gain an assurance that licenses are up to date and that there is clear evidence of compliance in practice.

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Task 2: Audit planning

Draw up an audit plan defining what specific tests will be carried out to meet the objective and the evidence that will be required in order establish whether the tests are met. Audit record sheets may need to be devised to capture the findings in a consistent form, and a scoring system to highlight minor and major non-compliances.

Task 3: Undertake audit

An audit may include:

A: Review of documents

Documentary evidence may include:

- Records of the contractor's own internal audit work
- Waste carrier registrations
- Operator licences
- Environmental permits
- Weighbridge certificates
- Planning permissions
- Records relating to transfrontier shipments of waste

Documents can be used to evidence whether:

- All sites have appropriate permits in place.
- All material received has been either properly treated/disposed of on site, or passed on to a legitimate third party.
- Where waste is transferred to a third party, they are also able to properly evidence what happens to the material they receive.
- All subcontractors and third party waste service providers have appropriate permits in place.

- All waste carriers used are properly registered.
- Appropriate waste transfer records are in place in respect of any waste exported.
- Appropriate European Waste Codes are used throughout the documents, reflecting the nature of the waste expected to be transferred.

B: Site visits

Site visits can be used to validate information supplied in documentary records or to investigate cases where documentary records are weakest or the risks of non-compliance are greatest (e.g. because large quantities of waste are received, because of the nature of the treatment undertaken, or because there are numerous subcontractors/treatment providers before the material reaches its final destination).

The site visits will typically accomplish three principal aims:

1. Check and obtain copies of the most up to date documentation such as permits, waste transfer notes and operator licenses.
2. Observe operations at the sites and ask staff questions to seek to establish whether waste matches the codes being used and whether it is consistently being handled in line with the permits and good practice. This will include enquiries regarding any regulatory action taken in connection with the site.
3. Seek explanations for any discrepancies between the documents and on-site observations. These explanations will be recorded so that these can be reported to the council alongside our findings.

Task 4: Review findings and agree actions.

Once the audit work is complete, the results should be summarised and findings reviewed. The public body should share its findings with the contractor and agree actions to be carried out to rectify any problems identified.

Appendix G - Declaration of non-involvement in serious organised crime

Police Scotland has identified that this is a business area which may be attractive or vulnerable to exploitation by serious organised crime groups

Section 28 - Involvement in serious organised crime

(1) A person who agrees with at least one other person to become involved in serious organised crime commits an offence.

(2) Without limiting the generality of subsection (1), a person agrees to become involved in serious organised crime if the person —

(a) agrees to do something (whether or not the doing of that thing would itself constitute an offence), and

(b) knows or suspects, or ought reasonably to have known or suspected, that the doing of that thing will enable or further the commission of serious organised crime.

(3) For the purposes of section 28 and 31:

- “serious organised crime” means crime involving two or more persons acting together for the principal purpose of committing or conspiring to commit a serious offence or a series of serious offences,
- “serious offence” means an indictable offence —

(a) Committed with the intention of obtaining a material benefit for any person, or

(b) which is an act of violence committed or a threat made with the intention of obtaining such a benefit in the future, and

- “Material benefit” means a right or interest of any description in any property, whether heritable or moveable and whether corporeal or incorporeal.

(4) A person guilty of an offence under subsection (1) is liable —

(a) on conviction on indictment, to imprisonment for a term not exceeding 10 years or to a fine or to both,

(b) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or to both.

Section 31- Failure to report serious organised crime

(1) This section applies where —

(a) A person (“the person”) knows or suspects that another person (“the other person”) has committed —

(i) an offence under section 28,

(b) That knowledge or suspicion originates from information obtained —

(i) in the course of the person’s trade, profession, business or employment, or

(ii) as a result of a close personal relationship between the person and the other person.

(2) In the case of knowledge or suspicion originating from information obtained by the person as a result of a close personal relationship between the person and the other person, this section applies only where the person has obtained a material benefit as a result of the commission of serious organised crime by the other person.

(3) The person commits an offence if the person does not disclose to a constable —

(a) the person's knowledge or suspicion, and

(b) the information on which that knowledge or suspicion is based.

(4) It is a defence for a person charged with an offence under subsection (3) to prove that the person had a reasonable excuse for not making the disclosure.

(5) Subsection (3) does not require disclosure by a person who is a professional legal adviser (an "adviser") of —

(a) information which the adviser obtains in privileged circumstances, or

(b) knowledge or a suspicion based on information obtained in privileged circumstances.

(6) For the purpose of subsection (5), information is obtained by an adviser in privileged circumstances if it comes to the adviser, otherwise than for the purposes of committing serious organised crime —

(a) from a client (or from a client's representative) in connection with the provision of legal advice by the adviser to that person,

To ensure that company name do not unwittingly engage with serious organised criminals through the contracting or letting of any services it is considered relevant and proportionate to obtain a 'declaration of non- involvement in serious organised crime'

(b) from a person seeking legal advice from the adviser (or from that person's representative), or

(c) from a person, for the purpose of actual or contemplated legal proceedings. (7) A person guilty of an offence under this section is liable —

(a) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine or to both,

(b) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or to both.

To satisfy the requirements of that declaration it is necessary that an authorised signatory confirms that the content of the following statement is applicable to your company or each of the companies within the group or consortia.

I confirm that I have received, read over and understood sections 28 and 31 of the following legislation, Criminal Justice and Licensing (Scotland) Act 2010.

I hereby declare that I have nothing to report in relation to this legislation at this time.

'I can confirm that no director, shareholder, or other persons who have power of representation, decision or control over in respect of my business area or otherwise connected to me are engaged in serious organised crime, as defined in the Criminal Justice and Licensing (Scotland) Act 2010.

In making this declaration, I confirm that I have taken all the necessary steps to ensure the accuracy of my attestation and understand that the wilful provision of misleading or inaccurate information may constitute fraud and or termination of my contract.

Print name ***name of company director***

Signed ***name of company director***

Company business details include address and postcode ***details of company address etc.***

Home address including postcode ***home address of company director***

Contact telephone number ***company business phone number***

Witnessed by ***name***

Job title ***company director***

Witnessed by ***name***

Job title ***employee***

Signed ***name of company director***

Signed ***name of company employee***

Date and place of signature ***date & place***

Date and place of signature ***date & place***

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End notes

Foreword

[1] Eunomia Research & Consulting (2014) Waste Crime: Tackling Britain's Dirty Secret, Report for ESA Education Trust, April 2014, http://www.esauk.org/esa_reports/ESAET_Waste_Crime_Tackling_Britains_Dirty_Secret_LIVE.pdf

[2] The Serious Organised Crime Task Force (2009) Letting Our Communities Flourish: A Strategy for Tackling Serious Organised Crime in Scotland, Report for Scottish Government, June 2009,

<http://www.gov.scot/resource/doc/274127/0081989.pdf>

¹ SEPA New Environmental Enforcement Framework - Consultation on New Enforcement Measures for the Scottish Environment Protection Agency and the Relevant Offences Order - Page 4, accessed 2 February 2015,

<http://www.scotland.gov.uk/Publications/2014/07/6322/4>

² See <http://www.scotland.gov.uk/Topics/Government/Procurement/buyer-information/standardformsanddocs/sPQQ0214>

³ See UK Government (2013) Procurement Policy Note – Supplier Financial Risk Issues, February 2013, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/137569/PPN_Supplier_financial_risk_Feb-18.pdf

⁴ See <http://www.zerowastescotland.org.uk/ResourceCommitment>

⁵ See <http://shop.bsigroup.com/ProductDetail/?pid=000000000030186242>

⁶ Scottish Government Information for Suppliers, accessed 8 February 2015, <http://www.scotland.gov.uk/Topics/Government/Procurement/Selling>

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@ScottishEPA

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