

Scotland Excel Academy

Fraud in Procurement

5 November 2025

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What is Procurement Fraud?

Procurement fraud is a deliberate deception intended to influence any stage of the procure-to-pay lifecycle in order to make a financial gain or cause a loss.

It can be perpetrated by suppliers, contractors or sub-contractors external to the organisation, as well as staff within the organisation.

What does it look like?

- **Bribery** – the act of giving or receiving something of value in exchange for some kind of influence or action in return, that the recipient would otherwise not offer.
- **Collusion** – agreement between people to act together secretly or illegally in order to deceive or cheat someone. Can be carried out between contractors or between the procurer and bidder.
- **Conflict of interest** – a situation in which a person or organisation is involved in multiple interests (financial or otherwise), and serving one interest could involve working for/against another.
- **Corruption** – the abuse of entrusted power for private gain.
- **Fraud** – an act of deception carried out for personal gain or to cause loss to another party.
- **Money laundering** – the concealment of the origin of illegally obtained money, typically by means of transfers involving banks or legitimate businesses.

What does it look like?

Pre-contract

- Bid-rigging / Price fixing
- Cover Pricing – submit false bids
- Collusion
- Bribes/kickbacks

Post Contract

- False Invoicing
- Payment for sub-standard work
- Overpricing of goods or services
- Cyber-fraud
- Organised crime

Procurement Fraud Risks

Procurement Fraud Risk	
Price fixing	Suppliers collude to fix the prices they will charge
Market sharing	Suppliers collude to divide up markets between them (eg geographical market share).
Bid rigging	Suppliers collude to ensure a particular bidder wins the contract, for example, by reaching an agreement on the bids that will be submitted. Bid rigging may involve 'cover pricing' where high bids which are not intended to be successful make the favoured bid look more attractive, and may involve 'compensation payments' to those bidders who do not win. 'Bid suppression' is where one or several bidders withdraw their bid (or fail to bid) or 'Bid rotation' is where bidders take turns at submitting the lowest price.

Procurement Fraud Risks

Procurement Fraud Risk	Meaning
Manipulation of specifications	Specifications are manipulated to favour a particular bidder. Or specifications not fully developed before contract award.
Manipulation of procurement procedures	The procurement procedure is manipulated to ensure a particular bidder is successful. For example: • rigging of exclusion/selection/award criteria • unjustified recourse to single sourcing (direct negotiation) or contract scope change without the need for re-competition • unjustified contract extension • disclosing confidential and commercially sensitive information about other bids during negotiations.

Procurement Fraud Risks

Procurement Fraud Risk	Meaning
Bribery for awarding a contract	A bribe ('kickback') is given to an employee to secure the award of a contract
Bribery for disclosing confidential information	A bribe is given to an employee to secure the disclosure of confidential and commercially sensitive information such as the content of competing bids.
Conflict of interest	An employee does not disclose a pecuniary or other personal interest in a contract. This might be perceived to compromise their impartiality and independence in the context of the procurement or contract management process
Cyber-fraud	Hacking into systems to obtain confidential and commercially sensitive information.
Overcharging	Overbilling in relation to the goods and services which have been delivered.



Business Sectors

Business sector	Sub-sectors
Property	Property development / property maintenance; Groundworks / landscaping; Roofing; Building / construction – commercial & residential; Joinery; Scaffolding; Demolition.
Vehicle / Transport	Taxi / private hire companies; Car/Truck repairs / maintenance; Dealership; Haulage; Vehicle lease / hire / rental; Plant hire; Vehicle breakdown; Furniture delivery / removals; Courier / delivery company;
Service / Retail	Shop / retail premises; Business Support; Cleaning; Import / export company; Storage facilities; Dry cleaning / Laundry; Hire company (excluding vehicle and plant); Market stalls; Mobile phones / electronics stores; Recruitment agency.



Business Sectors

Business sector	Sub-sectors
Catering / Food	Mobile van / catering; Wholesaler; Bakery
Licenced premises	Bar / public house; Night club; Off licence; Management; Hotels
Environmental	Waste disposal & exploitation; Skip hire; Recycling; Tyres; Scrap yard
Recreation	Gym; Children's recreation activities and clubs; Entertainment events – dance / music / sport / festivals.
Security	Site
Care	Nursery (Children); Social Care; Care Homes
Professional Services / Assistance*	Financial / investment; Estate / letting agent; Accountant; I.T.; Insurance; Legal; Money bureau; Immigration advisory; Procurement specialists.

Business Sectors

Human-trafficking / Modern Slavery

- Fastest growing criminal activity in the world
- Second most profitable criminal industry behind drugs.
- Found in many UK businesses that depend on low skilled workers (e.g. hairdressers, demolition, waste industry, café, restaurants, cleaning, delivery, care).
- Happening all around us (see right)
- Is a SOCG income stream where human beings are exploitable commodities.



Exclusion Criteria in Tenders

Bidders will use their SPD response to indicate whether their organisation meet the requirements of the procurement exercise. The form is a self-declaration form and suppliers do not need to provide any evidence upfront unless there are clear reasons for doing so.

[Regulation 58 of The Public Contracts \(Scotland\) Regulations 2015](#) sets out reasons for exclusion relating to criminal convictions for above GPA threshold procurements. These also apply to utilities contracts (see Regulation 78 of the Utilities Contracts (Scotland) Regulations 2016).

[Regulation 8 and 9 of The Procurement \(Scotland\) Regulations 2016](#) sets out reasons for exclusion relating to criminal convictions for below GPA threshold procurements.

These include...

Exclusion Criteria in tenders

Procurement Officers must include a statement in the Contract Notice regarding the exclusions that may apply

In the Contract Notice the Procurement Officer must select the relevant statement (as listed below) to be added to II.2.14 'Additional Information'.

The statement for an above GPA threshold notice:

- **Economic operators may be excluded from this competition if they are in any of the situations referred to in regulation 58 of the Public Contracts (Scotland) Regulations 2015.**

The statement for below GPA threshold notices:

- **Economic operators may be excluded from this competition if they are in any of the situations referred to in regulation 8 and 9 of the Procurement (Scotland) Regulations 2016.**

Exclusion Criteria in tenders

[3A1] The common law offence of conspiracy; where that conspiracy relates to participation in a criminal organisation as defined in Article 2 of Council Framework Decision 2008/841/JHA on the fight against organised crime or an offence under sections 28 or 30 of the Criminal Justice and Licensing (Scotland) Act 2010;

[3A2] a) Corruption; within the meaning of section 1(2) of the Public Bodies Corrupt Practices Act 1889 or section 1 of the Prevention of Corruption Act 1906, where the offence relates to active corruption as defined in Article 3 of the Council Act of 26th May 1997 and Article 3(1) of Council Joint Action 98/742/JHA;

b) Bribery or Corruption within the meaning of sections 68 and 69 of the Criminal Justice (Scotland) Act 2003, where the offence relates to active bribery or corruption

c) Bribery within the meaning of sections 1 or 6 of the Bribery Act 2010;

d) Any other offence within the meaning of Article 57(1)(b) of the Directive as defined by the law of any EEA state or any part thereof.

[3A4] Terrorist offences or offences linked to terrorist activities; listed in section 41 of the Counter-Terrorism Act 2008; or Schedule 2 to that Act where the court has determined that there is a terrorist connection.

Exclusion Criteria in tenders

[3A5] a) Money laundering within the meaning of sections 340(11) and 415 of the Proceeds of Crime Act 2002;

b) Money Laundering or Terrorist financing; an offence in connection with the proceeds of criminal conduct within the meaning of section 93A, 93B or 93C of the Criminal Justice Act 1988;

c) Drugs trafficking, an offence in connection with the proceeds of drug trafficking within the meaning of section 49, 50 or 51 of the Drug Trafficking Act 1994;

d) Any other offence within the meaning of Article 57(1)(e) of the Directive as defined by the law of any EEA state or any part thereof.

[3A6] Child labour and other forms of **trafficking in human beings**; any offence under Part 1 of the Human Trafficking and Exploitation (Scotland) Act 2015 or under any provision referred to in the Schedule to that Act;

[3B1a] Payment of taxes Has the bidder met all its obligations relating to the payment of taxes, both in the UK, and in the country in which it is registered, if that is not the UK?

[3B1b] Payment of social security Has the bidder met all its obligations relating to the payment of taxes, both in the UK, and in the country in which it is registered, if that is not the UK?

Exclusion Criteria in Tenders

The exclusion questions you can ask are split into two types:

Mandatory exclusions: the buyer must ask questions regarding these exclusions and the bidder may be excluded from the procurement process if specified offences have been committed and the self-cleansing measures taken are not sufficient to demonstrate reliability. For example corruption, bribery, money laundering or certain types of fraud.

Discretionary exclusion: the buyer may ask questions concerning these exclusions and the bidder may be excluded from the procurement process if they have taken part in certain activities and the self-cleansing measures taken are not sufficient to demonstrate reliability . These should be considered on a case by case basis by the buying organisation.

Excluding a bidder: When determining whether to exclude a bidder, a contracting authority should be proportionate in its decision, taking into account the size of the contract, the relevance of the breach, and its impact on the operational and reputational risk to the delivery of the contract.

Exclusion Criteria in Tenders

Self Cleansing

The bidder must be given the opportunity to provide evidence that they have taken sufficient and appropriate remedial action i.e. they have 'self-cleansed'. If you are satisfied that the evidence they have given is sufficient to demonstrate reliability, you should not exclude the bidder from the procurement procedure on those grounds

The bidder must satisfy that it has

- paid, or undertaken to pay, compensation for any damage caused by the criminal offence or misconduct;
- provided detailed facts and circumstances by collaborating with the investigating authorities; and
- taken appropriate concrete technical, organisational and personnel measures to prevent further criminal offences or misconduct.

In the case of tax and social security breaches, where self-cleansing does not apply, the bidder should not be excluded if they:

- have met their obligations by paying or
- entered into a binding agreement with the view to paying monies due or
- the obligation to repay otherwise ceases.

Exclusion Criteria in Tenders

Bidders must not be excluded indefinitely from participating in procurement activity.

A bidder must only be excluded:

- for a maximum of 5 years from the date of conviction by final judgment for one of the criminal offences listed in regulation [58\(1\) of the Public Contracts \(Scotland\) Regulations 2015](#);
- until it has paid its outstanding tax or social security obligations. This includes: any applicable interest or fines; entering into a binding agreement to pay; or the obligation to make repayment ceases; or
- a maximum of 3 years from the date of the relevant event for all other grounds for exclusion.

Contract Management Fraud Risks

Overcharging	Meaning
Duplicate payments	The council is charged twice for the same goods or services.
False invoices	A form of identity fraud. Payment to a genuine supplier is diverted to a bank account controlled by the fraudster. This could also be an internal fraud perpetrated by a council employee.
False claims and variations	Unjustified contractual claims and payments for contract variations. This type of fraud is often associated with under-priced bids ('loss leaders').
False performance reporting	Payment is claimed for levels of performance that have not been achieved.
Phantom suppliers	A fictitious company, or a real company that does not have a genuine relationship with the council, is set up as a supplier and receives payment.
Sub-standard materials	Cheaper materials are substituted for those specified in the contract. The use of sub-standard materials may also carry health and safety risks and environmental risks.
Misappropriation of assets	Council assets (including data and intellectual property) are stolen or exploited illegitimately by suppliers in the course of performing a contract.



Measures to Mitigate

Your organisation's strategy should clearly demonstrate approaches to mitigate fraud.

Key elements include:

- Clear governance
- Audit trail
- Effective contract management
- Transparency
- Scrutiny

A risk register should be completed for every procurement detailing risks and strategies to manage these risks.

Measures to Mitigate

Internal Controls	Considerations
Financial Regulations	• financial delegations/authorisation limits • record keeping/audit trail requirements • separation of duties in ordering process e.g. raising order, authorising expenditure and receiving the goods • a policy of no purchase order, no payment • purchase card checks - prohibit personal purchases • risk management • reporting of fraud, corruption, money laundering
Standing Orders	• compliance with procurement law including thresholds • due diligence on prospective suppliers • authorisation of single sourcing and waivers • conflict of interests • confidentiality • contract register • open book accounting • regular contract reviews • detailed procurement process with separation of duties • minimum of two to be present during any negotiation process

Measures to Mitigate

Internal Controls	Considerations
Scheme of delegation	How authority is delegated to councillors and officers
Councillor code of conduct	Includes requirement to declare interests
Employee code of conduct	Includes requirement to declare interests
Register of interests	Both councillor and employee interests should be recorded in a register
Register of gifts and hospitality	Non-trivial gifts and hospitality received by councillors and employees should be recorded in a register.
Risk register	The council should maintain a strategic risk register and risk registers for major programmes and projects
Confidential reporting policy ('whistleblowing')	Confidential 'hotline'.
Procurement documents	Mandatory use of standard documents including SPD, T&C's, Certificates
Contracts register	Part of the audit trail concerning council contracts and suppliers.
IT strategy and policies	• IT and information assurance including cybersecurity. • Alignment of council and supply chain with Government Cyber Essentials Scheme

What can procurement do?

Things to consider:

- Have we undertaken procurement fraud risk identification and assessment?
- Do we have the right approach - strategies, policies and plans?
- Do we have a 'no purchase order, no payment' policy?
- Do we raise awareness of procurement fraud and risks with:
 - new staff (including agency staff)
 - existing staff
 - councillors, and
 - our suppliers?
- Do we work well with national, regional and local networks to ensure we know about current procurement fraud risks and issues?
- Do we work well with other organisations to ensure we effectively share knowledge and data about fraud?
- Do we identify areas where our internal controls are not working as well as intended? How quickly do we then take action?

What can procurement do?

- How often do we review our procurement procedures in line with best practice?
- Are our procurement procedures compliant with the Public Contracts Regulations 2015 regarding mandatory and discretionary exclusion, conflicts of interest and preliminary market consultations?
- Do we have arrangements in place that encourage our staff to raise their concerns about money laundering?
- Do we have effective arrangements for reporting and recording procurement fraud?
- Do we have effective whistleblowing arrangements? In particular are staff:
 - aware of our whistleblowing arrangements?
 - confident in the confidentiality of those arrangements?
 - confident that any concerns raised will be addressed?

Organisation Audit

- How confident are you that your organisation is not at risk of purchasing goods / services from organisations with links to SOC? How have you reached this conclusion?
- Are your procurement, contract management and due diligence procedures robust, fully implemented and being properly followed?
 - Are they regularly reviewed and when did you last review your procurement processes?
 - Do they specifically cover SOCG-infiltration risk?
- Are you confident that your staff with purchasing responsibilities are aware of the risks of transacting with an organisation linked to SOC, and know how to raise any potential concerns about organisations with which your organisation transacts?
- How does the procurement process protect procurement staff from getting undue pressure applied to them? Is there adequate segregation of duties?
- Are your records of supplier details reliably maintained and are they checked and verified sufficiently?
- Do you carry out an annual 'Supplier Healthcheck' as part of CSM?



**With the right analytical approach, fraud can be detected,
measured and appropriate action taken.**



