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Transport Committee
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Procurement

Introduction

This paper provides background briefing for a session with two panels of witnesses on procurement matters, with a particular focus on major strategic road projects.

Background

The following sections provide background information on aspects of transport procurement that may be of interest to the Committee.

Key documents

The Scottish Government's Public Procurement Strategy 2023 to 2028 defines a vision for public procurement in Scotland of "Putting public procurement at the heart of a sustainable economy to maximise value for the people of Scotland." This is intended to support the Scottish Government's overarching purpose and to produce four key outcomes, that is - procurement which is:

- good for businesses and their employees.
- good for places and communities.
- good for society.
- open and connected.

Public procurement is governed by a detailed legislative and policy framework that is largely decided at a UK, European, and international level. Key aspects of this system are described in a range of documents, which include:

- Scottish Public Finance Manual (Procurement): Procurement chapter of the Scottish Government manual on the proper handling and reporting of public funds that applies to the Scottish administration, including the core Scottish Government, agencies, non-ministerial departments, non-departmental public bodies, and the SPCB and bodies that it sponsors.

- Scottish Government Procurement Policy Manual: Provides guidance on the policies that apply to Scottish Government procurement and highlights key legal obligations and considerations. The manual is mandatory for core Scottish Government and certain other bodies. Executive Agencies and Non-

Departmental Public Bodies (NDPBs) should follow the principles set out in the manual).

- Scottish procurement policy handbook: Provides guidance on the rules and policies that apply to procurement by public authorities and other bodies in Scotland. It also highlights some key legal obligations.

- Scottish Procurement Policy Notes: Provides advice to public authorities and other relevant bodies on detailed aspects of procurement policy.

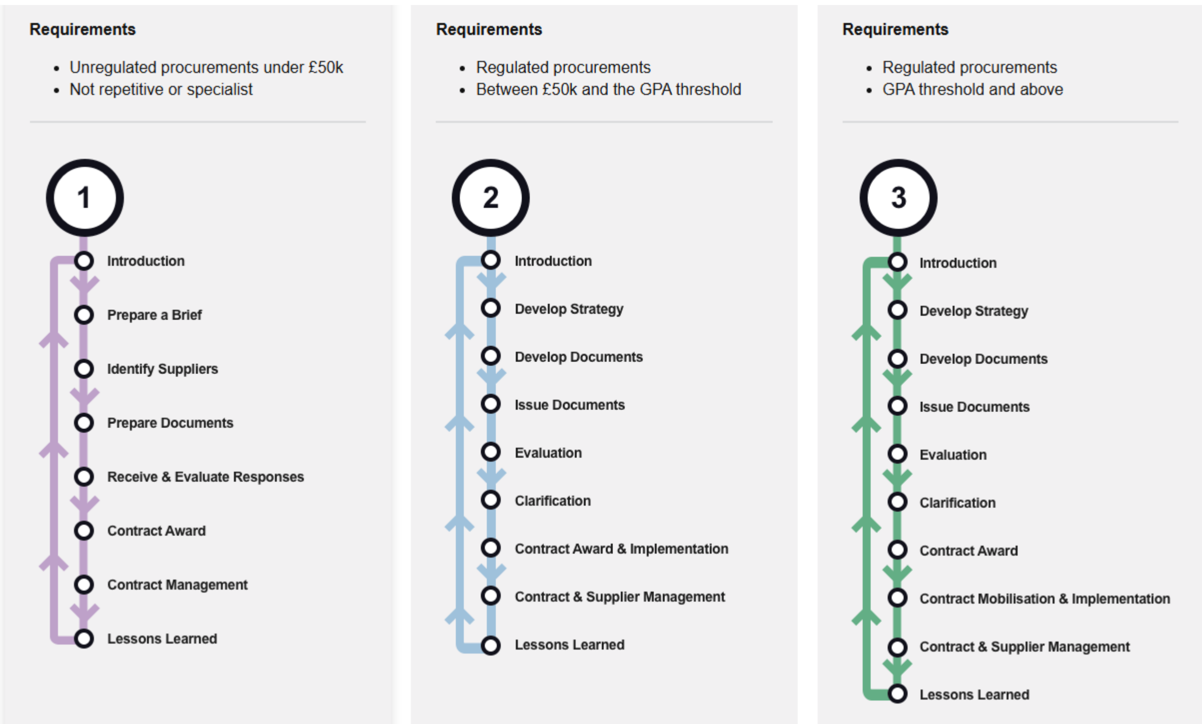
- Procurement Journey: An interactive online resource for civil and public servants involved in public procurement.

- Construction procurement handbook: Guidance for public authorities and other bodies on the procurement of construction works.

- Construction policy notes: Detailed advice and guidance for public authorities and other bodies on aspects of construction procurement.

The public procurement process

As may be expected from a system supported by so many guidance documents, the public procurement process is complex. However, there are three broad approaches to procurement typically followed by public authorities – which can be summarised as follows:



Infographic from the Scottish Government's "Procurement Journey" website.

The "GPA thresholds" are set out in the World Trade Organisation's Government Procurement Agreement (GPA), which is agreed every two years at an international level. Between 1 January 2026 and 31 December 2027, the thresholds are £135,018 for supplies and services for “Schedule 1 bodies” – that is UK and devolved administration departments and agencies listed in Schedule 1 of the Public Contracts (Scotland) Regulations 2015, £207,720 for all other public bodies, and £5,193,000 for works contracts (all inclusive of VAT).

A regulated procurement is any procurement for public supplies or services with a value of greater than £50,000 excluding VAT, or of greater than £2 million excluding VAT for works contracts.

Transport Scotland Procurement Strategy

Building on the Scottish Government’s Public Procurement Strategy, Transport Scotland’s approach to procurement is set out in its Corporate Procurement Strategy 2026-2028. In this, Transport Scotland highlights the role that the policies set out in National Transport Strategy 2 and the projects identified as priorities for investment in the second Strategic Transport Projects Review (STPR2) play in guiding procurement decisions.

It goes on to explain how Transport Scotland’s procurement action will support the four objectives established in the Scottish Government’s procurement strategy, as follows:

Objective 1 - Good for Businesses and Their Employees: Transport Scotland will maximise the impact of procurement to boost a green, inclusive and wellbeing-focused economy, while promoting and enabling innovation.

Objective 2 - Good for Places and Communities: Transport Scotland will use its procurement programme and strong community engagement to deliver social and economic outcomes that drive wellbeing by creating quality employment and skills opportunities.

Objective 3 – Good for Society: Transport Scotland will use continuous improvement to ensure it is efficient, effective, and forward thinking to help achieve a fairer and more equal society.

Objective 4 - Open and Connected: Transport Scotland will ensure its procurement competitions are open, transparent, and connected at local, national, and international levels.

It goes on to list 12 procurement policies, which are:

1. Procurement will contribute to corporate priorities.
2. Value for money.
3. Equal treatment and non-discrimination.
4. Transparency and proportionality.

5. The sustainable procurement duty[1].
6. Community benefits requirements.
7. Consultation and engagement.
8. Fair work and the real living wage.
9. Contractor's health and safety.
10. Fairly and ethically traded goods and services.
11. Provision of food (effectively a statement that it has no policy on this as it does not procure food using regulated procurements).
12. Prompt payment.

As required by Section 18 of the Procurement Reform (Scotland) Act 2014 Transport Scotland must publish an annual procurement report. The most recent is the Annual Procurement Report 2024-2025. This states that "During this year Transport Scotland awarded 33 regulated procurements with a value in excess of £241 million." This goes on to note that "Community benefits reported by contracted suppliers during the period include the creation of 832 new entrants' positions, 63 apprenticeships, 172 graduate positions and 77 work placements" and that "Its suppliers reported placing orders in excess £560,000 with supported businesses and social enterprises during the reporting period."

Funding major road projects

There are two options for funding trunk road improvements. Scottish Government capital funding, or a revenue funded private finance option – the current favoured approach being the Mutual Investment Model (MIM).

MIM was developed by the Welsh Government to finance major capital projects through long term revenue funding over and above the level that would be possible using capital budgets and conventional borrowing. It is effectively an evolution of earlier PFI and NPD procurement approaches. The MIM was the subject of a 2019 Scottish Futures Trust appraisal, which described its favoured approach to MIM as a:

> "…design build finance maintain structure where the private sector raises and finances the majority of the debt and equity and the public sector raises and finances up to 20% of the risk capital. Any reward (and risk) which flows from the vehicle is split accordingly 80:20.
>
> It is assumed that the revised risk transfer arrangements that were introduced into the NPD and hub structures feature."

The adoption of MIM as a means of financing capital projects is not without its critics, e.g. a report authored by Jim Cuthbert for Common Weal argues that:

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[1] The sustainable procurement duty requires that before a contracting authority buys anything, it must think about how it can improve the social, environmental and economic wellbeing of the area in which it operates, with a particular focus on reducing inequality.

It also requires a contracting authority to consider how its procurement processes can facilitate the involvement of SMEs, third sector bodies and supported businesses, and how public procurement can be used to promote innovation.

> "MIM carries many of the same risks and costs of PFI and actually represents a retrograde step compared to the NPD system which was itself flawed" and "…also raises concerns about the lack of consultation carried out during the development of the model and the lack of proper scrutiny prior to its adoption."

MIM was slated to fund two significant sections of the A9 dualling programme, however Scottish Ministers decided in January 2026 not to proceed with this option, stating that:

> "It was concluded that using MIM contracts for the A9 dualling programme would provide poorer commercial value for money than would be provided by capital-funded contracts. Therefore, the Government will progress the A9 dualling programme to completion using capital-funded contracts. That important decision demonstrates the strength of the Government's commitment to meeting its target of completing the A9 dualling programme by the end of 2035."

MIM funding was also mooted for the A96 dualling between Inverness and Nairn, but no announcement on funding for this project has been made to date. The Scottish Government's Infrastructure Delivery Pipeline, published in January 2026, makes no mention of revenue funding for any major Scottish transport project.

Infrastructure Plans

The Scottish Government published the Infrastructure Delivery Pipeline 2026 on 13 January 2026, alongside the Scottish Spending Review 2026. This lists infrastructure projects costing over £5 million and programmes over £20 million which are currently being delivered, approved, assessed, or considered for progress by the Scottish Government. The Infrastructure Delivery Pipeline is a live document, and new projects and programmes will be added as investment plans are agreed. The Scottish Government intends to publish progress reports on the listed projects every six months.

The Pipeline lists the following transport projects as having agreed outline business cases (or equivalent) and agreed funding:

- **A9 Dualling Programme**
  - Tomatin to Moy
  - Tay Crossing to Ballinluig
  - Pitlochry to Killiecrankie

- **Major Roads Investment Programme**
  - A83 Rest and Be Thankful – Medium Term Solution
  - M8 Woodside Viaduct Propping

- **Rail Services Improvement and Decarbonisation programme**
  - Borders Railway electrification and Fife electrification (Including Suburban Fleet
  - Replacement and Dundee – Arbroath enhancements)
  - Intercity fleet replacement and rail enhancement projects

- **Low Carbon and Sustainable Travel Programme**
    - Including active travel and bus infrastructure, zero emission buses and fleets,
    - smartcard programme and electric vehicle charging infrastructure.

- **Vessels, Ports and Harbours**
    - Islay/ Little Minch vessels
    - Lochboisdale/ Gasay Island port improvements
    - Freight flex vessels – Northern Isles
    - Small Vessel Replacement Programme Phase 1 incl. port upgrades
    - Lord of the Isles (LOTI) replacement
    - Port Ellen Harbour upgrade

It goes on to list projects that are at an earlier stage of development which:

> "…will be added to the Delivery Pipeline once Business Case and funding are agreed. To ensure protection of the public purse, where business cases and value for money considerations do not stack up projects may be stood down from the development or future pipelines."

This list includes major projects such as A96 dualling, the A83 Rest and be Thankful long-term solution, A720 Sherriffhall Junction Improvement, Ardrossan Harbour redevelopment, and mass transit schemes in Aberdeen, Edinburgh, and Glasgow. The Pipeline document ends by listing projects being explored to determine if there is a case for investment, including the Fort William Integrated Transport Plan, Borders Railway extension, and Newburgh, Winchburgh, Cove, and Newtonhill railway stations.

The Scottish Government consulted on a new Infrastructure Strategy 2027-2037 between January and May 2026. It is currently considering responses to this. Rather than identify individual projects, the draft Strategy sets out an approach to assessing infrastructure needs, identifying priorities, delivering Scottish Government goals, and providing a structure to underpin future capital investment decision making.

Civil Engineering Contracts

During the Session 6 Citizen Participation and Public Petitions Committee's inquiry into the A9 dualling project, concerns were raised in written evidence submitted in June 2023 by the Civil Engineering Contractors Association (CECA) that Transport Scotland's standard design and build contracts required contractors to assume risks for matters including ground conditions, weather, underground utilities, and third-party consultations. CECA argued this meant that "The bespoke TS contract used to procure road projects is regarded as a dated, unattractive anomaly by the market. As a result, TS is regarded by CECA members across the UK as the worst client to work for in the UK." CECA suggested that Transport Scotland replace the use of such contracts with the widely used New Engineering Contract (NEC), which had been in use since 1993.

Following this intervention, Transport Scotland switched to the New Engineering Contract, a decision praised at Citizen Participation and Public Petitions Committee's meeting of 24 January 2024 by CECA representative Graham Barn, who stated:

> "I would like to thank Transport Scotland for taking that leap to change to NEC4. It was a large leap for Transport Scotland, and it took it."

Direct award of ferry building contracts to Ferguson Marine

It is currently proposed that there should be a direct award of Scottish Government contracts for the construction of four ships to the Ferguson Marine shipyard, two of which will be procured by Caledonian Maritime Assets Ltd (CMAL) – which owns the vessels used by CalMac Ferries and Northlink.

On 3 March 2026, the then Secretary of State for Transport, Fiona Hyslop, made a statement on ferries and ports in the chamber, which included the following:

> "Ministers propose to include the two new vessels for the Sound of Harris and the Sound of Barra from the next phase of the small vessel replacement programme[1] as a direct award to Ferguson Marine as part of a wider suite of publicly funded and directly awarded vessel projects. The proposal is subject to a detailed internal due diligence process that is under way to assess viability, including examination of structural organisation matters and subsidy control. Engagement with the Competition and Markets Authority would also be among the steps that are required before any formal contract award decisions can be made."

This was immediately followed by a statement on Ferguson Marine by then Deputy First Minister, Kate Forbes, during which she said:

> "…ministers propose to award contracts for a further two vessels to Ferguson Marine—replacements for the marine research vessel Scotia and the marine protection vessel Minna. Together, that represents a programme of four new vessels that it is proposed will be built in the yard. That is a substantial and clear demonstration of our confidence in Ferguson Marine.
>
> Ministers must, of course, ensure that public contracts are awarded in accordance with legal requirements and that they demonstrate value for communities and for the taxpayer. A detailed due diligence process is under way in the Scottish Government to closely assess the viability and implications of the proposals, and engagement with the Competition and Markets Authority is among the steps that are required before any formal contract award decisions can be made."

When asked on 18 March 2025 about why a direct award of phase one of the SVRP was not made to Ferguson Marine, the Deputy First Minister stated that:

> "…in a very litigious industry, going down the direct award route would have created significant levels of risk that could have resulted in the contract being in the courts".

And:

> "…there was extensive analysis and legal advice that indicated that a direct award of the small vessel replacement programme contract to Ferguson Marine could have introduced substantial risks, meaning that the yard did not have ships to build and our islanders did not have the ships that they need. That was not a risk that I thought was appropriate to introduce into the process."

The Programme for Government 2026-2031, published on 1 September 2026, included a commitment that the Scottish Government would:

> "Support the future of Ferguson Marine to protect commercial shipbuilding and provide vital skilled job opportunities on the Clyde through the direct award of Government funded contracts subject to necessary legal, commercial and subsidy control requirements."

The Cabinet Secretary for Economy, Tourism and Transport, Stephen Flynn MSP, made a statement in the chamber on 17 September 2026 about Ferguson Marine, during which he said:

> "There has been considerable interest in the role of the Competition and Markets Authority in the process. To establish that a subsidy is lawful, the Scottish Government must prepare a detailed principles assessment demonstrating that the policy rationale, economic case and commercial justification align with subsidy control requirements. The technical requirements for each vessel must be developed sufficiently to allow Ferguson Marine to prepare designs, delivery plans and cost estimates. Those estimates are then assessed through independent technical, commercial and financial scrutiny.
>
> Due to the nature and value of the proposed support package, the Subsidy Control Act 2022 requires a mandatory referral to the CMA. The CMA does not approve or reject proposals. Its role is to independently assess the evidence and publish advice, which ministers must carefully consider before reaching a decision. That important safeguard helps to ensure that any support package is supported by credible evidence and robust analysis.

Scottish Government officials continue to engage closely with the CMA and, under the current timetable, we expect the principles assessment to be submitted for formal pre-referral assessment in the coming weeks, with a final submission following thereafter. The resulting report will inform the decision that ministers ultimately take. I will continue to keep Parliament updated on key milestones."

Alan Rehfisch, Senior Researcher (Transport and Planning), SPICe
Date: 25/09/2026