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Governance and Audit Committee

14 April 2016

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**Subject: Annual Review of the Constitution**

Report by:

Monitoring Officer

Contact Officer:

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Purpose / Summary:

The purpose of the report is to recommend to Council the proposed amendments to the Constitution, following consideration by the Governance and Audit Committee at its meeting on 14 April 2016

**RECOMMENDATION(S): THAT IT BE RECOMMENDED TO COUNCIL**

- (a) That Members note the outcome of the annual review.
- (b) That the amendments detailed at Section 2 of the report be approved by Council for immediate adoption and implementation.
- (c) That Members note the amendments made to the Financial and Contract Procedure Rules agreed by the Governance and Audit Committee at its meeting on 19 January 2016 shown at Appendix 1
- (d) That Members note the further planned work detailed at Section 4 of the report.
- (e) That Council commission the Governance and Audit Committee to undertake further detailed evaluation work into the implications of a possible move to the leader cabinet model and submit recommendations to full council during autumn 2016

## IMPLICATIONS

**Legal:** The Council is required by law to prepare, and keep up to date, the Constitution.

**Financial: 8/16**

There are only very limited financial implications as a result of making amendments to the constitution. These relate to the resources needed to make changes to electronic records and to the limited printing costs of producing amended pages for paper copies of the Constitution.

**Staffing:** None arising from this report but the Constitution sets out the manner in which staffing matters should be dealt with.

**Equality and Diversity including Human Rights :** None arising from this report.

**Risk Assessment:** Failure to amend the constitution to reflect changes could lead to a risk of legal challenge and reputational risk for the Council.

**Climate Related Risks and Opportunities :** None arising from this report.

**Title and Location of any Background Papers used in the preparation of this report:**

Accessed through WLDC website "[Meetings, agendas, minutes and reports](#)"  
[Constitution of the Council | West Lindsey](#)

**Call in and Urgency:**

**Is the decision one which Rule 14 of the Scrutiny Procedure Rules apply?**

Yes  No

**Key Decision:**

Yes  No

## **1 Introduction**

- 1.1 The Council is required by law to prepare and keep up to date a Constitution which explains how the Council operates, how decisions are made and the procedures which are to be followed to ensure that these are efficient, transparent and accountable to local people.
- 1.2 Article 14 of the Constitution stipulates how such a review should be conducted namely:
- a) by observing meetings of different parts of the Member and officer structure;
  - b) by undertaking an audit trail of a sample of decisions
  - c) by recording and analysing issues raised with the Monitoring Officer by Members, officers, the public and other stakeholders; and
  - d) by comparing practices in this authority with those in comparable authorities, or national examples of best practice.
  - e) by undertaking a review of each committee's effectiveness annually.
- 1.3 As a comprehensive review of the Constitution was undertaken in 2011 and 2014, a number of relatively minor amendments are being proposed as detailed at Section 2 of the report.

## **2. Proposed Amendments**

- 2.1 In reviewing the Constitution, the actions detailed at 1.2 above have been undertaken using a variety of methods including:-
- (a) attending a variety of Committee Meetings in order to review proceedings;
  - (b) collating feedback from stakeholders and interested parties including that received in formal complaints or alleged breaches of the Code whether upheld or not
  - c) Seeking the views of Senior Officers and Team Managers who work within the Constitution
  - d) Seeking the views of all Members by e-mail
  - e) Surveying Members as to the effectiveness of the Committees to which they are appointed.
  - f) Reviewing other "fourth-option" Councils' Constitutions
- 2.2 Arising from the feedback received / issues identified the following additions/amendments are proposed to come into immediate effect.
- 2.3 The table below sets out the main proposed amendments for consideration along with the rationale for each.

Ref	Section /Page Ref	Amendment required	Reason for Amendment
1	Part IV page 10 – Taxi and General Licensing Sub-Cttee Terms of Reference	To amend bullet point (i) to read “ <b>scrap metal licences</b> ” as opposed to “scrap yard registrations”	Change of legislation in 2013 regarding the licensing of scrap metal dealers. This wording now reflects the role the Committee have in this area.
2	Part IV page 11 – Licensing Sub-Committee	To amend bullet point (k) to read “ <b>Determination of an objection to a Temporary Event Notice by the Police or Environmental Health Officer</b> ” as opposed to “Determination of a police objection to a Temporary Event Notice”	Police Reform and Social Responsibility Act 2011 changed who could object to TEN. This revised wording now reflects this.
3	Part IV page 13/4 – Challenge and Improvement Terms of Reference	To add a footnote to read “This Committee has an operating methodology which is agreed annually at its first full meeting”	For clarity and transparency.
4	Part IV Page 1 – Council Terms of Reference	To add into the footnote the words “ including the setting of fees and charges”	For clarity transparency and the avoidance of doubt
5	Part IV Page 3 – Corporate Policy and Resources Committee Terms of Reference	To add a new term of reference as follows “to recommend fees and charges for service areas within its remit or following a recommendation from the Prosperous Communities Committee to Full Council”	For clarity transparency and the avoidance of doubt
6	Part IV Page 4 – Prosperous Communities Committee Terms of Reference	To add a new term of reference as follows “to recommend fees and charges for service areas within its remit to Corporate Policy and Resources / Full Council”	For clarity transparency and the avoidance of doubt
7	Part IV Page 30 – Chief Operating Officer Delegations	To delete “1. To monitor authorisations to conduct surveillance under the Regulation of Investigatory Powers Act 2000” and replace with “1 To be the authorising officer for surveillance under the Regulation of Investigatory Powers Act 2000 and	There has been a change in legislation whereby RIPA requests need to be approved by the Magistrates’ Court therefore this amended wording reflects Officers’ revised role in the process.

Ref	Section /Page Ref	Amendment required	Reason for Amendment
		as such can make requests for the Magistrates' Court to consider applications made under RIPA.	
8	Part IV Page – 52 – Proper Officers	To include Section 100 (f) (2) of the Local Government Act 1972 which relates to the exclusion from council agendas any information which is likely to be dealt with in the absence of the press of public into the list of Proper Officer functions - Proper Officer to be the Chief Executive and Directors.	Having reviewed other constitutions these functions are specified
9	Part IV Page 52 – Proper Officers	To include Section 100 (b) (2) of the Local Government Act 1972 which relates to the circulation of committee reports and agendas into the list of Proper Officer functions – Proper Officer to be the Chief Executive	Having reviewed other constitutions these functions are specified
10	Part IV Page 55 – Proper Officers	To include Section 13 (3) of Part III of Schedule 12 of the Local Government Act 1972 – which relates to holding the Office of Parish Trustee where there is a parish meeting with no separate Parish Council into the list of Proper Officer functions – Proper Officer to be the Monitoring Officer	Arising from consultation with stakeholders
11	Part IV Page 15 – Standards Sub-Committee Terms of Reference	To amend the footnote regarding membership to read “the committee shall comprise six elected District Councillors and <u>up to</u> three non-voting parish representatives.	There is no legal requirement specifying the number of parish representatives. It is considered that by incorporating the words “up to” it allows flexibility and allows the Committee to continue its work if a parish councillor resigns / loses an election for example.
12	Part IV Page 15 – Standards Sub-Committee Terms of Reference	To add an additional footnote to read “this Sub-Committee, by formal resolution of Full Council at its annual meeting each year, is not politically balanced”.	Increased transparency. Non-politically balanced Standards committees are considered best practice and improve the public's confidence.
13	Part IV Page 34 –	To add an additional restriction as to when	Members will approve new policy when

Ref	Section /Page Ref	Amendment required	Reason for Amendment
	Responsibility for Functions – Chief Operating Officer – Development, Neighbourhoods and Strategic Growth	planning applications cannot be determined using delegated powers, namely “ (i): Any application where the recommendation is for approval which is in conflict with a policy of the Central Lincolnshire Local Plan [NB this will only come into force once the Central Lincolnshire Local Plan is adopted as part of the development plan for West Lindsey] “  Note all other restrictions listed in this section of the Constitution remain in force and un-amended.	they adopt the Central Lincolnshire Local Plan. Therefore any application which departs from Policy must be approved by Members.
14	Appendices – Appendix 4 – Role Description for the Deputy Leader of the Council – Page 8	To add an additional duty to the description under the heading Governance, ethical standards and relationships, namely “to co-ordinate communication between Members and Officers”	Arising from feedback from the administration.
15	Part IV / Page 22 – Responsibility for Functions Officers General – Sub delegation	To insert a new paragraph under the sub-delegation paragraph to read “14. where urgency dictates during periods of leave or sudden unexpected absence, delegations granted to the Chief Operating Officer or Director of Resources can be exercised by the other, except when the matter relates to a function which by law must be undertaken by either the Head of Paid Service or the S151 Officer”.	Provides greater flexibility and allows business continuity  Please note reference to the Commercial Director has purposely not been made as it is considered conflicts of interest may arise.
16	Part IV / Page 22 – Responsibility for Functions Officers General – Sub delegation	To insert a new paragraph under the sub-delegation paragraph to read “15. Functions which by law must be undertaken by the Statutory Officers cannot be sub-delegated and are set out elsewhere in this document.”	Avoidance of Doubt
17	Part IV / Page 30 – Responsibility for	To Insert a new delegated function namely “ Power to Serve notice under Section 12(a) The	This will enable officers to carry out a new legal requirement as a result of the

Ref	Section /Page Ref	Amendment required	Reason for Amendment
	Functions – Chief Operating Officer – Public Protection	Microchipping of Dogs (England) Regulations 2015”	introduction of new legislation.

### **3. In-Year changes to the Financial and Contract Procedure Rules**

3.1 Furthermore Council, at its meeting on 21 May 2015, during consideration of the last Annual Review of the Constitution resolved that: -

the Governance and Audit Committee be delegated to make any changes to the Financial and Contract Procedure Rules between Annual Councils.

3.2 In accordance with the above resolution the Financial and Contract Procedure Rules were amended and approved by the Governance and Audit Committee at its meeting on the 19 January 2016.

3.3 The revised Procedure Rules (including tracked changes) are shown at Appendix 1, Members are asked to note these.

3.4 The full report considered by the Governance and Audit Committee, in which the rationale for having made these changes is set out, can be viewed at [Governance and Audit Committee Reports - 19 January 2016 | West Lindsey](#) (Paper E relates).

### **4 Associated Work Planned to be undertaken during the 16/17 year**

4. 1 Whilst undertaking the annual review of the Constitution a number of other associated actions for further work and development have been identified namely: -

(a) Having attended a number of Planning Committee Meetings and received feedback from Officers, Members and Stakeholders, it is intended to work with the Planning Committee in order to review the current Public Participation Scheme. This will be subject to a separate report at a future meeting of the Planning Committee.

(b) The Local Code of Conduct has not been reviewed since its implementation. It is intended to work with the Standards Sub-Committee and Governance and Audit Committee to review its content and ensure it reflects all the behaviours that as an Authority we would expect of elected Members and are mentioned elsewhere in other Protocols and Guides throughout the Constitution. Early suggestions are that it should include reference to confidential information and respect. Any proposed changes would be subject to a separate report to a future meeting of Full Council.



- (c) Officers are continuing to refine the Sub-Delegation scheme. This is now available electronically to all staff, in a central location with an easy-to-use search function.
- (d) When surveying Members regarding the effectiveness of Committees a number of suggestions were made which related to Member development. Officers will continue to work with Members during the 16/17 civic year with a view to producing personal development plans
- 4.2 Members are asked to note the planned work set out above.
- 4.3 As a result of the commitment in the Conservative manifesto and as a result of the growing importance of the Devolution work in Lincolnshire workshops were arranged to give members an understanding of the Governance systems available and how they may meet the needs of WLDC. A number of key drivers emerged from comments expressed by those present at the workshop. These include
- Speed of decision making
  - Executive powers for key members
  - Specialist Knowledge
  - Transparency
- 4.4. As a result of this it is recommended that governance and audit committee further explore the implications of a possible move to the leader cabinet model and submit recommendations to full council during autumn 2016

## **5. Recommendations**

### **That it be recommended to Council: -**

- (a) That Members note the outcome of the annual review.
- (b) That the amendments detailed at Section 2 of the report be approved by Council for immediate adoption and implementation.
- (c) That Members note the amendments made to the Financial and Contract Procedure Rules agreed by the Governance and Audit Committee at its meeting on 19 January 2016 shown at Appendix 1.
- d) That Members note the further planned work detailed at Section 4 of the report.
- e) That Council commission the Governance and Audit Committee to undertake further detailed evaluation work into the implications of a

possible move to the leader cabinet model and submit recommendations to full council during autumn 2016

## Contract Procedure Rules

### Introduction and Scope

The purpose of these Procedure Rules is to –

- Help officers administer their contracts in a consistent and proper way;
- Ensure legal clarity and reliability in contract administration;
- Help ensure that expenditure involved in contracts is controlled within approved budgets; and
- Support officers to achieve and demonstrate best value for the Council.
- Ensure compliance with Public Contract Regulations, Financial Procedure Rules, applicable Grant Funding regulation and with all UK and European Union legal requirements
- Ensure fairness in allocating public contracts
- Comply with all legal requirements
- Comply with the Councils' policies
- Comply with the Councils' corporate and service aims and objectives

Commented [AG1]: Addition

These Contract Procedure Rules advise on procedures for the purchase of goods and services and should be read together with Financial Procedure Rules and the Approved Code of Practice (ACOP) for Procurement, which is held in the ACOP Library on Minerva.

These Procedure Rules apply to all West Lindsey District Council officers and services.

These Procedure Rules apply equally to contracts for the purchase and sale of goods and services.

In the event of any conflict between EU law, UK law and these Procedure Rules, the requirements of European law shall prevail over UK law and the requirements of UK law shall prevail over these Procedure Rules.

In support of continuous improvement, Contracts need to be devised that drive down costs, drive up quality and still provide an incentive for both partners.

The push towards e-government will bring opportunities for electronic tendering and other forms of e-procurement. These will offer process-cost reductions, but must provide the same standards of openness and probity as the current longer established tendering process.

### How to use these Procedure Rules

Some of the rules in these Procedure Rules apply to all contracts. Others depend on the expected value of the contract involved.

The expected value of a contract is calculated by totaling all capital and/or

revenue expenditure over the expected life of the contract including any extension periods. This will include licenses and maintenance fees if applicable. For open-ended contracts, the value should be calculated over a notional four-year period.

#### Local Suppliers

For the purpose of these regulations a local supplier is defined as those “whose trading premises are located in Lincolnshire and/or a 20 mile radius of the County”.

#### Exceptions

All staff involved in the purchase and/or supply of goods and services must follow these Procedure Rules. However, exemptions can be agreed by either

- a) The appropriate Committee, or
- b) The **Core Leadership Team** and the Chief Finance Officer

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If the total value of the contract is over the EU Threshold legal advice must be sought from Legal Lincolnshire before proceeding with the exception process and the contract.

- i) An example of where option (a) might be needed is - where it is felt that a tendering exercise would not achieve best value. A report to Committee would need to demonstrate this in terms of cost, performance and quality comparisons, market conditions and any other relevant factors. The report should provide the basis for subsequent audit scrutiny.

- ii) Option (b) will be appropriate only in the following circumstances -

There are unforeseen events – for example, the breakdown of equipment or delayed deliveries,

A quotation or tender differs marginally from the specification but nevertheless represents the best value for West Lindsey,

There is only one potential supplier or contractor,

If the value of the contract is below £25,000.

If option (b) is used, a written request must be submitted to the **Core Leadership Team** and the Chief Finance Officer detailing the reasons for the request. If approved, the note must be signed by a member of the **Management Team**, on behalf of the **Management Team** and the Chief Finance Officer and retained on file. Additionally, where the value of the contract is over the EU Threshold (which should be confirmed with Procurement Lincolnshire) a report must be taken to the

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relevant Committee to inform it of the action taken and the reasons for taking it.

NOTE: It is not a substitute for instances where procurement planning has not been exercised and Services find themselves with insufficient time to undertake a competitive process.

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#### Rule 1. Requirements for All Contracts

All contracts must comply with Contract and Procurement Procedure Rules. A contract is any arrangement made by, or on behalf of, the Council, including schools, for the carrying out of works or for the supply of goods or services. These include arrangements for:

- a) The supply, or disposal of goods;
- b) Execution of works;
- c) The delivery of services
- d) The hire, rental, repair, maintenance or lease of goods or equipment;

Contracts do not include:

- a) Contracts of employment which make an individual a direct employee of the authority;
- b) Agreements regarding the acquisition, disposal, or transfer of land (for which Financial Regulations shall apply) or
- c) Awarding of Grant monies.

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#### 1.1 Contracts shall include, as a minimum, details of –

- The Name of the Council and the Supplier
- The goods and services to be supplied or purchased;
  - The price (including any discounts or deductions);
  - The period over which the contract is to be performed;
  - The timing of supply;
  - Arrangements for payments.

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1.2 Other terms and conditions can be written in with the agreement of both parties.

1.3 There must be an approved budget for all contracts where West Lindsey District Council will incur expenditure.

1.4 An officer must have authority to enter into a contract, through committee approval or delegated powers.

- 1.5 If any person who is not an officer of West Lindsey District Council is involved in supervising or letting a contract on behalf of the Council, then they must comply with these Procedure Rules in the same way as if they were an officer.
- 1.6 All contracts should reflect the Council's wider policies such as equality of opportunity and sustainability and in particular, Procurement Lincolnshire's sustainable procurement strategy and any internal guidance.
- 1.7 All procurements must comply with EU law. Only those procurements above a certain threshold are required to follow the advertising and notification provisions made in the EU regulations. However, all procurements, of whatever value, must follow the principles of non-discrimination and equality of opportunity that are contained in the regulations.
- 1.8 The Council is committed to employing only competent contractors. Health and Safety should be considered and provisions made as appropriate. The Contracts Officer from Business Improvement can give further advice if required.
- 1.9 The concept of partnership is recognised and supported by the Council. Partnerships will be based on flexible and innovative approaches but must still conform to the provisions of Contract Procedure Rules (and Financial Procedure Rules).
- 1.10 Long term contracts will need to include mechanisms for variations. For example parts of the contract may be varied by reference to the then current RPI or other suitable index.

Rule 2. Framework Agreements

- 2.1 The lead officer must check whether a suitable Corporate Contract or Framework Agreement (including ESPO, other buying consortia, Office of Government Commerce or relevant Frameworks let by NHS) exists before seeking to let another contract. Where a suitable Corporate Contract or Framework Agreement exists, these must be used unless there is a good reason not to and these reasons must be recorded and agreed in writing with the Leadership Team and Chief Finance Officer.
- 2.2 The term of any *Framework Agreement* (including any extension period) should not exceed four years, except in cases duly justified by the *Contracting Authorities* and where an *EU Procurement Directive* applies and was included in the contract notice.
- 2.3 A *Framework Agreement* may be awarded to either a single *Economic Operator*, or three or more. Contracts based on *Framework Agreements*

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Commented [AG10]: change to Crown Commercial Services, OGC doesn't exist

Commented [AG11]: Where are they recorded?

may be awarded either:

- By applying the terms laid down in the *Framework Agreements* (where such terms are sufficiently precise to cover the particular call-off) without reopening competition; or
- Where the terms laid down in the *Framework Agreements* are not precise enough or complete for the particular call-off, by holding a mini competition in accordance with the following procedure -
  - a) Inviting the *Economic Operators* within the *Framework Agreements* who are capable of executing the subject of the contract to submit written *Tenders*.
  - b) Fixing a time limit, which is sufficiently long, to allow *Tenders* for each specific contract to be submitted, taking into account factors such as the complexity of the subject of the contract.
  - c) *Tenders* shall be submitted in writing, and their content shall remain confidential until the stipulated time limit for reply has expired.
  - d) *Contracting Authorities* shall award each contract to the *Tenderer* who has submitted the best *Tender* on the basis of the award criteria set out in the specifications of the *Framework Agreement*.

### Rule 3. Joint Commissioning:

- 3.1 When the Council jointly commissions services with other public sector bodies such as Health Authorities, or other Local Authorities, the following procedures shall apply:
- The authorities concerned will decide which of them is to act as the lead authority for the purposes of the particular service that is to be commissioned.
  - The procedures for the procurement of services of the lead authority shall be followed.
  - All partaking authorities will be issued with a copy of the agreement

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### Rule 4. Contracts under £10,000

- 4.1 Contracts up to £1,000
- Strategic Leads must ensure that best value for West Lindsey is

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obtained.

A local supplier must be used where appropriate.

Minimum of one oral quotation is required for goods, which includes similar types of process (e.g. looking up from a catalogue).

Minimum of one written quotation is required for services. An email will be acceptable.

The form of contract will be a properly completed official West Lindsey District Council order raised through the Financial Management System Purchasing Module.

#### 4.2 Contracts from £1,001 to £10,000

Strategic Leads must ensure that best value for West Lindsey is obtained.

A minimum of two written quotations is required. One of the quotations must be from a local supplier, where possible, and a local supplier must be used who can provide the most economically advantageous offer.

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The minimum requirement for the form of contract will be a properly completed official West Lindsey District Council order raised through the Financial Management System Purchasing Module. An accompanying letter or e mail, cross-referenced to the order, should give further details if necessary.

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All Contracts £5,000 and over must be entered onto the Contract Management System by the Contracts Officer in Business Improvement.

Entry of contracts under £5,000 will be dependent on the provision and at the discretion of the Strategic Lead.

The services will be responsible for updating the contract on the management system through the term.

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#### Rule 5. Contracts from £10,000 to £75,000

##### 5.1 Contracts from £10,001 to £25,000

Electronic Tendering is the preferred method of carrying a RFQ exercise for procurements with an Estimated Total Contract Value exceeding £10,000.

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Strategic Leads must ensure that best value for West Lindsey is obtained.



Pre-Procurement approval is required.

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A minimum of three written quotations are required. One of the quotations must be from a local supplier and a local supplier must be used who can provide the most economically advantageous offer.

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The minimum requirement for the form of contract will be a properly completed official West Lindsey District Council order raised through the Financial Management System Purchasing Module. An accompanying letter or e mail, cross-referenced from the order, should give further details if necessary.

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Contracts must initially be entered onto the Contract Management System by the Contracts Officer in Business Improvement. It will be the responsibility of the Service to update the contract through the term.

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## 5.2 Contracts from £25,001 to £75,000

Electronic Tendering is the preferred method of carrying out an RFQ exercise for procurements with an Estimated Total Contract Value exceeding £25,000.

Pre-Procurement approval is required.

Procurement at this level has two options.

Option 1 – Seek a minimum of three written quotations.

Option 2 – Advertise the opportunity on Source Lincolnshire and Contracts Finder. This process will be conducted through the Open Procedure. Permission must be sought from the Chief Finance Officer

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Quotations must be based on a request for quotation (RFQ) document including a written specification with simplified Terms and Conditions.

Contracts above £25,001 must be notified to the Head of Finance who will maintain a register of such contracts.

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Contracts must initially be entered onto the Contract Management System by the Contracts Officer in Business Improvement. It will be the responsibility of the Service to update the contract through the term.

Commented [AG25]: addition

### 5.2.1 Invitation

- a) Strategic Leads must invite at least three written quotations from suitable traders against a written specification for the goods or services required. A date and time for the receipt of the quotations must be set and the invitation must:

- state that the Council is not bound to accept any tender or quotation;
  - specify the evaluation criteria and award procedure.
- b) As a minimum, invitations to quote should include the following details -
- A date and time for the receipt of the quotations;
  - The quality or outcomes required;
  - The goods or services to be supplied or purchased;
  - The price (including any discounts or deductions);
  - The period over which the contract is to be performed;
  - The timing of the supply;
  - Arrangements for payments;
  - Monitoring requirements and default procedure;
  - Relevant Terms and Conditions from the Councils' standard Terms and Conditions are incorporated

#### 5.2.2 Receipt/Opening/Acceptance –

- a) Quotations should ideally be received electronically through a secure electronic vault. If this option is not practical quotations can be received in a plain sealed package by the date and time previously specified. They must be marked "Quotation for ....." with the name of the contract but with no mark to identify the sender.
- b) If quotations are received through an electronic vault they can be opened by an officer authorised by the relevant Strategic Lead.
- c) If quotations are received in hard copy, they are to be endorsed with the date and time of receipt and kept by the Strategic Lead in a secure place until the time of opening.
- d) Quotations (hard copy) are to be opened at one time by the Strategic Lead and another officer with a record being kept of all quotations.
- e) Quotations received after the time specified or in envelopes/packages which identify the sender may not be considered.
- f) Any anomalies or apparent errors in the quotation will be clarified by the Strategic Lead and a record of the outcome kept on file.
- g) The Strategic Lead should accept in writing the quotation that represents the best value for West Lindsey.

Commented [AG26]: remove and replace with officer in charge of the procurement process

#### 5.2.3 Form of Contract and Contract Provisions

- a) Within this category, the form of contract may range from a comprehensive and detailed letter (for lower values) to a straightforward formal document prepared by the Legal Adviser (for higher values). Every contract shall specify the goods, materials or services to be supplied or the work to be executed, the price to be paid, the period within which the contract is to be performed and such other conditions and terms as may be agreed. The Legal Adviser should, in all cases, be consulted on the terms of the contract.
- b) The contract may include a clause for the payment of liquidated damages should the contractor fail to complete the contract within the agreed time.
- c) A clause must be inserted allowing the Council to cancel the contract and recover any losses from doing so if the contractor or their agent offers any gift or consideration in relation to the contract.
- d) Where appropriate, the contract should require that the goods or services comply with the relevant European Standard or, if unavailable, a British Standard or equivalent issued by another Member State.
- e) The contract must require that the supplier has all the necessary permissions such as waste disposal licence, planning permission etc.

Rule 6. Contracts from £75,000 up to the EU Threshold

6.1 Electronic Tendering is the mandated method of carrying out a Tender or RFQ exercise for procurements with an Estimated Total Contract Value exceeding £75,000.

Pre-Procurement approval is required.

Procurement at this level has two options.  
Option 1 – Seek a minimum of four written quotations.

Option 2 – Advertise the opportunity on Source Lincolnshire and Contracts Finder. This process will be conducted through the Open Procedure. Permission must be sought from the Chief Finance Officer

Commented [AG27]: addition, LCC have made it mandatory from £5000.

Quotations must be based on a request for quotation (RFQ) document including a written specification. with simplified Terms and Conditions.

Commented [AG28]: remove

Tenders should be co-ordinated by Procurement Lincolnshire, with all tender documentation issued electronically by and returned to the relevant

officer as advised by Procurement Lincolnshire.

Adverts must be placed in the relevant websites as advised by Procurement Lincolnshire.

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## 6.2 Invitation to Tender

The Strategic Lead will select the most appropriate procurement route. Generally there are two main procedures for tendering, restricted (6.5) or open (6.6). In addition Approved Lists may be used as outlined at 6.14.

Commented [AG30]: Replace with 'The main procedure for tendering is through the Open Procedure'

## 6.3 Restricted Procedure

A two stage process. A list of contractors can be compiled from a response to an advertisement or other market research. Where used, the advert should give details of the contract, invite expressions of interest, state the number of bidders who will be invited to tender, and give a time limit within which a pre-qualification questionnaire (PQQ) should be submitted (not less than 30 days if undertaken electronically). The PQQ will contain certain criteria including, but not limited to:

- Financial stability
- Capacity
- Track record
- References
- Health and Safety

When the time limit has expired, invitations to tenders will be sent to a selected number of bidders successful at the PQQ stage.

Commented [AG31]: take out this clause as procurements below EU threshold are subject to open procedure only

## 6.5 Open Procedure

An advertisement shall be placed inviting firms to tender directly for a contract. The advert should be placed on relevant websites and appear at least 40 days (if undertaken electronically) before the closing date for tenders.

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It should state the nature and purpose of the contract, where further details may be obtained and the closing date for tenders.

The Open Procedure is a single stage tender (i.e. no PQQ stage) where all bidders are required to submit a full tender response, and all compliant submissions must be evaluated.

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## 6.6 Timescales

Advice should be sought from Procurement Lincolnshire on developing an appropriate tendering timeline. Where tendering is undertaken, using an electronic vault, timescales may be reduced according to the

procedure to be followed.

#### 6.7 Contract Provisions

Provisions are as Procedure Rule 5.2.3 above.

#### 6.8 Receipt of Tenders

6.9.1 Tenders ideally should be received electronically through a secure vault if this option is not practical tenders can be received in a plain sealed package bearing the words "Tender for ....." and the name of the contract to which it relates. There should be no mark which might identify the sender.

6.9.2 All tenders should be endorsed with the date and time of receipt, with non electronic tenders held by the relevant officer in a securely locked cabinet until the time and date agreed for opening.

6.9.3 Tenders received after the time specified or in envelopes/packages which identify the sender are not to be considered.

#### 6.10 Opening of Tenders

6.10.1 Where Tenders are received in hard copy, they shall be opened by the Monitoring Officer and the Procurement Team or their representatives.

6.10.2 Of those present at the opening, at least two must not be involved in the tender process.

6.10.3 The service is responsible for maintaining a record of all tenders received which will include –

- The names of the contractors;
- The amount of each tender;
- The signatures of the persons opening the tenders;
- The signature of the person receiving the tenders for evaluation. (if hard copy supplied).

6.10.4 Where tenders are received through an electronic vault they will be opened by the relevant officer.

#### 6.11 Evaluation and Acceptance of Tenders

6.11.1 Any anomalies or apparent errors in the tender shall be clarified by the Strategic Lead and a record of the outcome kept on file.

6.11.2 The tenders shall be assessed and scored against the previously set evaluation criteria.

Commented [AG34]: remove and replace with officer in charge of the procurement process

- 6.11.3 No tender shall be accepted formally until adequate and satisfactory financial and technical references have first been obtained in writing.
- 6.11.4 The appropriate Director has delegated authority to accept the tender that represents best value within the approved budget, in accordance with the Council's corporate delegations.
- 6.12 Form of Contract
- 6.12.1 The form of contract should always be a formal document, the provisions of which shall be approved by the Legal Adviser to the Council prior to the invitation to tender. Every contract shall specify the goods, materials or services to be supplied or the work to be executed, the price to be paid, the period within which the contract is to be performed and such other conditions and terms as may be agreed.
- 6.12.2 The contract shall be signed by the appropriate Director.
- 6.13 Approved Lists:**
- 6.13.1 *Approved Lists* may be used to select *Applicants* as an alternative to advertisement where the *Total Contract Value* for a contract exceeds £75,000. They may also be used to select *Applicants* where the *Total Contract Value* is less. *Approved Lists* should be used where recurrent transactions of a similar type are likely but where such transactions need to be priced individually and cannot easily be aggregated and priced in a single tendering exercise. *Approved Lists* cannot be used where the *EU Procurement Directive* applies.
- 6.13.2 Strategic Leads shall draw up in consultation with their Lincolnshire Procurement Resource:
- *Approved Lists of Economic Operators* ready to perform contracts to supply goods or services of particular types including without limitation on the basis of agreed contract terms; and
  - Criteria for *Shortlisting* from the lists.
- 6.13.3 No person may be entered on an *Approved List* until there has been an adequate investigation into both their financial and technical ability to perform the contract, unless such matters will be investigated each time bids are invited from that list.
- 6.13.4 *Approved Lists* must be drawn up after an advertisement inviting applications for inclusion on the list. The advertisement must be placed to secure widest publicity among relevant *Economic Operators* throughout all member states of the EU. Persons may be entered on a list between the initial advertisement and re-advertisement provided the shortlisting requirements are met.

6.13.5 The list and *shortlisting* criteria must be reviewed at least annually and re-advertised at least every three years. For clarification review means:

- The reassessment of the financial, technical ability and performance of those *Economic Operators* on the list unless such matters will be investigated each time bids are invited from that list, and
- The deletion of those *Economic Operators* no longer qualified, with a written record kept justifying the deletion.

On re-advertisement, a copy of the advertisement must be sent to each person on the list, inviting them to reapply.

6.13.6 All *Approved Lists* shall be maintained in an open, fair and transparent manner and must be open to public inspection.

6.13.7 Lists maintained by third parties e.g. the New Qualification System (NQS), Construction Line, EXOR or any list maintained in substitution of the NQS will be deemed to be an *Approved List* for the purpose of these Contract Procurement Procedure Rules and shall not be subject to the requirements of Regulation 6.13.2 inclusive.

#### Rule 7. Contracts above the EU threshold

7.1 At this level TENDERS are required as per Procedure Rule 6 plus –

- a) The estimated contract value must be considered in relation to the EU procurement thresholds in force at the time. An advertisement must be placed in the Official Journal of the EU and other set procedures followed.
- b) The contractor will be required to provide suitable security for the due performance of the contract. This shall be decided by the appropriate Director in consultation with Procurement Lincolnshire.

#### 7.2 Invitation to Tender

The Strategic Lead, in consultation with Procurement Lincolnshire, will select the most appropriate procurement route. Generally there are two main procedures for tendering, restricted or open (6.5). In addition Approved Lists may be used as outlined at 6.13.

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#### 6.9 Restricted Procedure

A two stage process. A list of contractors can be compiled from a response to an advertisement or other market research. Where used, the advert should give details of the contract, invite expressions of interest, state the number of bidders who will be invited to tender, and

give a time limit within which a pre-qualification questionnaire (PQQ) should be submitted (not less than 30 days if undertaken electronically). The PQQ will contain certain criteria including, but not limited to:

- 6.9.1 Financial stability
- 6.9.2 Capacity
- 6.9.3 Track record
- 6.9.4 References
- 6.9.5 Health and Safety

When the time limit has expired, invitations to tenders will be sent to a selected number of bidders successful at the PQQ stage.

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Rule 8. Financial Control

8.1 Expenditure above the contract price should be reported as follows –

Contract Figure £	Director £	Leadership Team & Chief Finance Officer £	Committee £
Up to 25,000	Up to 2,000	Over 2,000 to 5,000	Over 5,000
25,001 to 75,000	Up to 3,000	Over 3,000 to 7,500	Over 7,500
75,000 above	Up to 5,000	Over 7,500 to 10,000	Over 10,000

8.2 The reporting requirement does not apply where contract growth is in accordance with the provisions of the contract.

8.3 Financial Procedures Rules regarding virement still apply to all additional expenditure.

8.4 Strategic Leads should report any overspends on the Final Account to Financial Services, identifying where the additional expenditure will be generated, and subsequently to the appropriate committee.

8.5 Compliance with Procedure Rules must not be avoided by breaking contracts down into lesser values.

Rule 9. Contracts Register

9.1 All West Lindsey District Council contracts must be recorded on the Contracts Register. Strategic Leads are responsible for updating the register.

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Rule 10. The Appointment of Consultants to Provide Services:

10.1 The following procedure applies where in the opinion of the relevant officer because of the specialist nature of the services required, it is necessary to appoint a consultant to provide the services to the Council.

This procedure does not apply when:

- The estimated Total Contract Value of the services is equal to or exceeds the EU Threshold for the supply of services in which case the EU procurement procedure must be followed, or
- When the services required may be obtained through ESPO or other collaborative arrangements in the public sector.

10.2 The officer must submit a report to the Director setting out:

- The nature of the services for which the appointment of a Consultant is required;
- The estimated Total Contract Value of the services;
- That no employee of the Council has been identified with the capacity or availability to undertake the services.

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10.3 If the Director is of the opinion that in the interest of value for money for the provision of the services it is necessary or expedient to secure the appointment of a consultant to provide those services they shall record that opinion in writing and authorise the officer to engage a consultant using an established Corporate Contract or Framework Agreement or where the nature of the services required are so specialist and no suitable Corporate Contract or Framework Agreement is in place a formal tendering process will follow receipt and evaluation of the business case proposals.

10.4 Where the Total Contract Value is estimated to be above £75,000 the Rules are set out in Procedure Rule 6 onwards and should be followed.

10.5 Where the Total Contract Value is between £10,000 and £75,000 the Rules are set out in Procedure Rule 5 onwards and should be followed.

The officer must submit invitations to provide the services to at least three Applicants who are experienced in providing services of a similar type to the services required.

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A RFQ/Invitation to Tender for the provision of consultancy services

must include:

- a) a specification for the services;
- b) a questionnaire seeking details of the applicant's experience in providing similar services;
- c) the Council's standard contractual terms on which it is intended to appoint the consultant to provide the services; and
- d) the Award Criteria.

10.6 If the officer is of the opinion that the nature of the services required is so specialist that fewer than three Applicants would be able to provide the services the officer must record in writing the reason why the services are so specialist and, subject to the approval of the Director of Resources, may send the invitation to provide the services to two/one Applicant(s) only.

10.7 Responses to the invitation to provide the services shall be submitted to the officer by the appointed time and shall be opened by the officer and a representative of the relevant Director. The responses shall be evaluated in accordance with the Award Criteria to ascertain which response is most economically advantageous. The evaluation shall be recorded in writing and the record shall be signed by the officer.

10.8 The officer shall submit the evaluation report to the Director and recommend the appointment of the applicant who has submitted the most economically advantageous response. The Director may accept or reject that recommendation and shall record their reason for doing so in writing and sign and date that record.

10.9 Prior to appointing the chosen consultant to provide the services the officer shall ensure that:

- a) two satisfactory references have been obtained;
- b) a bankruptcy search has been undertaken against the name of the consultant with a satisfactory result;
- c) the independent Medical Officer is satisfied of the consultant's medical fitness to provide the services;
- d) the employment/tax status of the consultant has been confirmed