



## **CONTRACT & PROCUREMENT PROCEDURE RULES**

In partnership with Procurement Lincolnshire

Revised March 2020

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## Contract & Procurement Procedure Rules

### **1. INTRODUCTION AND SCOPE**

Contract & Procurement Procedure Rules (CPPR's) inform officers involved in procurement of the mandatory requirements when undertaking procurement and developing contract documentation.

The CPPR's advise on procedures for the purchase of goods, works and services and should be read together with Financial Procedure Rules within The Constitution and the Public Contract Regulations 2015 <http://www.legislation.gov.uk>, and apply to all officers employed by the Council and any persons appointed to work with or on behalf of the Council.

In the event of any conflict between EU law, UK law and these Contract & Procurement 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.

Following these CPPR's will ensure that the Council promotes good purchasing practice, deters corruption and prevents allegations of incorrect or fraudulent purchase.

When carrying out any procurement, consideration shall be given to the four principles:

- Transparency
- Non-discrimination
- Proportionality
- Mutual consideration

#### **1.1 BASIC STANDARDS**

The purpose of the CPPR's is to:-

- Help officers procure 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;
- 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; and
- Comply with the Councils' corporate and service aims and objectives

In addition, ensure that: -

- Any grant money received must be spent in line with these Contract & Procurement Procedure Rules unless the grant conditions state otherwise;
- The purchase has been authorised by the relevant level of management;
- It is a lawful purchase; and
- Processes are in place to maintain the security and integrity of data;

Officers involved in any procurement will make sure that:

- The rules set out in this document are followed;
- Any additional legal or financial advice is sought prior to commencement or during the procurement process;
- Any personal financial interest in a contract is declared prior to commencement of the procurement process;
- All bids are kept confidential;
- A written contract is issued and signed by both parties or purchase order is issued before the supply of goods, services or carrying out of works begin;
- Where appropriate identify a Contract Manager with responsibility for ensuring the contract delivers as intended; and
- A review of each contract is carried out at an appropriate stage in a term contract or at the end of a fixed term contract.

## 1.2 CONTRACTS

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

- The supply of goods;
- Execution of works;
- The delivery of services;
- The hire, rental, repair, maintenance or lease of goods or equipment.

For the purposes of these CPPR's contracts do not include:

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

## 1.3 CONCESSION CONTRACTS

A concession contract is an agreement between the Council and an Economic Operator (mostly private companies) where the Economic Operator is given the right to exploit works or services provided for their own gain. Economic Operators can either receive consideration for their services solely through third party sources, or partly through consideration from the Council, along with income received from third parties.

There are two types of concessions contracts: works concessions and service concessions. In a works concession, the Economic Operator operates, maintains and carries out the development of infrastructure. In a service concession, the Economic

Operator provides services of general economic interest.

Advice must be sought from Procurement Lincolnshire prior to tendering a concessions contract.

## 1.4 RESPONSIBILITIES

### 1.4.1 The Management Team (MT)

The MT have joint responsibility for:

- Ensuring that procedures for procurement are sound and properly administered;
- All staff comply with these Contract & Procurement Procedure Rules.

The Section 151 Officer (Chief Finance Officer) is responsible for ensuring all income and expenditure is lawful. In addition, the Section 151 Officer will also monitor the use of the exception process (section 2).

### 1.4.2 Managers

Will be responsible for:

- Ensuring staff are aware of their responsibilities under these procedures and receive adequate training and guidance;
- Ensuring officers assigned to manage contracts, update those contracts with the relevant management information, i.e., orders, invoices, minutes, etc. in the current contract management depository;
- Ensure sufficient time and resource is allocated to the pre-procurement and tendering process.

### 1.4.3 Contract sign off

Sign off on Contract documentation on behalf of the Council will be as follows dependent on financial limits allocated:

<b>Total Contract Value</b>	<b>Sign off</b>
Under £5k	Team Manager
Contracts £5k - £30k	Team Manager / Management Team
Contracts above £30k	Member of Management Team

### 1.4.4 Procurement Resources

#### 1.4.4.1 Contracts & Procurement Officer

Will be responsible for:

- The Council's Electronic Contract Register which holds all contracts where the estimated contract value is £5,000 and over, including extensions.
- Ensuring safe keeping of an electronic copy of the signed contract is held where a contract is formed in addition to a Purchase Order

Commented [AG1]: Renamed due to organizational structure

Commented [AG2]: Addition to cover monitoring of exception process

Commented [AG3]: Addition required to cover sign off authority

- All approved exceptions are held on the Contract Register
- All Consultancy and Interim appointments are held on the Contract Register
- Ensuring completion of all procurement and contract documentation, including sign off on award/non-award letters for procurements under EU threshold.

Commented [AG4]: Addition to cover authority of Contracts Officer

The Contracts & Procurement Officer is authorised to carry out procurement, under EU threshold, for supplies, services and works on behalf of the Council, and shall ensure that the principles and standards of these CPPR's are complied with. Additional support for procurements over £75k will be provided by the Procurement Lincolnshire District Liaison Officer. Advice must be sought from Procurement Lincolnshire with regard to any deviation from the CPPR's and an Exception Report shall be submitted to the Section 151 Officer for approval.

Commented [AG5]: Increase in financial limit for CPO procurements

The officer must check whether a suitable Contract or Framework Agreement exists within the Council, which can be utilised, before engaging in a Procurement exercise. A framework should be used unless there is a good reason not to, i.e., limited suppliers, timescales, etc., and any reason must be recorded.

The officer must also ensure that any agents acting on the behalf of the Council comply with the CPPR's and all other relevant regulations, and with all UK and EU binding legal requirements.

#### 1.4.4.2 Procurement Lincolnshire District Liaison Officer

The Shared Service agreement with Procurement Lincolnshire provides an additional procurement resource to assist the Council with high value or complex procurement enquiries, as required, in particular with focus on procurements over the value of £75,000.

## **2. EXCEPTIONS TO COMPLIANCE WITH THE CONTRACT & PROCUREMENT PROCEDURE RULES**

Exceptions are provided in circumstances where the Chief Finance Officer (Section 151 officer) believes an alternative route to normal tendering procedures is required.

Commented [AG6]: Changed at request of Finance Manager

Exceptions may be necessary because of an unforeseen event has occurred whereby there may be immediate risk to persons or property, or potential serious disruption to Council services.

**Exceptions are not a substitute for occasions where procurement planning has not been exercised and there is insufficient time to undertake a competitive process.**

The exception report shall be completed by the Contracts & Procurement Officer and submitted to the appropriate authority for approval as follows:-

- The appropriate Committee or Full Council if:
  - The value of the contract is over EU threshold and approval has been given by Legal Services and/or Procurement Lincolnshire: and

Commented [AG7]: To cover if requirement is urgent or Full Council is earlier than relevant Committee

Commented [AG8]: Either or option needed dependent on requirement

- The tendering exercise would not achieve best value.
- The Management Team (one member to sign on behalf) if:
  - The potential value of the contract is between £75k – EU threshold; and
  - A quotation or tender differs marginally from the specification but nevertheless represents the best value for West Lindsey; or
  - There is only one potential supplier or contractor.
- The Section 151 Officer if:
  - The value of the contract is below £75k; and
  - The requirement is of an urgent nature; or
  - Social value is of high importance; or
  - There is only one potential supplier or contractor; or
  - There are unforeseen events.

Commented [AG9]: To clarify that one member can sign on behalf of MT

All exceptions shall be recorded on the Councils' Contract Register.

### **3. JOINT COMMISSIONING**

When the Council jointly commissions services with other public sector bodies, the following procedures shall apply:-

- The parties 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 participating authorities will be issued with a signed copy of the agreement.

Contracts entered into through collaboration with other public sector bodies, where a competitive process has been followed that complies with their equivalent to the CPPR's will not require an exception from this Council's CPPR's.

### **4. APPOINTMENT OF CONSULTANTS, INTERIM STAFF AND TEMPORARY STAFF**

#### Consultants

Definition – a person who provides expert knowledge and advice in a particular field

Where, it is considered necessary to appoint a consultant to provide the services to the Council the following procedure shall be undertaken.

The Service shall submit a report to the Management Team setting out:

- The nature of the services for which the appointment of a Consultant is required;
- The estimated Total Contract Value of the services;
- The preferred Procurement route (RFQ, tender, framework, via agency);
- That no employee of the Council has been identified with the capacity or availability to undertake the services;
- The identified budget availability as agreed with Finance.



If it is 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 Management Team, may send the invitation to one/two Applicant(s) only.

If permission is granted, an RFQ/Invitation to Tender for the provision of consultancy services must include as a minimum:

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

The estimated Total Contract Value will dictate which Procurement route is applicable.

The Service will, in liaison with Human Resources, obtain responses in line with the identified procurement route, for evaluation. Human Resources will ascertain as to whether IR35 (intermediaries legislation) will apply.

Where it is deemed that IR35 will apply, the status check report and cost implications of such appointment must be highlighted. No consultant is to be appointed without confirming if the IR35 rule applies to an engagement.

IR 35 is legislation which affects Tax and National Insurance contributions relating to appointments whereby consultants are contracted to work through an intermediary.

The intermediary can be:

- a limited company;
- a service or personal service company; or
- a partnership

The potential candidates will be evaluated and HR will then carry out the relevant checks and assurances. The Service will then submit a final report to the Management Team detailing the proposed appointment and costs for approval. If approved, the successful candidate will then be engaged. HR will then ensure the contract documentation is completed.

Once the consultancy assignment is completed, the Service must submit a report to the Management Team detailing the total cost of the engagement, the benefits and whether the aims and objectives were achieved.

#### Interim Staff

Definition – a person employed for a set period of time, experienced professional with niche skills, able to cover long term leave or manage a project

Where, it is considered necessary to appoint an interim to provide long term cover for an existing post within a Service the following procedure will be undertaken.

The officer must submit a report to Human Resources and Financial Services setting

out:

- The nature of the services for which the appointment of an Interim is required;
- The estimated Total Contract Value of the services;
- The preferred Procurement route (RFQ, tender, framework, via agency);
- That no employee of the Council has been identified with the capacity or availability to take over the post;
- The identified budget availability as agreed with Finance.

Where the interim resources is for additional capacity or for specific project delivery, The officer must submit a report to the Management Team setting out the items as detailed above.

If permission is granted, an RFQ/Invitation to Tender for the provision of interim services must include as a minimum:

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

The estimated Total Contract Value will dictate which Procurement route is applicable. The potential candidates will be evaluated and HR will then carry out the relevant checks and assurances. The successful candidate will then be engaged. HR will then ensure the contract documentation is completed.

Where the employment of a Consultant or Interim is estimated to attain a value of £5,000 or over, an entry shall be made on the Council's Contract Register.

HR will ensure that all documentation relating to the appointment and engagement of a Consultant or Interim will be stored in a secure environment.

#### Temporary staff

Definition – a person hired through an agency to cover unexpected short term defined work.

The Service Manager will complete a vacancy request form. It will be assessed by finance for budget requirements and if approved, will then be forwarded to Human Resources (HR) to source suitable agencies. The number of CV's required will be dependent on the budget (see procurement thresholds for quotes).

HR will complete relevant employment checks. If the candidate is self – employed through an agency the Service will be required to sign the agency contract. If the candidate is not self-employed through an agency, HR will complete the Council agency contract document and arrange for a signature from the successful candidate.

## **5. E-PROCUREMENT**

Electronic tendering is the compliant method of carrying out an Invitation to Tender (ITT) or Request for Quotation (RFQ) process where the value of the contract will be £5,000 and above.

When calculating the expected value of a contract, the final cost will be identified through the total capital and/or revenue expenditure over the projected life of the contract; this will also include any extension periods. If dealing with open-ended contracts the total value should be costed over a four year period.

The electronic tendering portal has a Contract Register and Contract Management module within. It will be the responsibility of the Contracts & Procurement Officer to ensure the register is up to date, all awarded contracts are published and contract management is in place. It will be the responsibility of the Service to ensure all relevant documentation relating to the contract management is uploaded, and the contract is managed through to end of contract term.

## **6. STEPS PRIOR TO PROCUREMENT**

Before engaging in a procurement resulting in a Contractual arrangement, the following must be considered:-

- Is the proposed contract in line with the Council's Corporate Plan, aims and objectives?
- Has it been identified as part of business planning?
- Have all options for delivering the contract been explored?
- Is there a budget in place or will one need to be developed?
- Will the proposed contract provide value for money in line with good quality?
- Will this procurement secure any wider social, economic and environmental benefits for the West Lindsey District - (Social Value)?

Commented [AG10]: Addition to support robust process

Commented [AG11]: Addition to cover introduction of Social Value

For potential procurements not already identified and approved by the Management Team through the Business and/or Service Plans and are considered to be outside 'Business as Usual', these must be authorized through a Business Case detailing:

- The need
- The value
- The objectives
- The risks
- The governance and data protection
- The market
- The most appropriate procurement method
- The resources required for procurement process
- The resources required for ongoing management and monitoring of the contract

### **6.1 BEST VALUE**

Procurements should consider how the contract will impact on the economic, social value and environmental wellbeing of the district and Lincolnshire as a whole, as required by the Public Services (Social Value) Act 2012.

Where necessary, the Council should consider as part of an assessment:

- How the proposed procurement might improve the economic, social and environmental well-being of the relevant area
- How, during the development of the procurement documentation, the potential improvements can be incorporated, to secure delivery
- Whether any consultation is necessary

## 6.2 LOCAL SUPPLIERS

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

## 6.3 USING A FRAMEWORK AGREEMENT

A framework is an agreement put in place by a Contracting Authority that may be used by other purchasing organisations, subject to that organisation having been included in the original OJEU notice and identified within the contract documentation, (there maybe more than one Contracting Authority).

The purchasing organisation (the buyer) can call off from a framework by either Direct award or Further Competition according to the detail of the Call-Off procedure included in the contract documentation. As a framework has already satisfied the procurement procedures included in an OJEU tendering process they can often be a faster route to procurement. However for a Direct Award the requirements of the buying organisation must be precise in detail with that within the framework, this means no change to specification, terms and conditions, standards, price and costs, payment terms etc. Documentation for either a Call-Off or Further Competition is often supplied by the Framework Contracting Authority and part of the framework portfolio documents.

Prior to any procurement the officer responsible for carrying out the procurement activity must consider as to whether there are any frameworks available and suitable for meeting the buying organisations purchasing need.

Engagement of a supplier and formation of a contract must be executed in accordance with the framework procedures (it is the Call-Off order that forms the contract within the Framework). Officers must ensure that they fully understand the terms and conditions, are familiar with and understand all of the Framework and Call-Off procedures documentation along with buyer eligibility before using the framework.

To make a direct award the buying organisation must be able to differentiate amongst suppliers and demonstrate a value for money approach.

## 6.4 GRANT MONIES

Procuring contracts using external grant monies can involve additional regulatory requirements and additional scrutiny. It is therefore mandatory that both the Service and officer responsible for conducting the procurement are fully conversant with all of

the requirements of the relevant funding bodies and identify any risks in a pre-procurement risk register.

The procuring officer shall ensure they engage with Procurement Lincolnshire to maintain assurance that the correct process is followed and any additional guidance is provided.

**NOTE:** Specifically for ERDF funding, officers must appraise the intended procurement activity against the ERDF published 'common mistakes' guidance prior to initiating any procurement activity to ensure all of the common mistakes are avoided.

### 6.5 STATE AID

State aid is any advantage granted by public authorities through state resources on a selective basis to any organisations that could potentially distort competition and trade in the European Union (EU).

The definition of state aid is very broad because 'an advantage' can take many forms. It is anything which an undertaking (an organisation engaged in economic activity) could not get on the open market.

State aid rules can (among other things) apply to the following:

- Grants
- Loans
- Tax breaks, including enhanced capital allowances
- The use or sale of a state asset for free or at less than market price

The rules can apply to funding given to charities, public authorities and other non-profit making bodies where they are involved in commercial activities.

Prior to undertaking any tender the Service must give consideration as to whether there are any state aid implications, advice to be sought from Procurement Lincolnshire.

Where any state aid implications are found, Legal Services should be consulted before continuing with the procurement.

### 6.6 INFORMATION GOVERNANCE AND DATA PROTECTION

The Contracts & Procurement Officer, when engaging in any procurement process, must consider as to whether any of the requirements of the General Data Protection Regulations will apply. If it is anticipated that personal data is to be processed, the officer must ensure that safeguards are built into the tender documentation and assessed, where appropriate, as part of the evaluation.

### 6.7 TUPE

When undertaking a procurement exercise, consideration must be given as to whether any Transfer of Undertaking (Protection of Employment) TUPE issues may arise.

Human Resources and Legal should be consulted before the procurement process commences.

## **7. THRESHOLDS**

The following table shows the financial threshold levels for Procurement:

Goods and Services

up to £5,000	one written estimate/quotation (email included)
£5,001 - £25,000	two quotations
£25,001 - £75,000	three independent quotations (no group relationship) (RFQ)
£75,001 – EU threshold (£189,330)	four independent quotations (no group relationship) (RFQ)
over £189,330.00	full EU tender process (ITT)

Works contracts as above until

£189,330.00 - £4,733,252	Five independent quotations (no group relationship) or by advertisement
Over £4,733,252	full EU tender process (ITT)

Compliance with the CPPR's must not be avoided by disaggregating spend into lesser values.

## **8. BELOW OJEU THRESHOLDS FOR PROCUREMENT OF SERVICES**

### **8.1 SELECTING THE CORRECT PROCESS**

When engaging in any procurement the Service must ensure that good quality and best value is obtained for West Lindsey.

Contracts up to £5,000

- Minimum of one written quotation is required for services and goods, which includes similar types of process (e.g. looking up from a catalogue). An email will be acceptable. A local supplier shall be used where appropriate.
- The form of contract will be a completed West Lindsey District Council Purchase Order raised through the Financial Management System Purchasing Module.

Contracts from £5,001 to £25,000

- Procurement of contracts for £5,000 and over shall be carried out through the Electronic Tendering Portal.

- Pre-Procurement approval is required from **Team Manager** or Management Team.
- A minimum of two written quotations is required. One of the quotations shall be from a local supplier, where possible, and a local supplier shall be used if they provide the most economically advantageous offer.
- 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. For the higher value contracts it may be pertinent to have a formal contract document signed by both parties.
- All Awarded Contracts of £5,000 and over shall be published on the Contract Register. Contracts under £5,000 will be entered at the discretion of the Service.
- The Service will be responsible for updating the contract on the management module through the term of the contract.

**Commented [AG12]:** Addition as Team Manager financial limits are £30k

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

- Procurement of contracts for £5,000 and over shall be carried out through the Electronic Tendering Portal.
- Pre-Procurement approval is required from **Team Manager**, or Management Team.
- 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 Director of Resources
- Quotations must be based on a Request for Quotation (RFQ) document including a written specification with Terms and Conditions.
- The Service will be responsible for updating the contract in the management depository through the term of the contract.
- The 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 and a formal contract document signed by both parties.
- Awarded contracts over £25,000 shall have an award notice published on Contracts Finder within 30 days of sign off of contract documentation by both parties.

**Commented [AG13]:** To be included as their limit is £30k and this section starts at £25k

#### Contracts from £75,001 up to the EU Threshold

- Procurement of contracts for £5,000 and over must be carried out through the Electronic Tendering Portal.
- Pre-Procurement approval is required from Management Team.
- 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 Director of Resources
- Tenders over £75,000 should be coordinated by Procurement Lincolnshire, with all tender documentation issued electronically by and returned to the relevant officer as advised by Procurement Lincolnshire.
- The 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 and a formal contract document signed by both parties.
- Awarded contracts over £25,000 shall have an award notice published on Contracts Finder within 30 days of signing of the contract documentation by both parties.

#### 8.2 REQUEST FOR QUOTATIONS (RFQ'S)

RFQ's are the Council's preferred method of undertaking procurement within the value thresholds identified in section 7.

As a minimum, quotation documentation must include the following details as a minimum:-

- A date and time for the receipt of the quotations;
- Specification
- Pricing schedule (including any discounts or deduction options);
- The period over which the contract is to be performed;
- The timing of the supply;
- Arrangements for payments;
- Terms and Conditions from the Councils' Standard Terms and Conditions for Services or Works:
- Any requirement specific terms and conditions
- Evaluation criteria and award procedure.

In addition, the RFQ can also include:-



- Management and Monitoring requirements and service levels;
- Quality or outcomes required;

The quotation must also state that the Council is not bound to accept any tender or quotation.

All Quotations with an estimated value of £5,000 and over, should ideally be received electronically through a secure 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.

If quotations are received through an electronic vault they are to be opened by the Contracts & Procurement Officer or other designated procurement officer.

If quotations are received in hard copy, they are to be endorsed with the date and time of receipt and kept by the Contracts & Procurement Officer in a secure place until the time of opening.

Quotations (hard copy) are to be opened at one time by the Contracts & Procurement Officer and witnessed by another officer with a record being kept of all quotations.

Quotations received after the time specified or in envelopes/packages which identify the sender may not be considered.

Any anomalies or apparent errors in the quotation will be clarified by the Contracts & Procurement Officer and a record of the outcome kept on file.

The Council should accept in writing the quotation that represents the best value for West Lindsey.

### 8.3 APPROVED LISTS

Approved lists may be used in conjunction with RFQ's to select Economic Operators. Approved lists may be used when recurrent transactions need to be priced individually and cannot easily be aggregated and priced in a single tendering exercise.

Approved lists may not be used if the estimated total aggregated spend for contracts to be placed under the approved list, over a 48 month period, may exceed the relevant EU threshold. When this might occur, a Dynamic Purchasing system or Framework agreement would be a more suitable and compliant approach.

Suppliers to be entered onto an Approved List must have both their financial and technical ability assessed to ensure they are fully able to comply with the requirements.

The list shall be reviewed annually and re-advertised at least every three years. The review will consider the financial, technical ability and performance of those suppliers on the list.

Suppliers no longer qualified will be deleted from the list with a written record kept justifying the deletion.

Suppliers may be entered onto the list at any time between advertisement and re-advertisement as long as they comply with the requirements.

On re-advertisement, all suppliers currently on the list must be invited to reapply.

All Approved Lists must be transparent, non-discriminatory and proportionate. The lists must also be available for public inspection.

#### 8.4 INVITATION TO TENDER (ITT) BELOW THRESHOLD

If it is considered that the RFQ process will not deliver the required outcome, a full tendering exercise may be undertaken.

If the total contract value is estimated to be below EU threshold, the Invitation to Tender (ITT) should follow an Open procedure. This a single stage tender process where all bidders submitting a response will be evaluated, there will be no assessment of bidders, through a Standard Selection Questionnaire (SSQ) for the purpose of reducing the numbers of bidders invited to bid for the contract

For works contracts which are above the Services EU threshold and below the Works OJEU threshold, a Restricted Tendering process is permitted by the Public Contract Regulations 2015, which means an SSQ can be included in the tendering process.

#### 8.5 TOTAL CONTRACT VALUE

The total contract value will need to be estimated in order to identify the correct procurement process. All total values will exclude Value Added Tax.

The value will be calculated as follows:

Fixed Term contracts – total estimated value of the supplies, services or works to be supplied over the period including extensions.

Indeterminate Length contracts – estimated annual value for 4 year period. Continuance of these contracts will only be permitted after a cost review and best value assurance has been ascertained on a periodic timescale.

Consultancy contracts – daily rate multiplied by duration of assignment

Concession Contracts – estimated total value of concessionaire's total turnover generated over the duration of the contract

Framework agreements – estimate of the total throughput expected to be placed through the framework in order to provide some additional capacity for unexpected requirements.

Periodic purchases for the same requirement, from the same or different suppliers,

must be aggregated over a minimum 12 month period.

Where the Council is only making a part payment, the value from all contributors must be totalled to obtain estimated total value.

## **9. ABOVE OJEU THRESHOLD PROCUREMENT**

Where the estimated total contract value is over the EU threshold, advice must be sought from Procurement Lincolnshire.

There are several tender procedures available:- Open procedure, Restricted procedure, Competitive Dialogue, Competitive Procedure with Negotiation, Innovation Partnership.

In an Open procedure all bidders will be evaluated. In other procedures bidders will be de-selected at SSQ stage, prior to completion of the full tender document. Bidders should also be informed of the reasons for de-selection in a pre-tender shortlisting process, at the point of de-selection.

For the higher value procurements, Procurement Lincolnshire recommend a strategy is written to determine the planned approach of cost-effectively purchasing the Council's required supplies, taking into consideration several elements and factors such as the background, scope, outcomes, procurement route options, selected route, timeline for procurement, checklist, funding, budget, the projected risks and opportunities, among others.

**Commented [AG14]:** Addition to cover the requirement for a strategy for the high level procurements

### **9.1 STANDARD SELECTION QUESTIONNAIRE**

The SSQ is structured in 3 separate parts:

Part 1 of the SSQ covers the basic information about the supplier, such as contact details, trade memberships, details of parent companies, etc.

Part 2 covers a self-declaration regarding whether or not any of the exclusion grounds apply.

Part 3 covers a self-declaration regarding whether or not the company meets the selection criteria in respect of their financial standing and technical capacity.

A Part 1 and Part 2 declaration is mandatory from potential suppliers to declare that they have not breached any of the exclusion grounds.

If a potential supplier, or any organisation has breached any of the exclusion grounds, the organisation has the opportunity to explain how and what action they have taken to rectify the situation (this is called self-cleaning).

You must not add to or change the questions in Part 1 or Part 2 of the Standard Selection Questionnaire. Deviations are permissible for the supplier selection questions in Part 3, but must be reported.

## 9.2 STANDARDS AND AWARD

The Award Criteria is used to determine which of the Bidders will be awarded the contract and they are assessed as part of the ITT.

Public contracts must be based on the Most Economically Advantageous Tender 'MEAT'. Award Criteria must be designed to secure a sustainable outcome which represents Value for Money and quality for the Council.

Award criteria can be:

- Lowest price or total cost
- Based on specified qualitative, environmental or social criteria
- Best price/quality ratio

It may also include:

- Quality, including technical merit, aesthetic and functional characteristic, accessibility
- Innovative characteristics
- Organisation, qualification and experience of staff assigned to performing the contract
- After sales service and technical assistance, delivery conditions and process

It must not include:

- Non-commercial considerations i.e.,
  - Terms and conditions of employment by suppliers of their workers
  - Terms on which suppliers contract with their sub-contractors
  - Suppliers business activities or interests with other areas of government
  - Conduct of suppliers or workers in industrial disputes
  - Any political, industrial or sectarian affiliations or interests of suppliers
  - Financial support or lack of, by the suppliers for any institution to or from which the authority gives or withholds support
  - Workforce matters and industrial disputes
  - Use or non-use by suppliers of technical or professional services provided by the authority under the Building act 1984.
  - Matters which discriminate against suppliers from the European Economic Area or signatories to the Government Procurement Agreement
  - Selection/Suitability Criteria

## 9.3 COMMUNICATION WITH SUPPLIERS

All communication with suppliers will take place through an electronic tendering portal.

The Contracts & Procurement Officer or Procurement Resource will publish all documents relating to the procurement. No substantial modification to the documentation is permitted once it has been published.

No verbal communication regarding the documents must be undertaken with bidders during the tender process. Communication must be conducted through the electronic tendering portal.

If a competitive dialogue process is used, oral communication is permitted within the dialogue phases of the procurement. Advice should be sought from Procurement Lincolnshire before this process is undertaken.

#### 9.4 UNDERTAKING A TENDER

When considering a tender process, it is in the Council's interest to ensure that the Bidders are given sufficient time in which to prepare and submit a tender and that as much relevant information is disclosed to allow Bidders to submit a competitive offer.

The Invitation to Tender (ITT) must include:

- A specification – this must describe clearly the Council's requirements
- Any proposed contract mobilisation or implementation
- A process to enable the Council to ensure the Supplier meets its obligations
- Exit strategy and potential decommissioning
- A statement that the Council is not bound to accept any tender received
- Timeline for the procurement process, including clarification deadlines and process for return of tenders through the electronic tendering portal
- The award criteria and weightings where relevant
- The evaluation procedure
- The Form of Tender and collusive tendering certificate

#### 9.5 CLARIFICATIONS PRIOR TO SUBMISSION

During the tender process, Bidders are allowed to submit questions regarding the tender documentation. All questions are to be submitted through the electronic tendering portal. The Council will then respond through the portal ensuring both the clarification and response is shared with all Bidders, except when the response would disclose confidential Bidder information.

#### 9.6 PRESENTATIONS

Presentations are no longer permitted to be assessed as part of the procurement process unless presenting is a material component of the specification.

The evaluation of presentations must be defined within the Award Criteria of the ITT and the following undertaken:

- Contemporaneous notes are collected detailing all questions, responses and points raised
- Questions to be concentrated on the evaluation requirements

## 9.7 EVALUATIONS AND SCORING

Tenders shall be evaluated, recorded and awarded in accordance with the Award Criteria detailed in the RFQ or ITT, and the award criteria and any sub-criteria should be kept to a minimum to enable the evaluation process to be more manageable.

The evaluation and scoring meeting will be chaired by the Contracts & Procurement Officer or Procurement resource from Procurement Lincolnshire, the chair is not allowed to be part of the evaluation panel.

The evaluators must evaluate the Bidder submission alone, no other documentation or knowledge of the Bidder can be included, and the written record must demonstrate why the highest scoring Bidder provided the best submission.

Evaluators are required to reach a consensus score with agreed comments. The scores and comments for all the Bidders shall be objective and in line with the Award criteria. Any commentary may be disclosed to Bidders if there is a legal challenge and the evaluation process is an activity where the risk of challenge is high.

## 9.8 CLARIFICATIONS DURING EVALUATION

Any unclear or ambiguous aspects of the bids shall be clarified with the Bidder through the electronic tendering portal. Clarifications during the evaluation process shall not be used to extract additional components of the bid, but to ascertain the extent of the Bidder's offer.

Any response subject to a clarification request by the Council shall not be scored until the clarification has been received.

## 9.9 AWARD

Where the estimated total value of the contracts exceeds the EU threshold, all Bidders shall be informed of the intention to award to the successful bidder. A Standstill period of 10 calendar days will be in force after the notification to allow unsuccessful bidders to challenge the decision.

Once the 10 day period has expired, the contract may be formally awarded to the successful supplier. Contract documentation will then be drawn up for signatures.

If the decision is challenged the Council will immediately inform Procurement Lincolnshire for advice.

In the case of unforeseen circumstances outside the control of the Council, the 10 day standstill period can be waived, after confirmation with Legal Services and Procurement Lincolnshire.

The Contracts & Procurement Officer or Procurement resource will inform all bidders of the reason for the award and provide feedback. This must include:

- The award criteria;
- Scores for the relevant sections of the tender for the bidder who is to receive the debrief;

- The deadline for the standstill period and the date after which the Council is able to award the contract;
- Evaluation commentary for the Bidder
- Name of the winning Bidder

## 10. REPORTING REQUIREMENTS

It is a requirement of the Public Contract Regulations, on completion of an over EU threshold tender process, for a written procurement report to be drawn up, to include at least:

- Name and address of the contracting authority, subject matter, and value of contract
- Names of selected bidders and reasons for selection
- Names of deselected bidders and reason for deselection
- Name of successful bidder and reasons why its tender was selected
- Justification for use of competitive procedures with negotiation and competitive dialogues in accordance with regulation 26 (PCR's)
- Justification for use of negotiated procedures without prior publication, in accordance with regulation 32 (PCR's)
- The reason for non-award of contract
- The reason for not using the electronic tendering portal
- Any conflicts of interest identified and measures taken.

A copy of the report must be submitted to the Cabinet Office or European commission on request.

Sufficient documentation must be kept to justify all decisions taken in all stages of the procurement process.

The documentation must be kept for a minimum of 12 months for records of unsuccessful tenders and 6 years in relation to the successful tender.

## 11. CONTRACT FORMATION

Every contract, including the appointments of consultants or interims, with a total contract value of £5,000 and above, including extensions, must be recorded on the Council's electronic Contract Register.

No amendments must be made to the contract, or terms and conditions, without first consulting Legal Services or Procurement Lincolnshire. Any amendments agreed during the clarification process will be stated in the clarifications list as an Appendix to the contract document.

Every contract must clearly state appropriate governance obligations where it involved the processing of personal data.

Procurement Lincolnshire advice must be obtained for contracts involving:

- Leasing arrangements
- Use of supplier terms and conditions
- A total contract value in excess of £75,000
- Complex documentation

## 12. CONTRACTS SIGNED UNDER HAND

The officer responsible for obtaining the signature for the contracts shall ensure that the person signing it has the authority to do so.

A signature will be required for all contracts up to a total term of 6 years and not in excess of the EU threshold.

## 13. CONTRACTS SIGNED UNDER SEAL

A contract should be sealed where:

- The Council may wish to enforce the contract for more than 6 years after its end;
- The total contract value is over the EU threshold
- Legal Advice has been provided to this effect
- Where the Council has paid no consideration for goods or services, or the carrying out of works

## 14. PREVENTION OF CORRUPTION

Officers engaged in procurement processes must not invite or accept any gift or reward in respect of the award or performance of any contract.

**In any other situation the Gifts and Hospitality Policy should be adhered to.**

On submission of tenders, the ITT must include an anti-collusion statement signed by the Bidder, this is a declaration of good standing confirming that the Bidder has not met any grounds for mandatory exclusion.

## 15. CONTRACT MANAGEMENT

All contracts, whatever the value, shall require some form of management methodology to be able to evidence that they are: Efficient, Economic and Effective.

A hard copy of all contracts, requiring further documentation than a Purchase Order must be kept in a central location and it is the responsibility of the Contracts & Procurement Officer to ensure it is done.

All contracts must have a named Contract Manager for the life of the contract.

## 16. CONTRACT MONITORING

All contracts will be monitored and reviewed on a regular basis, subject to the requirement. Areas for monitoring will include:



- Adherence of the specification
- Compliance with the terms and conditions
- Attainment of performance standards and service levels
- Change protocol
- Payment arrangements
- User satisfaction
- Data protection

#### 17. CONTRACT VARIATION & EXTENSION

The Contracts & Procurement Officer must ensure that all variations and extensions to contracts are made in accordance with the provisions included within the contract.

Any variations to the original contract must not result in a substantial modification or change to exceed 50% of the initial total contract value.

All variations and extensions must be within the scope of the original procurement and must be signed by both parties.

A copy of any variation or extension must be kept with the original contract documentation.

#### 18. FINANCIAL CONTROL

Where expenditure is expected to exceed the contract price, this should be reported as follows –

Contract Figure £	Chief Finance Officer (S151) £	Management Team £	Committee £
Up to £25,000	Up to 5,000	Over 5,000 to 10,000	Over 10,000
£25,001 to £75,000	Up to 7,500	Over 7,500 to 15,000	Over 15,000
£75,000 above	Up to 10,000	Over 10,000 to 25,000	Over 25,000

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

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