

# Contract Procedure Rules

April 2022

DRAFT



SOUTH  
KESTEVEN  
DISTRICT  
COUNCIL

## CONTENTS

- 1 [Introduction](#)
- 2 [Roles and Responsibilities](#)
- 3 [Non-Compliance with these Rules](#)
- 4 [Exceptions](#)
- 5 [Procurements valued under £10,000](#)
- 6 [Procurements valued between £10,000 and £49,999](#)
- 7 [Procurements valued between £50,000 and the current Goods and Services Public Procurement Threshold](#)
- 8 [Procurements for Works valued between the current Goods and Services Public Procurement Threshold and the current Works Public Procurement Threshold](#)
- 9 [Procurements valued over the relevant Public Procurement Threshold](#)
- 10 [Procuring via a Framework Agreement or Dynamic Purchasing System \(DPS\)](#)
- 11 [Setting up a Framework Agreement](#)
- 12 [Setting up a Dynamic Purchasing System \(DPS\)](#)
- 13 [Public Services \(Social Value\) Act 2012](#)
- 14 [Other Matters to Consider](#)
  - 14.2 [Conflict of Interest](#)
  - 14.3 [Abnormally Low Bids](#)
  - 14.4 [Errors in Tenders](#)
  - 14.5 [Receiving late Submissions](#)
  - 14.6 [Receiving Irregular Tenders](#)
  - 14.7 [GDPR and Data Protection Act 2018 Requirements](#)
  - 14.8 [Freedom of Information](#)
  - 14.9 [Modern Slavery](#)
  - 14.10 [Safeguarding Provisions in Contracts and Grant Arrangements](#)
  - 14.11 [Due Diligence](#)
  - 14.12 [Impacted of Organised Crime](#)
  - 14.13 [Financial Sanctions Legislation](#)
  - 14.14 [Sealing a Contract](#)
  - 14.15 [Reserving below Threshold procurements \(for Service contracts only\)](#)

14.16	<u>Bonds and Parent Company Guarantees</u>
14.17	<u>Procuring with External Grant Monies</u>
15	<u>Contract Management</u>
15.1	<u>Contract Management</u>
15.2	<u>Variations</u>
15.3	<u>Extensions</u>
Appendix 1	<u>Definitions</u>
Appendix 2	<u>Variable Information</u>
Appendix 3	<u>Approval Forms</u>
1	<u>Approval for use of a Framework Agreement</u>
2	<u>Approval to Award a Contract</u>
3	<u>Approval for a Contract Extension</u>
4	<u>Exception Approval</u>
Appendix 4	<u>Roles of Procurement Lead and Welland Procurement</u>
Appendix 5	<u>Quick Reference Guide</u>

DRAFT

## 1. Introduction

- 1.1. The purpose of these Contract Procedure Rules is to set out the principles, roles and processes involved in procurement at the Council. All procurements must comply with these rules, the Officer Scheme of Delegation, the Council's Financial Regulations, English law and European law in force in England.
- 1.2. All procurements must realise value for money through the optimum combination of whole life costs and quality of outcome.
- 1.3. These Rules seek to protect the Council's reputation by minimising the risk of allegations of corruption, dishonesty and failure to meet legal obligations, as such they must be followed in all commercial activity undertaken on behalf of the Council and within a partnership relationship, regardless of the source of funding.
- 1.4. If there is any change to the law which affects these Rules, then that change must be observed until these Rules can be revised. If these Rules conflict in any way with the law, then the law takes precedence.
- 1.5. These Rules are supported by detailed, practical guidance available in the Procurement Toolkit, which can be accessed via the [procurement portal](#). The Procurement Toolkit covers:
  - The Procurement Cycle
  - Assessing Needs
  - When does TUPE apply?
  - Assessing Risks
  - Valuing Your Requirement
  - Understanding Social Value
  - Sustainable Procurement
  - Procurement timetable
  - Specification
  - Evaluation Methodology and Criteria
  - Terms and Conditions
  - Due Diligence
  - The Procurement Process
  - Procuring via a Framework Agreement
  - Contract Management and Review
  - Variation
  - Extensions
- 1.6. Any values stated within these Rules are exclusive of VAT.
- 1.7. All procurement activities must be carried out in a fair, open, transparent, proportionate, and non-discriminatory manner.
- 1.8. These Rules apply to:

- 1.8.1. Contracts or agreements with external organisations where the Council pays for:
    - 1.8.1.1. Goods and/or Services;
    - 1.8.1.2. Works of any kind; and
    - 1.8.1.3. Hire, rental or lease of equipment, material and/or plant.
  - 1.8.2. Grant money received unless the grant conditions state otherwise.
- 1.9. These Rules do not apply in the following circumstances:
- 1.9.1. The purchase or lease of property, land acquisition, interest in land, transaction in land or disposal. This does not extend to any service, supplies or works contracts that may be required to make the land, existing buildings or immoveable property ready for acquisition, disposal or leasing.
  - 1.9.2. Direct employment of permanent or fixed term employees, for the avoidance of doubt these Rules do apply to consultancy and employment agency contracts.
  - 1.9.3. Instructing barristers or solicitors (as long as those costs do not exceed the relevant Public Procurement Threshold).
  - 1.9.4. The lending or borrowing of money by the Council.
  - 1.9.5. Contracts between Local Authorities as defined by Clause 12 of the Public Contracts Regulations 2015.
  - 1.9.6. Contracts between Local Authorities as defined by Clause 17 of the Concession Contracts Regulations 2015.
  - 1.9.7. Contracts between Local Authorities as defined by Clause 1 of the Local Authorities (Goods and Services) Act 1970.
  - 1.9.8. Section 75 NHS Act 2006 arrangements (although details must be recorded on the Council's Contract Register).

**1.10. Estimating the Total Contract Value**

- 1.10.1. Total Value is the maximum potential contract value. This is an estimation of the annual value, multiplied by the maximum contract length (including any extensions). This calculation is to be used for contracts that fall under the Public Procurement Regulations 2015. All references to "value" within these Rules refer to Total Value.
- 1.10.2. Where a proposed work or provision of services may result in contracts being awarded in the form of separate lots, account shall be taken of the total estimated value of all such lots. Where the aggregate value of the lots is equal to or greater

than the relevant Public Procurement Threshold, please speak to the Procurement Lead for further guidance on aggregation.

1.10.2.1. For works contracts, the calculation of the estimated value shall take account of both the cost of the works and the total estimated value of the supplies and services that are made available to the contractor by the Council if they are necessary for executing the works.

1.10.2.2. For services contracts which do not indicate a total price, the basis for calculating the estimated contract value shall be the following:

- in the case of fixed-term contracts where that term is less than or equal to 48 months, the total value for their full term;
- in the case of contracts without a fixed term or with a term greater than 48 months, the monthly value multiplied by 48.

1.10.2.3. For the appointment of consultants, the Estimated Total Contract Value shall be calculated using the requisite rate for the consultant, multiplied by the total duration of the assignment required to complete all the activities and deliverables of the consultant for their entire appointment.

1.10.3. For Concessions contracts (where the supplier makes money from the right given by the Council to provide), contract values are based on what it is worth to the supplier or the cost the Council would incur to provide the contract. The Total Value for these contracts shall be the total turnover of the concessionaire generated over the duration of the contract, as estimated by the Council, taking into account:

- (a) the value of any form of option and any extension of the duration of the concession contract;
- (b) revenue from the payment of fees and fines by the users of the works or services other than those collected on behalf of the Council;
- (c) payments or any other financial advantages, in any form, from the Council to the concessionaire, including compensation for compliance with a public service obligation and public investment subsidies;
- (d) the value of grants or any other financial advantages, in any form, from third parties for the performance of the concession contract;
- (e) revenue from sales of any assets which are part of the concession contract;
- (f) the value of all the supplies and services that are made available to the concessionaire by the Council, provided that they are necessary for executing the works or providing the services;
- (g) any prizes or payment.

1.10.4. Officers will ensure that values are not split in an attempt to avoid the applicability of these Rules or the Public Contract Regulations.

1.10.5. Re-occurring Contracts shall not be put in place with the effect of preventing it from falling within the scope of these Rules, thresholds, or any relevant Public Procurement Regulations. Spend must be aggregated where it is appropriate to do so, whether that is within Council services, or across multiple services for the same scope of work; to ensure value for money is achieved and reduce the duplication of work. Examples of where aggregate spend would be appropriate includes (but is not limited to):

- (a) One service spot purchasing similar pieces of work on a regular basis throughout the financial year;
- (b) Multiple Council services purchasing the same services under different contracts; and
- (c) Individual contracts being kept under a certain threshold to avoid procurement obligations within these Rules.

Where a proposed work or provision of services may result in contracts being awarded in the form of separate lots, account shall be taken of the total estimated value of all such lots. Where the aggregate value of the lots is equal to or greater than the relevant Public Procurement Threshold, the Procurement Lead must be consulted.

1.10.6. Where the Council may be contributing only part of the total value of a contract, it is nevertheless the Estimated Total Contract Value that should be applied in determining the correct procedures to be applied under these Rules. Examples of where this would be appropriate includes (but is not limited to):

- (a) Collaborations between services within the Council;
- (b) Collaboration between the Council and at least one other Contracting Authority; and
- (c) Where the Council is only part funding a project, in partnership with another funding source.

1.10.7. In the event that the estimated Total Contract Value is below the Public Procurement Threshold, and following a procurement process the proposed winning bidder's Total Bid Value exceeds the relevant Public Procurement Threshold, the Officer must not award the contract without consulting with the Procurement Lead as to the risks associated with awarding the contract.

## **2. Roles and Responsibilities**

### Officers

- 2.1. The Officer responsible for the procurement must comply with these Contract Procedure Rules and the Financial Regulations. The Officer is also responsible for ensuring that any Agents acting on behalf of the Council do so in compliance with these Rules and must seek written confirmation of their agreement.

- 2.2. The Officer must have regard to the guidance contained in the Procurement Toolkit which can be accessed via the [procurement portal](#).
- 2.3. All procurements must realise value for money through the optimum combination of whole life costs and quality of outcome.
- 2.4. The Officer must check whether a suitable Corporate Contract or other Publicly Available Contract exists before seeking to let another Contract. Where such a contract does exist, its use should be considered.
- 2.5. The Officer must keep the records detailed in these Rules.
- 2.6. Where an above Public Procurement Threshold procedure is required, the Officer **must** contact the Procurement Lead before embarking on the procurement. The Procurement Lead is also available to provide advice on all procurement activity.
- 2.7. Officers must take all necessary legal, financial and other professional advice. All officers are required to obtain the necessary approvals BEFORE commencing a procurement process. These approvals vary according to value and whether the procurement is considered a Key Decision. Please speak to Democratic Services for any queries relating to approvals.
- 2.8. Where any employee of the Council or of a Supplier may be affected by any transfer arrangement (TUPE), the Officer must ensure that the Transfer of Undertaking (Protection of Employment) issues are considered and obtain relevant advice.
- 2.9. Officers must ensure that the contracts for which they are responsible are effectively managed and monitored to ensure they deliver the requirement as intended.
- 2.10. Where an Officer has a potential conflict of interest within a procurement, the Officer must declare this immediately to the relevant Strategic Director and Monitoring Officer. The Officer may be required to withdraw from the procurement process. Any Officer who fails to declare such a conflict of interest may be subject to disciplinary proceedings and sanctions and also risks being prosecuted under the Bribery Act 2010.
- 2.11. As part of the service planning process Officers are expected to highlight all required procurement support through the annual Procurement Service Plan in advance of the next financial year.
- 2.12. Officers are responsible for the contracting activity, and must ensure:
  - a) Continued compliance with the Council's requirements;
  - b) Value for money;
  - c) Compliance with these Rules as well as any legal and statutory requirements;
  - d) Compliance with any relevant Council policy and Key Decision Threshold; and
  - e) That contracts are signed/sealed before the commencement of any Works, Services or Good delivered.

- 2.13. The Officer is responsible for ensuring the Procurement Lead is aware of the timescales for upcoming procurement work, especially for contracts in excess of £50,000, in sufficient time.
- 2.14. The Officer must have regard to the guidance contained in the Procurement Toolkit which can be accessed via the procurement portal.
- 2.15. Before beginning a commercial activity, the Officer responsible for it must carry out an appraisal and consider:
- (a) The requirements from any relevant Best Value or other review;
  - (b) The need for the expenditure and its priority e.g., has a business case been developed which sets out the service objectives, the criteria for evaluation and the options for delivery;
  - (c) Defining the objectives of the purchase;
  - (d) The risks associated with the purchase over its life and how to manage them;
  - (e) What procurement method is most likely to achieve the purchasing objectives, including internal or external sourcing, and collaboration with other purchasers;
  - (f) If corporate contracts and/or suitable frameworks exist and assess their suitability;
  - (g) Consulting users as appropriate about the proposed procurement method, contract standards, and performance and user satisfaction monitoring; and
  - (h) Selecting the most appropriate procurement method.

The Officer's approach to the appraisal tasks should be proportionate to the complexity, risks, and value of the procurement.

- 2.16. Officers will need to ensure they have the relevant budget approved (as per the Constitution) and available prior to embarking upon a procurement process. Budget approval ensures you have provision to fund any commitment within your own budget, and where sufficient budget isn't available the additional required funding has been sought and approved in accordance with the Council's Constitution.
- 2.17. Officers will need written approval to procure (email is sufficient). This approval needs to be sought regardless of the procurement route i.e., Tender, Quotation, Framework Award or Exception.
- 2.18. Officers will need written approval to award, in line with the Constitution. This approval needs to be sought regardless of the procurement route i.e., Tender, Quotation, Framework Award or Exception. Please see Appendix 3 for the relevant Forms.
- 2.18.1. For contracts with a total value up to and including £50,000 the approval will be given by the relevant Head of Service (or equivalent post). This must be done in writing (email is sufficient).
- 2.18.2. For contracts with a total value over £50,000 but up to £100,000 then approval will be given by the Assistant Director (or Director and must be recorded via an Officer Delegated Decision (ODD)).

2.18.3. For contracts with a total value over £100,000 but up to £200,000 then approval will be given by the Director (or any member of the Corporate Management Team) and must be recorded via an Officer Delegated Decision (ODD).

2.18.4. For contracts with a total value of £200,000 and above this approval constitutes a Key Decision, which must be on the forward plan. Democratic Services must be engaged prior to any procurement process with a total value of £200,000 or more commencing. Note that any applicable “call in” period must be observed before the Decision is implemented.

2.18.5. A summary of information is available at Appendix 5 Quick Reference Guide.

2.19. The provisions of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) apply to a relevant business transfer where the transferor (incumbent supplier) has a dedicated team of employee(s) that carry out the service activity that is to be transferred. In practice this will often apply where a Council service is:

- ‘out-sourced’
- brought back ‘in-house’ / in-sourced
- where a contract that former Council employees are undertaking comes up for renewal and is awarded again to the same supplier or to a new supplier
- transferred from one external organisation to another
- TUPE is also likely to apply where a supplier who has been awarded a contract subsequently awards or sub-contracts all or part of it to another supplier, whilst retaining the contract with the main client

TUPE can apply irrespective of whether there has been a formal procurement exercise or not. Officers must ask the current Supplier whether or not any employee of the Council or of the Supplier may be affected by any transfer arrangement (TUPE). Where this is relevant, the Officer must ensure that the Transfer of Undertaking (Protection of Employment) issues are considered and obtain relevant advice before undertaking the procurement process. This will include liaising with Lincolnshire County Council where any employee of the Council or of the Supplier is a member of the Local Government Pension Scheme (LGPS). Guidance on whether TUPE applies must be referred to Human Resources or Legal services in the first instance, before proceeding, so that the scope of any legal obligations may be identified. If TUPE does apply this must be factored into the procurement strategy / plan and timescales.

Suppliers must seek their own legal guidance on the application of TUPE; the Council must not offer any such advice. The Council’s only involvement with TUPE is to facilitate through the provision of TUPE information; it must not get involved in other TUPE related matters.

‘TUPE Information’ templates are available on the [procurement portal](#). This information will need to be completed by the current supplier which Officers will issue to the market as part of the procurement documentation on which potential suppliers are invited to bid. This information must be gathered prior to going out to market, and Officers would need to review the information to ensure it has been anonymised (TUPE information is confidential –

please discuss with the Procurement Lead whether TUPE information should be published with the tender pack, or to individual bidders, subject to the return of TUPE Confidentiality Agreement), and whether or not there are any LGPS (Local Government Pension Scheme) members. Officers can refer to the Procurement Toolkit available on the [Procurement Lead portal](#) for guidance on considerations for LGPS members.

- 2.20. Officers must ensure that the contracts for which they are responsible are effectively managed and monitored to ensure they deliver the requirement as intended.
- 2.21. It is the Officer's responsibility to carry out due diligence on successful suppliers, both at Contract Award, and for the duration of the Contract.
- 2.22. Officers must ensure details of bidders and their submissions are kept confidential (subject to Freedom of Information considerations).
- 2.23. Officers shall complete the Council's electronic Contract Register (to record all approved exceptions and contracts with an estimated total value of £5,000 and above including any changes over the contract life e.g., extensions).
- 2.24. Officers shall notify the Procurement Lead of any contracts awarded with an estimated total value of £20,000 and above (including any changes over the contract life e.g., extensions), so that a Contracts Finder Award Notice can be published.
- 2.25. Where an Officer has a potential conflict of interest within a procurement process, the Officer must declare this immediately to the relevant Chief Officer and Monitoring Officer. The Officer may be required to withdraw from the procurement process. Any Officer who fails to declare such a conflict of interest may be subject to disciplinary proceedings and sanctions.

A 'Conflict of Interest Declaration – Confidentiality Agreement' form can be obtained from the [procurement portal](#).

#### Heads of Service (or equivalent postholders)

- 2.26. Heads of Service must ensure that staff are aware of their responsibilities under these Rules, receive adequate training and guidance and that they and their Officers comply with these Rules at all times, and that sufficient budget is available and approved before procurement process begin.
- 2.27. Heads of Service must ensure that Value for Money is achieved in all procurements and ensure officers have obtained the necessary approvals BEFORE commencing a procurement process.

- 2.28. Heads of Service must ensure that they have in place a scheme of delegation that records in writing what action Officers are authorised to take under these Rules and what action needs to be referred to Cabinet or Council.
- 2.29. The relevant Head of Service is responsible for ensuring there is a process in place so that the Council's Contracts Register is updated as required following procurement activity.
- 2.30. Where a Head of Service has a potential conflict of interest within a procurement process, the officer must declare this immediately to the relevant Strategic Director and Monitoring Officer. The Head of Service may be required to withdraw from the procurement process. Any Head of Service who fails to declare such a conflict of interest may be subject to disciplinary proceedings and sanctions and also risks being prosecuted under the Bribery Act 2010.
- 2.31. A 'Conflict of Interest Declaration – Confidentiality Agreement' form can be obtained from the procurement portal.

### **3. Non-Compliance with these Rules**

- 3.1. Where an Officer becomes aware of any non-compliance with these Rules (which cannot be remedied), they must declare this to the relevant Director and Monitoring Officer.

### **4. Exceptions**

- 4.1. The exceptions listed in this Section do not apply to procurements with a total value above the relevant Public Procurement Threshold. Exceptions are not a substitute for instances where procurement planning has not been exercised and Officers find themselves with insufficient time to undertake a competitive process. Officers must still consider commercial awareness and achieve value for money.
- 4.2. Officers must obtain a fully approved exception in advance of awarding a contract and must ensure that the actual spend does not exceed the total value stated in the approved exception.
- 4.3. Officers will need to ensure they have the relevant budget approved and available prior to submitting an exception request. This approval will be from the Budget Holder, in accordance with budget authorisation limits (as outlined in the Financial Procedure Rules).
- 4.4. Signed contracts that have a total value of £10,000 or more must be scanned in and saved to central procurement area. Officers must then provide Legal Services with any paper copies of the Contract for the subsequent storage and safe keeping.
- 4.5. Exceptions must be approved by the relevant member of the Corporate Management Team (CMT), upon completion of the Exception Form at Appendix 3 subject to one or more of the following criteria being fulfilled.

- 4.5.1. No genuine competition: proprietary or patented goods or services; requirement of such a specialist nature that it can genuinely only be fulfilled by one person or organisation; compatibility with existing goods or services is required and where those existing goods or services can only be sourced from the same supplier.
- 4.5.2. There is a sound business case and/or an independent review that there is no value for money in running a full procurement process. Supporting evidence will need to demonstrate market testing and enquiries to other suppliers. This must not be used to avoid competition or where decisions to procure have been postponed and there are insufficient timelines to procure.
- 4.5.3. Genuine emergencies: critical preventative or remedial work where there is a real and imminent risk to the safety of people or property arising from hitherto unforeseen 'catastrophic' events or incidents, for example fire, bombing, landslide etc.
- 4.5.4. Urgent Situations not of the Council's own making: the urgency must have been reasonably unforeseeable (e.g., existing supplier going into liquidation) and genuinely be a case of time is of the essence. Urgency arising from the Council's own making (e.g., lack of planning) shall not justify an exception. Where this exception is used, a compliant procurement must be implemented as soon as possible.
- 4.5.5. Collaborative/Joint Procurement: where another authority/public body is acting as the 'lead buyer' and provided that the Officer can demonstrate those arrangements comply with relevant Regulations and best practice.
- 4.5.6. Grants which the Council may receive or make: except where the grant is the form of payment for a contract for services where the Council specifies the output or outcomes to be delivered. The awarding of grants by the Council or on behalf of the Council must be carried out under the principles of openness, fairness, non-discrimination and value for money. Officers cannot choose to treat procurement as a grant in order to avoid conducting a competitive process. **This exception cannot be used if the grant funding guidance states a procurement process must be conducted (such as ERDF funding); Officers must be fully aware of all requirements of the relevant funding body and ensure full compliance.** Please discuss with the Procurement Lead before any exception on this basis is requested.
- 4.5.7. Contracts for the execution of either mandatory works or provision of goods or services which must be provided by Statutory Provider other than the Council. This includes but is not limited to public utility companies and other legal authorities
- 4.6. Where the total value of the contract is £5,000 or more, the resultant contract must be added to the Contract Register (on ProContract) to ensure compliance with Transparency Regulations.

4.7. An award notice is required on Contracts Finder for all Contracts with a total value of £20,000 or above. The Procurement Lead is responsible for such award notices. Officers must formally advise the Procurement Lead of the award details, so that they can publish the award notice.

## **5. Procurements valued under £10,000**

5.1. Officers will need to ensure they have the relevant budget approved and available prior to embarking upon a procurement process. This approval will be from the Budget Holder, in accordance with budget authorisation limits (as outlined in the Financial Regulations). Officers will also need written approval to procure (email is sufficient).

5.2. Council Officers may decide it is appropriate to reserve contracts for services at this value to the local area or SME's/voluntary sector. Please refer to the appropriate guidance in this document (and consult the Procurement Lead) before any reservations are made.

5.3. Where the contract is valued below £10,000, Officers are required to seek at least one written quotation (email is acceptable). Value for money remains a primary objective and so Officers may decide to seek more than one quotation to ensure that objective is achieved.

5.4. Quotations can be submitted via email but should be PDF documents to prevent tampering or accusations thereof; the onus will be on the bidder to make this decision. Quotations are not to be "opened" prior to the deadline for return if one is given (not applicable if only one quote is being sought).

5.5. The quotation must be received before any order is processed and must include the following information:

- a) A description of the goods, services or works to be supplied;
- b) When and where they will be supplied;
- c) The value of the requirement;
- d) Payment terms.

5.6. The contract award must be authorised by the budget holder using the relevant Approval Form in Appendix 3.

5.7. The contract or terms and conditions must be signed by the Head of Service.

5.8. Where the value of the contract is more than £5,000, the resultant contract must be added to the Contract Register (on ProContract) to ensure compliance with Transparency Regulations.

5.9. It is the Officer's responsibility to carry out due diligence on successful suppliers, both at Contract Award, and for the duration of the Contract.

## 6. Procurements valued between £10,000 and £49,999

- 6.1. Officers will need to ensure they have the relevant budget approved and available prior to embarking upon a procurement process. This approval will be from the Budget Holder, in accordance with budget authorisation limits (as outlined in the Financial Regulations). Officers will also need written approval to procure (email is sufficient).
- 6.2. Council Officers may decide it is appropriate to reserve contracts for services at this value to the local area or SME's/voluntary sector. Please refer to the appropriate guidance in this document (and consult the Procurement Lead) before any reservations are made.
- 6.3. Where the contract is valued between £10,000 and £49,999, at least three written quotations must be sought. Those quotations must be invited from identified suppliers as no procurement advertising can take place.
- 6.4. For contracts with a total value of £20,000 or more, if the Council chooses to advertise a quotation, for example because:
  - 6.4.1. The Officer cannot immediately identify three potential suppliers to invite to quote; and/or
  - 6.4.2. The procurement opportunity is either politically sensitive or high profilethen it must be simultaneously advertised via the Procurement Lead on Contracts Finder.
- 6.5. Where the Procurement Lead is instructed to support the procurement, the Officer must complete a Procurement Initiation Document (PID), available on the procurement portal, prior to the commencement of the procurement process (at pre-procurement stage).
- 6.6. It is recommended that the Request for Quotation template document (<http://wellandprocurement.org.uk/>) is used. In any case the criteria for selecting the most advantageous quotation must be established before the quotations are invited and be made clear in the procurement documentation.
- 6.7. The quotations must contain (as a minimum):
  - a) A specification (covering the goods, services or works to be supplied; the "where" and "when" they are to be supplied; and any relevant performance and contract management details);
  - b) Instructions to bidders:
    - a. Evaluation criteria
    - b. How to respond
    - c. How clarification messages are to be asked (who sent to, any deadlines for messages)
    - d. Information bidders need to include within response
    - e. Deadline for responses (day and time); and

- c) The short form terms and conditions to be applied (available Standard T's & C's, unless using another appropriate set of terms and conditions, as agreed by Legal Services).
- 6.8. In some instances Officers may need to consider TUPE implications
- 6.9. At least one of the suppliers invited to submit a quotation should be local, where local means operating from a business address within the boundary of South Kesteven. Where a local supplier cannot be identified, the Officer must keep a written record of the reason.
- 6.10. Where fewer than three potential suppliers can be identified, the Officer must keep a written record of the reason and all potential suppliers should be invited to quote. It is accepted that the Officer may receive fewer than three quotations even where three or more suppliers have been invited to quote.
- 6.11. Quotations can be submitted via email but should be PDF documents to prevent tampering or accusations thereof; the onus will be on the bidder to make this decision. Quotations are not to be "opened" prior to the deadline for return if one is given (not applicable if only one quote is being sought).
- 6.12. The Officer must keep copies of the Council's procurement documentation as well as copies of all quotations received and any communication between the Council and the bidders.
- 6.13. As part of the procurement process (quotation), potential bidders can seek clarification on either the information published or the process itself.
- 6.14. The nature of any clarification or response from the Council must not materially change the scope/substance of the requirement. If it does, Officers may need to abandon the process and restart, using revised documentation. Please discuss this with the Procurement Lead.
- 6.14.1. All requests for clarification and questions relating to the quote (and its associated documents) must be submitted as per the instruction document (via email or ProContract).
- 6.14.2. The Council must respond to all clarifications as soon as possible (via email or ProContract).
- 6.14.3. A copy of all requests for clarifications and the responses must be anonymised and published to all potential bidders (who have either been invited to quote or have expressed an interest in the quote) where the clarification and response are not considered confidential.
- 6.14.4. If a potential bidder wishes the Council to treat a clarification as confidential and therefore not publish the response to all, it must state this when submitting the

clarification. If in the opinion of the Council, the clarification is not confidential, the Council will publish it in an anonymised format.

- 6.14.5. Officers must state a deadline for receipt of clarifications.
- 6.14.6. Officers must keep a record of communications between potential bidders and the Council.
- 6.14.7. Unless it is part of a clarification and the above is observed, Officers must not:
  - 6.14.7.1. Make contact with suppliers/potential bidders; or
  - 6.14.7.2. Send information to suppliers/potential bidders.

If a supplier/potential bidder makes contact with an Officer, they should advise them that messages must be submitted as per the instruction document; via email or ProContract.

- 6.15. Evaluation of the quotations received must be carried out using the evaluation criteria identified in the procurement documentation. Any subjective evaluation (such as quality) must be carried out independently by a minimum of two evaluators (preferably three), and then moderated by an independent moderator to reach a final agreed score. The evaluators should be fully briefed on the evaluation process.

Clarification questions may be asked where responses would not result in a material change of the bid received.

- 6.16. The 'Conflict of Interest Declaration – Confidentiality Agreement' on the procurement portal gives further guidance on evaluation principles and best practice; it is advisable to ask all evaluators to complete, sign and return this document to the Council lead. The procurement Lead can act as the independent moderator but cannot undertake any scoring. Clarification questions may be asked where responses would not result in a material change of the bid received.
- 6.17. Contract award must be approved as per 2.18 of these Rules.
- 6.18. All bidders must be notified of the Award decision simultaneously in writing (via the Council's electronic tendering system or email, depending on the method of obtaining quotations) by the Officer (or the Procurement Lead), whether or not their bid was successful.
- 6.19. The contract or terms and conditions must be signed by an officer authorised in accordance with the delegation scheme. In certain circumstances the contract may require sealing, please see Section 14.14 below.
- 6.20. If a Council Officer or Supplier needs to sign contract documentation electronically, please speak to Legal Services for advice and guidance on the use of electronic signatures.

- 6.21. The resultant contract must be added to the Council's Contract Register (on ProContract) to ensure compliance with Transparency Regulations.
- 6.22. All signed contracts must be scanned in and saved to the relevant Directorate and the Contracts Register. Officers must then provide Legal Services with any paper copies of the Contract for the subsequent storage and safe keeping.
- 6.23. If the contract is valued over £20,000, an award notice on Contracts Finder is required. The Procurement Lead is responsible for such award notices. If an Officer has managed the procurement process without assistance from the Procurement Lead, they must formally advise them of the award details, so that they can publish the award notice.
- 6.24. It is the Officer's responsibility to carry out due diligence on successful suppliers, both at Contract Award, and for the duration of the Contract.

## **7. Procurements valued between £50,000 and the current Goods and Services Public Procurement Threshold**

- 7.1. Officers will need to ensure they have the relevant budget approved and available prior to embarking upon a procurement process. This approval will be from the Budget Holder, in accordance with budget authorisation limits (as outlined in the Financial Regulations). Officers will also need written approval to procure (email is sufficient).
- 7.2. Council Officers may decide it is appropriate to reserve contracts for services at this value to the local area or SME's/voluntary sector. Please refer to the appropriate guidance in this document (and consult the Procurement Lead) before any reservations are made.
- 7.3. The Procurement Lead should be notified in respect of all contracts with a total value between £50,000 and the current goods and services Public Procurement Threshold because a single stage/open tender process must be completed. This means that all interested suppliers are eligible to submit a Tender.
- 7.4. Where the Procurement Lead is instructed to support the procurement, the Officer must complete a Procurement Initiation Document (PID), available on the procurement portal, prior to the commencement of the procurement process (at pre-procurement stage).
- 7.5. The procurement must be advertised on Contracts Finder, the Procurement Lead is responsible for managing this advertising.
- 7.6. Council Officers must conduct the Tender process using the Council's tender portal (unless agreed otherwise by the Chief Finance Officer). The Open Tender template documents must be used to ensure that the required Standard Suitability Questions are used (available from the Procurement Lead). The Officer must ensure that all relevant procurement documents are finalised before the procurement is advertised, these will include at least the

Specification, Long Form Terms and Conditions of Contract (available Standard T's & C's, unless using another appropriate set of terms and conditions, as agreed by Legal Services), TUPE information (where applicable) and evaluation criteria.

The specification must cover the scope of the requirement i.e., the goods, services or works to be supplied, the "where" and "when" they are to be supplied as well as any relevant performance and contract management details. A template is available on the procurement portal.

- 7.7. As part of the procurement process (tender), potential bidders can seek clarification on either the information published or the process itself.
  - 7.8. The nature of any clarification or response from the Council must not materially change the scope/substance of the requirement. If it does, Officers may need to abandon the process and restart, using revised documentation. Please discuss this with the Procurement Lead.
    - 7.8.1. All requests for clarification and questions relating to the quote (and its associated documents) must be submitted as per the instruction document (via ProContract).
    - 7.8.2. The Council must respond to all clarifications as soon as possible (via ProContract).
    - 7.8.3. A copy of all requests for clarifications and the responses must be anonymised and published to all potential bidders (who have expressed an interest in the tender) where the clarification and response are not considered confidential.
    - 7.8.4. If a potential bidder wishes the Council to treat a clarification as confidential and therefore not publish the response to all, it must state this when submitting the clarification. If in the opinion of the Council, the clarification is not confidential, the Council will publish it in an anonymised format.
    - 7.8.5. Officers must state a deadline for receipt of clarifications.
    - 7.8.6. Officers must keep a record of communications between potential bidders and the Council.
    - 7.8.7. Unless it is part of a clarification and the above is observed, Officers must not:
      - 7.8.7.1. Make contact with suppliers/potential bidders; or
      - 7.8.7.2. Send information to suppliers/potential bidders.
- If a supplier/potential bidder makes contact with an Officer, they should advise them that messages must be submitted as per the instruction document; via ProContract.
- 7.9. Tenders will be received via the electronic tendering system. An Officer or a representative of Procurement Lead will be responsible for opening tenders.

- 7.10. Tenders must be evaluated in accordance with the advertised evaluation criteria, clarification questions may be asked as long as the response would not have the effect of materially changing the tender received. Any subjective evaluation (such as quality) must be carried out independently by a minimum of two evaluators (preferably three), and then moderated by an independent moderator to reach a final agreed score. The evaluators should be fully briefed on the evaluation process. The 'Conflict of Interest Declaration – Confidentiality Agreement' on the procurement portal gives further guidance on evaluation principles and best practice; this form must be completed, signed and returned to the Procurement Lead. The Procurement Lead can act as the independent moderator but cannot undertake any scoring.
- 7.11. The bidder with the highest evaluation score will be awarded the contract. If this is not the case, the advice of the Procurement Lead must be sought prior to award.
- 7.12. Contract award must be approved in accordance with the approval levels set out at 2.18 of these Contract Procedure Rules.
- 7.13. All bidders must be notified of the Award decision simultaneously in writing (via the e tendering system) by the Officer (or Procurement Lead), whether or not their bid was successful.
- 7.14. The contract must be sealed, please see Section 14.14 below.
- 7.15. The resultant contract must be added to the Council's Contract Register to ensure compliance with Transparency Regulations. The Officer is responsible for ensuring the original signed contract is given to Legal Services for safekeeping.
- 7.16. All signed contracts must be scanned in and saved to the relevant Directorate and the Contracts Register. Officers must then provide Legal Services with any paper copies of the Contract for the subsequent storage and safe keeping.
- 7.17. The Officer must keep the following records:
- a) A record of all decisions from pre to post procurement.
  - b) The method of obtaining tenders.
  - c) Tender documents produced by the Council.
  - d) Tenders received from bidders. The successful tender should be retained for at least the life of the contract. Unsuccessful tenders should be retained for the first 12 months of the contract.
  - e) A written record of the evaluation.
  - f) A record of the Award approval.
  - g) A signed copy of the Contract which should be retained for the life of the contract and in normal circumstances for 6 years thereafter.
  - h) Communications to and from bidders during the procurement process.

Where an Agent has managed the procurement on behalf of the Council, the Officer must ensure that the above documents are returned to the Council upon completion of the process.

These documents should be stored in the Council's central Procurement filing system.

- 7.18. An award notice is required on Contracts Finder; the Procurement Lead is responsible for such award notices. If an Officer has managed the procurement process without assistance from the Procurement Lead, they must formally advise them of the award details, so that they can publish the award notice.
- 7.19. It is the Officer's responsibility to carry out due diligence on successful suppliers, both at Contract Award, and for the duration of the Contract.

## **8. Procurements for Works Contracts valued between the current Goods and Services Public Procurement Threshold and the current Works Public Procurement Threshold**

- 8.1. Officers will need to ensure they have the relevant budget approved and available prior to embarking upon a procurement process. This approval will be from the Budget Holder, in accordance with budget authorisation limits (as outlined in the Financial Regulations). Officers will also need written approval to procure (email is sufficient).
- 8.2. The Procurement Lead should be instructed for all Works contracts with a total value between the Goods and Services Public Procurement Threshold and the Works Public Procurement Threshold. The authorised Officer can choose either a single stage/open tender or two stage/restricted process.
- 8.3. Where conducting a two stage/restricted process, Officers should use the PAS91 PQQ for works contracts (including the procurement of goods and services needed in relation to the works).
- 8.4. Where the Procurement Lead is instructed to support the procurement, the Officer must complete a Procurement Initiation Document (PID), available on the procurement portal, prior to the commencement of the procurement process (at pre-procurement stage).
- 8.5. The procurement must be advertised on Contracts Finder and the Procurement Lead is responsible for managing this advertising.
- 8.6. Council Officers must conduct the Tender process using Procurement Lead tender portal (unless agreed otherwise by the Chief Finance Officer). The Council's standard Tender documents must be used to ensure that the required Standard Suitability Questions are used. The Officer must ensure that all relevant procurement documents are finalised before the procurement is advertised, these will include at least the Specification, Long Form Terms and Conditions of Contract (available Standard T's & C's, unless using another appropriate

set of terms and conditions, as agreed by Legal Services), TUPE information (where applicable) and evaluation criteria.

The specification must cover the scope of the requirement i.e., the goods, services or works to be supplied, the “where” and “when” they are to be supplied as well as any relevant performance and contract management details. A template is available on the procurement portal.

- 8.7. As part of the procurement process (tender), potential bidders can seek clarification on either the information published or the process itself. This must be conducted as per 7.7 and 7.8 of this document.
- 8.8. Tenders will be received via the electronic tendering system. The Procurement Lead will be responsible for opening tenders.
- 8.9. Tenders must be evaluated in accordance with the advertised weighted evaluation criteria, clarification questions may be asked as long as the response would not have the effect of materially changing the tender received.
- 8.10. Any subjective evaluation (such as quality) must be carried out independently by a minimum of two evaluators (preferably three), and then moderated by an independent moderator to reach a final agreed score.
- 8.11. The evaluators should be fully briefed on the evaluation process. The ‘Conflict of Interest Declaration – Confidentiality Agreement’ on the procurement portal gives further guidance on evaluation principles and best practice; this form must be completed, signed and returned to the Procurement Lead. The Procurement Lead can act as the independent moderator but cannot undertake any scoring.
- 8.12. The bidder with the highest evaluation score will be awarded the contract. If this is not the case, the advice of the Procurement Lead must be sought prior to award.
- 8.13. Contract award must be approved as per 2.18 of this document.
- 8.14. All bidders must be notified of the Award decision simultaneously in writing (via the e tendering system) by the Officer or Procurement Lead, whether or not their bid was successful.
- 8.15. The contract must be sealed, please see Section 14.14 below.
- 8.16. The details of the resultant contract must be added to the Council’s Contract Register to ensure compliance with Transparency Regulations. The Officer is responsible for ensuring the original signed contract is given to Legal Services for safekeeping.

- 8.17. All signed contracts must be scanned in and saved to the relevant Directorate and the Contracts Register.
- 8.18. The Officer must keep the following records:
- a) A record of all decisions from pre to post procurement;
  - a) The method of obtaining tenders.
  - b) Tender documents produced by the Council
  - c) Tenders received from bidders. The successful tender should be retained for at least the life of the contract. Unsuccessful tenders should be retained for the first 12 months of the contract.
  - d) A written record of the evaluation
  - e) A record of the Award approval
  - f) A signed copy of the Contract which should be retained for the life of the contract and in normal circumstances for 6 years thereafter.
  - g) Communications to and from bidders during the procurement process

Where an Agent has managed the procurement on behalf of the Council, the Officer must ensure that the above documents are returned to the Council upon completion of the process.

These documents should be stored in the Council's central Procurement filing system.

- 8.19. An award notice is required to be published on Contracts Finder and the Procurement Lead is responsible for such award notices.
- 8.20. It is the Officer's responsibility to carry out due diligence on successful suppliers, both at Contract Award, and for the duration of the Contract.

## **9. Procurements valued over the relevant Public Procurement Threshold**

- 9.1. Officers will need to ensure they have the relevant budget approved and available prior to embarking upon a procurement process. This approval will be from the Budget Holder, in accordance with budget authorisation limits (as outlined in the Financial Regulations). Officers will also need written approval to procure (email is sufficient).
- 9.2. Where the anticipated value of the contract exceeds the relevant Public Procurement threshold, the formal advice off the Procurement Lead must be sought as early as possible and in any case before any procurement activity takes place.
- 9.3. All goods, services and works with a procurement total value in excess of the relevant Public Procurement threshold are enforced by the Public Contracts Regulations 2015, and over threshold public works concessions and public services concessions are enforced by the Concessions Contracts Regulations 2016. These Regulations set out strict processes that have to be followed, as well as remedies available to suppliers. The principles that Officers need to comply with are:

- a) equal treatment;
- b) non-discrimination;
- c) mutual recognition;
- d) proportionality; and
- e) transparency.

Officers must comply with these Regulations and principles at all times.

- 9.4. Where the Officer is following one of the below procurement processes, the number of bidders invited to tender or to conduct a dialogue can be limited (out of those meeting the selection criteria). This must be indicated in the contract notice and the tender documentation (shortlisting criteria, the minimum number of candidates the Officer intends to invite and, where applicable the maximum number).
- a) In the restricted procedure, the minimum number of candidates shall be 5.
  - b) In the competitive procedure with negotiation, the competitive dialogue procedure and the innovation partnership procedure, the minimum number of candidates shall be 3.

Where the number of candidates meeting the selection criteria and the minimum levels of ability is below this minimum number, the Officer may continue the procedure by inviting the candidates with the required capabilities, but must record the reason for doing so.

- 9.5. The Officer must:
- a) adhere to the minimum timescales stipulated in the Regulations;
  - b) ensure the specification clearly describes the intended outcomes or outputs, and that it is complete and fair;
  - c) assess the quality of tenders as per the Regulations;
  - d) ensure the evaluation criteria (and any sub criteria) is disclosed in the Tender documentation and advertisements;
  - e) ensure the Contract terms and conditions allow for modification, should the total value increase or decrease due to amended volumes/values;
  - f) treat selection and award criteria separately.
- 9.6. The Officer must complete a Procurement Initiation Document (PID), provided by the Procurement Lead prior to the commencement of the procurement process (at pre-procurement stage).
- 9.7. The procurement must be advertised on Contracts Finder and on Find a Tender, the Procurement Lead is responsible for managing this advertising.
- 9.8. The procurement will be managed using an electronic tendering system; the Officer must therefore contact the Procurement Lead to access that system.

- 9.9. As part of the procurement process (tender), potential bidders can seek clarification on either the information published or the process itself. This must be conducted as per 7.7 and 7.8 of this document.
- 9.10. Council Officers must conduct the Tender process using the Council's tender portal (unless agreed otherwise by the Chief Finance Officer). The Council's standard Tender documents must be used to ensure that the required Standard Suitability Questions are used. The Officer must ensure that all relevant procurement documents are finalised before the procurement is advertised, these will include at least the Specification, Long Form Terms and Conditions of Contract (available Standard T's & C's, unless using another appropriate set of terms and conditions, as agreed by Legal Services), TUPE information (where applicable) and evaluation criteria.

The specification must cover the scope of the requirement i.e., the goods, services or works to be supplied, the "where" and "when" they are to be supplied as well as any relevant performance and contract management details. A template is available on the procurement portal.

- 9.11. Tenders will be received via the electronic tendering system. The Procurement Lead will be responsible for opening tenders.
- 9.12. Tenders must be evaluated in accordance with the advertised evaluation criteria, clarification questions may be asked as long as the response would not have the effect of materially changing the tender received.
- 9.13. Any subjective evaluation (such as quality) must be carried out independently by a minimum of two evaluators (preferably three), and then moderated by an independent moderator to reach a final agreed score.
- 9.14. The evaluators should be fully briefed on the evaluation process. The 'Conflict of Interest Declaration – Confidentiality Agreement' on the procurement portal gives further guidance on evaluation principles and best practice; this form must be completed, signed and returned to the procurement lead. The Procurement Lead can act as the independent moderator but cannot undertake any scoring.
- 9.15. The bidder with the highest evaluation score will be awarded the contract, as per the award criteria detailed.
- 9.16. Contract award must be approved as per 2.18 of this document.
- 9.17. All bidders must be notified of the Award decision simultaneously in writing (via the Council's electronic tendering system) by the Officer (or the Procurement Lead), whether or not their bid was successful. The letters must include:
- a) the award criteria;
  - b) the name of the successful bidder(s);

- c) the score of the recipient;
- d) the score of the successful bidder(s);
- e) details of the reason for the decision, including the characteristics and relative advantages of the successful tender; and
- f) confirmation of the date before which the contracting authority will not enter into the contract or framework agreement (i.e., the date after the end of the standstill period).

Officers shall allow a period of not less than 10 calendar days after announcing their Intention to Award to provide unsuccessful Bidders an opportunity to challenge.

If the decision is challenged by an unsuccessful Bidder, then the Officer shall not award the contract and shall immediately seek the advice of the Procurement Lead.

- 9.18. The contract will require sealing, please see Section 14.14 below.
- 9.19. The details of the resultant contract must be added to the Council's Contract Register (on ProContract) to ensure compliance with Transparency Regulations. The Officer is responsible for ensuring the original signed contract is given to Legal Services for safekeeping.
- 9.20. The Officer must keep the following records:
  - a) A record of all decisions from pre to post procurement;
  - b) The method of obtaining tenders;
  - c) Tender documents produced by the Council;
  - d) Tenders received from bidders. The successful tender should be retained for at least the life of the contract. Unsuccessful tenders should be retained for the first 12 months of the contract;
  - e) A written record of the evaluation;
  - f) A record of the Award approval;
  - g) A signed copy of the Contract which should be retained for the life of the contract and in normal circumstances for 6 years thereafter; and
  - h) Communications to and from bidders during the procurement process.

Where an Agent has managed the procurement on behalf of the Council, the Officer must ensure that the above documents are returned to the Council upon completion of the process.

These documents should be stored in the Council's central Procurement filing system.

- 9.21. An award notice is required on Contracts Finder and Find a Tender; the Procurement Lead is responsible for such award notices. If an Officer has managed the procurement process without assistance from the Procurement Lead, they must formally advise them of the award details, so that they can publish the award notices.

- 9.22. It is the Officer's responsibility to carry out due diligence on successful suppliers, both at Contract Award, and for the duration of the Contract

## **10. Procuring via a Framework Agreement or Dynamic Purchasing System (DPS)**

- 10.1. Officers will need to ensure they have the relevant budget approved and available prior to embarking upon a procurement process. This approval will be from the Budget Holder, in accordance with budget authorisation limits (as outlined in the Financial Regulations). Officers will also need written approval to procure (email is sufficient).
- 10.2. A contract of any value can be procured via a framework agreement or DPS. Compliance with these Rules and relevant national law is achieved through compliance with the framework agreement/DPS terms and conditions. This will involve:
- reviewing relevant Framework/DPS guidance document(s);
  - reviewing the correct process for call off (which may be through further competition or direct award); and
  - following the stated call off process, as laid out in the Framework/DPS documentation.

Officers must ensure they are fully conversant with the eligibility of the Council to use the framework, as stated within the Framework Agreement. If these Rules are not sufficiently detailed for the Officer to be assured of the eligibility and requisite process, they must engage with the Procurement Lead to seek advice on the validity of the Framework Agreement.

- 10.3. As part of the procurement process (call off), potential bidders can seek clarification on either the information published or the process itself. This must be conducted as per 7.7 and 7.8 of this document.
- 10.4. For the avoidance of doubt, a framework agreement or DPS is considered a compliant procurement route where:
- a) It has been entered into by the Council in compliance with these Rules; or
  - b) Another contracting authority, purchasing consortium or Central Government has tendered the framework agreement or DPS in compliance with national procurement law and the Council is named as a potential user of the arrangement.

This section (10) applies to call offs in the circumstances detailed in both 10.4(a) and 10.4(b) above.

- 10.5. All goods, services and works with a procurement total value in excess of the relevant Public Procurement threshold are enforced by the Public Contracts Regulations 2015, and over threshold public works concessions and public services concessions are enforced by the Concessions Contracts Regulations 2016. These Regulations set out strict processes that have to be followed, as well as remedies available to suppliers. The principles that Officers need to comply with are:

- a) equal treatment;
- b) non-discrimination;
- c) mutual recognition;
- d) proportionality; and
- e) transparency.

Officers must comply with these Regulations and principles at all times.

- 10.6. The procurement will be managed in line with the appropriate Rule, dependent on the total value of the contract (unless otherwise detailed by the Framework/DPS Owner).
- a) Procurements valued under £10,000 see Rule 5
  - b) Procurements valued between £10,000 and £49,999 see Rule 6
  - c) Procurements valued between £50,000 and Current Goods and Services Public Procurement Threshold see Rule 7
  - d) Procurements for Works Contracts Valued between the Goods and Services Public Procurement Threshold and the Works Public Procurement Threshold see Rule 8
  - e) Procurements valued over the Relevant Public Procurement Threshold see Rule 9
- 10.7. It is recommended that the Further Competition Template documents are used which can be obtained from the procurement portal or the Procurement Lead; if template documentation is provided by the Framework/DPS Owner, Officers can make use of this.

In any case the criteria for selecting the most advantageous submission must be established before call offs submissions are invited and be made clear in the procurement documentation. The call offs must contain (as a minimum):

- a) The goods, services or works to be supplied;
- b) The “where” and “when” they are to be supplied; and
- c) Instructions to bidders:
  - a. Evaluation criteria
  - b. How to respond
  - c. How clarification messages are to be asked (who sent to, any deadlines for messages)
  - d. Information bidders need to include within response
  - e. Deadline for responses (day and time); and
  - f. The terms and conditions to be applied to the call off (as per Framework/DPS guidance document, please use the terms stated; these must be agreed by Legal Services).

In some instances Officers may need to consider TUPE implications.

- 10.8. Submissions must be evaluated in line with the Framework/DPS guidance document and the appropriate Rule, dependent on the total value of the contract.
- a) Procurements valued between £10,000 and £49,999 see Rule 6.14
  - b) Procurements valued between £50,000 and Current Goods and Services Public Procurement Threshold see Rule 7.10 and 7.11

- c) Procurements for Works Contracts Valued between the Goods and Services Public Procurement Threshold and the Works Public Procurement Threshold see Rule 8.9, 8.10, 8.11 and 8.12
- d) Procurements valued over the Relevant Public Procurement Threshold see Rule 9.12, 9.13, 9.14 and 9.15

10.9. Contract award must be approved as per 2.18 of this document.

10.10. All bidders must be notified of the Award decision simultaneously in writing (via the method used to run the procurement process i.e., email, ProContract or other system used by the Framework/DPS owner) by the Officer (or the Procurement Lead or the Framework/DPS owner), whether or not their bid was successful.

10.11. The contract must be signed/sealed in line with the appropriate Rule, dependent on the total value of the contract.

- a) Procurements valued under £10,000 see Rule 5.7
- b) Procurements valued between £10,000 and £49,999 see Rule 6.20
- c) Procurements valued between £50,000 and Current Goods and Services Public Procurement Threshold see Rule 7.15
- d) Procurements for Works Contracts Valued between the Goods and Services Public Procurement Threshold and the Works Public Procurement Threshold see Rule 8.16
- e) Procurements valued over the Relevant Public Procurement Threshold see Rule 9.18

If a Council Officer or Supplier needs to sign contract documentation electronically, please speak to Legal Services for advice and guidance on the use of electronic signatures.

10.12. Where the Council is using an external framework, and the total value of the contract is £5,000 or above, the resultant contract must be added to the Contract Register to ensure compliance with Transparency Regulations.

Where the Council has set up a framework, only the framework is necessary to be recorded on the register. It is not necessary to record the individual call-offs from the framework.

10.13. Where the contract has a total value of £20,000 or above an award notice is required on Contracts Finder. The Officer must formally advise the Procurement Lead of the award details, so that they can publish the award notice.

10.14. The Officer must keep the following records:

- a) A record of all decisions from pre to post procurement;
- b) The method of obtaining tenders;
- c) Tender documents produced by the Council;
- d) Tenders received from bidders. The successful tender should be retained for at least the life of the contract. Unsuccessful tenders should be retained for the first 12 months of the contract;
- e) A written record of the evaluation;

- f) A record of the Award approval;
- g) A signed copy of the Contract which should be retained for the life of the contract and in normal circumstances for 6 years thereafter; and
- h) Communications to and from bidders during the procurement process.

Where an Agent has managed the procurement on behalf of the Council, the Officer must ensure that the above documents are returned to the Council upon completion of the process.

These documents should be stored in the Council's central Procurement filing system.

- 10.15. It is the Officer's responsibility to carry out due diligence on successful suppliers, both at Contract Award, and for the duration of the Contract.

## **11. Setting up a Framework Agreement**

- 11.1. Officers will need to ensure they have the relevant budget approved and available prior to embarking upon a procurement process. This approval will be from the Budget Holder, in accordance with budget authorisation limits (as outlined in the Financial Regulations). Officers will also need written approval to procure (email is sufficient).
- 11.2. Framework agreements set out the general terms under which specific purchases ("call offs") can be made under the agreement. The purpose of using a framework is to enable contracting authorities to award individual contracts without going through a full procurement process each time. A framework agreement may be established with one supplier ("single supplier frameworks") or with more than one ("multiple supplier frameworks").
- 11.3. The minimum number of suppliers for a multiple supplier framework is two.
- 11.4. Framework agreements must not exceed four years. Call-off contracts based on framework agreements may be longer than four years and may extend beyond the expiry date of the framework.
- 11.5. Framework agreements should be set up to allow for mini competitions to run as the first option for selecting a supplier. Where this is not the case, the Procurement Lead should be consulted.
- 11.6. As part of the procurement process (either the creation of the Framework or any subsequent call off), potential bidders can seek clarification on either the information published or the process itself. This must be conducted as per 7.7 and 7.8 of this document.
  - 11.6.1. As Framework agreements are "closed" for the term, consideration should be given to the impact of this, and ensure that the benefits and length of the Framework are justified.

- 11.7. Formal advice from the Procurement Lead must be sought as early as possible and in any case before any procurement activity takes place. The relevant Rules and Regulations should be followed according to the total potential value of the Framework (the value to be taken into consideration shall be the maximum estimated value net of VAT of all the contracts envisaged for the total term of the framework agreement). It is the Officer's responsibility to monitor and track spend against the framework.
- 11.8. The Officer is responsible for ensuring the original signed/sealed contract is given to Legal Services for safekeeping.
- 11.9. If a Council Officer or Supplier needs to sign contract documentation electronically, please speak to Legal Services for advice and guidance on the use of electronic signatures.
- 11.10. Where the Council has set up a framework, details of the framework itself must be recorded on the Council's Contract Register (on ProContract). The estimated value of the framework must be recorded and all of the suppliers associated with the framework must be listed. Any other relevant detail to the mechanics of the framework must also be recorded so the suppliers can be searched and found in the Register and cross referenced with Council spend.

Where the Council has set up a framework, only the framework is necessary to be recorded on the register. It is not necessary to record the individual call-offs from the framework.

- 11.11. It is the Officer's responsibility to carry out due diligence on successful suppliers, both at Contract Award, and for the duration of the Contract.

## **12. Setting up a Dynamic Purchasing System (DPS)**

- 12.1. Officers will need to ensure they have the relevant budget approved and available prior to embarking upon a procurement process. This approval will be from the Budget Holder, in accordance with budget authorisation limits (as outlined in the Financial Regulations). Officers will also need written approval to procure (email is sufficient).
- 12.2. A Dynamic Purchasing System (DPS) is similar to an electronic framework agreement, with two exceptions, new suppliers can join at any time and it is to be run as a completely electronic process.
- 12.3. Dynamic Purchasing Systems are used exclusively by public sector organisations. They save time and money by being a quick and easy way to access goods, services and works through a compliant route.
- 12.4. There is no maximum term for a DPS; the period of validity of the DPS should be indicated in the call for competition.

- 12.5. All bidders that meet the selection criteria shall be admitted to the DPS, and the number of bidders accepted on to the DPS shall not be limited.
- 12.6. Formal advice from the Procurement Lead must be sought as early as possible and in any case before any procurement activity takes place. The relevant Rules and Regulations should be followed according to the total potential value of the DPS (the value to be taken into consideration shall be the maximum estimated value net of VAT of all the contracts envisaged for the total term of the DPS). It is the Officer's responsibility to monitor and track spend against the DPS.
- 12.7. As part of the procurement process (either the creation of the DPS or any subsequent call off), potential bidders can seek clarification on either the information published or the process itself. This must be conducted as per 7.7 and 7.8 of this document.
- 12.8. There is no obligation to notify DPS suppliers of a decision to award a contract under a DPS, to provide a de-brief or to run a standstill period.
- 12.9. There is a requirement to publish a contract award notice on Find a Tender Service for contracts awarded using a DPS. The contract award notice must be dispatched within 30 days of the contract award. Contract award notices can be grouped together and published on a quarterly basis within 30 days of the end of each quarter. The Officer must formally advise the Procurement Lead of the award details, so that they can publish the award notice.
- 12.10. Contracting authorities are also required to publish information on Contracts Finder in respect of contracts awarded under a DPS for contracts with a total value of £20,000 or above. Publication on Contracts Finder is required within a "reasonable time" (no longer than 90 days following contract award).
- 12.11. Signed/sealed DPS Agreements that have a total value of £5,000 or more be added to the Council's Contract Register (on ProContract) to ensure compliance with Transparency Regulations. The Officer is responsible for ensuring the original signed contract is given to Legal Services for safekeeping.

If a Council Officer or Supplier needs to sign contract documentation electronically, please speak to Legal Services for advice and guidance on the use of electronic signatures.

- 12.12. The contract must be signed by a member of the Senior Team except where a contract requires Sealing as set out at 14.14.
- 12.13. Where the Council has set up a DPS, details of the DPS itself must be recorded on the Council's Contract Register (on ProContract). The estimated value of the DPS must be recorded and all of the suppliers associated with the DPS. Any other relevant detail to the mechanics of the DPS must also be recorded so the suppliers can be searched and found in the register and cross referenced with council spend.

Where the Council has set up a DPS, only the DPS is necessary to be recorded on the register. It is not necessary to record the individual call-offs from the DPS.

- 12.14. It is the Officer's responsibility to carry out due diligence on successful suppliers, both at Contract Award, and for the duration of the Contract

### **13. Public Services (Social Value) Act 2012**

- 13.1. The Public Services (Social Value) Act requires people who commission public services to think about how they can also secure wider social, economic and environmental benefits.
- 13.2. Before starting a procurement process, the Officer should think about whether the services they are going to buy, or the way they are going to buy them, could secure these benefits for their area or stakeholders.
- 13.3. The Council must consider, in the form of a Social Value appraisal whilst recognising the principal of proportionality;
- a) how what is proposed to be procured might improve the economic, social, and environmental well-being of the relevant area, and
  - b) how, in conducting the process of procurement, it might act with a view to securing that improvement.
- 13.4. The Officer must consult the Procurement Lead for advice on specifying requirements under Social Value, and how to evaluate tenders against these requirements.

### **14. Other Matters to Consider**

- 14.1. These Rules are relevant to all Contracts with a total value above £10,000.

#### **14.2. Conflict of Interest**

- 14.2.1. Clause 2.10 and 2.25 and 2.30 define when a conflict of interest must be declared.
- 14.2.2. For contracts with a total value of £50,000 or more, all Officers, Members and other stakeholders involved in procuring for the Council must sign a Declaration of Interest form at the start of the procurement process. This form is available on the procurement portal.
- 14.2.3. For contract with a total value of between £10,000 and £50,000, it is advisable that all Officers, Members and other stakeholders involved in procuring for the Council sign a Declaration of Interest form at the start of the procurement process. This form is available on the procurement portal.
- 14.2.4. This form must be kept on file during the procurement and for the term of the contract.

### 14.3. **Abnormally Low Bids**

14.3.1. Under the Public Contract Regulations 2015, the Council is required to request an explanation of the price or costs proposed in a tender where that price or those costs appear to be abnormally low in relation to the requirement.

14.3.2. Advice should be sought from the Procurement Lead during this investigation process to ensure that the requirements of the Public Contract Regulations 2015 are complied with.

### 14.4. **Errors in Tenders**

14.4.1. If it is identified that a bidder has made an error or omission that is “obvious”, the Officer can request the bidder to correct this, as long as:

- a) the Chief Officer has given written approval, and is in agreement that the error or omission was “obvious”;
- b) it has been determined that the bidder has gained no unfair advantage from correcting the error or omission; and
- c) any such corrections are recorded, along with the approval decision.

### 14.5. **Receiving Late Submissions**

14.5.1. Where a Tender/Quote has been received late (beyond the stated response deadline), the Officer must get written approval to either accept or reject the submission from the relevant Chief Officer before opening any of the responses. Late submissions must only be accepted in exceptional circumstances.

14.5.2. The Officer must record:

- a) the circumstances behind the late response;
- b) how late the response was received;
- c) if any advantage could have been gained by the bidder in submitting the late response (i.e. having longer to respond to the opportunity compared with other bidders); and
- d) the Chief Officer’s decision to accept or reject the late response (based on the above points).

### 14.6. **Receiving Irregular Tenders**

14.6.1. Irregular tenders are those that:

- a) do not comply with the terms of the tender documents (i.e. fail to supply key information); or
- b) make reservations (i.e. if the pricing submitted contains conditions, when these are explicitly prohibited within the tender documentation).

14.6.2. If the Officer receives an irregular Tender, they shall immediately report this to the relevant Chief Officer.

14.6.3. The Chief Officer may accept the irregular tender if it has been determined that the bidder has gained no unfair advantage from the irregularity.

14.6.4. Any acceptance or rejection of irregular tenders shall be recorded in writing.

14.7. **GDPR and Data Protection Act 2018 Requirements**

14.7.1. The General Data Protection Regulations and Data Protection Act 2018 impose greater obligations on the Council to protect an individual's information.

14.7.2. Officers conducting a procurement should ensure that the GDPR screening questions, available from the Procurement Lead, are completed as early as possible in the planning stages of that procurement.

14.7.3. Should any of the GDPR screening questions be answered positively, further advice must be sought from the Procurement Lead and the Council's Data Protection Officer before any further action is taken. A non-disclosure data protection agreement (available from Legal Services) must be entered into either prior to or upon commencement of the Contract.

14.7.4. Officers shall consider the information governance requirements of the contract if they anticipate any Personal Data is to be processed as part of the contract e.g., data protection, security of information, records management.

14.7.5. Where Personal Data may be processed as part of the contract, a Privacy Impact Assessment tool shall be completed. This will help the Council identify the most effective way to comply with their data protection obligations and meet individuals' expectations of privacy.

14.7.6. Where requirements are identified by the Privacy Impact Assessment, the Officer shall ensure that any requirements of contractors are considered and built into the specification and assessed where necessary as part of the evaluation.

14.7.7. Any queries relating to this should be directed to the Council's Data Protection Officer.

14.8. **Freedom of Information**

14.8.1. The Council has specific obligations under the FOI Act 2000, regarding disclosure of information. Officers have an obligation to record and maintain accurate records relating to Contracts, as well as complying with FOI requests.

14.8.2. Bidders should be asked to identify any information they supply that is confidential or commercially sensitive, and detail why they consider this the case. This justification should be considered when responding to FOI requests.

14.8.3. Any queries relating to this should be directed to the Council's Data Protection Officer.

14.9. **Modern Slavery**

14.9.1. The Council is committed to ensuring that modern slavery does not exist within its supply chains.

14.9.2. All procurements with a total value of £50,000 or more are required to include the Standard Selection Question regarding Modern Slavery Act compliance.

14.9.3. Where procurement is considered high risk in terms of modern slavery, for example transport and waste related procurements, additional award questions should be considered with advice from the Procurement Lead.

14.9.4. Where a supplier is required to comply with the Modern Slavery Act, i.e., their turnover is above £36 million, that compliance should form part of the contract management (as per 15.1).

14.9.5. A Modern Slavery Helpline is available on Tel: 08000 121 700 or online (<https://www.modernslaveryhelpline.org/>). The Helpline provides information and advice about modern slavery, a 24-hour telephone reporting line and an online reporting function through the website

14.10. **Safeguarding Provisions in Contracts and Grant Arrangements**

14.10.1. Any service engaged by the Council should be provided on the basis of agreed terms or a contract. Safeguarding compliance should be included in all arrangements. All services commissioned by the Council must operate within the requirements of the Council's Safeguarding Policy and meet the relevant legislative standards. Where appropriate, procuring officers will need to ensure that contractors demonstrate that they meet these requirements.

14.10.2. It is expected that the lead officer on any commissioning project be responsible for ensuring that any contract includes proper provision for the safeguarding of children, young people, and adults with care and support needs; this also includes making reasonable requests for evidence from suppliers that the requirements stated in the Safeguarding Policy (where applicable) are in place or ready to be implemented. Where there is any confusion about the need for the inclusion of safeguarding in a contract arrangement clarification and/or advice should be sought from the Safeguarding Lead.

#### 14.11. Due Diligence

14.11.1. It is the Officer's responsibility to carry out due diligence on successful suppliers, both at Contract Award, and for the duration of the Contract. This will involve requesting, obtaining and maintaining records (and asking for appropriate evidence) of relevant due diligence, annual inspections and any future expiration/renewals.

This may include (but not be limited to):

- a) Insurance certificates (new certificates to be requested upon expiry of the individual insurance policy);
- b) Details as required by the selection/suitability criteria asked as part of the procurement process (annually, upon anniversary of Contract start date):
  - i. Supplier policies
    - Quality Management
    - Environmental
    - Equality
    - Health and Safety
    - Data protection/GDPR
  - ii. Licences/certificates/registrations
  - iii. Business continuity plans
  - iv. Required training (and updates for staff (Council and supplier)
  - v. Staff certifications/qualifications (Council and staff); and
- c) A financial appraisal, which may include a financial credit check and / or a review of submitted financial information (as per the standard selection questionnaire). Finance can provide reports from the Council's credit check facility, and where required undertake a financial ratio analysis. Further information is available within the Procurement Toolkit on the procurement portal.

14.11.2. Before the contract commences (and regularly throughout the duration of a contract), contract managers should request and inspect key health and safety records to provide assurance that controls are operating effectively. The frequency of requests and types of records to be reviewed should be agreed and outlined as part of the procurement process. Records should include but not be limited to:

- Up to date Health and safety policies
- Risk Assessments
- COSHH assessment
- Induction and training records
- Fire safety logbooks (if applicable)
- PAT certificates
- Health and Safety inspections (as well as any actions arisen, and how they are being followed up on, reviewed and regularly monitored) and whether these are carried out by the Council or the supplier
- Accident reporting

14.11.3. Throughout the duration of the contract, Council Officer's must keep a record (and ask for appropriate evidence) of relevant due diligence as well as any future expiration/renewals.

#### 14.12. **Impact of Organised Crime**

14.12.1. In 2016 a pilot study was undertaken which found links between organised crime and specific categories of public sector procurement.

14.12.2. Areas particularly at risk of involvement with organised crime are taxis/transport, waste and areas of low level spend, for example property maintenance.

14.12.3. If an Officer is seeking to procure in one of these higher risk categories, further advice should be sought from the Procurement Lead.

#### 14.13. **Financial Sanctions Legislation**

11.11.1 Financial sanctions are imposed by government and may apply to individuals and entities in the UK and abroad. In most cases it is illegal to contract with individuals and entities subject to financial sanctions.

11.11.2 Any Officer concerned about whether the individual or entity they wish to enter into a contract with may be subject to financial sanctions should contact the Procurement Lead for advice.

#### 14.14. **Sealing a Contract**

14.14.1. A contract must be sealed where:

14.14.1.1. The total value is over £50,000;

14.14.1.2. The Council wishes to enforce the contract for more than six years after its expiry; or

14.14.1.3. The price paid or received under the contract is a nominal price and does not reflect the value of the goods, services or works; or

14.14.1.4. There is any doubt about the authority of the person signing for the other contracting party; or

14.14.1.5. A Bond is established on behalf of the Supplier(s) or their guarantors; or

14.14.1.6. Required by the Parties to the agreement; or

14.14.1.7. Where the Monitoring Officer deems it appropriate.

14.14.2. Where contracts are completed by each side adding their common seal, the affixing must be attested by or on behalf of the Council in accordance with the Constitution. The Monitoring Officer is responsible for the process of sealing a contract.

14.14.3.If a Council Officer or Supplier needs to sign contract documentation electronically, please speak to Legal Services for advice and guidance on the use of electronic signatures.

14.15. **Reserving below Threshold Procurements (for Services contracts only)**

Officers can consider reserving below threshold services contracts to local (County) and/or SME (Small and Medium Sized Enterprises) status organisations as part of a procurement process.

This will be managed by officers on a case-by-case basis, after assessing the market to ensure there is sufficient competition (based on the reserved criteria). This will help support the local economy and encourage entrepreneurship and small businesses in the area.

Being able to reserve the procurement by supplier location would mean being able to run a competition and specify that only suppliers located in a geographical area can bid (Lincolnshire). Additionally, reserving the procurement for Small and Medium sized Enterprises (SMEs) would mean that only SMEs can bid, encouraging entrepreneurship, and attracting new and smaller organisations to work with and for the Council.

14.15.1.If Council Officers wish to reserve below threshold Services procurements as per the guidance set out in this section, they must:

- a) Consult with the Procurement Lead;
- b) Comply with all other Rules within this document;
- c) Provide rationale for reserving a contract; and
- d) Receive written approval from the relevant Director for this approach.

14.15.2.Council Officers may consider the following options for the procurement of below threshold Services contracts (applying either both or just one option):

- a) Reserve the procurement by supplier location - this means being able to run a competition and specify that only suppliers located in a geographical area can bid. This could be by county to tackle economic inequality and support local recruitment, training, skills and investment. Where a county reservation is to be applied, only a single county may be reserved. Supplier location should be described by reference to where the supplier is based or established and has substantive business operations and not by location of corporate ownership.
- b) Reserve the procurement for Small and Medium sized Enterprises (SMEs) and Voluntary, Community and Social Enterprises (VCSEs) - this means being able to run a competition and specify that only SMEs and VCSEs can bid.

14.15.3.Definitions:

- a) Small and Medium sized Enterprise (SME): Any business with fewer than 250 employees and either an annual turnover below £45m or a total balance sheet less than £40m.
- b) Voluntary, Community and Social Enterprises (VCSEs): Any organisation (incorporated or not) working with a social purpose. This ranges from small community-based groups / schemes, through to larger registered charities and social enterprises, public service mutuals and cooperatives that operate locally, regionally and nationally. This term is often interchangeable with the terms 'third sector' or 'civil society' organisations.
- c) Supplier Location: Where the supplier is based or established in a particular location and has substantive business operations in that location. In this context, this means having a registered office, factory or other permanent base in that location from which meaningful business operations have been conducted for at least 12 months. For example, if the reservation is for the UK or a county, this should not preclude foreign suppliers from participating as long as they are based or established and have substantive business operations in the UK in the first example or in Dorset in the second example.

14.15.4. When considering either of the above, Council Officers would need to:

- a) Make reservation decisions on a case-by-case basis, and record justifications for the decision to reserve a contract;
- b) Make the reservation clear in the procurement documentation in terms of any intention by including the standardised definitions of SME / VCSE and supplier location;
- c) Eliminate bidders that do not meet the stated criteria, following on from written approval being received from the relevant Director; and
- d) Ensure value for money can still be met, and an open competitive process is followed.

#### 14.16. **Bonds and Parent Company Guarantees**

14.16.1. Officers, when assessing the contractor's financial viability, shall consider whether the Council requires security for due performance of the contract.

14.16.2. Officers must consult the Section 151 Officer about whether a Bond or Parent Company Guarantee would be necessary where the total value exceeds £500,000. This must be determined prior to any procurement process, so that the requirement can be included in the terms and conditions for the contract.

14.16.3. Where security is considered to be appropriate and required, Officers shall specify in the tender the nature and amount of the security to be given. This as a minimum shall be at least 10% of the total value of the contract.

14.16.4. The security shall be obtained by the contractor in a format, and from an institution or bank approved by the Section 151 Officer.

**14.17. Procuring with External Grant Monies**

14.17.1. Procuring contracts using external grant monies can bring about additional risks to the Council due to additional regulatory requirements in the way the money is controlled and additional scrutiny that the procurement process may receive. Therefore, Officers must be fully aware of all requirements of the relevant funding body and ensure full compliance.

14.17.2. Officers shall ensure that they engage, in advance of undertaking a procurement activity, with the Procurement Lead, providing full access to any relevant additional guidance.

14.17.3. NOTE: Specifically for ERDF funding, the Officers shall appraise the intended procurement activity against the ERDF published 'common mistakes' guidance prior to initiating any procurement activity to ensure none of the common mistakes have been made.

**15. Contract Management**

**15.1. Contract Management**

15.1.1. The named Contract Manager should be noted in the Contract Register. All contracts must have a named Contract Manager for the entirety of the contract and that Contract Manager is responsible for the application of these Rules.

15.1.2. For all contracts valued over £50,000, the Contract Manager must identify the risks by maintaining a suitable risk register and ensure that suitable contingency measures are in place.

15.1.3. During the life of the contract, the Contract Manager must monitor the overall performance of the contract closely in order to ensure any issues of under-performance are addressed as soon as possible and any areas of added value are identified as soon as possible.

15.1.4. All contracts must contain the right to terminate the contract in the event of a contractor offering any inducement, committing fraud, or committing an offence under the Prevention of Corruption Acts.

15.1.5. All contracts must require contractors to comply with the Council's Corporate Counter Fraud Strategy.

15.1.6. Where a supplier intends to sub-contract, Officers must assess whether it is appropriate for the supplier to obtain a local quotation as part of this process, where local means the District of South Kesteven.

## 15.2. **Variations**

15.2.1. In any case where a variation (independently or cumulatively) means that the total value of a contract would exceed the relevant Public Procurement Threshold, or where there is any material change to the contract, the contract must be treated as a new procurement under these Rules.

If any variation (independently or cumulative) means that the total value of a contract would exceed a threshold set out in these Rules, Officers must seek advice from the Procurement Lead.

15.2.2. A material change is one which:

15.2.2.1. Would have allowed the admission of other Bidders or the acceptance or another tender; or

15.2.2.2. Extends the scope of the contract considerably to goods, services or works not initially covered by the Specification; or

15.2.2.3. Changes the economic balance in favour of the contractor in a manner not provided for in the procurement documents.

15.2.3. For clarity, a change will be deemed immaterial if the value of the modification is both below the relevant Public Procurement Threshold and below 10 % of the original contract value (15% for works contracts) as provided by Regulation 72 of the Public Contract Regulations 2015.

15.2.4. All variations to contracts shall be in writing, following approval in accordance with the Scheme of Delegation.

15.2.5. All variations to a contract (that was originally above the Public Procurement Threshold and therefore advertised on OJEU or Find a Tender Service) must have a Modification Notice published. Please discuss this with the Procurement Lead prior to any variation being entered.

## 15.3. **Extensions**

15.3.1. A contract should not be extended beyond its initial term unless the contract documents allow (the potential extension option was advertised).

15.3.2. A Framework Agreement shall only be extended if the contract documents and framework allow, and the original term and extension together should not exceed four years except in exceptional circumstances.





























