



SOUTH  
KESTEVEN  
DISTRICT  
COUNCIL

# **Contract Procedure Rules**

## **September 2025**

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## **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 maximising value for money, making savings where possible, and 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 section of the Intranet and further supported by the Councils Procurement Lead and the Councils outsourced tendering agent which is currently Welland Procurement; [wellandprocurement@melton.gov.uk](mailto:wellandprocurement@melton.gov.uk).
- 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 Paragraph 2, Schedule 2 of the Procurement Act 2023 (PA23)
- 1.9.6. Contracts between Local Authorities as defined by Paragraph 2, Schedule 2 of the Procurement Act 2023 (PA23)

## **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. All procurements must realise value for money through the optimum combination of whole life costs and quality of outcome.
- 2.3. 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.
- 2.4. Where an above Procurement Act 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.
- 2.5. 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.
- 2.6. Officers must ensure that the contracts for which they are responsible are effectively managed and monitored to ensure they deliver the requirement as intended.
- 2.7. 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.
- 2.8. A 'Conflict of Interest Declaration form' can be found on the Council's and will be monitored by tendering officers throughout any tendering process they support on.
- 2.9. 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.
- 2.10. 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.

2.11. The Officer is responsible for ensuring adequate notice is given to the Procurement Lead on new requirements, where a procurement lead will be involved in supporting the activity, taking into account the time required for mini comps, tenders and any internal approvals required.

2.12. 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.

2.13. 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.

2.14. Officers will need written approval to procure and award in line with the constitution. This approval needs to be sought regardless of the procurement route i.e., Tender, Quotation, Framework Direct Award or Exception. Please see Appendix 3 for the relevant Forms.

2.15. Contract Approval and Signing

2.15.1. For contracts with a total value up to and including £49,999 the approval will be given by the relevant Service Manager (or equivalent post). This must be done in writing (email is sufficient). Contract to be signed by Service Manager

- 2.15.2. For contracts with a total value between £50,000 and £99,999 then approval will be given by Heads of Service (must be recorded via an Officer Delegated Decision (ODD). Contract to be signed by Heads of Service.
- 2.15.3. For contracts with a total value over £100,000 but up to the key decision threshold as set out in the Councils constitution then approval will be given by the Director or Assistant Director and must be recorded via an Officer Delegated Decision (ODD). Contracts to be signed by Director or Assistant Director.
- 2.15.4. For contracts with a total value above the key decision threshold constitutes a Key Decision, which must be on the forward plan. Democratic Services must be engaged prior to any procurement process commencing which is above the key decision threshold. Note that any applicable “call in” period must be observed before the Decision is implemented. Section 17 provides further information where Contracts need to be signed and sealed.
- 2.15.5. ODDs requiring comment/approval from Procurement should be sent to Procurement Lead to fill out. Officers should not fill this section out and approve under the Procurement Leads’ name without the knowledge and consent of the procurement Lead.
- 2.15.6. Copies of signed Approvals should be saved in SharePoint under the relevant departments folder
- 2.15.7. A summary of information is available at Appendix 6 Quick Reference Guide.
- 2.16. 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.
- 2.17. Officers must ensure details of bidders and their submissions are kept confidential (subject to Freedom of Information considerations).
- 2.18. Officers shall complete the Council’s electronic Contract Register (to record all contracts with an estimated total value of £5,000 and above including any changes over the contract life e.g., extensions).
- 2.19. Officers shall notify the Procurement Lead of any contracts awarded with an estimated total value of £25,000 (ex. VAT) and above (including any changes over the contract life e.g., extensions), so that a Find a Tender Award Notices can be published.

### **Service Managers, Heads of Service, Assistant Directors and Directors (or equivalent postholders)**

- 2.20. Service Managers and 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.
- 2.21. Service Managers and 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.
- 2.22. Service Managers and 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.
- 2.23. The relevant Service Manager or 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.
- 2.24. Where a Service Manager or 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.
- 2.25. A 'Conflict of Interest Declaration – Confidentiality Agreement' form can be obtained the councils intranet.

### **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. Procurement Processes – General**

- 4.1. 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).

#### **4.2. Estimating the Total Contract Value**

- 4.3. 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 Procurement Act 2023. All references to "value" within these Rules refer to Total Value.

- 4.4. 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.
- 4.5. 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.
- 4.6. 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.
- 4.7. 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.
- 4.8. Officers will ensure that values are not split in an attempt to avoid the applicability of these Rules or the Procurement Act 2023.
- 4.9. 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 Act. 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.
- 4.10. 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 Procurement Act Threshold, the Procurement Lead must be consulted.
- 4.11. 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.
- 4.12. In the event that the estimated Total Contract Value is below the Procurement Act Threshold, and following a procurement process the proposed winning bidder's Total Bid Value exceeds the relevant Procurement Act Threshold, the Officer must not award the contract without consulting with the Procurement Lead as to the risks associated with awarding the contract.
- 4.13. **Tupe**
- 4.14. 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. More information can be found in Appendix 7 and on the Intranet.
- 4.15. When obtaining quotes, consideration should be given to selecting SME/Local suppliers for quotes wherever possible.
- 4.16. 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).
- 4.17. The quotation must be received before any order is processed and must include the following information:

<b>Under 24,999</b>	<b>Between £25,000 and £100,000</b>
A description of the goods, services or works to be supplied;	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)

When and where they will be supplied;	Instructions to bidders:
The value of the requirement;	Evaluation criteria
Payment terms.	How to respond
<ul style="list-style-type: none"> <li>- If high risk (e.g Building Works, technical works, working with the public/accessing people's homes, working in areas where there is public access).</li> <li>- The short form terms and conditions to be applied (available Standard T's &amp; C's, unless using another appropriate set of terms and conditions, as agreed by Legal Services or Procurement Lead).</li> </ul>	How clarification messages are to be asked (who sent to, any deadlines for messages)
	Information bidders need to include within response
	Deadline for responses (day and time); and
	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 or Procurement Lead).

4.18. The contract award must be authorised by the budget holder using the relevant Approval Route (ODD, etc)

4.19. 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.

4.20. 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. 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

Finance can provide reports from the Council's credit check facility, and where required undertake a financial ratio analysis.

#### **4.21. Exceptions / Direct Awards**

- 4.21.1. Direct Awards 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.
- 4.21.2. Officers must obtain a fully signed Approval to Direct Award form in advance of awarding a contract and must ensure that the actual spend does not exceed the total value stated in the approved form.
- 4.21.3. Officers will need to ensure they have the relevant budget approved and available prior to submitting an exception or Direct award or exemption request. This approval will be from the Budget Holder, in accordance with budget authorisation limits (as outlined in the Financial Procedure Rules).
- 4.21.4. Signed contracts that have a total value of £5,000 or more must be scanned in and saved to the central procurement SharePoint area and added to the contract register. Officers must then provide Governance with any paper copies of the Contract for the subsequent storage and safe keeping.
- 4.21.5. Direct Awards must be approved by the relevant departments' Director or secondary Director in the instance where a Director is initiating the Direct Award themselves, upon completion of the Approval to Direct Award Form subject to one of more of the following criteria being fulfilled:
  - 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.
  - 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/left to the last minute and there are insufficient timelines to procure.
  - 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.
  - 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.

- 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.
- 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.
- An award notice is required on Find a Tender for all Contracts with a total value of £25,000 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.

**4.22. For all procurements, the Officer must keep the following records saved in Sharepoint under Procurement section of the Intranet, within their relevant department :**

- 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.

**4.23. Communications to and from bidders during the procurement process.**

**4.24. Contract management**

**4.25. 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.**

**4.26. 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 underperformance are formally addressed as soon as possible.**

**4.27. 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

4.28. 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.

4.29. 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.

4.30. **Contract Modifications**

4.31. Any variation to contract for a contract valued above the Threshold can only be varied if the variation is a permitted modification and not a substantial modification or a material change in accordance with Procurement Legislation (PCR 2015 and New Act – PA2023)

4.32. A material change is one which:

- Would have allowed the admission of other Bidders or the acceptance of another tender; or
- Extends the scope of the contract considerably to goods, services or works not initially covered by the Specification; or
- Changes the economic balance in favour of the contractor in a manner not provided for in the procurement documents.

4.33. All above threshold variations should be reviewed by Procurement Lead prior to the agreement of any variation.

4.34. Permitted modifications include:

- Change provided for in the contract
- Urgency and protection of life (PA 2023)
- Unforeseen circumstances (subject to the change not exceeding 50% of the value of the original contract under PCR 2015 and PA2023)
- Materialisation of a known risk (subject to the change does not increase the estimated value of the contract by more than 50% PA 2023)
- Additional goods, services or works (under PCR 2015 and PA2023 provided that any increase in price does not exceed 50% of the value of the original contract)
- 'Convertible contract' (PA 2023)

- 4.35. Variations to Relevant Below-Threshold Contracts (subject to whether it is a convertible contract) are allowed. Input from the procurement lead should be requested by Officers.
- 4.36. **PA 2023 – Above threshold**
- 4.37. Before any modification to a contract can be made, a contract change notice must be published unless there is an exception (such as if the modification increases or decreases the estimated value of the contract by 10% or less for goods or services or 15% or less for works; or the contract term by 10% or less of the maximum term provided for on award).
- 4.38. Changing the term of a contract term by more than 10% of the maximum term is considered substantial (calculated in months). Officers must therefore ensure they account for all possible extensions in all Relevant Contracts.
- 4.39. If the change increases or decrease the estimated value of the contract by 10% or less for goods or services or 15% or less for works unless the modification is permitted in relation to novation or transfer of the contract on corporate restructuring.
- 4.40. Modifications apply to the value of the contract at the time of the modification (i.e. the estimated value of the contract immediately before the modification is made) - therefore if more than 1 modification is applied to the contract, the value will be the new value (including the previous modification) rather than the old value.
- 4.41. Officers may observe a voluntary standstill period of at least 8 working days from the day of publication of the contract change notice and it is strongly recommended to do so to provide additional protection for the Council.
- 4.42. For modification of contracts over £5M a copy of the modified contract (redacted) must be published within 90 days of entering into it
- 4.43. **Public Contracts Regulations 2015 (PCR 2015)**
- 4.44. Officers must note that any changes made to Relevant Above-Threshold Contracts that started their procurement process or existed before the PA 2023 came into effect are still subject to the modification rules of the PCR 2015. It is important to check when the contract was procured and if calling off a framework agreement, check when the framework agreement was established. If they were procured with the PCR 2015 were in force, then the PCR 2015 will apply to modifications under them.
- 4.45. Permitted modifications are allowed if the value is below 10% of the initial contract value for service and supply contracts and 15% of the initial contract value for works Contract Extensions.

## **5. Procurements valued £24,999 and under**

- 5.1. Where the contract is valued £24,999 and below, 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. Officers are encouraged to seek quotations from local suppliers wherever possible.

## **6. Procurements valued between £25,000 and £99,999**

- 6.1. Where the contract is valued between £25,000 and £99,999, at least three written quotations must be sought. Those quotations can be invited from identified suppliers as no procurement advertising is needed to take place.

- 6.2. For contracts with a total value of £25,000 or more, if the Council chooses to publicly advertise a quotation, for example because:

6.2.1. The Officer cannot immediately identify three potential suppliers to invite to quote; and/or

6.2.2. The procurement opportunity is either politically sensitive or high profile

then it must be simultaneously advertised via the Procurement Lead on Contracts Finder.

- 6.3. Where the Procurement Lead is instructed to support the procurement, the Officer must complete a Procurement Initiation Document (PID), available on the intranet, prior to the commencement of the procurement process (at pre-procurement stage).
- 6.4. It is recommended that the Request for Quotation template document is used which can be found on the Intranet. 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.
- 6.5. At least one of the suppliers invited to submit a quotation should be local, where local means operating from a business address within the geographical boundary of the East Midlands.
- 6.6. 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.
- 6.7. 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).
- 6.8. 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.

- 6.9. As part of the procurement process (quotation), potential bidders can seek clarification on either the information published or the process itself.
- 6.10. 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.
- 6.10.1. 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).
- 6.10.2. The Council must respond to all clarifications as soon as possible (via email or ProContract).
- 6.10.3. 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.
- 6.10.4. 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.
- 6.10.5. Officers must state a deadline for receipt of clarifications.
- 6.10.6. Officers must keep a record of communications between potential bidders and the Council.
- 6.10.7. Unless it is part of a clarification and the above is observed, Officers must not:
- 6.10.7.1. Make contact with suppliers/potential bidders; or
  - 6.10.7.2. Send information to suppliers/potential bidders.
- 6.11. 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.
- 6.12. 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.
- 6.13. Clarification questions may be asked where responses would not result in a material change of the bid received.
- 6.14. 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.

- 6.15. Contract award must be approved as per 2.15 of these Rules.
- 6.16. 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.
- 6.17. 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 18 below.
- 6.18. If a Council Officer or Supplier needs to sign contract documentation electronically, please speak to Governance for advice and guidance on the use of electronic signatures.
- 6.19. The resultant contract must be added to the Council's Contract Register (on ProContract) to ensure compliance with Transparency Regulations.
- 6.20. All signed contracts must be scanned in and saved to the relevant Directorate in SharePoint and added to the Contracts Register. Officers must then provide Governance with any paper copies of the Contract for the subsequent storage and safe keeping.
- 6.21. If the contract is valued at £25,000 and over, an award notice on Find a Tender is required. Further contract management notices may also be required under the new Act. 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 full details of Notices required can be found at Appendix 3.
- 6.22. 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.

## **7. Procurements valued at £100,000 and above**

- 7.1. All Procurements with a value over £100,000 must be competed formally
- 7.2. The Procurement Lead should be notified giving at least 4 months' notice in respect of all contract requirements with a total value of £100,000 and above to allow time for tendering agent to schedule the procurement into their master service plan.
- 7.3. Where the Procurement Lead is instructed to support the procurement, the Officer must Notify the Lead who will add the requirement to Tendering Agents Service Plan. Tendering Agent will assign a procurement officer who will support with the tender.
- 7.4. In the first instance, Tendering Agent will arrange a startup meeting where they will discuss the requirement with the stakeholder and assist in filling out Section 1 of the Procurement Toolkit

Document. Once completed, stakeholder will need to get signed off to ensure approval has been sought to procure.

- 7.5. The Procurement Took Kit document can be found on the Council's intranet.
- 7.6. All required external notices up to the point of contract award will be published on Find a Tender service by Tendering Agent. All contract management notices will need to be managed by the Contract Manager.
- 7.7. Tenders valued at over £5M require at least 3 KPI's setting and performance against KPIs are to be published.
- 7.8. Once contract is awarded, service is required to circulate the contract for signing
- 7.9. Once contract is signed, Tendering Agent will add to the register and will advise of any further contract notices which may be required during the life of the contract when handing over the completed Procurement Toolkit.
- 7.10. The Contract manager is responsible for publishing any further notices required during the life of the contract. These may include;
  - 7.10.1. Contract Change Notice
  - 7.10.2. Payment compliance notice (Contracts over £5M)
  - 7.10.3. Contract performance notice (contracts over £5M)
  - 7.10.4. Contract termination notice
- 7.11. Council Officers must conduct the Tender process using the Council's tender portal (unless agreed otherwise by the Chief Finance Officer).
- 7.12. The Tender template documents must be used to ensure that the required Suitability Questions are used (available from Tendering Agent).
- 7.13. The Officer must work with Tendering Agent to ensure that all relevant procurement documents are finalised before the procurement is advertised, these will include at least the Specification, Draft Terms and Conditions of Contract, TUPE information (where applicable) and evaluation criteria.
- 7.14. 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. Further training on writing scopes is available by booking onto Tendering Agent training session via the Intranet
- 7.15. As part of the procurement process (tender), potential bidders can seek clarification on either the information published or the process itself.

- 7.16. 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.
- 7.16.1. All requests for clarification and questions relating to the tender (and its associated documents) must be submitted as per the instruction document (via ProContract).
- 7.16.2. Tendering Agent will manage the clarifications
- 7.16.3. The Council must respond to all clarifications as soon as possible so Tendering Agent can publish responses.
- 7.16.4. 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.
- 7.16.5. 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 Tendering Agent and the Council, the clarification is not confidential, Tendering Agent will publish it in an anonymised format.
- 7.16.6. Tendering Agent must keep a record of communications between potential bidders and the Council.
- 7.16.7. Unless it is part of a clarification and the above is observed, Officers must not:
- 7.16.7.1. Make contact with suppliers/potential bidders; or
- 7.16.7.2. Send information direct to suppliers/potential bidders.
- 7.16.8. 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.
- 7.17. Tenders will be received via the electronic tendering system. The Procurement Officer will be responsible for opening tenders.
- 7.18. 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), 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 Assessment – Confidentiality Agreement' will be assessed as part of the Procurement Toolkit Document.
- 7.19. Further guidance on evaluation, principles and best practice can be found by booking on to the Evaluations training session via the Intranet and can also be provided by the procurement Lead.
- 7.20. The Procurement Lead officer can act as the independent moderator but cannot undertake any scoring.

- 7.21. The bidder with the highest evaluation score will be awarded the contract. If this is not case, the advice of the Procurement Lead Officer must be sought prior to award.
- 7.22. Contract award must be approved in in accordance with the approval levels set out at 2.16 of these Contract Procedure Rules.
- 7.23. All bidders must be notified of the Award decision simultaneously in writing (via the e tendering system) by the Procurement Lead Officer, whether or not their bid was successful.
- 7.24. The contract must be signed and/or sealed, please see Section 18 below.
- 7.25. The resultant contract must be added to the Council's Contract Register to ensure compliance with Transparency Regulations and saved to relevant Directorate on SharePoint. The Officer is responsible for ensuring the original signed contract is given to Governance for safekeeping.
- 7.26. Where Tendering 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.
- 7.27. An award notice is required on Find a Tender; the Procurement Lead Officer is responsible for such award notices.
- 7.28. It is the Officer's responsibility to carry out due diligence on successful suppliers, for the duration of the Contract.

**8. Procuring via a Framework Agreement, Dynamic Purchasing System (DPS) or Dynamic Market (DM)**

- 8.1. A contract of any value can be procured via a Framework agreement DPS or Dynamic Market (DM) Providing there is a business justification for doing so.
- 8.2. Direct awards under Frameworks, where permissible under the Framework guidance must be approved by completing and signing the Approval to Direct Award' from.
- 8.3. Under the new Act (PA23), Dynamic Purchasing system (DPS) is replaced by Dynamic Markets (DMs). Currently, use of DM's only apply to above threshold requirements.
- 8.4. Frameworks and DPS's which were established before 24th February 2025 are to be used in accordance with Public Contracts Regulations 2015. Any new Frameworks created after 24th February are to be used in accordance with the new Procurement Act 2023 (PA23).
- 8.5. Compliance with these Rules and relevant national law is achieved through compliance with the framework agreement / DPS / DM terms and conditions. This will involve:
  - 8.5.1. reviewing relevant Framework/DPS/DM guidance document(s);
  - 8.5.2. reviewing the correct process for call off (which may be through further competition or direct award); and

- 8.5.3. following the stated call off process, as laid out in the Framework/DPS/DM documentation.
- 8.5.4. 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.
- 8.6. Mini Competitions/Further Competitions should be carried out by working with Tendering Agent
- 8.7. As part of the procurement process (call off), potential bidders can seek clarification on either the information published or the process itself.
- 8.8. For the avoidance of doubt, a framework agreement, DM 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.
- 8.9. 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 (before 24th February 2025) and The Procurement Act 2023 (post 24th Feb 2025). These Regulations set out strict processes which must 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.
- 8.10. It is recommended that the Further Competition Template documents are used which can be obtained from the Intranet or the Procurement Lead; if template documentation is provided by the Framework/DPS Owner, Officers can make use of this.
- 8.11. 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.

- 8.12. Submissions must be evaluated in line with the Framework/DPS/DM guidance document and the Contract award must be approved as per 2.15 of this document.
- 8.13. 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/DM owner) by the Procurement Lead or the Framework/DPS owner), whether or not their bid was successful.
- 8.14. The contract must be signed/sealed in line with the appropriate Rule, dependent on the total value of the contract.
- 8.15. 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.
- 8.16. Under PA23 external notices must be published for every call off
- 8.17. 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, however external notice must be published for every call off.
- 8.18. Where a Tendering 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.
- 8.19. These documents should be stored in the Council's central Procurement filing system in SharePoint
- 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. Creating an internal Framework Agreement**

- 9.1. 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 tender process each time. A framework agreement may be established with one supplier ("single supplier frameworks") or with more than one ("multiple supplier frameworks").
- 9.2. Under the new Procurement Act, there are now two types of frameworks. Standard Framework and Open Framework
- 9.3. A standard framework runs for a maximum of 4 Years. Once the Framework has been awarded, it is fixed, and new suppliers cannot be added at a later date.

- 9.4. An Open Framework can run up to 8 years and can be re-opened periodically throughout the 8 Year duration to allow new bidders to apply to be added.
  - 9.4.1. When running the initial tender for an Open Framework, how the framework will run, how call offs will take place and when the framework will re-open for new bidders must be set out.
  - 9.4.2. The framework must reopen at least once in the first three years of its life and at least every 5 years thereafter
  - 9.4.3. Each time the framework re-opens, there can be no substantial amendments to the scope of terms and no amendments to the award criteria.
  - 9.4.4. If only one supplier bids and is awarded either to the framework or to a specific Lot of the Framework, the Open framework can only run for a maximum of 4 years, thorough market engagement should therefore be conducted to ensure there is a likelihood of more than one bidder.
- 9.5. The minimum number of suppliers for a multiple supplier framework is two.
- 9.6. Call-off contracts based on framework agreements may be longer than four years and may extend beyond the expiry date of the framework.
- 9.7. Under the new Act, an award notice must be published for every call off.
- 9.8. 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.
- 9.9. As Standard 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.
- 9.10. 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 inclusive 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.
- 9.11. 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.
- 9.12. Purchase orders raised under the framework must reference the contract reference number so spend against the framework can be monitored.
- 9.13. 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, however, public award notices must be published for every call off.

## **10. Setting up a Dynamic Market (DM)**

- 10.1. A Dynamic Market (DM) is similar to an electronic framework agreement, with three exceptions, new suppliers can join at any time, it is to be run as a completely electronic process and no direct awards are allowed – mini comps/quotations must be sought for each call off.
- 10.2. 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. However, Dynamic Markets can only be used for call-off over the PA233 Threshold.
- 10.3. There is no maximum term for a DM; the period of validity of the DM should be indicated in the call for competition.
- 10.4. All bidders that meet the selection criteria shall be admitted to the DM, and the number of bidders accepted on to the DM shall not be limited.
- 10.5. 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 DM). It is the Officer's responsibility to monitor, and track spend against the DM.

## **11. Social Value and Sustainability**

- 11.1. Local authorities are required to consider how economic, social, and environmental wellbeing may be improved by services that are to be procured, and how procurement may secure those improvements under the provisions of the Public Services (Social Value) Act 2012.
- 11.2. Social Value and Sustainability refers to approaches which maximise the additional benefits that can be created through the delivery, and procurement of goods and services, above and beyond those directly related to those goods and services themselves.
- 11.3. This covers areas such as:
  - 11.3.1. Health and wellbeing
  - 11.3.2. The wider economy
  - 11.3.3. Tackling economic inequality
  - 11.3.4. Equal opportunity
  - 11.3.5. Climate change and the environment
  - 11.3.6. Community cohesion and empowerment
- 11.4. 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.
- 11.5. All Contract with a value above the PA23 threshold must include a Social Value assessment worth 10% of the overall score.
- 11.6. For below threshold contracts, 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.

11.7. The Officer must consult the Procurement Lead for advice on specifying requirements under Social Value, and how to evaluate tenders against these requirements.

11.8. Further support can be provided by the Economic Development team for Social Value and the Sustainability & Climate Change Officer for Sustainability

## **12. Conflicts of Interest**

12.1. Clauses 2.8 and 2.9 define when a conflict of interest must be declared

12.2. For contracts with a total value of between £25,000 and £99,999, 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 intranet.

12.3. For contracts with a total value of £100,000 or more, all Officers, Members and other stakeholders involved in procuring for the Council must sign a Declaration of Interest Assessment at the start of the procurement process. This process will be managed by Tendering Agent if they support the procurement.

## **13. GDPR and Data Protection Act 2018 Requirements**

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

13.2. 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.

13.3. 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.

13.4. 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.

13.5. Where Personal Data may be processed as part of the contract, a Data Protection Impact Assessment, available from the Governance Support Team, 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.

13.6. Where requirements are identified by the Data Protection 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.

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

#### **14. Freedom of Information**

14.1. 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.

14.2. 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.

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

#### **15. Modern Slavery**

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

15.2. All procurements with a total value of £100,000 or more are required to include the Standard Selection Question regarding Modern Slavery Act compliance.

15.3. 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.

15.4. 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 5.1).

15.5. 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

#### **16. Safeguarding Provisions in Contracts and Grant Arrangements**

16.1. 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.

- 16.2. 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.

## **17. Sealing a Contract**

- 17.1. A contract must be sealed where:

- 17.1.1. The total value is over £500,000;
- 17.1.2. The Council wishes to enforce the contract for more than six years after its expiry; or
- 17.1.3. 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
- 17.1.4. There is any doubt about the authority of the person signing for the other contracting party; or
- 17.1.5. A Bond is established on behalf of the Supplier(s) or their guarantors; or
- 17.1.6. Required by the Parties to the agreement; or
- 17.1.7. Where the Monitoring Officer deems it appropriate.

- 17.2. 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.

- 17.3. 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.

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

- 18.1. Officers, when assessing the contractor's financial viability, shall consider whether the Council requires security for due performance of the contract.
- 18.2. 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.

## **19. Procuring with External Grant Monies**

- 19.1. 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.
- 19.2. 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.

## APPENDIX 1: DEFINITIONS

Agent(s)	A person or organisation acting on behalf of the Council, or on behalf of another organisation.
Award Criteria	The criteria used by the Council to evaluate a Bidder's submission against the needs identified within the specification to determine the successful tender.
Award Notice	A notice published on FTS (Find a Tender Service) which provides details of the winning bidder and the final value of the contract. Award notices are required for all procurements valued over £25,000
Bidder	An individual or organisation who submits a tender or quotation in a competitive procurement process
Bond	An insurance policy: If the provider does not do what it has promised under a contract with the Council, the Council can claim from the insurer the sum of money specified in the Bond (often 10% of the Total Contract Value). A Bond is intended to protect the Council against a level of cost arising from the provider's failure.
Candidate	An individual or organisation that has sought an invitation or has been invited to take part in a Quote or tender
Conflict of interest	The concept of conflicts of interest shall at least cover any situation where relevant staff members have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure.
Constitution	The Constitution sets out how the Council operates, how decisions are made and the procedures which are followed to make sure these are efficient, transparent and accountable to local people.
Contract	A legal document that states and explains a formal agreement between two different parties.
Contracting Authority	Has the definition contained within the Procurement Act 2023. It means the State, regional or local authorities, bodies governed by public law or associations formed by one or more such authorities or one or more such bodies governed by public law, and includes central government authorities, but does not include Her Majesty in her private capacity
Contract management	Is the process of managing contract creation, execution and analysis to maximize operational and financial performance at an organization, all while reducing financial risk.
Contract Register	A register that stores details of the Council's Contracts, including duration and expiry dates. All Contracts with a total value of £5,000 and above must be entered onto the register.
Contract term	Is the length of the contract including the initial term and any extension periods proposed.
Corporate Contract	A contract that has already been let by the Council.
Council	South Kesteven District Council.

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.
Electronic Tendering (eTendering)	A secure means to store and transmit all Procurement Documentation via a secure electronic vault (ProContract).
Evaluation	<p>The process of assessing received tenders or quotations against the published criteria to identify the winning bidder, i.e. the bidder with the highest evaluation score.</p> <p>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. Procurement Lead can act as the independent moderator but cannot undertake any scoring.</p>
Exception	An act or instance of waiving a right to obey PCR2015 or PA2023.
Extension (contract)	An additional period identified within the contract, beyond the initial term which may be used to lengthen the contract term.
Find a Tender (FTS)	An e-notification service used to post and view mandatory public sector procurement notices.
Framework Agreement	A framework is an agreement with suppliers to establish terms governing contracts that may be awarded during the life of the agreement. It is a general term for agreements that set out terms and conditions for making specific purchases (call-offs).
Goods	Tangible products that satisfy a need.
Initial Term	The initial period of a contract which may be subsequently extended.
Parent Company Guarantee	A contract which binds the parent of a subsidiary company as follows: If the subsidiary company fails to do what it has promised under a contract with the Council, they can require the parent company to do so instead.
Personal Data	Any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural, or social identity of that natural person.
Procurement	Procurement is the process of finding, agreeing terms and acquiring goods, services or works from an external source, often via a tendering or competitive bidding process.
Procurement Documentation	The full suite of procurement documents required to undertake a compliant procurement process. Includes (but not limited to); Selection Questionnaire, Specification, Invitation to Tender, Terms and Conditions, TUPE information and Form of Tender.

Public Procurement Procedure	A procurement process where the total value exceeds the relevant Public Procurement Threshold and so governed by the Public Contract Regulations 2015 and the Concessions Contracts Regulations 2016.
Proportionate/ Proportionality	Operating in a way that ensures that all aspects of a tender process and contract management including; timescales, specifications, Suitability Criteria, evaluation process and Award Criteria correspond to the size, complexity, risk, and value of the requirements of the procurement and/or contract.
Public Procurement Threshold	The threshold above which a Regulated procedure must be carried out. There are thresholds for goods/services, works and concessions. The current thresholds are contained within Appendix 2.
Publicly available contract	A contract that has been let by another Contracting Authority and which is available for use by the Council. The Council must have been named specifically or generally within the procurement documentation in order to enable access.
Quotation	A formal statement setting out the estimated cost for a particular job or service.
Services	A valuable action, deed, or effort performed to satisfy a need or to fulfil a demand.
Tendering Agent	An organisation acting on behalf of the Council, or on behalf of another organisation, responsible for providing procurement support, including but limited to – <ul style="list-style-type: none"> <li>- Tendering</li> <li>- Contract Management</li> </ul> Procurement Training.

## APPENDIX 2: VARIABLE INFORMATION

The following information is subject to change during the currency of these Contract Procedure Rules and may be updated as changes occur by the relevant Strategic Director.

### Regulation changes

Potential phase out of information relating to the old regulations – Public Contracts Regulations 2015

### Public Procurement Thresholds

The Government has revised the threshold figures, which came into force on 1<sup>st</sup> January 2024. These revised thresholds will not apply to any procurement which commenced prior to the Regulations coming into force.

From 1<sup>st</sup> January 2024 onwards, the Public Procurement Thresholds are (Ex. VAT):

	Including VAT	Excluding VAT
Works	£5,372,609	£4,298,097.20
Non-Works contract (goods and or Services)	£214,904	£171,923.20

### Welland Procurement (Tendering Agent)

### Contacts to be found in Procurement Intranet

[www.wellandprocurement.org.uk](http://www.wellandprocurement.org.uk)

### APPENDIX 3 – FTS NOTICE REQUIREMENT SUMMARY

Ref.	Transparency Notices	Requirement
K1	Pipeline notice	<ul style="list-style-type: none"> <li>• Mandatory (for organisations where spend is £100m+ Per Annum).</li> <li>• 18-month forward-look at planned procurements of £2m+ value only.</li> </ul>
K2	Preliminary market engagement notice	<ul style="list-style-type: none"> <li>• Mandatory where engagement with the market is anticipated or has taken place (or else explain in tender notice why it hasn't been published).</li> </ul>
K3	Planned procurement notice	<ul style="list-style-type: none"> <li>• Optional and Best Practice</li> <li>• Advises the market of an upcoming procurement. A qualifying planned procurement notice can reduce tender timescales.</li> </ul>
K4	Tender notice Including to establish a framework and below-threshold notices	<ul style="list-style-type: none"> <li>• Mandatory (for a competitive procedure)</li> <li>• Publish when undertaking an open or competitive flexible procedure (including to establish a framework contract and procuring using a dynamic market(1)) or procuring a regulated below-threshold contract.</li> </ul>
K5	Transparency notice	<ul style="list-style-type: none"> <li>• Mandatory (for a direct award)</li> <li>• Publish prior to award when undertaking a direct award.</li> </ul>
K6	Contract award notice	<ul style="list-style-type: none"> <li>• Mandatory</li> <li>• Publish to communicate the outcome of the procurement and to commence the standstill period prior to awarding a contract under the open or competitive flexible procedure (and voluntary standstill periods for direct awards).</li> </ul>
K7	Contract details notice	<ul style="list-style-type: none"> <li>• Mandatory</li> <li>• Publish details of the awarded contract (including the contract, for public contracts £5m+), inc. regulated below-threshold contracts above a certain value and those procured by direct award.</li> </ul>
K8	Contract payment notice	<ul style="list-style-type: none"> <li>• Mandatory</li> <li>• Publish details of payments over £30,000 made under a public contract (quarterly).</li> </ul>
K9	Contract performance notice	<ul style="list-style-type: none"> <li>• Mandatory</li> <li>• Publish KPI scores for public contracts £5m+ (at least annually). Publish within 30 days of supplier poor performance / breach of contract.</li> </ul>
K10	Contract change notice	<ul style="list-style-type: none"> <li>• Mandatory</li> <li>• Publish prior to a qualifying modification taking place.</li> <li>• for contracts £5m+, include details of the modification.</li> </ul>



Ref.	Transparency Notices	Requirement
K11	Contract termination notice	<ul style="list-style-type: none"> <li>• Mandatory</li> <li>• Publish when a public contract is terminated / comes to an end</li> </ul>
K12	Procurement termination notice	<ul style="list-style-type: none"> <li>• Mandatory</li> <li>• Publish where, after publishing a tender or transparency notice, the process is terminated without awarding a contract.</li> </ul>
K13-16	Dynamic market notices	<ul style="list-style-type: none"> <li>• Mandatory</li> <li>• Publish and update when advertising, establishing, changing or terminating a dynamic market (inc. utilities dynamic markets and qualifying utilities dynamic markets).</li> </ul>
K17	Payments compliance notice	<ul style="list-style-type: none"> <li>• Mandatory</li> <li>• Publish details of performance against 30-day payment terms (twice annually).</li> </ul>

Further information on notices and requirements can be found: [Module 2: Transparency - GOV.UK](#)

## APPENDIX 4 – APPROVAL DOCUMENTS

All templates can be found in the procurement section of the intranet under Approval Docs - <https://skdc.sharepoint.com/:f:/r/sites/Procurement/Shared%20Documents/Procurement%20Shared%20Documents/Approval%20Docs?csf=1&web=1&e=UYemJp>

### APPROVAL FOR A CONTRACT EXTENSION

#### Guidance Notes

- In normal circumstances it is only possible to extend a contract where such a provision is included in the original terms and conditions.
- In exceptional circumstances, as set out in 15.3.3 of these Rules it is possible to extend a contract even where there is no provision for such an extension within the original terms and conditions. However, advice must be sought from the Procurement Lead before taking such action.

### EXEMPTION FORM

- a) To be used for Direct Awards under single quotes for anything over the PA23 Threshold which is outside of a framework
- b) Notify Procurement Lead for advice in this instance as public notices must be published

### APPROVAL TO DIRECT AWARD

- a) To be used for Direct Awards either through a framework or without a framework for values between 25K and the relevant Procurement Act Threshold.

#### Direct Awards under an external Framework -

- a) An External framework agreement is a contract let by another contracting authority, usually another Council, or an NHS body or a central purchasing authority (e.g. Crown Commercial Service).
- b) An external framework can only be used if it was originally created by a public sector contracting authority (e.g EEM – created by Nottingham City Council).
- c) The framework agreement must have named the Council as one of its potential users, either generally or specifically.
- d) The framework agreement will have been published with rules and guidance notes; these must be followed in order for the call off contract to be compliant and valid.

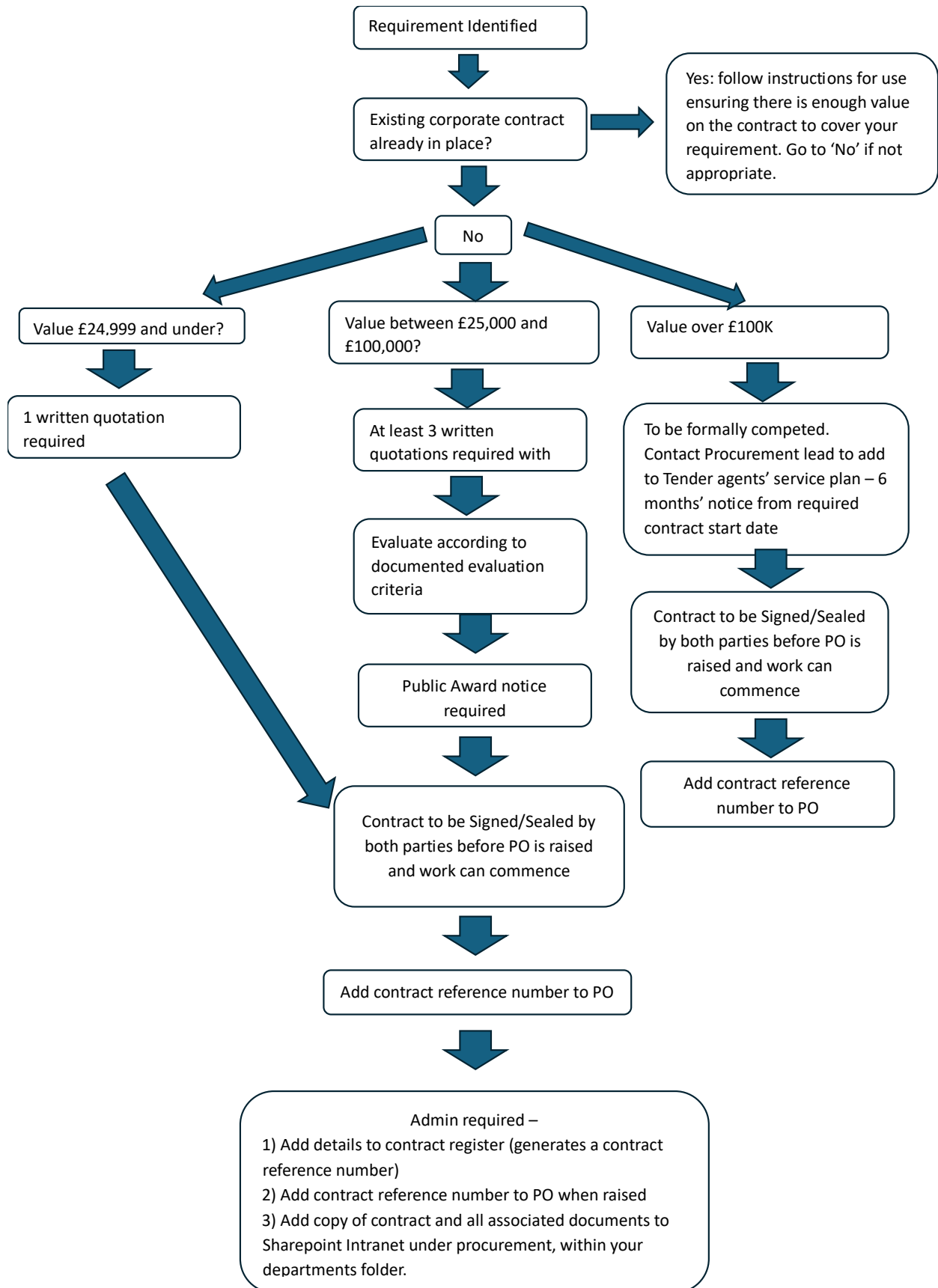
#### Direct Awards without Framework

- a) Approval must be sought before any direct award takes place between 25K and the relevant Procurement Act Threshold
- b) Following approval, please remember to –
  - Publish the contract award notice; and
  - Add your Contract to the Contracts Register.
  - Attach copy of signed contract to Contract Register
  - Save all associated documents on Sharepoint

## APPENDIX 5: ROLES OF PROCUREMENT LEAD AND TENDERING AGENT PROCUREMENT

Procurement Cycle Stage	Role Fulfilment
Needs assessment/business case	Procurement Lead with relevant client officer (this is a key stage in the identification of possible savings, to ensure compliance and that where possible a commercial approach is being taken)
Options analysis	Procurement Lead/Tendering Agent with relevant client officer (for the same reasons as above)
Procurement Plan	Procurement Lead/Tendering Agent (with relevant Council client officer) and with input from the Procurement Lead as necessary.
Market testing/market engagement	Procurement Lead/Tendering Agent (with relevant Council client officer)
Production of procurement documentation including Specification, Request for Quotation an Invitation to Tender documents, Terms and Conditions of Contract	Procurement Lead/Tendering agent (with relevant Council client officer and Legal Services)
Advertising (Contracts Finder and where necessary FTS)	Tendering Agent
Tender Evaluation	Tendering Agent (with relevant Council client officer) Legal Services advice should be sought where any challenge under Procurement Act 2023 is anticipated.
Contract award notices	Tendering Agent
Contract award: contract signing, insertion in to Contract Register and contract management set up	Procurement Lead (with relevant client officer and Legal Services)
Contract Management support	Procurement Lead

## APPENDIX 6: QUICK REFERENCE GUIDE



- Approval to procure is required before procurement commences (via email) AND a decision to award must be obtained before a contract is awarded.
- Contracts valued at £5,000 or more are subject to Transparency Regulations and must be entered on to the Council's Contracts Register ( ProContract).

Total Value	Procurement Guidance	Governance Guidance
<b>Under £24,999</b>	<p><b>Notices Required:</b> None</p> <p><b>Method:</b> At least <b>one written quotation</b> required.</p> <p><b>Note:</b> Budget Holders are responsible for all awards over £5,000 to be entered on the Contracts Register</p>	<p><b>Governance Process:</b> All contracts below £25,000 do not require a formal decision record unless it is deemed high risk, politically or financially sensitive or other circumstances dictate a formal record is required. Decision does not require a formal officer decision notice. The contract should be signed before PO is raised. The Purchase Order (PO) should be raised before award, and this will be deemed sufficient authority to award the contract with a copy of all documentation kept on Shrepoint for audit purposes.</p> <p><b>Finance Process:</b> Must be within budget. A Purchase Order (PO) should be raised before award and authorised in accordance with the Council's Financial Regulations.</p> <p><b>Legal Process:</b> PO Ts &amp; Cs are on the intranet. Please ensure these are fit for purpose for the contract before award. Type of contract to be used must be considered on a case by case basis, depending on the level of risk associated with it Link to Intranet should be added to PO. If bespoke terms are required, please instruct legal before procuring. PO to be approved / signed by the relevant Head of Service prior to award of the Contract once all due diligence has taken place All documentation to be stored on Sharepoint for audit purposes. All awards over £5,000 must be entered on the Contracts Register.</p> <p><b>Signing:</b> Can be signed by Head of Service.</p>
<b>Between £25,000 and £99,999</b>	<p><b>Notices Required:</b> All Contracts over £25,000 must have a formal award notice issued (on Contracts Finder)</p> <p><b>Method:</b> At least 3 quotations should be sought using RFQ template with one supplier being local</p>	<p><b>Governance Process:</b> All Contracts between £25,000 and £99,999 will require a decision record authorising the award of the contract <b>BEFORE</b> the Contract is awarded. Democratic Services can provide the relevant template(s). This decision can be made by the relevant Head of Service. If matter is high risk, politically or financially sensitive it should be made by the Director and/or relevant Portfolio Holder – please liaise with your Director for guidance). The contract should be signed before raising the PO.</p> <p><b>Legal Process:</b> Type of contract to be used must be considered on a case-by-case basis, depending on the level of risk associated with it. In most cases, all Works should have a formal contract such as JCT/NEC4 and should be signed before raising the PO.</p> <p><b>Finance process:</b> Must be within budget. A Purchase Order must be raised prior to award and signed off by the Budget Holder. Purchase Order must be authorised in accordance with the Council Financial Regulations.</p>
<b>£100,000 and over</b>	<p><b>Notices Required:</b> Contracts Finder Advertising and Award notices. Procurement Lead must be instructed.</p> <p>Method: A formal tender or mini comp is required. Tenders at this level are run via Council's etendering system and managed by Tendering Agent.</p>	<p><b>Governance Process:</b> All contracts with a combined value of £100,000 up to the key decision threshold approval must be by the relevant Assistant Director (or Director via an Officer Delegated Decision notice) and must be recorded via an Officer Delegated Decision (ODD).</p> <p><b>Finance process:</b> Must be within budget. Once awarded a Purchase Order must be raised. Purchase Orders must be authorised in accordance with the Council's Financial Regulations.</p> <p><b>Legal Process:</b> Cabinet decision required for any contract over the key decision threshold. Forward Plan timelines to be considered. Contract must be sealed for anything valued over £500,000</p> <p><b>Signing:</b> The Contract must be sealed (Rule 18) – please refer to Legal Services for sealing.</p>

## APPENDIX 7 – TUPE

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.