



Lincolnshire County Council

Contract and Procurement Procedure Rules

Updated September 2019

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2 SCOPE OF CONTRACT AND PROCUREMENT PROCEDURE RULES (CPPRs)

2.1 A BRIEF GUIDE TO THE CONTRACT AND PROCUREMENT PROCEDURE RULES (CPPRs)

NOTE: Whenever defined terms are used they are in italics, begin with a capital letter and are in the Definitions in Section 11. All costs stated in these CPPRs are exclusive of VAT, staff costs and fees.

For the benefit of readers of this document the following definitions have been included in this section, as well as the definitions section at the back.

Electronic tendering portal/Contract Register – ProContract

<https://procontract.due-north.com> Council – Lincolnshire County Council

Information Governance Resource – Information Governance Team

information_governance@lincolnshire.gov.uk

Legal Support – Legal Services Lincolnshire – 01522 552573

Procurement Resource – Commercial Unit – Infrastructure – 01522 553649

– Commercial Unit – People – 01522 550691

Procuring Officer – The officer of the *Council* with responsibility for undertaking a procurement activity

These procedures inform *Procuring Officers* of the *Council* of the mandatory requirements for undertaking procurement and forming contracts, and must be followed. This document sits beneath the *Contract Regulations*, and should be read alongside the *Procurement Guide* and Financial Procedures. The *Contract Regulations* take precedence if there is any inconsistency with the CPPRs.

NOTE: These Procedure Rules apply to schools except where they are incompatible with the Scheme for Financing Schools, as required under the School Standards and Framework Act 1998, which shall take precedence.

The CPPRs promote good Commercial practice, public accountability and deter corruption. Following the procedures is the best defence against allegations that a procurement activity has been undertaken incorrectly, fraudulently or unlawfully. These procedures cover contract and procurement activity undertaken on behalf of the *Council* and within a partnership arrangement, regardless of the source of funding.

Procuring Officers responsible for procurement and contracting must comply with these CPPRs, the Public Contract Regulations 2015, *Financial Regulations*, applicable Grant Fund spending regulations and conditions, and with all UK and European Union (EU) legal requirements.

Procuring Officers must also pay due regard to statutory guidance issued by the Crown Commercial Service, as required by the Public Contract Regulations 2015.

NOTE: Crown Commercial Service guidance is issued regularly and may supersede these procedure rules. Where statutory guidance supersedes these CPPRs, *Procuring Officers* will be required to follow the statutory guidance until the CPPRs are updated.

These CPPRs do not contain procedures relating to making payments and undertaking purchasing activity, i.e. raising purchase orders or using a purchasing card. These procedures are found within the Financial Procedures.

The CPPRs lay down minimum requirements. More stringent requirements may be appropriate for particular contracts and procurements.

In accordance with the Constitution the Executive Director of Finance and Public Protection shall have the power to make amendments from time to time to these Contract and Procurement Procedure Rules after consultation with the Chief Commercial Officer, Legal Services Lincolnshire and Audit and Risk Management.

2.2 BASIC PRINCIPLES

All procurement activity must:

- Comply with these CPPRs, Public Contract Regulations 2015, *Financial Regulations*, applicable Grant Fund spending regulations, and with all UK and European Union (EU) legal requirements;
- Follow the EU procurement treaty principles by being undertaken in a *Transparent*, *Non-Discriminatory* and *Proportionate* manner;
- Achieve *Best Value* for public money spent;
- Be consistent with the highest standards of integrity;
- Ensure fairness in allocating public contracts;
- Ensure that *Non-Commercial Considerations* do not influence any *Contracting Decision*;
- Be consistent with the *Council's* relevant Commissioning Strategies;
- Be consistent with the *Council's* Procurement Strategy.

Further, all those involved in undertaking procurement and the subsequent contract management must ensure that:

- The above requirements are delivered;
- All necessary professional procurement, legal and financial advice is sought;
- Grant money received must be deployed in line with these CPPRS and any grant conditions. If the grant conditions contravene these CPPRs seek further advice from your *Legal Support* and /or *Procurement Resource*;
- The procurement is legitimate, lawful and within the budget and policy framework;
- They declare any personal financial interest in a contract. Corruption is a criminal

offence.

- Payments are only made for goods, services and the carrying out of works received at the contracted price, quantity and quality standards;
- The budget holder monitors all expenditure through their budget;
- Processes are in place to maintain the security and integrity of data for transacting business electronically;
- Bids are kept confidential;
- A completed written contract or *Council* order is created before the supply of goods, services or carrying out of works begin;
- An appropriate Contract Manager is identified, who is accountable for ensuring the contract delivers the goods or services as intended;
- Records of dealings with *Economic Operators* or *Bidders* are kept in accordance with the *Council's* document retention policies.

2.3 CONTRACTS

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

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

2.3.2 For the purposes of these CPPRs contracts do not include:

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

2.4 JOINT COMMISSIONING

2.4.1 When the *Council* jointly commissions services with other public sector bodies such as Health Authorities, or other Local Authorities, the following procedures shall apply:

- a) The arrangements between NHS Bodies and LCC are regulated by specific Regulations, i.e. The NHS Bodies and Local Authorities Partnership Arrangement Regulations 2000 as amended by The NHS Bodies and Local Authorities Arrangements (Amendment) Regulations 2015. These Regulations set out the requirements and pre-conditions that have to be met for before NHS Bodies and the Council can enter into any partnership arrangement.
- b) The Authorities concerned will decide which of them is to act as the lead authority for the purposes of the particular service that is to be commissioned.

c) Subject to section 2.4.1a) the procedures for the procurement of services of the lead authority shall be followed.

2.4.2 Any contracts entered into through collaboration with other Local Authorities, or other public bodies e.g. Health Authorities, where a competitive process has been followed that complies with the lead authority's equivalent to these CPPRs (but does not necessarily comply with these CPPRs), will be deemed to comply with these CPPRs and no exception to these CPPRs is required. However, advice should be sought from your *Procurement Resource*.

3 RESPONSIBILITIES

3.1 OVERVIEW

- 3.1.1 The Chief Information and Commissioning Officer has delegated responsibility for ensuring that procedures for procurement are sound and properly administered.
- 3.1.2 The Executive Director of Finance and Public Protection is responsible for ensuring all income and expenditure is lawful.
- 3.1.3 *Chief Officers* are responsible for ensuring that staff are aware of their responsibilities under these procedures and receive adequate training and guidance.
- 3.1.4 *Chief Officers* are responsible for consulting with the Executive Director of Finance and Public Protection and seeking approval on any matters liable to affect the *Council's* finances materially.
- 3.1.5 *Chief Officers* are responsible for establishing the Scheme of Authorisation for their Commissioning Teams. The Scheme of Authorisation will detail where decision making has been delegated to members of staff and the financial parameters of that delegation.
- 3.1.6 *Chief Officers* are responsible for ensuring that contracts are not split into smaller constituent parts in order to avoid the necessary procurement procedures.
- 3.1.7 *Chief Officers* are responsible for monitoring the use of exceptions to these procedures set out in section 4.

3.2 TIER 3 OFFICERS RESPONSIBILITIES (MANAGERS)

- 3.2.1 Ensure that all staff comply with section 3.3.
- 3.2.2 Ensure all staff comply with transparency legislation by completing the *Council's* electronic *Contract Register* to record all contracts with an *Estimated Total Contract Value* of £5,000 and above, including any extensions.
- 3.2.3 Ensure all staff secure an electronic copy of the signed contract (where the contract is formed otherwise than by way of a purchase order) in the *Councils* contract database.
- 3.2.4 For the appointment of *Consultants*, Tier 3 Officers will ensure all contracts including those valued at less than £5,000 are recorded on the electronic *Contracts Register*.
- 3.2.5 Ensure that a register is kept of exceptions recorded under section 4. The use of exceptions will be monitored by *Chief Officers* (Tier 2 Officers).

3.3 PROCURING OFFICER RESPONSIBILITIES

3.3.1 The *Procuring Officer* responsible for procurement or disposal must comply with the Public Contract Regulations 2015 and all other UK and EU binding legal requirements, the *Contract Regulations*, the CPPRs, and the *Financial Regulations*. Where a conflict is found between the Public Contract Regulations 2015 or other UK and EU binding legal requirements and the Council's *Contract Regulations*, CPPRs or *Financial Regulations*, the legal requirements take priority over the Council's *Contract Regulations*, CPPRs and the *Financial Regulations*. The *Contract Regulations* and the *Financial Regulations* take priority over these CPPRs.

The *Procuring Officer* must pay due regard to statutory guidance issued by the Crown Commercial Service in relation to the Public Contract Regulations 2015 which means that there must be a very good reason for not following it. That reason must be recorded within the *Procurement Report*.

3.3.2 The *Procuring Officer* must check whether a suitable *Corporate Contract* or *Framework Agreement* (including *ESPO*, *CCS* or relevant *Framework*) exists before undertaking any commissioning exercise.

3.3.3 Where a suitable *Corporate Contract* or *Framework Agreement* exists, these must be used unless there is a good reason not to, and these reasons must be recorded within the *Procurement Report*.

3.3.4 The *Procuring Officer* must complete the *Council's* electronic *Contract Register* (to record all approved exceptions and contracts with an *Estimated Total Contract Value* of £5,000 and above including extensions. In addition, all appointments of *Consultants* (no matter of the value) must be recorded on the electronic *Contract Register*.

3.3.5 *Procuring Officers* must also ensure that *Agents* acting on their behalf also comply with *Contract Procedures Rules*, *Contract Regulations*, *Financial Regulations*, and with all UK and EU binding legal requirements.

3.3.6 *Procuring Officers* must take all necessary professional procurement, legal and financial advice. *Procuring Officers* will need to satisfy themselves that the principles of these *Contract and Procurement Procedure Rules* are complied with.

3.3.7 When *Transfer of Undertaking (Protection of Employment) (TUPE)* may apply as a result of the procurement, *Procuring Officers* must ensure that the *TUPE* issues are considered and where staff may transfer from one supplier to another, *Procuring Officers* may decide to obtain legal advice before proceeding with inviting *Tenders* or *Quotations*.

- 3.3.8 When an employee of the *Council* may as a result of a procurement transfer to a supplier, *Procuring Officers* must ensure that the *Transfer of Undertaking (Protection of Employment) (TUPE)* issues are considered and must obtain legal advice before proceeding with inviting Tenders or Quotations.
- 3.3.9 *Procuring Officers* should always seek to protect the *Council* from the commercial and operational risks of *TUPE*. Generally the more information *Bidders* have on likely staff cost the more competitive their pricing. In some cases this may involve commissioners brokering discussions between incumbent suppliers and interested suppliers either directly or through a third party. This can be particularly helpful where there is limited staff capacity in the market which needs to be preserved. In other cases it might be more appropriate simply to refer interested suppliers to the incumbent.

4 EXCEPTIONS TO NORMAL TENDERING ROUTES

4.1 EXCEPTIONS TO NORMAL TENDERING ROUTES

4.1.1 Exceptions to the normal tendering routes are provided for in the *Contract Regulations* and are set out in paragraph 3.5 of the *Contract Regulations*.

4.1.2 Exceptions are provided in exceptional circumstances where a *Chief Officer* believes an alternative route to normal tendering procedures is required.

NOTE: Good procurement planning should ensure sufficient time to undertake a competitive process.

An exception under this Procedure Rule permits an alternative route to the normal tendering route to be adopted, for example, by allowing a contract to be placed by direct negotiation with one or more *Economic Operators* or securing fewer quotations or *RFQs*.

4.1.3 In these exceptional circumstances the authority must be sought, and granted prior to contract award, from the following:

- a) *Chief Officers* have the authority, under the *Contract Regulations*, to approve an alternative procurement route where the contract has an *Estimated Total Contract Value* between £10,000 and £249,999, subject to the Chief Officer consulting with their Executive Councillor on all exceptions where the contract value exceeds £75,000. In this instance the *Procuring Officer* must provide a written report to the *Chief Officer* detailing the circumstances as to the exception, and recommending an alternative approach to secure a contract. The *Chief Officer* shall keep a register of contracts that they have approved as exceptions.
- b) An *Executive Councillor* has the power to approve an alternative procurement route for contracts with an *Estimated Total Contract Value* between £250,000 and The Health and Social Care Services Contracts EU Threshold (currently £615,278 and subject to change periodically). In this instance securing an approval for an exception is part of the Council's formal decision making process as detailed in the Constitution, and a decision report will be required for submission to the *Executive Councillor*. *Procuring Officers* will need to seek advice from Democratic Services for access to the relevant templates.
- c) The *Executive* has the power to approve an alternative procurement route for contracts with an *Estimated Total Contract Value* over The Health and Social Care Services Contracts EU Threshold (currently £615,278 and subject to change periodically). In this instance securing an approval for an exception is part of the formal decision making process as detailed in the Constitution, and a decision report will be required for submission to the *Executive*. *Procuring Officers* will need to seek advice from Democratic Services for access to the relevant templates.

NOTE: If the EU Procurement thresholds are exceeded an exception may not be legal, and therefore cannot be considered except on the advice of your *Procurement Resource* or *Legal Support*.

- 4.1.4 All exceptions, and the reasons for them, must be recorded on the *Council's* electronic *Contracts Register*.

5 SELECTING THE CORRECT PROCESS

5.1 CALCULATING THE ESTIMATED TOTAL CONTRACT VALUE

5.1.1 Before any Procurement Exercise begins the *Procuring Officer* must calculate its *Estimated Total Contract Value* in accordance with this clause.

5.1.2 The *Estimated Total Contract Value* shall be calculated as follows:

- a) Where the contract period is fixed the *Estimated Total Contract Value* shall be the total estimated maximum value of the supplies, services or works to be supplied over the period covered including any extensions to the contract;
- b) Where the contract period is indeterminate the *Estimated Total Contract Value* shall be calculated by multiplying the estimated average monthly value by 48;
- c) For feasibility studies the *Estimated Total Contract Value* to be identified within the feasibility study shall be the value of the scheme or contracts which may be awarded as a result;
- d) 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 of the activities and deliverables of the *Consultant* for their entire appointment;
- e) For Concessions Contracts (see section 5.14) the *Estimated Total Contract Value* shall be the concessionaire's estimated total turnover generated over the duration of the contract, in consideration for the works and services that are subject to the concession, and supplies incidental to such works and services;
- f) When establishing Framework Agreements the *Estimated Total Contract Value* should be a generous estimate of the total throughput expected to be placed through the framework in order to provide some additional capacity for unexpected requirements;
- g) The *Estimated Total Contract Value* must exclude Value Added Tax (VAT) but must include all other taxes and duties;
- h) Periodic purchases for the same requirement, whether that is from the same or different *Contracted Suppliers*, must be aggregated over a minimum of a 12 month period;
- i) 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.

5.2 COUNCIL PROCUREMENT THRESHOLDS

5.2.1 Based on the *Estimated Total Contract Value*, as identified in section 5.1, the table on page 16 makes provision for the minimum requirements for the subsequent Procurement Exercise.

5.3 CHOICE OF PROCUREMENT PROCEDURES FOR OVER THRESHOLD PROCUREMENT

NOTE: There are a variety of different procurement procedures that come into force when procuring goods, services or works over the *EU Thresholds*.

5.3.1 *Procuring Officers* must seek advice from their *Procurement Resource* when considering undertaking procedures other than Open, Restricted, as defined by the PCRs, or competitions based upon Framework Agreements.

5.4 THRESHOLDS

Contract Value		Process	Award Procedure based on	Contract Publication	Documentation
£0	£10,000	Quotation	One quotation – direct approach to single supplier	Not required	Employee to record details Local supplier to be used where appropriate (or reason for not using recorded)
£10,001	£25,000	Quotation	At least three written quotations based on an <i>RFQ</i> document with appropriate T&Cs At least one local supplier to be invited	Not required	Local supplier to be used where appropriate (or reason for not using recorded)
£25,001	EU Services Threshold	Quotation	At least four written quotations based on an <i>RFQ</i> document with Appropriate T&Cs At least two local suppliers to be invited	Where EU Treaty principles require advertising and where the Council chooses to advertise, must be placed on Source Lincolnshire and Contract Finder.	Must be based on a written specification with appropriate terms and conditions Where contract is below £25,000 a local supplier to be used where offers <i>Value for Money</i> (or reason for not using recorded)
Above EU Services Threshold (non-Works)		Formal tender	Full tender process	OJEU, Source Lincolnshire, Contracts Finder Specialist publication if appropriate	As required by the PCRs 2015 and detailed in the CPPRs

Contract Value		Process	Award Procedure based on	Contract Publication	Documentation
EU Services Threshold (for Works)	EU Works Threshold	Quotation	At least five tenders based on a full <i>ITT</i> document with appropriate T&Cs At least two local suppliers to be invited	Where EU Treaty principles require advertising tenders will be sought by open competitive tendering via public advertisement (Contracts Finder and Source Lincolnshire), or a framework let in accordance with EU legal requirements.	Must be based on a written specification with appropriate terms and conditions
Above EU Works Threshold (for Works)		Formal tender	Full tender process	OJEU, Source Lincolnshire, Contracts Finder Specialist publication if appropriate	As required by the PCRs 2015 and detailed in the CPPRs

5.5 EU PROCUREMENT THRESHOLDS

5.5.1 The relevant *EU Thresholds* as revised on 1st January 2018 are given below:

	Supplies	Services	Works	LTR
Other public sector <i>Contracting Authorities</i>	£181,302	£181,302	£4,551,413	£615,278
	€221,000	€221,000	€5,548,000	€750,000

5.5.2 These thresholds are updated bi-annually and can be validated against the current *EU Procurement Thresholds*, here: <https://www.ojec.com/thresholds.aspx>

NOTE: Different thresholds exist for light-touch regime procurements. Additional details can be found in section 8.

5.5.3 In the event that the *Estimated Total Contract Value* is below the *OJEU Threshold*, and a non OJEU tender process is undertaken, and the proposed winning *Bidders' Total Bid Value* exceeds the *OJEU Thresholds*, you should consult with your *Procurement Resource* as to the risks associated with awarding the contract.

5.6 E-PROCUREMENT

5.6.1 *Electronic Tendering* is the mandated method of carrying out a *Tender* or *RFQ* exercise.

5.6.2 The use of e-Procurement does not negate the requirements to comply with all elements of the CPPRs, particularly those relating to competition and *Value for Money*.

5.7 STEPS PRIOR TO PROCUREMENT

5.7.1 Before beginning a procurement activity the *Procuring Officer* responsible for it must appraise the procurement against those matters set out in sections 5.7 to 5.13. The *Procuring Officer* should consider:

- a) The requirements from any relevant *Best Value / Commissioning* review;
- b) Appraising 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) The objectives of the procurement and whether there are joint commissioning opportunities;

- d) The risks associated with the contract 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, or sourcing through ESPO, and collaboration with other purchasers;
- f) Consulting users as appropriate about the proposed procurement method, contract standards, and also performance and user satisfaction monitoring;
- g) Selecting the most appropriate procurement method;
- h) The maturity of the market (local, regional and national) and whether the contracting approach is likely to yield enough competition;
- i) Information Governance requirements / Data Protection;
- j) The resources required to deliver the procurement and produce a project timeline.

5.7.2 The *Procuring Officer* must confirm that:

- a) The budget is available in line with the *Council's* policy and budget framework;
- b) Where the *Estimated Total Contract Value* exceeds £75,000, a financial appraisal has been set out in writing in accordance with the *Financial Regulations*;
- c) There is *Executive Councillor* or delegated approval for the expenditure, and the procurement accords with the approved policy framework, and the scheme of authorisation as set out in the Constitution;
- d) Where the *Estimated Total Contract Value* exceeds £500,000 the need to go to procurement has been registered as a *Key Decision* and the decision has been made to proceed;
- e) The correct Notices, where required by the Public Contract Regulations 2015, have been placed in the Official Journal of the European Union (OJEU).

5.7.3 *Procuring Officers'* approach to the appraisal tasks should be *Proportionate* to the complexity, risks and value of the procurement

5.7.4 *Procuring Officers* shall ensure that where proposed contracts even where the *Estimated Total Contract Value* is below the relevant procurement threshold, may be of interest to *Economic Operators* located in other member states of the EU, appropriate accessible advertising must take place, i.e. placing an OJEU Notice.

5.7.5 When advertisements are placed through any medium they must always be placed on Source Lincolnshire and Contracts Finder, and may also be placed on other suitable publications, e.g.:

- a) National official journals;
- b) OJEU - even if there is no requirement within the PCRs;
- c) Trade publications.

- 5.7.6 In selecting an *Economic Operator*, an existing partnership or contractual arrangement for the same requirement should be considered as the first option. For example, the *Procuring Officer* must check whether a suitable *Corporate Contract* or *Framework Agreement* (including ESPO and other *Collaborative Arrangements* in the public sector) exists and is suitable before seeking to let another contract.
- 5.7.7 If a *Corporate Contract* exists or appears to be suitable advice should be obtained from the Commercial Team or your *Legal Support* before proceeding to use it.
- 5.7.8 Where a suitable *Corporate Contract* or *Framework Agreement* is available it should be used if doing so would achieve *Value for Money*.

5.8 SOCIAL VALUE

- 5.8.1 When proposing to procure or making arrangements for procuring a service contract where the *Estimated Total Contract Value* exceeds the relevant *EU Threshold* then consideration must be given as to how the Contract might improve the economic, social and environmental wellbeing of Lincolnshire, as required by the Public Services (Social Value) Act 2012. This duty also relates to goods or services as part of the Light Touch Regime (LTR) as described in section 8, where the *Estimated Total Contract Value* exceeds the *EU Threshold* for Services.
- 5.8.2 The *Council* must consider in the form of a Social Value appraisal, whilst recognising the principle of *Proportionality*:
- a) How, what is proposed to be procured, might improve the economic, social and environmental well-being of the relevant area;
 - b) How, in conducting the process of procurement, it might act with a view to securing that improvement; and
 - c) Whether to carry out any consultation in relation to the above matters.

5.9 UTILISING A FRAMEWORK AGREEMENT

- 5.9.1 The *Council* encourages the use of *Framework Agreements* as a means to balance the resource burden of procurement activity with the need to achieve *Value for Money*.
- 5.9.2 The *Procuring Officer* responsible for the procurement activity must assess the *Value for Money* offered by the framework prior to its use.
- 5.9.3 Contracts based on *Framework Agreements* must always be awarded in accordance with the rules set out within the *Framework Agreement* documentation. This may be either:
- d) By undertaking a 'direct call-off' from the *Framework Agreement*, where the terms are sufficiently precise to cover the particular call-off requirements without re-opening competition and a contract can be award directly to a *Framework*

Supplier; or

- e) By holding a 'further competition' in accordance with the rules set out in the framework, where the requirements are provided to the *Framework Suppliers* in the relevant lot of the framework, and the *Framework Suppliers* provide their responses and price in return.

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

5.9.5 Unless otherwise specified in the rules and stipulations of the *Framework Agreement*, *Procuring Officers* must follow the award procedures set out in sections 7.9, 7.10, 7.11, 7.12.1, 7.12.2 and 7.12.5 for 'further competitions', whilst ensuring compliance with the framework rules identified within section 5.9.4.

5.10 PROCURING WITH EXTERNAL GRANT MONIES

5.10.1 Procuring contracts using external grant monies can bring about additional risks to the *Council* due to the additional regulatory requirements in the way the money is controlled and the additional scrutiny that the procurement process may receive.

5.10.2 It is therefore mandatory for the *Procuring Officer* leading the procurement to ensure they are fully conversant with all of the requirements of the relevant funding bodies, and identify any risks in a pre-procurement risk register.

5.10.3 *Procuring Officers* must ensure that they engage, in advance of undertaking a procurement activity, with their relevant *Procurement Resource* providing full access to any relevant additional guidance.

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

5.11 STATE AID

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

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

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

- grants
- loans
- guarantees
- tax breaks
- the use or sale of a state asset for free or at less than market price

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

5.11.4 Prior to undertaking any tender the *Procuring Officer* must assess whether there are any state aid implications.

5.11.5 Where any state aid implications are found, e.g. grants, property or services, and have been made available to *Economic Operators*, the *Procuring Officer* must seek advice from their *Legal Support* before continuing with the procurement.

5.12 APPOINTMENT OF CONSULTANTS

5.12.1 The following procedure applies when it is necessary to appoint a *Consultant* to provide services to the *Council*.

5.12.2 The *Procuring Officer* must not engage with any agency to secure CVs, without prior engagement with the Commercial Team, and without a full understanding of the agency's terms and conditions.

NOTE: Some agencies require you to accept their terms and conditions prior to receipt of CVs. These terms and conditions may include clauses regarding ‘introductory fees’ which may be payable even if no appointment is made through that particular agency. These fees are often substantial and pose significant financial risk to the *Council*.

5.12.3 The *Procuring Officer* must submit a report to the Resourcing Board setting out:

- a) The nature of the services for which the appointment of a *Consultant* is required;
- b) The *Estimated Total Contract Value* of the services;
- c) The reason why a *Consultant* should be appointed.

- 5.12.4 For appointments greater than 30 days, Tier 3 Officer approval will be required. By completing the Resource Board report, both Strategic HR and *Procurement Resource* will be asked to comment on the request before the Report is automatically forwarded to the Tier 3 Officer.
- 5.12.5 If the Resourcing Board is of the opinion that it is necessary to secure the appointment of a *Consultant* they shall record that opinion in writing and authorise the *Procuring Officer* to engage a *Consultant* using an established *Corporate Contract* or *Framework Agreement*, or a formal *RFQ* or tendering process.
- 5.12.6 If the request is approved the *Procuring Officer* must then comply with the procedural requirements based upon the *Estimated Total Contract Value* as identified in section 5.4.

5.13 INFORMATION GOVERNANCE AND DATA PROTECTION

- 5.13.1 *Procuring Officers* must 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.
- 5.13.2 Where *Personal Data* may be processed as part of the contract *Procuring Officers* must seek further advice either from their *Information Governance Resource* or their *Legal Support*.
- 5.13.3 Where *Personal Data* may be processed as part of the contract, a Privacy Impact Assessment tool must be completed. This will help the *Council* identify the most effective way to comply with its data protection obligations, and meet individuals' expectations of privacy.
- 5.13.4 Where requirements are identified by the Privacy Impact Assessment, *Procuring Officers* must ensure that any requirements are considered and built into the contract, and assessed where appropriate as part of the evaluation.

5.14 CONCESSIONS CONTRACTS

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

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

NOTE: A simple example may be where the *Council* would allow an *Economic Operator* to operate a café on a *Council* site, using *Council* owned assets, but where the *Economic Operators* carries the commercial risk in terms of profit and loss, and the *Council* does not pay the *Economic Operator* to run the service.

5.14.1 Where the *Procuring Officer* is planning a contract which may be a concession contract, they must seek advice from either their *Procurement Resource* or their *Legal Support*.

6 BELOW OJEU THRESHOLD PROCUREMENT FOR SERVICES

6.1 PUBLIC CONTRACT REGULATIONS 2015 REQUIREMENTS

The UK chose to include brand new measures in the Public Contract Regulations 2015 to regulate procurements below the OJEU Services threshold.

- 6.1.1 These regulations apply for contracts with an *Estimated Total Contract Value* between £25,000 and the *EU Threshold* for Services (see section 5.5). You must not sub-divide procurement to get around the regulations.
- 6.1.2 *Procuring Officers* must not include *Selection Questionnaires (SQ)*, or any assessment of *Bidders* within the procurement process, for the purpose of reducing the number of candidates invited to bid for the contract (i.e. shortlisting).
- 6.1.3 *Procuring Officers* may ask *Suitability* assessment questions but only where they are relevant to the contract's subject matter and *Proportionate*. For example, you should not set a £20m public liability insurance level unless the risk of harm to the public was exceptionally high.
- 6.1.4 In order to manage the resource implications of not being able to shortlist, and to support the local economy, subject to section 6.1.5 *Procuring Officers* should not advertise procurements identified in the value thresholds of section 6.1.1. Rather *Procuring Officers* should contact the requisite number of *Economic Operators* directly to invite them to bid, as identified within the *Council* procurement thresholds – section 5.4.
- 6.1.5 In the interest of achieving *Value for Money* a *Chief Officer* may decide to authorise the advertising of a particular activity. In this case the following rules must be observed;

If contracts are advertised anywhere they must also be advertised on 'Contracts Finder' within 24 hours of the original advert. Advertising constitutes:

- a) Anything to put the opportunity in the public domain generally (for example issuing an annual PIN, or publishing a specific opportunity on a website);
- b) Anything to bring the opportunity to the attention of *Economic Operators* generally (e.g. trade magazines, websites, Source Lincolnshire).

Making the opportunity available to a select number of *Economic Operators* does not constitute advertising (e.g. contacting 3 *economic operators* directly / standing lists / frameworks).

- 6.1.6 *Procuring Officers* must ensure that all *Procurement Documentation* is available electronically, even when the procurement is not advertised. If the procurement opportunity is advertised a URL to the documentation must be included within the advert.

6.1.7 Unless it would impede law enforcement, is contrary to the public interest, would prejudice the legitimate commercial interests of the *Bidder* or would prejudice fair competition, *Procuring Officers* must publish an award notice on Contracts Finder, to include:

- a) The name of the successful *Bidder*;
- b) The date of award / when the contract was entered into;
- c) The value of the contract;
- d) If the *Bidder* is a Small to Medium Enterprise (SME) or Voluntary Community and Social Enterprise (VCSE).

6.2 REQUEST FOR QUOTATIONS (RFQs)

6.2.1 As identified in section 5.4, *RFQs* are the *Council's* preferred method of undertaking procurement within the value thresholds set out in section 6.1.1.

6.2.2 The *RFQ* document must include a specification. The specification must describe clearly the *Council's* requirements in sufficient detail to enable the submission of competitive offers and to enable the *Council* to hold the supplier to account.

6.2.3 The *RFQ* must state that the *Council* is not bound to accept any quotations received.

6.2.4 Evidence should be retained in respect of despatch of documents. Any supplementary information must be given on the same basis.

6.2.5 In determining and negotiating the terms and conditions of contract, the *Procuring Officer* must ensure, as a minimum, that the relevant Terms and Conditions from the *Councils'* Standard Terms and Conditions are incorporated into the *RFQ* documentation as amended to suit the particular procurement requirements. Contract conditions are available for a range of contract types from Legal Services. If amendments are required advice should be sought from your *Procurement Resource* or *Legal Support*.

6.2.6 All *Economic Operators* invited to quote must be issued with the same information at the same time, and subject to the same conditions. All *Procurement Documentation* must be made available via the e-Procurement platform.

6.2.7 Where approved lists are available *RFQs* should be requested from the relevant approved list.

6.2.8 The evaluation of quotes should be based upon simplified *Award Criteria*, and records of evaluation results must be retained by the *Procuring Officer*. The evaluation must follow the principals of the EU Treaty and therefore must be; *Transparent, Non-discriminatory* and *Proportionate*.

6.3 APPROVED LISTS

- 6.3.1 Approved lists may be used in conjunction with *RFQs* to select *Economic Operators*. Approved lists should be used where recurrent transactions of a similar type are likely but where such transactions need to be priced individually and cannot easily be aggregated and priced in a single tendering exercise.
- 6.3.2 Approved lists must not be used when the estimated total aggregated spend for contracts to be placed under the approved list, over a 48 month period, may exceed the relevant *EU Threshold*. When this might occur, a *Dynamic Purchasing System (DPS)* or *Framework Agreement* would be a more suitable and compliant approach. *Procuring Officers* must seek advice from their *Procurement Resource* prior to establishing a *DPS* or *Framework Agreement*.
- 6.3.3 *Chief Officers* should draw up approved lists of *Economic Operators* ready to perform contracts to supply goods or services, on the basis of agreed contract terms in consultation with their *Procurement Resource*.
- 6.3.4 No *Economic Operator* may be entered on an approved list until there has been an adequate investigation into both their financial and technical ability to perform the contract, unless such matters will be investigated each time bids are invited from that list.
- 6.3.5 Approved lists must be drawn up after an advertisement inviting applications for inclusion on the list. *Economic Operators* may be entered at any time on a list between the initial advertisement and re-advertisement provided the requirements of section 6.3.4 are met.
- 6.3.6 The list must be reviewed at least annually and re-advertised at least every three years. For clarification review means:
- a) The consideration of the financial, technical ability and performance of those *Economic Operators* on the list unless such matters will be investigated each time bids are invited from that list;
 - b) The deletion of those *Economic Operators* no longer qualified, with a written record kept justifying the deletion; and
 - c) The entry of new *Economic Operators* who request and qualify for inclusion.
- 6.3.7 On re-advertisement, a copy of the advertisement may be sent to each *Economic Operators* on the list, inviting them to reapply.
- 6.3.8 All approved lists shall be maintained in accordance with the EU Treaty principles in that they must be *Transparent*, be *Non-Discriminatory* and be *Proportionate*, and in addition must be open to public inspection.

6.3.9 Lists maintained by third parties e.g. the New Qualification System (NQS), ConstructionLine, EXOR or any list maintained in substitution of the NQS will be deemed to be an approved list for the purpose of these CPPRs.

6.4 BELOW THRESHOLD TENDERING

6.4.1 In the event that your *Chief Officer* considers the procedures in sections 6.2 and 6.3 insufficient for your procurement, the *Procuring Officer* may undertake a full tender exercise.

6.4.2 If a tender process is undertaken for procurements estimated to be lower than the *EU Threshold* for services, the tender process must be modelled on an Open process (as defined by the Public Contract Regulations 2015). This means a single stage tender (i.e. no SQ stage) where all *Bidders* are required to submit a full tender response, and *Procuring Officers* must evaluate all compliant submissions.

6.4.3 When undertaking a tender below the *EU Threshold* it should follow the approach identified in section 7 to ensure compliance with the EU Treaty principles. Please speak to your *Procurement Resource* for advice.

6.4.4 For Works contracts which are above the Services *EU Threshold* and below the Works *OJEU Threshold*, Restricted Tenders are permitted by the Public Contract Regulations 2015, i.e. the use of SQs is permitted.

NOTE: Due to the high Works threshold there is much more likely to be cross border interest, and therefore much more likely that an OJEU notice will be required. Advice is available from your *Procurement Resource* or *Legal Support*.

7 ABOVE OJEU THRESHOLD PROCUREMENT

7.1 PRE-TENDER MARKET RESEARCH AND CONSULTATION

- 7.1.1 *Procuring Officers* are encouraged to consult with *Economic Operators* and subject matter experts in order to:
- a) Receive input from the market generally relating to procurement plans and requirements;
 - b) Help prepare and plan the procurement activity;
 - c) Use experts to refine the specification.
- 7.1.2 All possible steps should be taken to ensure the principles of being *Transparent*, *Proportionate* and *Non-Discrimination* are met at all times.
- 7.1.3 All of the above must be done in a way that does not distort competition. *Procuring Officers* must seek advice from their *Procurement Resource* if *Economic Operators* for example incumbent suppliers are to be engaged in developing any aspect of the *Procurement Documentation*.
- 7.1.4 To avoid distorting competition the *Procuring Officer* shall communicate to all *Bidders* all relevant information exchanged in the context of, or resulting from, the involvement of the *Economic Operator* in the preparation of the *Procurement Documentation*.
- 7.1.5 *Procuring Officers* must keep contemporaneous notes of dialogue held with *Economic Operators*.
- 7.1.6 *Procuring Officers* must also allow adequate time for the receipt and development of tenders for those not involved in prior market engagement.
- 7.1.7 *Procuring Officers* must seek advice from their *Procurement Resource* for contracts over the *EU Threshold*.

7.2 SELECTION QUESTIONNAIRES (SQs)

- 7.2.1 *Procuring Officers* shall pay due regard to the statutory guidance regarding the use of Selection Questionnaires. The guidance sets out a mandatory standard *SQ* that *Procuring Officers* must use. Further information can be found here; https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/417963/4279-15_GN_PQQ_Lord_Young_Guidance.pdf

7.2.2 In accordance with regulation 107(4) of the Public Contract Regulations 2015, where a *Contracting Authority* uses a *SQ* in a way which represents a reportable deviation from the statutory guidance in section 7.2.1, the *Contracting Authority* must send a report explaining the deviation to the Crown Commercial Service. The *Procuring Officer* must draft this report and ensure that it is submitted.

7.2.3 In restricted procedures *Procuring Officers* may specify within the contract notice that the *Council* may limit the number of *Bidders*, who meet the requirements of the *SQ*, to be invited to *ITT* stage, i.e. shortlisting. When this occurs the *Procuring Officer* must allow a minimum of 5 *Bidders* to the *ITT* stage, providing that there are at least 5 *Bidders* meeting the *SQ* criteria. If there are less than 5 *Bidders* who meet the *SQ* criteria, all *Bidders* who meet the requirements of the *SQ* must be invited to the *ITT* stage.

7.3 SELECTION AND SUITABILITY CRITERIA

7.3.1 The purpose of the *SQ*, or the Business Information section of an Open Tender *ITT* document, is to assess the suitability of the *Bidder* to meet the requirements of the contract and to select the *Bidders* who will be invited to tender.

7.3.2 *Selection Criteria* may only relate to;

- a) Suitability to pursue a professional activity
- b) Economic and Financial standing this may include requiring a minimum yearly turnover in the area covered by the contract not exceeding twice the estimated contract value
- c) Technical and Professional ability this can include requiring the economic operator to have the necessary human and technical resources and experience to perform the contract to an appropriate quality standard.

7.3.3 *Procuring Officers* must limit any requirements to those that are appropriate and proportionate to ensure that a *Bidder* has the suitability to pursue a professional activity, the legal and financial capabilities, and the technical and professional abilities, to perform the contract to be awarded.

7.3.4 *Procuring Officers* must not use *Suitability Criteria* as *Award Criteria*.

7.3.5 *Procuring Officers* must seek advice from their *Procurement Resource* before setting any Pass / Fail conditions within the *Selection Criteria*.

7.4 STANDARDS AND AWARD CRITERIA

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

- 7.4.2 Where appropriate the *Procuring Officer* must ascertain what are the relevant British, European or International Standards which apply to the subject matter of the contract. The *Procuring Officer* must include those standards which are necessary and describe the required quality. Your *Legal Support* must be consulted if the *Procuring Officer* proposes to use standards other than European standards.
- 7.4.3 Public contracts must be based on the Most Economically Advantageous Tender. That can be assessed in a number of different ways. The *Procuring Officer* must define the *Award Criteria* which define how the Most Economically Advantageous Tender is to be determined in the procurement in a way which is appropriate and proportionate to the procurement. *Award Criteria* must be designed to secure a sustainable outcome which represents *Value for Money* for the *Council*. Award criteria can be:
- a) Lowest price, or total cost (based on life cycle costing);
 - b) Based solely on specified qualitative, environmental or social criteria linked to the subject matter of the contract in circumstances where the *Council* has fixed the price.
 - c) The best price (or total cost) /quality ratio.
- 7.4.4 *Award Criteria* and sub-criteria may refer only to relevant considerations. (See section 7.8.4 and definitions for further details).
- 7.4.5 All *Award Criteria* and sub-criteria must be weighted and these weightings must be set out in the *Procurement Documentation*.
- 7.4.6 Award criteria may include:
- a) quality, including technical merit, aesthetic and functional characteristic, accessibility, design for all users, social, environmental and innovative characteristics and trading and its conditions;
 - b) organisation, qualification and experience of staff assigned to performing the contract;
- or
- c) after sales service and technical assistance, delivery conditions and process
- 7.4.7 *Award Criteria* must not include:
- a) *Non-Commercial Considerations* (as defined in the definitions appendix);
 - b) Matters which discriminate against *Economic Operators* from the European Economic Area or signatories to the Government Procurement Agreement;
 - c) *Selection /Suitability Criteria*.

NOTE: Experience can be an exception to c) above and can be used at both the selection and award stages but in different ways. At selection it is the experience of the economic operator that is being assessed as part of its professional and technical ability assessment based on the economic operator's previous experience of the work (a look back test). At the award stage where the staff that will be allocated to the contract have been identified it is permissible to evaluate the experience of those particular and individual staff (i.e. not the economic operator) where the quality of the staff assigned can have a significant impact on the level of performance of the contract (a look forward test).

7.5 COMMUNICATION WITH SUPPLIERS

- 7.5.1 The *Procuring Officer* shall provide all documentation to all *Bidders* using electronic communication by means of the internet and offer unrestricted and full direct access free of charge to the *Procurement Documentation*. *Procuring Officers* must seek advice from their *Procurement Resource* prior to varying this approach.
- 7.5.2 The *Procuring Officer* must publish all *Procurement Documentation*, including the *SQ*, *Award Criteria*, *ITT*, *Terms and Conditions* etc. from the date of the publication in the OJEU of a notice sent in accordance with the Public Contract Regulations 2015.
- 7.5.3 No *Substantial Modification* to these documents is permitted once they have been published.
- 7.5.4 Oral communication with *Bidders* should be avoided where at all possible as this is a high risk area. Any oral communication with *Bidders* which could have a substantial impact on the content or assessment of the tender must be comprehensively and accurately documented, for example transcript, or through the creation of a full auditory record of discussions held.
- 7.5.5 Oral communication must not be used to discuss the *Procurement Documentation*, requests to participate, confirmations of interest and tenders. In these instances all communication must be completed through the *Councils* e-Procurement system.
- 7.5.6 If the procurement process is a competitive dialogue procedure, oral communication with each *Bidder* is permitted within the dialogue phases of the procurement. Advice on when and how to deliver a competitive dialogue procedure is available from the Commercial Team.

7.6 UNDERTAKING A TENDER

- 7.6.1 The *Invitation to Tender (ITT)* must include a specification. The specification must describe clearly the *Council's* requirements in sufficient detail to enable the submission of competitive offers and to enable the *Council* to hold the supplier to account.

- 7.6.2 The *Procurement Officer* must specify to the *Bidders* any transitional activity required of the Successful *Bidder* during the transition period, including contract mobilisation activity.
- 7.6.3 The *Procuring Officer* must also specify within the contract any foreseeable decommissioning and exit activity required of the incumbent supplier at the end of contractual periods.
- NOTE: It is in the interest of the *Council* to disclose as much information to Economic Operators as possible in the *ITT* to allow them to reduce risk and price competitively.
- 7.6.4 The *Invitation to Tender* must state that the *Council* is not bound to accept any tender received.
- 7.6.5 *Procuring Officers* must ensure that all *Procurement Documentation* is available to *Economic Operators* at the same time as publishing the contract notice. This means *Procuring Officers* must have ready at the point of opening the competition; *SQ* (where using the restricted process), *ITT*, payment mechanism, evaluation methodology, *Award Criteria*, Terms and Conditions, specification and any other relevant contract schedules.
- 7.6.6 The *Council's* e-Procurement system will evidence the despatch of the *ITT* and any other documents including supplementary information and clarifications.
- 7.6.7 The *Invitation to Tender* must include instructions for the return of tenders to the *Council's* e-Procurement system, and forbid submission of tenders by fax or email.
- 7.6.8 The *Invitation to Tender* must state the *Award Criteria* in weighted terms.
- 7.6.9 Where weighting is not possible for objective reasons, the criteria should be ordered in descending order of importance.
- 7.6.10 The *Invitation to Tender* must specify the evaluation procedure in sufficient detail for an informed *Economic Operator* to clearly understand how an award will be made. There must be no ambiguity or uncertainty.
- 7.6.11 The *Invitation to Tender* must include a form of tender, tendering certificate and instructions to applicants using relevant appendices from the *Procurement Guide*.
- 7.6.12 *Economic Operators* invited to respond must be given an adequate period in which to prepare and submit a Tender, consistent with the urgency and complexity of the contract requirement. A minimum of at least four weeks should be allowed for straightforward and simple requirements. For complex procurements or a new commissioning model, or where there is a large volume of information for *Bidders* to consider, 12 weeks is more appropriate. The EU Procurement Directive lays down minimum specific time periods for submission of documents which must be followed.

- 7.6.13 Late Tenders must not be accepted unless approved by your *Procurement Resource*, and this may only occur in exceptional circumstances where the decision is *Proportionate* in the circumstances, and not be in breach of the EU Treaty principles.
- 7.6.14 Elected Members, employees or *Consultants* employed by the *Council* who have a direct or indirect interest in the contract or any bidder must not be supplied with, or given access to, any Tender documents, or other information relating to the procurement without the authority of the relevant *Chief Officer*. To protect against this all evaluators must complete a declaration of interest form.
- 7.6.15 Any Tender amendments, changes to instructions or clarifications should be issued in writing to all *Bidders* unless the clarification is issued in response to a bidder's request which is said to be confidential, in which case advice should be sought from your *Procurement Resource*.
- 7.6.16 Any changes to the timetable for submission of tender responses must be published via an addendum notice in the OJEU, and also to all *Bidders* via the e-Procurement system.
- 7.6.17 The *Invitation to Tender* must attach *Procurement Documentation* which reflects the requirements of the procurement including appropriate Terms and Conditions. Standard Terms and Conditions are available for a range of contract types from Legal Services which can be amended as necessary.
- 7.6.18 Any alteration of tenders, undertaken by any person, after the submission closing date is not permitted. For correction of error see section 7.7.

7.7 CLARIFICATION OF TENDER DOCUMENTS, BY BIDDERS

- 7.7.1 In the event that *Bidders* seek clarification of the tender documentation due to ambiguity, lack of clarity or insufficient detail, all responses must be submitted electronically through the e-Procurement platform and shared with all *Bidders* unless doing so would involve disclosing *Bidders'* confidential information.
- 7.7.2 *Procuring Officers* must ensure that any commercially sensitive information that the requesting *Bidder* may have included in their request must not be shared with the other *Bidders*.

7.8 EVALUATION

7.8.1 Apart from the debriefing requirements set out in section 7.12.5, and requests via the Freedom of Information Act which must be considered on their own merit, confidentiality of quotations, tenders and the identity of *Economic Operators* must be preserved during the procurement process; and information about one *Bidders'* response must not be given to another *Bidder*.

7.8.2 *Chief Officers* may decide that it is in the public interest to disclose the identity of *Bidders* at key stages of strategic procurements.

7.8.3 Tenders must be evaluated, recorded and awarded in accordance with the *Award Criteria*. The basis on which the tender will be evaluated must be determined before tenders are invited and must be included as part of the tender information. This includes the contract *Award Criteria* and any sub-criteria and their respective weightings which must be relevant and *Proportionate*.

NOTE: It is recommended that the contract *Award Criteria* and any sub-criteria are kept to a reasonable minimum to help make the evaluation more manageable.

7.8.4 Evaluations may include price, technical merit and quality, as well as the need to demonstrate adding value to the *Council* and acceptance of risk.

7.8.5 All *Bidders* should be notified in the quotation/tender that no work or services may be commenced or goods/materials ordered until a formal contract has been signed and/or an official order has been raised.

7.8.6 It is strongly advised that there should be no more than 3 evaluators for each evaluation criteria to help manage the evaluation safely and to make the best use of resources.

7.8.7 When evaluating, *Evaluating Officers* must only take into account the *Bidder's* submission when carrying out their analysis and must not take into account information on a *Bidder* gleaned from the press, previous dealings with that *Bidder*, comments made in any dialogue or otherwise, or the poor/good formatting of the responses. *Evaluating Officers* must ensure that irrelevant comments are not included in the written record of the evaluation.

7.8.8 *Evaluating Officers* must ensure that they take into account and give due weight to all information provided in a *Bidder's* submission. *Evaluating Officers* must ensure that the written record of the evaluation covers all relevant matters detailed within the submission.

NOTE: The use of general terms such as “a few points were not covered well” is not sufficient. Comments must be linked to the submission and backed up by specific examples.

- 7.8.9 Use of words such as 'satisfactory' or 'very good' have a specific and objective meaning when used in evaluating responses. *Evaluating Officers* must refer to the scoring framework when using these terms and ensure that the use of these terms are consistent with the scoring framework and consistent across all submissions.

NOTE: The Commercial Team has developed an evidenced based scoring framework which has proved to work well, and which helps to de-risk evaluation by enabling scores to be spread across the available marks. Therefore it is strongly recommended that you use it. If you have particular requirements the scoring framework can be amended.

- 7.8.10 *Evaluating Officers* must justify all comments on an objective basis. The more contentious the comments the fuller the justification needs to be. *Evaluating Officers* must take great care to ensure that the scores match the written record for each evaluation and that there is consistency across all *Bidders*. It is essential that the written record demonstrates why the highest scoring *Bidder* provided the best submission.

NOTE: Best practice is to complete the written record summarising the submission against the scoring framework first and then score.

- 7.8.11 *Evaluating Officers* must ensure that all scoring commentary is in a professional, business-like language which helps to justify the score that has been awarded. *Evaluating Officers* should be aware that their commentary may be disclosed to *Bidders* if there is a legal challenge or a Freedom of Information request. Evaluating Officers should be aware that the evaluation process is an activity where the risk of legal challenge is high.

7.9 SCORING MEETING

- 7.9.1 Except where section 7.9.6 applies each *Evaluating Officer* should not score bids separately, and then reconsider outliers and average scores during a moderation process to reach a single score.
- 7.9.2 Instead all of the *Evaluating Officers* evaluating the same evaluation criteria must attend a scoring meeting, chaired by the relevant *Procurement Resource* who is not permitted to be an evaluator. The role of the *Procurement Resource* is to ensure that the scoring takes place transparently in accordance with the tender documents.
- 7.9.3 Bids must be read in advance of the scoring meeting, and may be annotated, but must not be formally scored prior to the scoring meeting.

NOTE: It is important that no prior scoring audit trail is created prior to the moderation meeting. The Chair does need to have read the bids as they may have to refer to the content to help resolve any disagreements within the evaluation team. Their role is to explore the arguments for any scoring variations, resolve errors and inconsistencies, and help the team come to an agreed consensus score reflecting the characteristics and relative merits of the tender as against each scoring criteria, and the other tenders.

7.9.4 *Evaluating Officers* are required to reach consensus during the scoring meeting, and produce an agreed narrative and score as described in section 7.8.

7.9.5 Full auditory records, or very detailed minutes of the discussions are not required.

7.9.6 In the rare case when a chaired scoring meeting is not possible and *Evaluating Officers* are scoring independently, and scores will be averaged and outliers considered by the *Evaluation Panel*, the *Procurement Resource* must ensure detailed justifications are recorded for the adjustment of any scores.

7.10 PRESENTATIONS

7.10.1 Due to the risks brought about by undertaking scored presentations, they are no longer permitted as an assessed part of the procurement process unless presenting is a material component of the specification, the Evaluation Criteria is designed in such a way as to objectively evaluate the presentation, it is approved by a Chief Officer, and is managed by your Procurement Resource.

7.10.2 If undertaking presentations as an evaluated component of the tendering process *Procuring Officers* must ensure that:

- a) Contemporaneous notes are collected detailing all questions, responses and points raised, or full auditory records are kept;
- b) Questions focus solely on the evaluation requirements. This is not an opportunity to deviate and probe wider components of a bid;
- c) As with the other *Award Criteria*, evaluators must ensure their scores accurately reflect the scoring framework, with appropriate justifications in the evaluation commentary.

7.11 CLARIFICATION OF BIDS BY EVALUATORS

- 7.11.1 Any aspects of bids that are manifestly unclear or ambiguous must be clarified with the *Bidder* in writing. *Procuring Officers* must not undertake presentations as a way to clarify a *Bidders* submission. Further, *Procuring Officers* must not use the clarification process to draw out additional components of the bid which were previously omitted but should use the clarification process to ascertain the extent of the Bidder's offer / commitment Advice may be sought from your *Procurement Resource*. Clarifications must be administered electronically through the e-Procurement platform.
- 7.11.2 Any aspects of a *Bidders* response that needs clarification must not be scored until the clarification has been received.

7.12 AWARD

- 7.12.1 Where the *Estimated Total Contract Value* is over the *EU Threshold*, the *Procuring Officer* must inform all *Bidders* of their intention to award the contract to the successful *Bidder*.
- 7.12.2 The *Procuring Officer* must allow a period of not less than 10 calendar days after the decision to award to provide unsuccessful *Bidders* with a period in which to challenge the decision, before the *Procuring Officer* awards the contract.
- 7.12.3 If the decision is challenged by an unsuccessful *Bidder* then the *Procuring Officer* shall not award the contract and shall immediately seek the advice of the *Commercial Team*.
- 7.12.4 In cases of unforeseen emergency outside the control of the *Council*, and where the 10 day standstill period would cause immediate risk to persons, property or serious disruption to *Council* services, a *Chief Officer* having taken advice from their *Legal Support* or the *Commercial Team*, may give approval to waive the 10 day standstill period.
- 7.12.5 The *Procuring Officer* shall debrief in writing all those *Bidders* who submitted a bid advising the reasons for the decision and provide information about the characteristics and relative advantages of the successful tender. This must include:
- a) The criteria for the award of contract;
 - b) Scores for the relevant sections of the tender for the *Bidder* who is to receive the debrief;
 - c) When the standstill period will end and the date before which the *Council* will not award a contract;
 - d) Evaluation commentary regarding how the *Award Criteria* were applied and a clear explanation as to the characteristics of the tender submitted by the *Bidder* who is to receive the debrief against the *Award Criteria*, and as against the successful tender;

- e) The name of the winning *Bidder*.

7.12.6 The *Procuring Officer* should also give the debriefing information required by section 7.12.5 to *Bidders* who are deselected in a pre-tender shortlisting process, at the point of deselection. Such debriefing need not include the relative advantages of the winning tender, as this information will not be known at this point.

7.13 REPORTING REQUIREMENTS

7.13.1 It is a requirement of the Public Contract Regulations 2015 (PCRs) for *Procuring Officers* upon completing a tender, to draw up a written *Procurement Report* which shall include at least the following:

- a) The name and address of the *Contracting Authority*, the subject-matter and value of the contract, *Framework Agreement* or *Dynamic Purchasing System*;
- b) Where applicable, the results of the qualitative selection and reduction of numbers pursuant to regulations 65 and 66 (PCRs), namely:—
 - i. the names of the selected candidates or *Bidders* and the reasons for their selection;
 - ii. the names of the rejected candidates or *Bidders* and the reasons for their rejection;
- c) The reasons for the rejection of tenders found to be abnormally low;
- d) The name of the successful *Bidder* and the reasons why its tender was selected and, where known:—
 - i. the share (if any) of the contract or *Framework Agreement* which the successful *Bidder* intends to subcontract to third parties; and
 - ii. the names of the main contractor's subcontractors (if any);
- e) For competitive procedures with negotiation and competitive dialogues, the circumstances as laid down in regulation 26 (PCRs) which justify the use of those procedures;
- f) For negotiated procedures without prior publication, the circumstances referred to in regulation 32 (PCRs) which justify the use of this procedure;
- g) Where applicable, the reasons why the *Contracting Authority* has decided not to award a contract or *Framework Agreement* or to establish a *Dynamic Purchasing System*;
- h) Where applicable, the reasons why means of communication other than electronic means have been used for the submission of tenders;
- i) Where applicable, conflicts of interests detected and subsequent measures taken.

7.13.2 *Procuring Officers* must submit a copy of the *Procurement Report* identified above to the Cabinet Office or European Commission upon request.

7.13.3 *Procuring Officers* must keep sufficient documentation to justify decisions taken in all stages of the procurement procedure, including but not limited to;

- a) Communications with *economic operators* and *Bidders*;

- b) Internal deliberations;
- c) Preparation of the *Procurement Documentation*;
- d) Dialogue or negotiation, if any;
- e) Selection and award of the contract.

7.13.4 *Procuring Officers* must ensure the documentation is kept in line with the *Councils* document retention schedule, in this case a minimum of 12 months for records relating to unsuccessful tenders and 6 years in relation to the successful tender.

7.14 ESTABLISHING A NEW FRAMEWORK AGREEMENT

7.14.1 All *Framework Agreements* must be established in agreement and under consultation with your *Procurement Resource*.

8 LIGHT TOUCH REGIME (LTR)

The new light-touch regime is a specific set of rules for certain service contracts that tend to be of lower interest to cross-border competition. These services replace the services formerly known as Part B services and include certain social, health and education services, defined by Common Procurement Vocabulary (CPV) codes. The list of services to which the Light-Touch Regime applies is set out in Schedule 3 of the Public Contracts Regulations 2015 (Annex A).

For the procurement of Social Care or Health or Education related services *Procuring Officers* may want to refer to the additional sector specific guidance issued by the Crown Commercial Service, found at the link below.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/409543/GUIDANCE_ON_THE_NEW_LIGHT_TOUCH_REGIME_FOR_HEALTH_SOCIAL_EDUCATION_AND_CERTAIN_OTHER_SERVICE_CONTRACTS.pdf

8.1 KEY POINTS

- 8.1.1 There are fewer services in the LTR than Part B (particularly due to the absence of the broad “other services” category that existed in Part B) and as a result some contracts formerly subject to the Part B services rules will now be subject to the full rules. The list of services is contained in Schedule 3 of the Public Contracts Regulations 2015 (Annex A).
- 8.1.2 A relatively high *EU Threshold* (when compared with the *EU Threshold* for Part A Services) has been applied to this light-touch regime – 750,000 euros (the current sterling equivalent is £615,278).
- 8.1.3 Below the LTR threshold, contracts do not normally need to be advertised in the OJEU as the Directive recognises that only services above the LTR *EU Threshold* would normally be of cross-border interest. Therefore services below the LTR *EU Threshold* do not need to be advertised in the OJEU unless there are clear indications of cross-border interest.

8.2 MANDATORY REQUIREMENTS

- 8.2.1 There are a small number of new procedural rules for procurements above the LTR threshold which the *Council* must follow:
 - a) OJEU Advertising - The publication of a contract notice (CN) or prior information notice (PIN) except where the grounds for using the negotiated procedure without a call for competition can be used, for example where there is only one *Economic Operator* capable of supplying the services required.

- b) The publication of a contract award notice (CAN) following each individual procurement, or if preferred, such notices can be grouped on a quarterly basis.
- c) Compliance with the EU Treaty principles of *Transparency, Proportionality, Non-Discrimination* and equal treatment.
- d) Conduct the procurement in conformance with the information provided in the OJEU advert (CN or PIN) regarding: any conditions for participation; time limits for contacting/responding to the *Council*; and the award procedure to be applied.
- e) Time limits imposed by authorities on *Bidders*, such as for responding to adverts and tenders, must be reasonable and *Proportionate*. There are no stipulated minimum time periods in the LTR rules, so discretion and judgement should be used on a case by case basis.

8.3 ADDITIONAL FLEXIBILITIES

- 8.3.1 The *Council* has the flexibility to use any process or procedure it believes most suitable to run the procurement as long as it respects the other obligations above. There is no requirement to use the standard EU procurement procedures (open, restricted and so on) that are available for other (non-LTR) contracts.
- 8.3.2 The LTR rules are flexible on the types of *Award Criteria* that may be used, and make clear that certain considerations can be taken into account, including but not limited to:
 - a) The need to ensure quality, continuity, accessibility, affordability, availability and comprehensiveness of the services;
 - b) The specific needs of different categories of users, including disadvantaged and vulnerable groups;
 - c) The involvement and empowerment of users; and
 - d) Innovation.
- 8.3.3 *Procuring Officers* must ensure advice is sought from their *Procurement Resource* prior to undertaking a LTR procurement.

9 CONTRACTS AND OTHER FORMALITIES

9.1 CONTRACT FORMATION

- 9.1.1 Every contract with a *Total Contract Value* of £5,000 and above including extensions must be recorded on the *Council's* electronic *Contract Register*.
- 9.1.2 *Procuring Officers* must not amend any contract, including those agreed in section 6.2.5 or 7.6.17, without seeking prior advice from their *Procurement Resource* and *Legal Support*.
- 9.1.3 Every contract must state clearly appropriate information governance obligations where it involves the processing of *Personal Data*.
- 9.1.4 The advice of your *Procurement Resource* must be sought for the following contracts:
- a) Those involving leasing arrangements (must receive the approval of the Executive Director of Finance and Public Protection);
 - b) Where it is proposed to use the *Contracted Supplier's* own terms and conditions;
 - c) Where the *Total Contract Value* exceeds £75,000;
 - d) Those which are complex in any other way.

9.2 CONTRACTOR / SUBCONTRACTOR / SUPPLY CHAIN PAYMENT PERFORMANCE

- 9.2.1 In accordance with the Public Contract Regulations 2015 every contract must state that the *Council* will pay the *Contracted Suppliers'* undisputed invoices within 30 days from the receipt of a valid invoice.
- 9.2.2 Every contract must have contractual provisions to require the *Contracted Supplier* to pay their *Sub-Contracted Suppliers'* undisputed invoices within 30 days from the receipt of a valid invoice.
- 9.2.3 Every contract must have contractual provisions to require the *Contracted Supplier* to require their *Sub-Contracted Suppliers'*, to pay their *Sub-Contracted Suppliers'* (i.e. Tier 3 of the supply chain) undisputed invoices within 30 days from the receipt of a valid invoice.
- 9.2.4 Every contract must have contractual provisions to ensure that section 9.2.3 perpetuates throughout the whole supply chain in relation to the payment of undisputed invoices within 30 days of any supplier delivering goods or services which contribute to the operation of the contract with the *Council* and the *Contracted Supplier*.

9.3 SIGNING CONTRACTS

9.3.1 Each *Chief Officer* has the responsibility to ensure that a Scheme of Authorisation is in place, and contracts should be signed in accordance with this scheme.

9.3.2 The *Procuring Officer* responsible for securing signature of the contract must ensure that the person signing for the other contracting party has authority to do so.

9.4 SEALING CONTRACTS

9.4.1 Where contracts are completed by each side adding their formal *Seal*, the fixing of the *Council's Seal* must be witnessed by or on behalf of the Chief Legal Officer.

9.4.2 Every *Council* sealing will be consecutively numbered, recorded and signed by the person witnessing the *Seal* in the *Contract Register*. The *Seal* must not be affixed without the authority of the *Executive*, a duly authorised *Committee*, the *Chief Legal Officer*, or a *Chief Officer* acting under delegated powers.

9.4.3 A contract should be sealed where:

- a) The *Council* may wish to enforce the contract more than six years after its end;
- b) Where the *Council* has paid no consideration for goods or services, or the carrying out of works; or
- c) Legal Advice has been provided to this effect.

9.5 DOCUMENT RETENTION

9.5.1 All relevant documentation must be kept in accordance with the *Council's* document retention policy.

9.6 BONDS AND PARENT COMPANY GUARANTEES

9.6.1 The Procuring Officer must consult the Chief Finance Officer to identify whether a *Parent Company Guarantee* or *Bond* is needed;

- a) When a *Contracted Supplier* is a subsidiary of a parent company as to the necessity of a *Parent Company Guarantee* when any of the following conditions are satisfied:
 - i. The *Total Contract Value* exceeds £250,000, or
 - ii. Award is based on evaluation of the parent company, or
 - iii. There is some concern about the financial stability of the *Contracted Supplier*; and
- b) To identify whether a *Bond* is needed:
 - i. Where it is proposed to make substantial staged or other payments in

excess of £250,000 and there is some concern about the financial stability of the *Contracted Supplier*, and there is no *Parent Company Guarantee* available.

9.7 PREVENTION OF CORRUPTION

9.7.1 The *Procuring Officer* must comply with the *Code of Conduct* and must not invite or accept any gift or reward in respect of the award or performance of any contract:

- a) It will be for the *Procuring Officer* to prove that anything received was not received corruptly;
- b) High standards of conduct are obligatory, and a failure to reach the required standards may lead to disciplinary action. Staff involved in procurement should be aware that the Council's counter fraud and whistleblowing policies apply equally to these procedures, as they do to other Council activities. Criminal sanctions for action of corruption are possible under the Bribery Act 2010.

9.7.2 The *Procuring Officer* must ensure that all bidders sign an anti-collusion statement, and require bidders to complete a declaration of good standing confirming that they have not met any grounds for mandatory exclusion.

10 CONTRACT MANAGEMENT

10.1 CONTRACT MANAGEMENT

- 10.1.1 Each contract must have a named Contract Manager for the entirety of the contract.
- 10.1.2 A hard copy of all contracts above the EU Threshold will be retained in a central location and it is the responsibility of the Procuring Officer to ensure that this is done.
- 10.1.3 Advice must be sought from your *Legal Support* before extending the term of a contract other than through the extension period provided for in the contract.

10.2 OPTIONS APPRAISAL AND COMMERCIAL MODEL

- 10.2.1 An options appraisal identifying the most appropriate service model must be prepared for all procurements with an *Estimated Total Contract Value* over the *EU Threshold*. Further a commercial model must be developed pre-procurement which takes a considered approach to risk transfer identifying how the key commercial questions (e.g. duration, performance deductions, volume variation, income generation) are to be dealt with.
- 10.2.2 Provision for resources for the management of the contract, for its entirety, must be identified in the business case.
- 10.2.3 For all contracts with a value of over £75,000, Contract Managers must:
 - a) Maintain a risk register (generic register acceptable) during the contract period and review it as appropriate depending on the level of risk;
 - b) Undertake appropriate risk assessments;
 - c) For identified risks, ensure contingency measures are in place.

10.3 CONTRACT MONITORING AND REVIEWS

- 10.3.1 All contracts that have a *Total Contract Value* higher than the *EU Threshold* limits, or are high risk, are to be subject to regular formal review (based on the risk) with the *Contracted Supplier*.
- 10.3.2 Where a contract is let on the basis of cost/quality criteria and the management processes and procedures accepted through the quality submission are contractually enforceable they must be adhered to for all material/services procured through that contract.
- 10.3.3 During the life of the contract the *Contract Manager* must monitor in respect of:
 - a) Performance;

- b) Compliance with specification and contract;
- c) Compliance with payment provisions, including managing open book arrangements;
- d) Contract change;
- e) Cost;
- f) Any *Value for Money* requirements;
- g) Working practices where appropriate and *Proportionate* e.g. Health and Safety, Safeguarding, Equality, Information and Governance;
- h) Changes in legislative requirements;
- i) User satisfaction and risk management;
- j) Information Governance and Data Protection obligations.

10.4 CONTRACT VARIATION

10.4.1 *Contract Managers* must ensure that all variations to contracts are made in accordance with the provisions included within the contract, and pay due regard for regulations and guidance relating to the extent of *Substantial Modification*.

10.4.2 *Contract Managers* must ensure that all variations to contracts are within the scope of the original procurement and do not put the Council at unnecessary risk, and are not already identified as requirements within the specification.

10.4.3 All variations to contracts shall be in writing. *Substantial Modification* may require the procurement of a new contract and advice should be sought from your *Procurement Resource* or *Legal Support*.

10.4.4 *Contract Managers* must ensure that contract variations are approved in accordance with the Scheme of Authorisation.

11 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 the *Bidders* tender against the needs identified within the specification to determine the successful tender. Such criteria may comprise for example –

- a) Price, or total cost;
- b) Quality including technical merit, aesthetic and functional characteristics, accessibility, design for all users, social, environmental and innovative characteristics and trading and its conditions;
- c) Organisation, qualification and experience of staff assigned to performing the contract, where the quality of the staff assigned can have a significant impact on the level of performance of the contract (and not already evaluated at *SQ* stage); or
- d) After-sales service and technical assistance, delivery conditions such as delivery date, delivery process and delivery period or period of completion.

Bidder(s) / Tenderer(s) – *Economic Operators* who are actively involved in a procurement process.

Bond - An insurance policy: If the *Economic Operator* 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 *Economic Operator's* failure.

Chief Officer(s) - The Officers defined as such in the Constitution.

Code of Conduct - The code regulating conduct of Officers and Members is defined in the Constitution.

Collaborative Arrangements - Use of a framework let by a third party e.g. ESPO or a joint procurement exercise which involves two or more parties.

Committee - A *Committee*, which has power to make, decisions for the *Council*, for example a joint *Committee* with another local authority but not a scrutiny committee.

Constitution - The constitutional document approved by the *Council* which:

- Allocates powers and responsibilities within the *Council* and between it and others;
- Delegates authority to act to the *Executive, Committees, Executive Councillors* and Officers; and Regulates the behaviour of individuals and groups through rules of procedure, codes and protocols.

Consultant(s) - Someone employed for a specific length of time to work to a defined project brief with clear outcomes to be delivered, who brings specialist skills or knowledge to the role, and

where the *Council* has no ready access to employees with skills, experience or capacity to undertake the work.

Contract Register - An electronic register that must be populated, with key information about contracts, for all contracts awarded as required by these procedures.

Contract Regulations - Rules of Procedure of the *Council's* Constitution titled *Contract Regulations* which covers the general principles to be followed by Officers in procuring goods, services and works from organisations external to the *Council*.

Contracted Supplier / Sub-contracted Supplier - An *Economic Operator* who is currently contracted to provide services.

Contracting Authority - The organisation letting the contract in question.

Contracting Decision - Any of the following decisions;

- Composition of Approved Lists
- Withdrawal of *Invitation to Tender*
- Whom to invite to submit a quotation or tender shortlisting
- Award of contract
- Any decision to terminate a contract

Corporate Contract - A contract let or approved by the Commercial Team to support the *Council's* aim of achieving *Value for Money*.

Council - For the purposes of these Contract and Procurement Procedure Rules, "*Council*" refers to Lincolnshire County Council.

Deed - A signed and sealed instrument containing some legal transfer, bargain, or contract.

Dynamic Purchasing System (DPS) – A fully electronic compliant 'Approved List', which in effect operates as an open framework where Economic Operators can join at any point while the *DPS* is open, and they meet the *Suitability Criteria*.

Electronic Tendering - A secure means to store and transmit all *Procurement Documentation* via a secure electronic vault (Pro-Contract).

Economic Operator - A contractor, a supplier or a service provider. Any person who offers on the market supplies, services or works and who sought, who seeks, or who would have wished to be the person to whom a public contract is awarded. In this document *Economic Operators* are not yet active in the procurement process. If they are active in the process they will be named *Bidders* in this document.

Estimated Total Contract Value - The estimated value of a procurement as defined in section 5.1.

Evaluating Officers - Members of the *Evaluation Panel*

Evaluation Panel - A group of relevant Officers of the *Council*, or appropriate stakeholders, who have the technical knowledge and experience to judiciously evaluate bids received in response to a procurement exercise.

Executive - The *Council's Executive* as defined in the Constitution.

Executive Councillor - A member of the *Executive* to whom decision making responsibility is allocated in respect of specified functions.

EU Threshold / OJEU Threshold(s) - The *Estimated Total Contract Value* at which the full EU public procurement directives must be applied for the category of spend, i.e. Goods, Services and Works.

Financial Regulations - The financial regulations outlining officer responsibilities for financial matters, issued by the Executive Director of Finance and Public Protection forming part of the Constitution.

Framework Agreement(s) - An agreement between one or more *Contracting Authorities* and one or more *Economic Operators*, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.

Framework Supplier(s) – An *Economic Operator* who has successfully secured a place on a public framework contract.

Information Governance Resource – The *Councils* nominated Information Governance Resource.

Invitation to Tender / ITT - A key document within the *Procurement Documentation* which must contain or reference, the instructions for *Bidders*, specification, evaluation model and other relevant materials to allow the procurement activity to be concluded successfully.

Legal Support – The *Councils* nominated Legal resource.

Key Decision - An executive decision taken by the *Council* which is likely -

- a) to result in the relevant local authority incurring expenditure which is, or the making of savings which are, significant having regard to the local authority's budget for the service or function to which the decision relates; or
- b) to be significant in terms of its effects on communities living or working in an area comprising two or more wards or electoral divisions in the area of the relevant local authority.

Substantial Modification - Any change to the tender, or contract, that would or could, foreseeably change the interest of *Economic Operators* in the procurement or contract. In practice this means that any change that might result in additional *Economic Operators* interested in the procurement activity or contract.

Non-Commercial Considerations - Except as provided below, the following matters are *Non-Commercial Considerations*;

- a) The Terms and Conditions of employment by *Economic Operators* of their workers or the composition of the arrangements for the promotion, transfer or training of or the other opportunities afforded to their workforces (See also *Workforce Matters own definition*);
- b) Whether the terms on which *Economic Operators* contract with their sub-contractors constitutes, in the case of contracts with individuals, contracts for the provision by them as self-employed persons of their services only;
- c) Any involvement of the business activities or interests of *Economic Operators* with irrelevant fields of Government policy;
- d) The conduct of *Economic Operators* or workers in industrial disputes between them or any involvement of the business activities of *Economic Operators* in industrial disputes between other persons;
- e) The country or territory of origin of suppliers to, or the location in any country or territory of the business activities or interests of, *Economic Operators*;
- f) Any political, industrial or sectarian affiliations or interests of *Economic Operators* or their Directors, Partners or Employees;
- g) Financial support, or lack of financial support, by *Economic Operators* for any institution to or from which the authority gives or withholds support;
- h) Use or non-use by *Economic Operators* of technical or professional services provided by the authority under the Building Act 1984 or the Building (Scotland) Act 1959;
- i) Workforce matters and industrial disputes, as defined above in paragraphs (a) and (d) of this definition, cease to be *Non-Commercial Considerations* to the extent necessary or expedient to comply with Best Value; or where there is a transfer of staff to which the *Transfer of Undertakings (Protection of Employment) Regulations 1981 (TUPE)* may apply.

Non-Discriminatory / Non-Discriminatory - Operating in a way that provides *Economic Operators* equal opportunity and equal treatment through the procurement process. Practically this means that *Procuring Officers* are not permitted to specify any preference as to the type i.e. SMEs, LEs etc., or location i.e. local, of *Bidders* within a procurement process, and all *Economic Operators* are treated consistently and equally prior to any procurement process.

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 - The Data Protection Act 1998 defines *Personal Data* as data which relates to a living individual who can be identified:

- From that data; or
- From that data and other information which is in the possession of, or is likely to come into the possession of, the data controller.

Sensitive *Personal Data* means *Personal Data* consisting of information as to -

- a) The racial or ethnic origin of the data subject,
- b) His political opinions,
- c) His religious beliefs or other beliefs of a similar nature,
- d) Whether he is a member of a trade union (within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992),
- e) His physical or mental health or condition,
- f) His sexual life,
- g) The commission or alleged commission by him of any offence, or
- h) Any proceedings for any offence committed or alleged to have been committed by him, the disposal of such proceedings or the sentence of any court in such proceedings.

SQ - Selection Questionnaire

Procurement Documentation - The full suite of procurement documents required to undertake a compliant procurement process. Includes; SQ, Specification, *ITT*, Terms and Conditions and Form of Tender.

Procurement Guide – A document containing best practice guidance regarding achieving *Value for Money* from procurement activity.

Procurement Resource – Service Area Procurement Teams charged with providing direction and advice to secure compliance and *Value for Money* for Service Area procurement activities. *Procurement Resource* may also be the Commercial Team depending on where responsibility sits within the *Council*.

Procurement Report - A report produced by the *Procuring Officer* detailing the conduct of and all decisions taken in the procurement leading to the evaluation process undertaken from which a recommendation is put forward for approval, as detailed in section 7.13. A template can be provided by the Commercial Team.

Procuring Officer(s) - The officer of the *Council* with responsibility for undertaking a procurement activity.

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.

Request for Quotation (RFQ) – A simplified version of a tender documentation with a more streamlined and efficient process. As a minimum it should include a statement of requirements, terms and conditions and details of how the quotes will be assessed and awarded.

(Common) Seal – The seal that may be, and in the case of the *Council* is, attached to a document by a corporate body when executing a *Deed*.

Selection / Suitability Criteria - A component of the evaluation process set out to assess the *Bidders* suitability to provide the requirements identified in the *ITT*. This is not an evaluation of how they will provide the requirements requested, more an evaluation of their organisation's intrinsic ability to provide those services.

Selection / Suitability Criteria may only relate to:

- a) Suitability to pursue a professional activity
- b) Economic and Financial standing
- c) Technical and Professional ability

Specification – a document which sets out the detailed requirements and scope of goods, services or works to be provided by the supplier. The specification should be written in a contractually enforceable manner.

Terms and Conditions – Special and general arrangements, governing laws, rules, requirements, standards etc. forming integral parts of a contract. To be provided by Legal Services Lincolnshire.

Total Bid Value – The total value of the successful *Bidders'* response.

Total Contract Value – The total value of the successful *Bidders'* response which will be, or has been, formed into a contract with the local authority.

Transparent / Transparency – operating in a way that provides all *Economic Operators* with full disclosure on all aspects of tender process, specifications, requirements, evaluation process and *Award Criteria*. In practice this requires all *Procuring Officers* to ensure that documentation is full and robust and available to *Economic Operators* at the start of the procurement process.

TUPE – Transfer of Undertakings (Protection of Employment) - *TUPE* refers to the Transfer of Undertakings (Protection of Employment) Regulations, 1981. These regulations were introduced to ensure the protection of employees when, for example, a business is taken over by another organisation. Broadly, *TUPE* regulations ensure that the rights of employees are transferred along with the business.

Value for Money - Where quality and cost combine to produce a service which meets technical and customer requirements, at an acceptable level of expenditure in the prevailing budgetary constraints, for an acceptable level of quality.

Workforce Matters - Authorities cannot focus on matters classed as *Non-Commercial Considerations* as part of the contractual process. However, the restrictiveness of the original definitions was considered too great, and so from 2001 authorities may consider the following matters to the extent that they are relevant to the delivery of Best Value or for the purposes of a *TUPE* transfer: the terms and conditions of employment by *Economic Operators* of their workers or the composition of, the arrangements for the promotion, transfer or training of or other opportunities afforded to, their workforces (section 17(5)(a)); the conduct of *Economic Operators* or workers in industrial disputes between them (section 17(5)(d)). Save for the above

restrictions on other *Non-Commercial Considerations* listed in the Social Value and Equalities Act remain in place.