

Part 3.5

Contract and Procurement Procedure Rules

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1. Scope of Contract and Procurement Procedure Rules (CPPRs)

1.1. A brief guide to the contract and procurement procedure rules (CPPRs)

These procedures inform *Procuring Officers* of the *Council* of the requirements for undertaking procurement and forming contracts.

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 all commercial activity undertaken on behalf of the *Council* and within a partnership arrangement, regardless of the source of funding.

Procuring Officers responsible for procurement, contracting or disposal shall comply with these CPPRs, Public Contract Regulations, Financial Regulations, applicable Grant Fund spending regulations, and with all UK and European Union (EU) legal requirements.

The Director of Resources shall have the power to make minor amendments from time to time to these Contract and Procurement Procedure Rules.

1.2. Basic principals

All procurement activity shall:

- Comply with these CPPRs, Public Contract Regulations, Financial Regulations, applicable Grant Fund spending regulations, and with all UK and European Union (EU) legal requirements.
- Follow the EU procurement 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;
- Comply with all legal requirements;
- Ensure that *Non-Commercial Considerations* do not influence any *Contracting Decision*;
- Comply with the *Council's* policies;
- Comply with the *Council's* corporate and departmental aims;

Further, all those involved in undertaking procurement or disposals shall ensure that:

- All necessary professional procurement, legal and financial advice is sought;

- Grant money received shall be deployed in line with these Contract and Procurement Procedure Rules unless the grant conditions state otherwise;
- The procurement is legitimate, lawful and within the budget and policy framework;
- Declare any personal financial interest in a contract. Corruption is a criminal offence.
- All goods, services and the carrying out of works are ordered in accordance with Contract and Procurement Procedure Rules, *Contract Regulations*, Financial Regulations and with all UK and EU binding legal requirements;
- Goods, services and the carrying out of works received meet the requirements of the contract;
- 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;

1.3 Contracts

A contract is any arrangement made by, or on behalf of, the *Council*, for the carrying out of works or for the supply of goods or services. These include arrangements for:

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

2. Responsibilities

2.1. Director of Resources responsibilities

2.1.1. The Director of Resources has delegated responsibility for ensuring that procedures for procurement are sound and properly administered.

2.1.2. The Director of Resources is responsible for ensuring all income and expenditure is lawful.

2.2. Chief Officer responsibilities

- 2.2.1. *Chief Officers* are responsible for ensuring that staff are aware of their responsibilities under these procedures and receive adequate training and guidance.
- 2.2.2. *Chief Officers* are responsible for consulting with the Head of Finance and Resources and seeking approval on any matters liable to affect the *Council's* finances materially.

2.3. Heads of service responsibilities

- 2.3.1. Ensure that all staff comply with Procedure Rule 2.3.4.
- 2.3.2. Local Authorities are now required under transparency legislation to publish all contracts over £5,000 therefore Heads of Service will ensure all staff complete the *Councils* electronic Contract Register to record all contracts with an *Estimated Total Contract Value* of £5,000 and above, including any changes over the contract life e.g. extensions as identified within the *Councils Constitution*.
- 2.3.3. Ensure all staff secure an electronic copy of the signed contract in the *Councils* contract database.
- 2.3.4. For the appointment of *Consultants*, Heads of Service will ensure **all** contracts are recorded on the electronic Contracts Register, no matter of the *Estimated Total Contract Value*.

2.4. Procuring Officer responsibilities:

- 2.4.1. The *Procuring Officer* shall 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 any changes over the contract life e.g. extensions).
- 2.4.2. *Procuring Officers* shall 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.
- 2.4.3. When an employee of a *Contracted Supplier* may be affected by any transfer arrangements, *Procuring Officers* shall ensure that the *Transfer of Undertaking (Protection of Employment) (TUPE)* issues are considered, and where required obtain legal advice before proceeding with inviting Tenders or Quotations.

3. Exceptions to these rules

- 3.1. Exceptions are provided for in very exceptional circumstances where it is necessary because of an **unforeseen emergency** involving immediate risk to persons, property, and serious disruption to *Council* services, or where a *Chief Officer* believes an alternative route to normal tendering procedures is required.

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

- 3.2. In these exceptional circumstances the authority shall be sought from the following;
- a) The Chief Executive (via Officer Decision Panel) has the authority, under the *Contract Regulations*, to approve an alternative procurement route where the contract has an *Estimated Total Contract Value* between £5,001 and £75,000.
 - b) The Executive Board has the power to approve an alternative procurement route for contracts with an *Estimated Total Contract Value* over £75,001.

NOTE: If the full EU Procurement Regulations apply, an exception may not be legal, and therefore cannot be considered except on legal advice.

- 3.3. All exceptions shall be recorded on the *Council's* electronic *Contracts Register*.

4. Selecting the correct process

4.1. Calculating the Estimated Total Contract Value

4.1.1. Before any Procurement Exercise is begun the *Procuring Officer* shall calculate its *Estimated Total Contract Value* in accordance with this clause.

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

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;

- a) Where the contract period is indeterminate the *Estimated Total Contract Value* shall be calculated using the best estimate or by multiplying the estimated average monthly value by 48;
- b) 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;
- c) 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.
- d) The *Estimated Total Contract Value* shall exclude Value Added Tax (VAT).
- e) Periodic purchases for the same requirement, whether that is from the same or different *Contracted Suppliers*, shall be aggregated over a minimum of a 12 month period.
- f) 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.

4.2. Council procurement thresholds

Based on the *Estimated Total Contract Value*, as identified in section 4.1, the table below makes provision for the minimum requirements for the subsequent Procurement Exercise.

All contracts (see Contract Regulations) shall be subject to competition, unless there is an exemption, as follows:

Total Contract Value (See Definitions Appendix)		Process	Award Procedure Based On	Contract Publication	Documentation	Use of local suppliers	Exemption
From	To						
£0	£5,000	Quotations**	Three quotations		Unit Manager to record details and Head of Service to Approve	A local supplier should be used where appropriate	
£5,000	£25,000	Written Quotations	Minimum of Three written Quotations	As per Contract Procedures 5, 6, & 7	Unit Manager to record details Head of Service to Approve	At least one quotation should be from a local supplier and a local supplier should be used where they provide the most economically advantageous offer	Any exemptions to the CPR to be granted by ODP
£25,000	£75,000	Request for Quotation (RFQ)	Three Written Quotations based on a RFQ (from Procurement Lincolnshire) document with simplified Terms & Conditions	As per Contract Procedures 5, 6, & 7 Web based publications e.g. Source Lincolnshire, Supply2Gov & Specialist Publication if appropriate	Shall be based on a written specification provided to the <i>Economic Operators</i> by the Council. Head of Service to Record Quotation may, good housekeeping, be delivered electronically from and to the secure		

					vault via Procurement Lincolnshire		
£75,000	< EU Threshold	Formal Tender via Procurement Lincolnshire	Full Tender Process	Web based publications e.g. Source Lincolnshire, Supply2Gov & Specialist Publication if appropriate	Consult with Procurement Lincolnshire Pre Qualification Questionnaire (PQQ) and Invitation to Tender (ITT) documentation as relevant with sealed bids which may be submitted via an electronic tendering process.		Any exemptions to the CPR to be granted by Executive following legal advice
EU Threshold *	Above	Formal Tender via Procurement Lincolnshire	Full Tender Process	Official Journal of the European Union (OJEU), Web based publications e.g. Source Lincolnshire, Supply2Gov & Specialist Publication if appropriate	Consult with Procurement Lincolnshire		No exemptions permissible

*Contracts falling within the different categories of Goods, Services and the carrying out of Works have value thresholds placed on them by the EU. When the estimated value of an individual contract (cumulative value not annual expenditure) is likely to exceed these EU thresholds, by law the Council shall comply with the full EU procurement regime. These *Total Contract Value* thresholds change on a bi-annual basis, as a general guide: Competition Requirements under European Procurement Rules (currently applicable for contracts valued at over £172,514 for Goods and Services and £4,322,012 [<http://www.bipsolutions.com/html/thresholds.htm>] for carrying out of Works, from January 2014). Clarification of the definitions of categories can be obtained from your *Procurement Resource*. A purchasing officer working with a contract estimated to be at the lowest of the above thresholds shall seek expert advice from your *Procurement Resource* on the process to be followed before proceeding. As a minimum, this process is likely to take at least 4 months in addition to the contract lead-in time and therefore purchasing officers shall ensure proper purchase planning procedures are in place.

**This includes similar types of process e.g. looking up from a catalogue.

4.3 E-Procurement

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

4.4 Steps prior to purchase

The *Procuring Officer* shall 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 £750,000 or is a capital item, a financial appraisal has been set out in writing in accordance with the Financial Regulations;
- c))Prior Information Notices where required for the EU Procurement Directive, have been placed in the Official Journal of the European Union (OJEU).

4.5 Social Value

The authority shall consider, in the form of a Social Value appraisal whilst recognising the principal of proportionality;

- a) how what is proposed to be procured might improve the economic, social and environmental well-being of the relevant area, and
- b) how, in conducting the process of procurement, it might act with a view to securing that improvement.

4.6 Utilising a Framework Agreement

4.6.1 North Kesteven District 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*.

4.6.2 The *Procuring Officer* responsible for the procurement activity shall assess the *Value for Money* offered by the framework prior to its use.

4.6.3 Contracts based on *Framework Agreements* shall always be awarded in accordance with the rules set out within the *Framework Agreement* documentation.

4.7 Procuring with external grant monies

4.7.1 Procuring contracts using external grant monies can bring about additional risks to the authority due to additional regulatory requirements in the way the money is controlled and additional scrutiny that the procurement process may receive. Therefore, Procuring Officers should ensure they are fully conversant with all the requirements of the relevant funding bodies.

4.7.2 *Procuring Officers* shall ensure that they engage, in advance of undertaking a procurement activity, with Procurement Lincolnshire providing full access to any relevant additional guidance.

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

4.8 Information Governance and Data Protection

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

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

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

5. Below OJEU threshold procurement

5.1 Request for quotations (RFQs)

5.1.1 The RFQ document shall include a specification. The specification shall describe clearly the *Council's* requirements in sufficient detail to enable the submission of competitive offers.

5.1.2 The RFQ shall state that the *Council* is not bound to accept any Quotations received.

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

5.1.4 In determining and negotiating the terms and conditions of contract, the *Procuring Officer* shall ensure, as a minimum, that the relevant Terms and Conditions from the Councils' Standard Terms and Conditions are incorporated into the RFQ documentation.

5.1.5 All *Economic Operators* invited to quote shall be issued with the same information at the same time, and subject to the same conditions.

5.1.6 The evaluation of quotes should be based upon on simplified *Award Criteria*, and records of evaluation results retained by the *Procuring Officer*. The evaluation shall follow the principals of the EU treaty and therefore shall be; *Transparent, Non-Discriminatory and Proportionate*.

5.2 Approved lists

5.2.1 Approved Lists may be used to select *Economic Operators* as an alternative to RFQs. 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.

5.2.2 Approved Lists shall not be used when the estimated total aggregated spend may exceed the relevant *EU Threshold*. When this might occur, a *Framework Agreement* would be a more suitable and compliant approach.

5.2.3 *Chief Officers* shall draw up in consultation with Procurement Lincolnshire approved lists of *Economic Operators*.

5.2.4 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.

5.2.5 Approved Lists shall be drawn up after an advertisement inviting applications for inclusion on the list.

5.2.6 The list shall be reviewed at least annually and re-advertised at least every three years.

5.2.7 On re-advertisement, a copy of the advertisement shall be sent to each *Economic Operators* on the list, inviting them to reapply.

5.2.8 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 Contract and Procurement Procedure Rules and shall not be subject to the requirements of regulations 5.2.3 and 5.2.4 inclusive.

6. Above OJEU threshold procurement

6.1 Pre-tender market research and consultation

6.1.1 *Procuring Officers* shall seek advice from Procurement Lincolnshire if *Economic Operators* are to be engaged in creating any aspect of the *Procurement Documentation*.

6.1.2 In order to not distort competition the *Procuring Officer* shall communicate to all *Bidders* in any resultant procurement activity all relevant information exchanged in the context of, or resulting from, the involvement of the *Economic Operator* in the preparation of the procurement procedure.

6.2 Pre-Qualification Questionnaires (PQs)

Procuring Officers shall pay due regard to the statutory guidance regarding the use of Pre-Qualification Questionnaires.

6.3 Selection and suitability criteria

6.3.1 Within the PQQ, or the Business Information section of an Open Tender ITT document, *Procuring Officers* may evaluate selection criteria in order to assess the suitability of the *Bidder* to meet the requirements of the contract.

6.3.2 Selection criteria may only relate to;

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

6.4 Standards and award criteria

6.4.1 Award criteria are assessed as part of the ITT.

6.4.2 The *Procuring Officer* shall define *Award Criteria* appropriate to the purchase. *Award Criteria* shall be designed to secure a sustainable outcome which represents *Value for Money* for the *Council*. The basic criterion shall be either:

- d) Most Economically Advantageous Tender (a combination of (price or total cost) and quality);
- e) Lowest price, or total cost.

6.4.3 All *Award Criteria* and sub-criteria shall be weighted. The procurement documentation shall include in full all *Award Criteria* and sub-criteria together with weightings and sub-weightings, and be made available to *Bidders* as required in rule 6.5.2.

6.4.4 *Award Criteria* shall not include:

- a) *Non-Commercial Considerations*;
- b) Matters which discriminate against *Economic Operators* from the European Economic Area or signatories to the Government Procurement Agreement.

6.5 Communication with suppliers

6.5.1 The *Procuring Officer* shall provide all documentation to all *Bidders* by means of the internet, offer unrestricted and full direct access free of charge to the procurement documents.

6.5.2 The *Procuring Officer* shall publish all procurement documentation, including the PQQ, *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, or the date of which an invitation to confirm interest is sent.

6.5.3 No *Material Change* to these documents is permitted once they have been published.

6.5.4 All communication shall be completed through the *Councils* e-Procurement system

6.6 Undertaking a tender

6.6.1 The Invitation to Tender (ITT) shall include a specification. The specification shall describe clearly the *Council's* requirements in sufficient detail to enable the submission of competitive offers.

6.6.2 Late Tenders shall not be accepted except in exceptional circumstances where the decision is found to not be in breach of the EU Treaty Principals.

6.6.3 Elected Members, employees or Consultants employed by the *Council* who have a direct or indirect interest in the contract shall not be supplied with or given access to any Tender documents, contracts or other information without the authority of the relevant *Chief Officer*.

6.6.4 If undertaking an Open Procedure, any changes to the timetable for submission of Tender responses shall be published via an addendum notice in the OJEU, and also via the e-Procurement system.

6.6.5 The Invitation to Tender shall make reference to the Terms and Conditions to be in force for the contract, and the Terms and Conditions shall be included within the Procurement Documents.

6.7 Clarification of tender documents, by bidders

In the event that *Bidders* seek clarification of the tender documentation, all responses shall be submitted through the e-Procurement platform and shared to all *Bidders*.

6.8 Evaluation

6.8.1 Apart from the debriefing requirements permitted by Procedure Rule 0, and requests via the Freedom of Information Act which will be considered on their own merit, confidentiality of Quotations and Tenders shall be preserved at all times; and Information about one *Bidders* response shall not be given to another *Bidder*.

6.8.2 Contracts shall be evaluated, recorded and awarded in accordance with the *Award Criteria*.

6.8.3 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.

6.9 Award

6.9.1 Where the *Estimated Total Contract Value* is over the EU Threshold, the *Procuring Officer* shall inform all *Bidders* of their intention to award the contract to the successful *Bidder*.

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

6.9.3 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 Procurement Lincolnshire.

6.9.4 In cases of unforeseen emergency outside the control of the *Council*, the *Chief Officer* may give approval to waive the 10 day standstill period.

6.9.5 The *Procuring Officer* shall debrief in writing all those *Bidders* who submitted a bid why they were unsuccessful and provide information about the characteristics and relative advantages of the leading bidder. This shall include:

- a) Scores for the relevant sections of the tender
- b) Evaluation commentary regarding how the *Award Criteria* were applied and clear explanation as to the characteristics of the bid against the *Award Criteria*;
- c) The name and contract price of the winning *Bidder*;

6.9.6 The *Procuring Officer* should also give the debriefing information required by Procedure Rule 0 to *Bidders* who are deselected in a pre-tender shortlisting process, at the point of deselection.

6.10 Clarification of bids, by evaluators

6.10.1 Any aspects of bids may be clarified with the *Bidder* in writing. *Procuring Officers* shall not undertake presentations as a way to clarify a *Bidders* response or to draw out additional components of the bid which were not previously submitted.

6.10.2 Any clarifications required of a *Bidder* shall be worded in a way to not allow the *Bidder* an opportunity to vary, amend or improve the bid.

6.11 Presentations

6.11.1 Due to the risks brought about by undertaking scored presentations, they are no longer permitted as an assessed part of the procurement process, unless necessary.

6.11.2 If undertaking presentations as an evaluated component of the tendering process *Procuring Officers* shall ensure that;

- a) Contemporaneous notes or full auditory records are kept.
- b) Questions are focussed solely on the scope required of the presentation.
- c) Evaluators shall ensure their scores accurately reflect the scoring criteria, with appropriate justifications in the evaluation commentary.

6.12 Moderation

6.12.1 It is no longer permissible for *Evaluating Officers* to score bids separately, and then reconsider outliers and average scores during a moderation process.

6.12.2 *Evaluating Officers* in the *Evaluation Panel* shall now attend a moderation meeting, which shall be chaired by Procurement Lincolnshire whom are not permitted to be evaluators.

6.12.3 Bids shall be read in advance of the moderation meeting, and may be annotated, but shall not be formally scored prior to the moderation meeting.

6.12.4 *Evaluating Officers* are required to reach consensus during the moderation meeting, and come to a single, agreed, and moderated score for each scored component of the response.

6.13 Post tender negotiation

When following EU Procurement Directives post-tender negotiation is not allowed.

6.14 Reporting requirements

6.14.1 It is a requirement of the Public Contract regulations for *Procuring Officers* to, in conjunction with PL, upon completing a tender, 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, 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.

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

6.14.3 *Procuring Officers* shall keep sufficient documentation to justify decisions taken in all stages of the procurement procedure in line with the *Councils* document retention schedule.

7. 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 formally known as Part B services. Those service contracts 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).

7.1 Key points

7.1.1 There are fewer services in LTR than Part B (meaning that some contracts formerly subject to the Part B services rules will now be subject to the full rules).

7.1.2 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 £625,050).

7.1.3 Below the LTR threshold, contracts do not normally need to be advertised in the OJEU.

7.2 Mandatory Requirements

The *Council* shall follow a new light-touch set of procurement rules for LTR contracts above the relevant threshold. The main mandatory requirements are:

- a) OJEU Advertising: The publication of a contract notice (CN) or prior information notice (PIN).
- b) The publication of a contract award notice (CAN) following each individual procurement, or if preferred, group such notices on a quarterly basis.
- c) Compliance with Treaty principles of *transparency, proportionality, non-discrimination* and equal treatment.

7.3 Additional Flexibilities

7.3.1 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.

7.3.2 The LTR rules are flexible on the types of *Award Criteria* that may be used, but 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.

7.3.3 *Procuring Officers* shall ensure advice is sought from Procurement Lincolnshire prior to undertaking a LTR procurement.

8. Contracts and other formalities

8.1 Contract formation

Every contract, where relevant, should clearly state:

- a) That the *Contracted Supplier* may not assign or sub-contract without prior written consent;
- b) Any Insurance requirements;
- c) Health and Safety requirements;
- d) Ombudsman requirements;
- e) Data Protection requirements, if relevant;
- f) Information Governance requirements, if relevant;
- g) That Charter Standards are to be met if relevant;
- h) Race Relations requirements;
- i) Disability Discrimination Act requirements;
- j) Freedom of Information Act requirements;
- k) That *Agents* shall comply with the *Council's* Contract and Procurement Procedure Rules relating to contracts (where *Agents* are used to let contracts);
- l) When the *Council* will have the right to terminate the contract;
- m) That the contract is subject to the law as to prevention of corruption (Procedure Rule 18);
- n) The specific Terms and Conditions purposely drafted for the contract, or as a minimum the *Councils* standard Terms and Conditions.

- o) A right of access to relevant documentation and records of the *Contracted Supplier* for monitoring and audit purposes if relevant;
- p) Price mechanism including inflationary issues where appropriate;
- q) Future service performance measures and efficiency targets;
- r) Any other relevant legislation e.g. Section 11 of the Children's Act;
- s) Business Continuity requirements;
- t) Any information governance requirements involving personal data.

8.2 Sealing contracts

8.2.1 Where contracts are completed by each side adding their formal *Seal*, the fixing of the *Council's Seal* shall be witnessed by or on behalf of the Chief Executive. This will only be undertaken following the completion of the Contract Register.

8.2.2 Every *Council* sealing will be consecutively numbered, recorded and signed by the person witnessing the *Seal*.

8.2.3 A contract shall be sealed where:

- a) The *Council* may wish to enforce the contract more than six years after its end; or
- b) The price paid or received under the contract is a nominal price and does not reflect the value of the goods, services or the carrying out of works; or
- c) Where there is any doubt about the authority of the person signing for the other contracting party; or
- d) The Total Contract Value exceeds £75,000.

8.3 Bonds and parent company guarantees

The *Procuring Officer* shall consult the Head of Finance and Resources;

- a) When a *Contracted Supplier* is a subsidiary of a parent company, the *Procuring Officer* does not think a *Parent Company Guarantee* is necessary and 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 the Total Contract Value exceeds £500,000 or
 - ii Where it is proposed to make staged or other payments in advance of receiving the whole of the subject matter of the contract.

8.4 Prevention of corruption

8.4.1 The *Procuring Officer* shall comply with the *Code of Conduct* and shall 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.

8.4.2 The following clause shall be placed in every written *Council* contract:

“The *Council* may terminate this contract and recover all its loss if the Contractor, its employees or anyone acting on the Contractor’s behalf do any of the following things:

- a) Offer, give or agree to give to anyone inducement or reward in respect of this or any other *Council* contract

(Even if the Contractor does not know what has been done); or
- b) Commit an offence under the Prevention of Corruption Acts 1889 to 1916 or Section 117(2) of the Local Government Act 1972; or
- c) Commit any fraud in connection with this or any other *Council* contract whether alone or in conjunction with *Council* members, contractors or employees.

Any clause limiting the Contractor’s liability shall not apply to this clause”.

9. Contract management

9.1 Contract management

All variations to contracts shall be in writing and Procurement Lincolnshire shall be consulted prior to issuing any variations.

9.2 Risk assessment and contingency planning

9.2.1 A business case shall be prepared for all procurements with an *Estimated Total Contract Value* over the EU Threshold.

9.2.2 For all contracts with a value of over £75,000, Contract Managers shall maintain a risk register (generic register acceptable) during the contract period.

9.3 Contract monitoring and reviews

9.3.1 All contracts which have a *Total Contract Value* higher than the *EU Threshold* limits, or which are high risk, are to be subject to a regular formal review (based on the risk) with the successful *Bidder*.

9.3.2 During the life of the contract the *Procuring Officer* shall monitor in respect of:

- a) Performance;
- b) Compliance with specification and contract;
- c) Cost;
- d) *Any Value for Money* requirements;
- e) Working practices where appropriate e.g Health and Safety;
- f) Changes in legislative requirements;
- g) User satisfaction and risk management
- h) Information Governance and Data Protection obligations; and
- i) Any additional factors in accordance with any guidance in the Procurement Guide.