

# **Newry, Mourne and Down District Council**

## **Procurement Policy & Procedures**



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## ABBREVIATIONS COMMONLY FOUND IN PROCUREMENT

| <b>Abbreviation</b>      | <b>Meaning</b>   |
|--------------------------|--|
| <b>ADR</b>               | Alternative Dispute Resolution - includes mediation and arbitration.   |
| <b>CN/CAN</b>            | Contract Notice - the normal OJEU notice advertising a contract. / Contract Award Notice - the notice issued to OJEU to award the contract.  |
| <b>CCS</b>               | Crown Commercial Services - The UK Central Procurement Body<br><a href="https://www.gov.uk/government/organisations/crown-commercial-service">https://www.gov.uk/government/organisations/crown-commercial-service</a>   |
| <b>CoE</b>               | Centre of Excellence also <b>CoPE</b> Centre of Procurement Excellence – A recognised central collaborative body   |
| <b>Council</b>           | This Council – Newry, Mourne and Down District Council   |
| <b>CPD</b>               | Central Procurement Directorate <a href="http://www.cpdni.gov.uk">www.cpdni.gov.uk</a>   |
| <b>CPV</b>               | Common Procurement Vocabulary  |
| <b>DCA /STAN/CA/NC P</b> | Direct Contract Award – also known as Single Tender Action, Non-competitive Action or Procurement (NCP)  |
| <b>EJC</b>               | European Court of Justice  |
| <b>EO</b>                | Economic Operative - The generic term for a Contractor, Service Provider or Supplier   |
| <b>ESPD</b>              | The European Single Procurement Document ( <b>ESPD</b> ) is a standard form of documents for use by all EU member states to facilitate easier Tender bidding throughout EU.  |
| <b>FoIA</b>              | Freedom of Information Act   |
| <b>ITT</b>               | Invitation to Tender   |
| <b>ITT Response</b>      | Tender Return or formal offer from an Economic Operator (EO)/Tenderer  |
| <b>KPI</b>               | Key Performance Indicator  |
| <b>MI/MIS</b>            | Management Information / Management Information System   |
| <b>OCB</b>               | Other Contracting Body   |
| <b>OJEU</b>              | Official Journal of the European Union <a href="http://www.ted.europa.eu/">www.ted.europa.eu/</a>  |
| <b>MEAT</b>              | Most Economical Advantageous Tender  |
| <b>NDPB</b>              | Non Departmental Public Bodies – i.e. Local Authorities  |
| <b>NIPP</b>              | Northern Ireland Procurement Policy from CPD, which covers Central Government Bodies in NI. <a href="http://www.finance-ni.gov.uk/central-procurement-directorate">www.finance-ni.gov.uk/central-procurement-directorate</a>   |
| <b>PCR2015</b>           | Public Contract Regulations 2015 – as amended -<br><a href="http://www.legislation.gov.uk/ukxi/2015/102/contents/made">http://www.legislation.gov.uk/ukxi/2015/102/contents/made</a>   |
| <b>PIN</b>               | Prior Information Notice (for OJEU Tenders)  |
| <b>PGN</b>               | Procurement Guidance Notes: <a href="http://www.dfpni.gov.uk/content - cpd - policy - _procurement_guidance_notes">http://www.dfpni.gov.uk/content - cpd - policy - _procurement_guidance_notes</a> Also:<br><a href="https://www.gov.uk/government/collections/procurement-policy-notes">https://www.gov.uk/government/collections/procurement-policy-notes</a> |
| <b>PPP</b>               | Public Private Partnership   |
| <b>PQQ</b>               | Pre Qualification Questionnaire – successful EO's produces “candidates”  |
| <b>RFQ/eRFQ</b>          | Request for Quotations/ Electronic Request for Quotations  |
| <b>SOPO/LGA - NAG</b>    | Society of Procurement Officers /Local Government Association - National Advisory Group for Procurement - <a href="https://www.local.gov.uk/">https://www.local.gov.uk/</a>  |
| <b>VEAT</b>              | Voluntary Ex-Ante Transparency notice see PCR2015 Reg 99(3) and EU Directive 2014/24/EU  |
| <b>VFM</b>               | Value for Money  |
| <b>WTO / GPA</b>         | The World Trade Organisation and their Agreement of Public Procurement (GPA)   |

## 1. STATEMENT FOR NEWRY MOURNE AND DOWN DISTRICT COUNCIL PROCUREMENT POLICY

All procurement must seek to accommodate the core values of local government and be administered to ensure adherence to relevant UK and EU legislation and ultimately provide the best value for money.

The Council procures goods and services with a view to:

- obtaining value for money i.e. ensuring that the Council's business needs and requirements are delivered to the required quality at the best available price;
- demonstrating propriety and good practice;
- complying with legal requirements that apply to public sector procurement activities.

This document is designed therefore to assist Council Officers to determine the most appropriate method of procurement when purchasing goods and services in line with the above provisions.

## 2. BACKGROUND TO PROCUREMENT

### 2.1 What is Public Procurement?

The National Procurement Strategy for Local Government defines procurement as “the process of acquiring goods, works and services, covering both acquisitions from third parties and from in-house providers. The process spans the **whole cycle** from identification of needs, through to the end of a services contract or the end of the useful life of an asset. It involves options appraisal and the critical “make or buy” decision, which may result in the provision of services in-house in appropriate circumstances.

In the context of a procurement process, obtaining “best value for money” means choosing the bid that offers “**the optimum combination of whole life costs and benefits to meet the customer’s requirement**”. This is not always the lowest initial price option and requires assessing the ongoing revenue/resource costs as well as initial capital investment. The council’s requirement can include social, environmental and other strategic objectives and is defined at the earliest stages of the procurement cycle. The criterion of best value for money is used at the award stage to select the bid that best meets the requirement.

Procurement is also about making choices. The choice that members make about a particular contract or form of partnering is a very clear signal of what type of authority the council wants to be and how it wants to be seen now and in the future.

## 2.2 Guiding Principles of Procurement

There are 12 guiding principles to govern the administration of public procurement:

1. **Accountability:** effective mechanisms must be in place in order to enable Officers and their equivalents to discharge their personal responsibility on issues of procurement risk and expenditure.
2. **Competitive Supply:** procurement should be carried out by competition unless there are convincing reasons to the contrary.
3. **Consistency:** economic operators should, all other things being equal, be able to expect the same general procurement policy across the public sector.
4. **Effectiveness:** public bodies should meet the commercial, regulatory and socio-economic goals of government in a balanced manner appropriate to the procurement requirement.
5. **Efficiency:** procurement processes should be carried out as cost effectively as possible. Where possible and allowed, Collaborative procurement is to be encouraged.
6. **Fair-dealing:** suppliers should be treated fairly and without unfair discrimination, including protection of commercial confidentiality where required. Public bodies should not impose unnecessary burdens or constraints on suppliers or potential suppliers.
7. **Integration:** the procurement policy should pay due regard to the Council's other economic and social policies, rather than cut across them.
8. **Integrity:** there should be no corruption or collusion with suppliers or others.
9. **Informed decision-making:** public bodies need to base decisions on accurate information and to monitor requirements to ensure that they are being met.
10. **Legality:** public bodies must conform to the European Community and other legal requirements.
11. **Responsiveness:** public bodies should endeavour to meet the aspirations, expectations and needs of the community served by the procurement.
12. **Transparency:** public bodies should ensure that there is openness and clarity on procurement policy and its delivery.

### 3. SCOPE / THE LEGAL FRAMEWORK – INTERNATIONAL OBLIGATIONS

Even when a Competition process is not subject to the EU Directives and UK Regulations, for example below threshold or when no cross EU border perceived interest exists, the EU treaty based principles of non-discrimination, equal treatment, transparency, mutual recognition and proportionality apply and some degree of advertising, appropriate to the scale of the contract, is likely to be necessary to demonstrate transparency. This is also in line with the Government objective of achieving value for money in all public procurement.

#### 3.1 Treaty obligations:

Public procurement is subject to the EU Treaty principles of:

- non-discrimination;
- free movement of goods;
- freedom to provide services; and
- freedom of establishment.

In addition to these fundamental treaty principles, some general principles of law have emerged from the case law of the European Court of Justice. The most important of these general principles of law for you to be aware of in the procurement context are:

- **Equal treatment (non-discrimination/fairness):** Contracting Authorities are obliged to treat both potential and actual tenderers in the same way, without favour or prejudice. When specifying requirements avoid brand names and other references which would favour or eliminate particular providers, products or services and accept equivalence.
- **Transparency (openness):** Some degree of advertising (appropriate to the size of the contract) is likely to be necessary to demonstrate transparency. Must be upfront with tenderers about the conditions for participation, clearly specified requirements, selection criteria, contract details, award criteria and the reasons why they were or (more importantly) were not successful.
- **Proportionality:** Contracting Authorities must ensure that tender requirements are both relevant to the contract being procured and necessary.
- **Mutual recognition:** Member States are required to accept on their territory, products which are legally produced and marketed and services that are legally provided, in other Member States. Also mutual recognition of diplomas, certificates or other evidence of formal qualifications.
- **Confidentiality:** Contracting Authorities are obliged to respect the confidentiality of the information received from tenderers during the procurement process.

### 3.2 EU Directives:

To support the treaty principles in the field of public procurement and to provide the necessary guidance to buyers in member states, the EU has adopted a series of procurement directives. The 2014 EU Procurement Directives came into force at EU level on 17 April 2014.

Public Sector: Directive 2014/24/EU as amended – (normally thresholds amended each year)

More information can be found on the [European Union](#) website.

### 3.3 UK Public Contract Regulations:

The Current UK Regulations, which is the transposition of the EU Directives into UK law and which covers Public Procurement in Northern Ireland, as well as England and Wales is:

THE PUBLIC CONTRACT REGULATIONS 2015 - [As amended](#)

The Regulations were developed in response to Procurement Directives issued by the European Union and they set out how the UK has transposed these EU Directives into national law.

### 3.4 Northern Ireland Public Services Ombudsman

The Northern Ireland Public Services Ombudsman investigates complaints about possible maladministration in the delivery of public services. The Ombudsman's role is to ensure that the people of Northern Ireland are served by a fair and efficient public administration that is committed to accountability, openness, and quality service. For further information see the [NIPSO website](#).

### 3.5 Best Practice Guidance

Local Government Procurement Strategy can be found here following this [link](#). This has been developed by the Local Government Association for Local Government bodies to share and learn from each other.

Best Practice on the entire process from start to completion of a project/contract can be accessed on the [UK Cabinet Office website](#).

CPDNI sits within DoF, and is responsible for disseminating advice and guidance on the direction and policies on public procurement, determined by the Procurement Board, to the Northern Ireland Public Sector and monitoring their implementation. This it does through the production of [Procurement Guidance Notes](#), which are developed in consultation with its public sector stakeholders. Once endorsed these guidance notes are issued to Permanent Secretaries, Finance Directors and all CoPEs for implementation by bodies covered by Northern Ireland Public Procurement Policy. Procurement Guidance Notes are also placed on the CPD website.

The Council carries out its procurement activities adhering to Council Policy and Procedures. Although the Council is not subject to Northern Ireland Public procurement rules, we would encourage Council Officers to use CPDNI best practice procurement guidance to assist them if they are looking any further guidance when performing procurement exercises.

**Failure to follow the procurement procedures set out in the Regulations may result in penalties for non-compliance.**

**There are three routes under which remedies may be sought: Judicial review, Article 226 proceedings and remedies under the Regulations.**

**In any case if a challenge is made, the procurement process can be suspended or even cancelled and damages can be awarded.**

#### **4. RELATED POLICIES**

This policy should be read in conjunction with the following NMDDC documents:

- Code of Conduct for Local Government employees;
- The Northern Ireland Local Government Code of Conduct for Councillors;
- Anti-Fraud Policy
- Gifts and Hospitality Policy
- Freedom of Information Policy
- Data Protection Policy
- Complaints Policy and Procedure



## 5. PROCUREMENT/PURCHASING OVER EU THRESHOLD VALUES

Almost all public procurement contracts for business worth more than the EU threshold must be published in the supplement of the OJEU (Official Journal of the European Union). The threshold changes every two years and varies according to the type of contract (supplies, works or services) and the public sector entity (Central Government, another public Council or Utility).

The up to date threshold values that apply for the purposes of EU Procurement regulations can be found on the [OJEU website](#). The Council falls under the heading 'other contracting authorities'.

At the 1 January 2016 the following thresholds have been implemented:

|  |                   |
|--|-------------------|
| <b>Supply, Services and Design Contracts</b> | <b>£164,176</b>   |
| <b>Works Contracts</b>                       | <b>£4,104,394</b> |

### 5.1 EU Threshold Levels

EU Treaty principles apply to all procurement, but there are specific rules that apply to most contracts where the estimated value exceeds a specified threshold.

In determining the value of a contract, for the purposes of assessing whether it is above the EU threshold, all options and renewals must be taken into consideration. Where the Council has a single requirement for goods, services or works contracts and a number of contracts are to be entered into to satisfy the requirement or the requirement is to be repeated over a period, the figure to be considered is the total value of all the contracts.

Even when a Tender or Quotation process is not subject to the EU legislation, for example the value is below threshold, EU treaty based principles of non-discrimination, equal treatment, transparency, mutual recognition and proportionality apply and some degree of advertising, appropriate to the scale of the contract, is likely to be necessary to demonstrate transparency. This is also in line with the Executives objective of achieving value for money in all public procurement – not just those covered by the EU procurement directives.

## 6. TYPES OF PROCUREMENT PROCEDURE

The EU Procurement Directives provide for four main procurement procedures to be used by contracting authorities.

For straightforward procurements, for example of commodity supplies and services, the open or restricted procedures are used. For complex procurements, contracting authorities normally use the Competitive Dialogue procedure. This can be used where a contracting Council wishes to award a particularly complex contract and considers that the open or restricted procedure will not allow the award of that contract. In exceptional circumstances or where other procedures fail to produce a contract the Council may use the Negotiated Procedure.

### 6.1 Open Procedure

Under the Open Procedure, all interested suppliers who respond to an OJEU advertisement must be invited to tender. This procedure does not allow any form of pre-qualification. If the supplier meets the selection criteria, the Council must consider and evaluate the submitted tender.

### 6.2 Restricted Procedure

Under the Restricted Procedure, interested suppliers are invited to respond to an OJEU advertisement by submitting an “Expression of Interest” (a completed PQQ) in which they reply against defined selection criteria such as technical capability, financial standing, or experience of supplying similar projects. A shortlist of suppliers is then drawn up and invited to submit tenders (an ITT).

The submitted tenders are then evaluated against the award criteria, e.g. price, quality and time of delivery. The Council will then award the contract to the tenderer that best satisfies all the criteria.

### 6.3 Other Procedures

For complex procurements, the restricted procedure is usually too inflexible as it allows only limited discussion and dialogue with suppliers. The Council can also use **Competitive Dialogue Procedure**, unless there are exceptional circumstances that would justify the use of the **Negotiated Procedure**. Both of these procedures would be rarely utilised in Council Procurement Processes.

## 7. NEWRY, MOURNE AND DOWN DISTRICT COUNCIL PROCUREMENT PROCEDURES

### ***Dealing with Suppliers***

In all dealings with suppliers or potential suppliers, the Council must endeavour to satisfy the twelve guiding principles which govern the administration of public procurement (as stated previously) and treat suppliers responsibly as follows:

- be fair, efficient and courteous;
- achieve high professional standards in the award of contracts;
- publicise clear procurement contact points;
- make available as much information for suppliers to respond to the bidding process;
- notify the outcome of bids announced promptly (noting EU standards);
- provide feedback to winners and losers on request on the outcome of the bidding process;
- achieve high professional standards in the management of contracts; and
- provide prompt, courteous and efficient responses to suggestions, enquiries and complaints

### ***Best Value for Money***

Procurement by the Council of works, supplies and services shall be based on best value for money, i.e. the optimum combination of whole life cost and quality (or fitness for purpose) to meet the Council's requirements. Where appropriate, a full option appraisal shall be carried out before procurement decisions are taken.

To maintain competitiveness in the market and provide protection against accusation or the perception of collusion, the Council should avoid inviting the same suppliers repeatedly to bid for procurements.

When supplier categories are being used in the selection process the Council should ensure that such lists are regularly refreshed and provide an easily accessible and transparent process for suppliers who wish to be considered for inclusion on a list.

Competitive procurement involves more than one supplier participating in the procurement process. Conducting price reviews, obtaining quotations, inviting suppliers to bid for work or advertising work will bring about a competitive situation. There are often significant costs associated with procurement. It is therefore vital that the form of competition should be appropriate to the value and complexity of the goods or services to be acquired.

Contracts/ orders should not be artificially split nor should values be under estimated in order to allow an award to be made under procedures appropriate to a lower threshold.

Aggregation, i.e. contracts awarded for similar goods or services will be considered as a single contract unless there are persuasive reasons that confirm otherwise. Care needs to be taken when budget lines are split across more than one Budget Holder.

## 8. PROCUREMENT/PURCHASING THRESHOLD VALUES

The Council's procedures for the normal supply of works, goods and services are noted in the table below:

| Value *   | Type of Procurement Processes   | Template Required  |
|---|---|--|
| Up to £250  | Referred to as a ' <b>low value order</b> ' to assist with a speedy purchase. Raise Purchase Order Requisition on e-Hub which can be approved by the requisitioner.   | Completed solely by Council Officer<br><a href="#">Purchase Order Requisition form</a>   |
| Up to £5,000  | Council Officer must demonstrate ' <b>value for money</b> ' has been achieved. Must seek minimum of 3 documented prices / quotations, Documentation must be retained by Council Officer.  | Completed by Council Officer.<br>Purchases Requisition then sent to procurement.<br><a href="#">Purchase Order Requisition form</a>                                    |
| £5,000 to £30,000<br>–Construction Works including professional services      | ' <b>Request for Quotation</b> ' (RFQ) completed by Council Officer. This is then sent to nominated supplier categories on e-Hub by procurement. Council Officer can also request a restricted list (nominated suppliers). Minimum of 4 suppliers invited to participate. | RFQ completed by the Council Officer. Procurement upload details to e-Hub<br><a href="#">RFQ works template</a><br><a href="#">RFQ professional services template</a>  |
| £5,000 to £30,000<br>– supplies and services                                  | ' <b>Request for Quotation</b> ' (RFQ) completed by Council Officer. This is then sent to nominated supplier categories on e-Hub by procurement. Council Officer can also request a restricted list (nominated suppliers). Minimum of 4 invited to participate.           | RFQ completed by the Council Officer. Procurement upload details to e-Hub.<br><a href="#">RFQ template</a>   |
| £30,000 to EU Thresholds – Construction Works including professional services | ' <b>Invitation to Tender</b> ' (ITT) to be completed by Council Officer. The tender is then advertised on e-Hub by procurement.  | ITT completed by the Council Officer. Procurement upload details to e-Hub.<br><a href="#">ITT works template</a><br><a href="#">ITT Professional Services template</a> |
| £30,000 to EU Thresholds – supplies services                                  | ' <b>Invitation to Tender</b> ' (ITT) to be completed by Council Officer. The tender is then advertised on e-Hub by procurement.  | ITT completed by the Council Officer. Procurement upload details to e-Hub. <a href="#">ITT Template</a>  |
| Above EU Threshold Level  | EU Directives now apply. Contact Procurement team to initiate process. Advertise on the ' <b>Official Journal of the European Union</b> ' (OJEU).   | Council Officer to contact procurement for guidance before starting the procurement process.   |
| Single Tender Action / Direct Award Contract                                  | STA/DAC is the process where a contract is awarded to a supplier without competition. Must have justification and be approved by a Director or Chief Executive.   | Completed by Council Officer, approved by Senior Management and forwarded to procurement to raised Purchase Order<br><a href="#">STA/DAC template form</a>             |
| Frameworks  | A procurement framework is an agreement put in place with a provider or range of providers that enables buyers to place orders for services without running lengthy full tendering exercises. Frameworks are based on large volume buying.                                | Contact procurement team if you wish to purchase through a framework.  |
| Grant Funded Schemes  | In certain cases, the Council will have to follow the procurement guidelines of the body who provides funding. Council Officer must ensure that they adhere to the funders advertising rules.   | As direct by the funding provider.   |

\*The estimated value should **exclude** value added tax (VAT) but **include** all foreseeable expenses relating to the contract. In general, the estimated value is based on the proposed life of the contract. For goods/ services of the same type that are purchased frequently the estimated value should be over 12 months or over the contract period if that is longer. Where there is uncertainty regarding the value of the contract/ order, the rules that apply to the highest estimate should be applied.

### **8.1 Low Value Orders (up to £250)**

Low Value Orders are in place to assist Council Operational Staff with the opportunity to carry out a speedy purchase. For example, so a Joiner can carry out repairs to a piece of equipment which may be a health and safety hazard. Only a limited amount of Council Officers will have authority to place Low Value Orders. Authority will be given by Assistant Directors on which of their staff can request low value orders. The Assistant Director of Finance will then decide which staff will be allowed low value order permissions on e-Hub.

The Council Officer will raise Purchase Order Requisition on e-Hub which will be immediately self-approved and the Purchase Order will be sent to the supplier. When the supplier forwards the invoice to the accounts payable department the invoice must be approved by the requisitioner and also their line manager to ensure there is segregation of duties at payment stage.

### **8.2 Value for Money (up to £5,000)**

The Council Officer must ensure that all purchases up to £5,000 are subject to value for money considerations.

Council Officers should ensure that:

- (i) the purchase is not covered by a suitable framework agreement (call-off contract);
- (ii) the purchase is a one-off requirement;
- (iii) the total aggregated spend is up to £5,000; and
- (iv) the requirement is clearly specified.

When existing arrangements at (i) are not available, then Council Officers should carry out a price check with **at least three contractors/suppliers** to ensure value for money has been achieved. Price checks (can include internet price comparisons) should be documented and retained on file for audit purposes.

When the Value for Money exercise is completed, the Council Officer will complete a purchase requisition which will be approved by their line manager. When forwarding purchase requisition, the Council Officer must note that the Value for Money exercise has been completed. Procurement will then issue a Purchase Order to the Supplier.

### **8.3 Request for Quotation**

'Request for Quotation' (RFQ) completed by Council Officer. The Council Officer will complete the template RFQ pack (separate packs for works and supplies – see section 8). The Council Officer should ensure the specification is sufficiently detailed to ensure the tenders received are of a high quality.

Once the packs have been completed, the Council Officer then sends the packs to the procurement team who will review the packs. Procurement will then send the RFQ to the nominated supplier categories on e-Hub. The Council Officer can also request a restricted list (nominated suppliers) if they feel the procurement process they are facilitating would benefit from a nominated supplier list (however other companies will still be able to tender). A minimum of 4 suppliers should be invited to participate within a nominated supplier list. The winning supplier will be based on the Most Economically Advantageous Tender (MEAT).

### **8.4 Invitation to Quote**

'Invitation to Tender' (ITT) to be completed by Council Officer. The Council Officer will complete the template ITT pack (separate packs for works and supplies – see section 8). The Council Officer should ensure the specification is sufficiently detailed to ensure the tenders received are of a high quality.

Once the packs have been completed, the Council Officer then sends the packs to the procurement team who will review the packs. Procurement will then send the ITT to the nominated supplier categories on e-Hub.

### **8.5 OJEU**

EU Directives now apply. The Council Officer should contact the procurement team to initiate process. When goods or services are over the EU threshold values the following principles must be used as a guide:

1. Commence with completing a Business Case identifying what is the need to purchase the good or service;
2. Specify it clearly, bearing in mind that it cannot be extended (though it can be narrowed);
3. Make reference to recognised standards, where relevant, making provisions for equivalents to be offered where appropriate;
4. Leave room for innovation, to the greatest extent possible, describe the requirement in terms of what is to be achieved rather than precisely how the outcome should be constituted;
5. Include economic, social and environmental policy objectives where appropriate;
6. Avoid specifying any bias directly or indirectly in favour of UK suppliers;
7. Set out how bids will be evaluated;
8. Keep the costs of the bidding process to the minimum necessary for effective competition;

9. Design a competition which will work for the widest range of sizes and kinds of firms, without discrimination;
10. Publish procurement and project timetables and stick to them;

### 8.6 Single Tender Action / Direct Award Contract (STA/DAC)

STA/DAC is the process where a contract is awarded to an economic operator (i.e. supplier, contractor) without competition. Purchases up to £5,000 awarded without competition are not considered to be STAs/DACs if they are dealt with in accordance with procurement Guidance Note [PGN 04/12: Procurement Control Limits](#).

In light of their exceptional nature, all STAs/DACs should be subject to Chief Executive or Director approval. For an STA/DAC to receive approval the [STA/DAC template form](#) has to be completed. **Approvals must be sought and signed prior to the expenditure being committed.** STAs/DACs are also scrutinised on a quarterly basis via the Audit Committee. Regulation 3214 of the PCR 2015 permits the use of the negotiated procedure without prior publication of an OJEU notice (ie a DAC) in certain circumstances.

The circumstances include:

- where the works, supplies or services can be supplied only by a particular supplier for any of these reasons:
  - the aim of the procurement is the creation or acquisition of a unique work of art/ artistic performance;
  - competition is absent for technical reasons<sup>15</sup> (but only where no reasonable alternative or substitute exists);
  - due to the protection of exclusive rights (including intellectual property rights);
- where for reasons of extreme urgency, brought about by unforeseeable events, the time limits for certain procurement procedures cannot be met;
- in the case of a supplies contract where the products involved are manufactured purely for the purpose of research, experimentation, study or development;
- in the case of supplies contracts where additional deliveries are required from the original supplier which are intended as a partial replacement or extension of existing supplies and a change of supplier would mean the supplies acquired would have different technical characteristics and result in incompatibility or
- disproportionate technical difficulties in operation and maintenance. (The DAC cannot exceed three years in duration);
- for supplies quoted and purchased on a commodity market;
- for the purchase of supplies or services on particularly advantageous terms, from either a supplier which is winding up its business activities or the liquidator in an insolvency procedure or an arrangement with creditors or similar procedure;
- for service contracts following a design contest; and

- for the repetition of works/services (provided that those works/services are in conformity with a basic project for which the original contract was awarded and that the basic project indicates the extent of possible additional services and the total estimated cost of the subsequent works/services). Only to be used during the 3 years after the original contract was concluded.
- It should be noted that although it is permissible under the Regulations to award a DAC in the circumstances listed above, a competitive procedure should be the standard method for conducting a procurement. This will help drive efficiencies, fight corruption and obtain fair and reasonable pricing.

An STA/DAC is not justified where better planning would have negated the need for STA or where the award of a limited value consultancy or other contract could lead to further work and possibly give the chosen firm a major advantage at a subsequent stage of tendering.

Further information is published in [PGN 02/10: Award of Contracts without a Competition](#).

### **8.7 Frameworks**

Framework Agreements are put in place with one or more suppliers of the same product or service. The Framework Agreement sets out the general terms and conditions under which specific purchases can be made as and when they are required. They are mainly used when the quantity of supplies, works or services is undetermined.

The competition for awarding a place on a Framework is usually very similar to that for winning an ordinary contract. There may well be a formal pre-qualification process, and/or a tendering stage which suppliers must complete successfully before they can be party to the agreement. Framework Agreements normally last a maximum of four years.

A supplier who has succeeded in being awarded a place on a Framework Agreement, can receive a call-off order directly, or (since a Framework Agreement does not mean an automatic agreement to purchase) may be asked to take part in a mini-competition with other suppliers on the Framework. The formal contract is formed when the customer places a 'call-off' order against the Framework requesting specific delivery of supplies or service

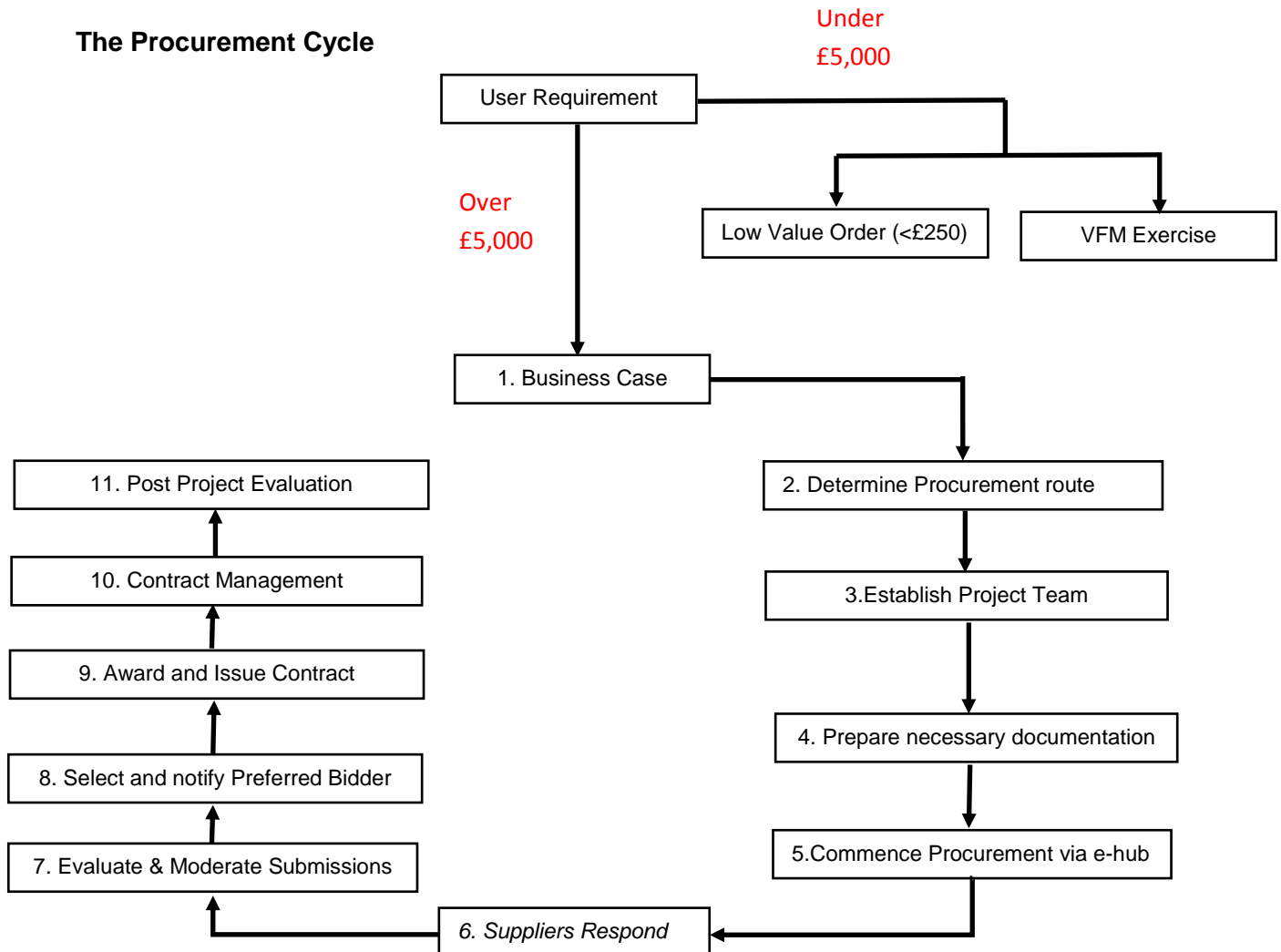
### **8.8 Grant Funded Schemes**

In a number of cases the Council will have to follow the procurement guidelines of the body who is providing the funding. For example, certain projects may have to follow CPD procurement rules (i.e. random selections). For further details see [PGN 01/07](#): Grant and Procurements is of particular relevance to the Councils activities.



## 9. THE NEWRY, MOURNE AND DOWN DISTRICT COUNCIL PROCUREMENT CYCLE

### The Procurement Cycle



### 9.1 Business Case

This is the initial stage of any procurement process where the need is identified by means of a business case. The extent of the documentation should be at a level of detail that is appropriate to the importance, cost, size, and complexity of the need for the goods or services. **(include the Business Case templates dependent on value when finalised)**

### 9.2 Determine Procurement Route

At this stage the Council Officer will have to decide on the both the procurement procedure (section 5.0 - open / restricted / competitive dialogue/ negotiated) and the procurement process (section 7.0 – LVO / VFM / RFQ/ ITT / OJEU / STA / Frameworks / Grant Funded). This will inform the Council Officer which method of procurement is appropriate based on the information supplied within the Business Case. At this stage the officer will also consider if advertising is necessary and liaise with the Corporate Marketing Team as necessary.

### **9.3 Establish Project Team**

At this stage the lead Council Officer will also consider who should be present in the project team. The Evaluation Panel will consist of individuals with the necessary expertise and experience. The size of the panel should be relevant to the size of the procurement and members need to understand the process and act in a consistent manner with regard to the specification, selection and award. Actual or perceived conflicts of interest must be carefully considered when determining panel members.

### **9.4 Prepare the Necessary Documentation**

Based on the procurement route which was appropriate from step 2, the template forms are available at section 7.0.

Award criteria must be based on either lowest price or MEAT, again reflecting the key principles of transparency, non-discrimination and equal treatment, however as public money is being used the price weighting must play a fairly significant part. Other award criteria can include non-technical questions that are open – however it may be better to be specific in questions and provide some hints/tips on the type of information you are after.

Once the Council Officer completes the relevant documents the procurement team performs quality checks of the documentation to ensure the documentation are compliant with the rules and regulations and that a clear requirement has been identified and are appropriately conveyed in the documentation.

### **9.5 Commence Procurement via e-Hub**

Once the necessary documentation has been completed by the Council Officer, the Officer will then pass the documentation to the Procurement team electronically who will upload the documents onto e-Hub when they have been finalised and approved by the Council Officer and their superior if required.

All suppliers are given the same information in regard to closing times and dates via e-Hub and these must be adhered to rigidly, in addition all suppliers will be provided with a set of NMDDC Terms and Conditions of contract at this stage. Any late or incomplete tenders should not be considered unless procurement have been advised of technical difficulties in advance of the closing date.

### **9.6 Suppliers Respond**

It is good practice to develop a summary sheet for the opening of tenders in order to record information, such as, who was present, when it happened, etc. and at least three people should be on the panel.

### **9.7 Evaluate and Moderate Submissions**

When staff are given details of Quotations/Tenders for evaluation they must act in a responsible, accountable, open and transparent manner while also maintaining strict confidentiality of all aspects. The following guidelines must be observed.

- There must be no direct contact with any supplier unless through the Procurement Department, until the award has been made.
- All adjudication members and any support staff attending, must sign the Conflict of Interests declaration - [Conflict of Interest Declaration \(for all procurement exercises\)](#)
- Adjudication team members should not change through the process.

During the evaluation process, it is important the panel use appropriate appraisal techniques to:

- secure best value for money, using relevant and consistent criteria for evaluating the key factors (cost, size, sustainability, design, etc.);
- assess suppliers' economic and financial standing to gain confidence of their capacity to carry out what the purchaser requires and deliver best value for money;
- establish the propriety of candidate suppliers – taking account of the requirement to exclude those convicted of e.g. fraud, theft, fraudulent trading or cheating HMRC.

Other issues to be taken into account include:

- **Cost:** the key factor is whole life cost, not lowest purchase price. Whole life cost takes into account the cost over time, including capital, maintenance, management, operating and disposal costs. For complex procurements, whole-life cost can be very different from initial price.
- **Quality:** paying more for higher quality may be justified if the whole life cost is better, eg taking into account maintenance costs, useful life and residual value. The purchaser should determine whether increased benefits justify higher costs.

Further guidance containing best practice principles is available at – [PGN 04/16 Selection & Tender Evaluation Procedures](#)

### Adjudication

The normal accepted process laid down for adjudicating on tenders requires ideally a minimum of 3 suitable (suitable in so far as having the relevant knowledge and technical capability to undertake the adjudication) staff each undertaking their assessments separately but based solely on the clearly defined criteria(s) pre-disclosed in the tender to suppliers as part of the tender process to date. See [Adjudication Assessment template](#) and also the [Sample Tender Scoring Summary Template](#).

There are 3 stages, although the first stage can be done in advance by the Project Officer and then just reviewed by the team:

1. Formal compliance check which would include insurance, financial, word count, professional standing etc. Any failure - the adjudication for that supplier stops here.

2. Any selection criteria requested should be assessed if set out clearly in the tender documentation. Any failure - the adjudication for that supplier stops here.
3. Adjudication of the scored criteria of each tenderer that has progressed to this stage.

When an adjudication stops and a tenderer is disqualified, the full reasons for disqualification will have to be advised to them. We would strongly advise consulting with the Procurement Department before disqualifying any tenderer.

### Moderation

The individual panel member can then come together for the moderation process, agreeing and finalising all tenderers scores and comments for release to the tenderers to justify identifying the preferred bidder/tenderer.

It is recommended that a member of the Procurement team is present to act as a moderator during this stage to help ensure the process is fully compliant, the scoring is justified and to help identify where future similar tenders can be improved.

Staff evaluating the Quotations/Tenders, if they are in any doubt as to whether information supplied meets that which is requested by the Council, must consult with the Procurement Department prior to making a decision.

The Procurement Department will advise whether an omission from a Tender is an acceptable omission and therefore does not invalidate the Tender or whether the omission is so grave as to invalidate the Tender, or in some circumstances where further clarification can or should be sought.

Where there is reasonable information to evaluate the Tender then staff as far as possible should try to evaluate the Tender from the information that has been supplied by the Tenderer. In some circumstances it maybe that the Tenderer needs to be approached for matters of clarification or indeed it may be desirable to inspect the goods that the Tenderer is offering. This should only be done through the Procurement Department. Details and transcripts of all such contact with a tenderer must be recorded and copies returned to Procurement Department.

### Report

A [tender report](#) needs to be prepared, which will contain an outline of the tender requirement and process to date, the moderated scores and comments - these will also be released to the suppliers and the name and reason why the preferred bidder has been chosen.

Note: this stage has only identified the preferred bidder, the actual award can only take place at a later stage following standstills or when other required steps have been fully addressed and a purchase order or other contract award process has been fulfilled.

## **9.8 Select and Notify Preferred Bidder**

Once the evaluation has concluded and the panel have selected a preferred bidder, both the successful and unsuccessful suppliers will be notified via feedback/standstill letters based on comments provided by the panel in the report at 9.7. See [link to sample letters](#).

For contracts over the **EU Thresholds a minimum standstill period** (Alcatel) refers to the time between a buyer notifying tenderers of the decision to award a contract and contract

signature. This is to allow tenderers time to review the award decision and provides an opportunity for unsuccessful suppliers, to decide whether to seek further information concerning the award decision.

In a normal debriefing situation requests must be fulfilled within 15 days and normally in writing. It is a requirement under the UK Procurement Regulations to provide feedback even when not sought by a supplier.

For Standstill Periods below the EU threshold levels, the Council Officer / Procurement team can use their discretion as to what is appropriate in each separate procurement exercise.

### **9.9 Award and Issue Contract**

The procurement team or officer will identify who has won the competition and advise them that they are the winning supplier. At this stage the Council Officer will advise the winning supplier to sign an acceptance form which will be linked to the Council's Terms and Conditions. Upon receipt of the acceptance form, the Council Officer must arrange for the award to be confirmed via a purchase order.

### **9.10 Contract Management**

Contract management is the phase of the procurement cycle in which the successful tenderer delivers the required supplies, works and services in accordance with the Council's specification. The approach to managing the relationship is critically important to ensuring successful contract delivery and VfM. When things go wrong, the failure can be expensive in human, financial and reputational terms.

Good management of this operational phase of the procurement is therefore critical. It ensures that both parties fully meet their respective obligations as efficiently and effectively as possible, in order to meet the business and operational objectives required from the contract.

To facilitate contract management, the Procurement Team maintains a central Contract Register. The register records detail of current contracts such as name of responsible Council Officer; Supplier name and contact; agreed contract prices; stating whether maintenance is included; contract start and end dates; extensions available and extensions confirmed with supplier see [PGN 01/12: Contract Management Principles and Procedures](#).

### **9.11 Post Project Evaluations**

A Post Project Evaluation (PPE) review should also be carried out by the lead Council Officer to ensure that lessons learned are fed back into the decision making process. The extent of post project evaluation will depend on the nature and contract value of the project. Issues to be considered here include whether the goods/services were delivered:

- on time;
- within budget; and
- to the required standard.

See Council template for Completing a [Post Project Evaluation](#).

## **10. Policy Review Date**

The policy will be reviewed in line with the Council's agreed policy review cycle i.e. every 4 years (as per Council's Equality Scheme commitment 4.31), or sooner, to ensure it remains reflective of legislative developments."

Staff wishing to receive clarification on this policy and/or suggest improvements should contact the Head of Procurement and Logistics.

## **11. Equality Screening**

Having screened the Procurement Policy and Procedures, the decision is that it should not be subject to an Equality Impact Assessment (EQIA) with no mitigating measures required. A copy of the equality screening is available from the Head of Corporate Policy.

*Version 1.0*

## APPENDIX 1

### Newry Mourne and Down District Council Delegated Limits

*(Approved by Senior Management Team in May 2017)*

| <b>Grade Role</b>                     | <b>Approval level</b> |
|---------------------------------------|-----------------------|
| Chief Executive                       | £30,000 *             |
| Directors                             | £30,000 *             |
| Assistant Director of Finance         | £30,000               |
| Assistant Directors                   | £15,000               |
| Heads of Service                      | £10,000               |
| Manager / Officers                    | £5,000                |
| Supervisors                           | £500                  |
| Identified Staff for Low Value Orders | £250                  |

**The approval level refers to both the final approver for Purchase Order Requisitions and all invoices.**

**The Chief Executive and Directors can approve Purchase Orders / Invoices over £30k as long as the supplies / services / works provided can't be linked to a contract / framework or service level agreement. This should be attached the requisition prior to going to purchasing.**

**For all other spend Council approval required.**

