



# MELTON BOROUGH COUNCIL

# CONTRACT PROCEDURE RULES

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Where the Council is procuring through the Welland Procurement Unit, there is no further requirement to seek alternative quotes and tenders.

The Contract Procedure Rules for the lead authority adopted by the Welland Executive Panel (joint committee) for a procurement will be applied by the Welland Procurement Unit.

## ***Glossary of Defined Terms***

<b>Approved Contract</b>	A Contract that has been created in accordance with the Contract Procedure Rules for Call Off or use by the Council. A list of contracts can be found on the Contracts Database.
<b>Approved Standard Terms</b>	The terms and conditions for use in contracts as agreed by an appropriate legal officer. These terms may need to be supplemented for specific contracts.
<b>Authorised Officer</b>	The Officer referred to in these Contract Procedure Rules as having authority to award a contract. (see 3.10)
<b>Buyer Profile</b>	A database, accessible by potential suppliers through the internet, listing the Council's proposed, current and concluded contracts with a value of over £50,000.
<b>Call Off</b>	A specific requirement which can be satisfied under the terms of a Framework Agreement, and which invokes the terms of that Framework Agreement to form a contract
<b>Central Purchasing Body</b>	<ul style="list-style-type: none"><li>(a) A Contracting Authority which—</li><li>(b) acquires goods or services intended for one or more contracting authorities;</li><li>(c) awards public contracts intended for one or more contracting authorities; or</li><li>(d) concludes framework agreements for work, works, goods or services intended for one or more contracting authorities.</li></ul>
<b>Code of Conduct</b>	The code regulating conduct of Officers contained within the Council's Constitution.
<b>Contracting Authority</b>	The public sector or other entity which lets and manages a contract for its own use and / or for the use of other entities.
<b>Contracts Database</b>	The record of contracts held by the Council or by the Welland Procurement Unit on its behalf.
<b>Contract Procedure Rules</b>	These Rules which are approved by Council and which govern all officers and agents or consultants working on their behalf in the conduct of procurement activity.
<b>Council's Procurement Strategy</b>	Defines the overall approach to procurement related activity for the Council.
<b>Engagement of Consultants</b>	Any use of professional help in supporting deliverables.
<b>EU Procurement Directive</b>	Regulations which are given the force of law in the UK through The Public Contracts Regulations 2006 As Amended and any successor regulations which specify in detail the procedures by which public bodies shall undertake their procurements.

<b>EU Threshold</b>	The threshold value at which EU Procurement Directive must be applied if expected to be exceeded by the <i>Total Value</i> ; unless a legal exemption applies.  The thresholds are to be found in Appendix D.
<b>Financial Health Check</b>	A financial risk assessment of the finances of company, parent or group of organisations in order to establish their liquidity, profitability, stability and capability to support a contract of the value required.
<b>Financial Procedure Rules</b>	The Financial Procedure Rules as approved by the full Council.
<b>Framework Agreement</b>	An agreement where the overall terms and conditions are agreed, but a contract is only formed in accordance with those terms and conditions when a Call Off of a specific requirement is made.
<b>Goods</b>	Goods which are covered by the EU Procurement Directive if they meet the relevant value threshold
<b>Industry Standard Terms</b>	Specific terms or conditions which are relevant only to the goods or service being purchased, or the industry sector or market within which the contract will operate.
<b>Invitation to Tender</b>	Invitation to tender documents in the form required by Contract Procedure Rules.
<b>Management Team</b>	Consists of the Chief Executive, Strategic Directors, and Heads of Service, which meet together as a decision making body.
<b>The Officer</b>	The Officer responsible for undertaking a purchase (see section (1.4))
<b>OJEU Notice</b>	Notice (advertisement) posted in the Official Journal of the European Union. Includes a Prior Information Notice, a Contract Notice or an Award Notice.
<b>Parent Company Guarantee</b>	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.
<b>Performance Bond</b>	An insurance policy: if the contractor 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 contract value). A Bond is intended to protect the Council against a level of cost arising from the contractor's failure.
<b>Pre-determined objective selection criteria</b>	The factors that will be assessed as part of the selection for tender short listing or final evaluation. These are normally backed up by a scoring mechanism and guidelines to enable an objective assessment.
<b>Purchasing Cards</b>	A Purchasing Card is designed for the purchase of low value goods and services. Procedures for the use of Purchasing

Cards will be published in the *Financial Procedure Rules*.

**Services** Services which are described in Schedule 3 of the *EU Procurement Directive* as being either Part A, to which the full Directive applies if they meet the relevant value threshold; or Schedule B, to which much lighter requirements apply. (Please see Rule 2.6)

**Social Value Act** The Public Service (Social Value) Act 2012 requires those tendering any Service (Part A or Part B) over the OJEU threshold to consider the economic, social and environmental well-being of the relevant area [normally the Borough of Melton] and to apply this to the procurement process. This requirement is not applicable to Services under the OJEU limit, Goods or Works tenders.

**Tenderers** Organisations who have been invited to submit a tender to the authority.

**Total Value** The whole of the value or estimated value (in money or equivalent value) for a group of similar commodities or services :

- whether or not it comprises several lots or stages across the Council as a whole;
- whether or not it is to be paid or received by the Council.

The *Total Value* shall be calculated as follows:

- (a) where the contract is for a fixed period, by taking the total price to be paid or which might be paid during the whole of the period;
- (b) where the purchase involves recurrent transactions for the same type of item, by aggregating the value of those transactions in the coming 12 months;
- (c) where the contract is for a duration which cannot be determined, by multiplying the monthly payment by 48;
- (d) for feasibility studies: the value of the scheme or contracts which may be awarded as a result;
- (e) for nominated suppliers and sub-contractors: the *Total Value* shall be the value of that part of the main contract to be fulfilled by the nominated supplier or sub-contractor; or
- (f) where an in house service provider is involved, by taking into account redundancy and similar/associated costs.

**Welland Procurement Unit** The Welland Procurement Unit (WPU) is the Welland Partnership procurement service shared by this Council and by other Councils. The WPU issues guidance and offers assistance on procurement matters to all participating Councils. (See 1.4)

**Works Contracts** Contracts let by public authorities for civil engineering and building works and works concession contracts.

**Written Quotation** Must be in letter, fax or email and must be addressed personally, contain pricing information and delivery details. Printouts of catalogues are not written quotations.

# **Contract Procedure Rules**

## **Contents**

### **Rule 1 – Introduction and Purpose**

1. Primary Objectives
2. Scope of Contract Procedure Rules
3. Exemptions and Exceptions
4. Officer Responsibilities
5. Consultants
6. Partnership Arrangements

### **Rule 2 – Procedure by Value of Requirement**

1. General Principles
2. Low Value Transactions
3. Intermediate Value Transactions
4. Call off from Existing Approved Contracts
5. High Value Transactions
6. Requirements over EU Threshold

### **Rule 3 – Common Tendering Principles**

1. Standing Lists
2. Tender Preparation
3. Receipt of Tenders
4. Tender Opening
5. Electronic Auctions
6. Dynamic Purchasing Systems
7. Errors in Tenders
8. Tender Evaluation
9. Post Tender Clarification
10. Award of Contracts
11. Notification to Unsuccessful Tenderers

### **Rule 4 - Contract and other Formalities**

1. Contract Documents
2. Statistical Returns
3. Contract Formalities
4. Bonds and Parent Company Guarantees
5. Prevention of Corruption
6. Declaration of Interests

### **Rule 5 – Contract Management**

1. Managing Contracts

### **Appendices**

Appendix A	General Exceptions to Contract Procedure Rules
Appendix B	Exemption Request Form
Appendix C	Summary of Process and Responsibilities
Appendix D	Variable Data

## **RULE 1 – INTRODUCTION AND PURPOSE**

### **1.1 Primary Objectives**

The *Contract Procedure Rules* set out the regulations which must be followed by the Council when it procures *Goods, Services and Works*.

The Rules have four primary objectives:

- (a) To ensure that the Council obtains value for money and fulfils the duty of achieving best value as defined in Section 3 of the Local Government Act 2003.
- (b) To ensure that the Council complies with English law and European law in force in England that governs the procurement of *Goods, Services and Works*.
- (c) To establish tendering procedures which when followed should protect members and *Officers* of the Council from any allegation of acting unfairly or unlawfully which may be made in connection with any procurement by the Council of *Goods, Services, or Works*.
- (e) To ensure that any risks associated with entering into the contract are assessed as part of the procurement process

A detailed best practice guide supplements these *Contract Procedure Rules* (see the Melton Q drive, Procurement).

### **1.2 Scope of Contract Procedure Rules**

1.2.1. These Rules apply to all procurement by the Council unless any such procurement is expressly excepted under these Rules, or subject to an exemption.

1.2.2. The Rules apply to all procurement activity including:

- (a) *Defined Contracts* that are for a defined requirement for a firm price.
- (b) *Framework Agreements* where the overall terms are agreed but the contract will only be formed when the specific requirement is called off.
- (c) *Works Contracts* where contracts are let by public authorities for civil engineering and building works and works concession contracts.
- (d) *The engagement of Consultants*

1.2.3. If there is any change to English law or European law in force in England which affects these rules then that change must be observed until these rules can be revised. If these Rules conflict in any way with English law or European law in force in England then that legislation or case law takes precedence and the Monitoring *Officer's* advice should be sought.

1.2.4. The *Officers* authorised to award contracts on behalf of the Council will have delegated powers issued through the Council's Constitution.

### 1.3 Exemptions and Exceptions

1.3.1. Unless a Contract falls within the list of general exceptions set out in Appendix A it can only be exempted from these Rules ('an Exemption') in accordance with these Rules.

1.3.2. The Council may consider a request for an exemption to these *Contract Procedure Rules* in exceptional circumstances. The Council has no power to vary or exempt the requirements of EU legislation or English law.

1.3.3. An 'Exemption Request Form' can be found at Appendix B and is also available electronically for digital signature. When an Exemption is sought this must be submitted to the Solicitor to the Council and Head of Central Services.

1.3.4. Finance and Legal Services will ensure that a decision on a request for an Exemption is made within 5 working days of receipt of the relevant Form.

1.3.5. Requests for Exemptions will either be approved or rejected by the Solicitor to the Council or referred to the *Management Team* for determination.

**1.3.6. If the Exemption is approved, the application form will be endorsed and returned to the relevant department with a copy retained by Legal Services.**

### 1.4 Officer Responsibilities

1.4.1. The *Officer* responsible for purchasing ("the *Officer*") must comply with these Rules, the *Financial Procedure Rules* and all UK and European Legislation in force in England.

1.4.2. The *Officer* must also ensure that agents acting on their behalf also comply with this requirement.

1.4.3. The *Officer* responsible for the contract must comply with the Council *Code of Conduct* and must not invite or accept any gift or reward in respect of the award or performance of any contract.

1.4.4. The *Welland Procurement Unit* (WPU) is the procurement service shared by this Council and other Councils admitted by the Welland Partnership Joint Committee. The WPU issues guidance and offers assistance on procurement matters to all the participating Councils.



- 1.4.5 The *Officer* must have regard to current guidance provided by the *Welland Procurement Unit* and the principles of the *Council's Procurement Strategy*.
- 1.4.6. The *Officer* must establish if an existing *Approved Contract* exists before seeking to let another contract. This contract must be used unless there is an overriding reason why not, that must be approved by the *Welland Procurement Unit*.
- 1.4.7 Where the Council is procuring through the *Welland Procurement Unit*, there is no further requirement to seek alternative quotes and tenders. The *Contract Procedure Rules* for the lead authority adopted by the Welland Executive Panel / Joint Committee for a procurement will be applied by the *Welland Procurement Unit*.
- 1.4.8 The *Officer* must consult with the *Welland Procurement Unit* prior to commencing any tendering activity where the contract value may be greater than the *EU Threshold*.
- 1.4.9 The *Welland Procurement Unit* must ensure that when any employee may be affected by any transfer arrangement, the relevant issues are considered, including Transfer of Undertaking Protection of Employment (TUPE), and that appropriate Legal/HR advice is obtained before proceeding with inviting tenders or quotations.
- 1.4.10 If the Head of the *Welland Procurement Unit* is not available to provide advice for any reason, in respect of 1.4, then this should be referred to the Head of Central Services and Solicitor to the Council.

## **1.5 Consultants**

- 1.5.1 An *Authorised Officer* may only appoint external consultants or advisors providing professional or consulting services if such services are not available within the Council or if Council *Officers* providing them do not have the resources to meet the needs of the service. Where such services are available in-house, the *Authorised Officer* must consult with a Strategic Director or the Head of Service before taking any decision to make an external appointment.
- 1.5.2 The appointment of external consultants and advisors shall be undertaken in accordance with the relevant sections of the Welland Procurement Guidance.
- 1.5.3 External consultants and technical officers engaged to supervise contracts must follow these Rules as applicable and their contracts for services must state this requirement.
- 1.5.4 All contracts for external consultants and advisors shall explicitly require that the consultants or advisors provide without delay any or all documents and records maintained by them relating to the services provided on request of the *Authorised Officer*, and lodge all such documents and records with the appropriate *Officer* at the end of the contract.

- 1.5.5 The *Authorised Officer* shall ensure that any consultant working for the Council has appropriate indemnity insurance.

## **1.6 Partnership arrangements**

- 1.6.1 These Rules apply to any proposal for the Council to become involved in a joint venture or partnership, including the monitoring of any such arrangement. A joint venture or partnership:
- Includes any formal arrangement involving one or more organisations in addition to the Council through which either a specific project or services within any of the functions of the Council are to be provided, and
  - Provides a role for the Council or any of its members or *Officers* in whatever structure is used to deliver the project or services involved (such structures may include, but are not limited to, companies, trusts and management committees).

### *Joint arrangements*

- 1.6.2 Before any consideration is given to the Council entering into a joint venture with the private sector or a strategic service delivery partnership with any external organisation, the Head of Service concerned must submit information detailing the proposed joint venture or partnership to the appropriate authorising *Officer* as determined on a case by case basis. They will give consideration to the proposed joint venture in accordance with these Rules and will ensure that an appropriate Steering Group is convened.
- 1.6.3 Procurement processes for strategic partnerships must include, where relevant:
- The issue of an information memorandum to prospective bidders setting out the background to the project, the Council's objectives and an outline of the procurement process and timetable, with roles and responsibilities made clear.
  - An invitation to bidders to demonstrate their track record in achieving value for money through effective use of their supply chain, including the use of small firms; this should continue to be examined as part of contract management.
  - The inclusion in invitations to tender (or negotiate) for partnerships a requirement on bidders to submit optional, priced proposals for the delivery of specified community benefits which are relevant to the contract and add value to the community strategy.
  - Clear indication of roles and responsibilities, including nomination of the lead authority where appropriate.

## **RULE 2 – PROCEDURE BY VALUE OF REQUIREMENT**

### **2.1 General Principles**

- 2.1.1. Obtaining value for money is an underlying principle, although the complexity of the procurement procedures that must be followed will vary according to the value and risk.

2.1.2. The *Total Value* of the procurement is defined as the total anticipated contract/purchase value and this will be determined by either:

- (a) The *Total Value* of the *Goods, Services or Works* if a one-off purchase;
- (b) The total contract value over the full duration of the contract including any options to extend (not just the annual value). When the duration of the contract cannot by its nature be determined, the value will be the monthly estimated cost x 48;
- (c) For *Framework Agreements* with no guaranteed commitment the contract value will be the estimated value of *Call Offs* over the full duration of the contract.

2.1.3. A summary of the process and responsibilities can be found at Appendix C.

2.1.4. The Head of Central Services must be consulted in advance where the criterion weighting given to price is less than 50%.

## **2.2 Low Value Transactions (up to £5,000)**

2.2.1. Defined as transactions valued at or below £5,000 that cannot be obtained via an existing *Approved Contract*.

2.2.2. Whilst obtaining value for money remains the primary objective, multiple quotations need not be obtained provided compliance with this objective can be demonstrated.

2.2.3. However, a *Written Quotation* must be obtained for requirements under £5,000 before any order is processed and this must specify:

- (a) The *Goods, Services or Works* to be supplied;
- (b) Where and when they are to be supplied;
- (c) The value of the transaction;
- (d) The Terms and Conditions including Payment Terms.

2.2.4. In the case of Works the use of pre agreed hourly/day rates is acceptable.

## **2.3 Intermediate Value Transactions below Formal Tender Threshold (£5,000 to £50,000)**

2.3.1. Defined as transactions for *Goods or Services* valued at over £5,000 but below £50,000 where the transactions cannot be carried out using an existing *Approved Contract*.

2.3.2. The criteria for selecting the most advantageous quotation must be established before the *Written Quotations* are invited.

- 2.3.3. At least 3 comparable *Written Quotations* must be sought. Where practical, at least one of those quotations should be from a local supplier, where local means based in the Borough, the County or the Region. Quotations may be sought and received by e-mail, fax or post.
- 2.3.4. If fewer than 3 potential suppliers can be identified, the *Authorised Officer* must keep a record of the reasons for this.
- 2.3.5. Quotations should be returned to the originator of the request for quotation by email (unless otherwise specified in the documents) by the closing date and time given.
- 2.3.6. The *Authorised Officer* concerned shall maintain suitable records indicating the quotations received and the action taken relating to the selection and invitation of suppliers, the receiving and valuation of quotations and the award of the transaction/works to the successful contractor.

## **2.4 Call Off from existing Approved Contracts**

- 2.4.1. Where the requirement can be satisfied from an existing *Approved Contract* then the order will be considered consistent with these rules as long as the *Call Off* arrangements defined within the individual contract are followed.

## **2.5 High Value Transactions (£50,000 to EU threshold)**

- 2.5.1. Defined as transactions for *Goods, Services or Works* valued at or over the formal tender threshold of £50,000 but below the relevant current *EU Threshold*.
- 2.5.2. An appropriate advertising process applies as set out in Rule 3.2.2. Advertising in OJEU is not required.
- 2.5.3. The formal tender process applies as set out in Rule 3

## **2.6 Requirements over EU Threshold**

- 2.6.1. Where the anticipated value of the Contract exceeds the current *EU Threshold* (see 2.6.2 below) then the formal advice of the *Welland Procurement Unit* must be sought prior to any tendering activity commencing.
- 2.6.2. Please see Appendix D for the current *EU Thresholds*.

### **Part A Services**

- 2.6.3. Part A services are listed below
- Maintenance and repair of vehicles
  - Transport by land, including armoured car services and courier services but not including the transport of mail and transport by rail

- Transport by air, but not of mail
- Transport of mail by land, other than by rail, and by air
- Telecommunications services
- Financial services including insurance and banking
- Computer and related services
- Research and development where the benefit accrues exclusively to the contracting authority.
- Accounting, auditing and book keeping services
- Market research and public opinion polling services
- Management consultancy services and related services, not arbitration and conciliatory services
- Architectural services, engineering and integrated engineering services, urban planning and landscaping, related scientific and technical consulting services, technical testing and analysis services
- Advertising services
- Building cleaning services and property management services
- Publishing and printing services on a fee or contract basis
- Sewerage and refuse disposal services, sanitation and similar.

2.6.4 The minimum standards to be applied to the selection process must be determined before the OJEU notice is published. This may involve members in determining award criteria at this early stage.

2.6.5 An OJEU notice is required for EU procurement and will be published centrally by the *Welland Procurement Unit* in the Official Journal of the European Union (OJEU).

## **Part B Services**

2.6.6 Part B services are listed below:

- Hotel and restaurant services
- Transport by rail
- Transport by water
- Supporting and auxiliary transport services
- Legal services
- Personnel placement and supply services
- Investigation and security services, other than armoured car services
- Educational and vocational health services
- Health and social services
- Recreational, cultural and sporting services
- Other services

2.6.7 Where the *Welland Procurement Unit* has approved procurement as Part B the following processes should be followed:

2.6.7.1 The minimum standards to be applied to the selection process must be determined before the tender is advertised. A member of the *Management Team* must approve these standards.

2.6.7.2 The tender must be advertised according to 3.2.2.

2.6.7.3 The tender processes detailed in 3.2 must be followed.

## **RULE 3 – COMMON TENDERING PRINCIPLES**

### **3.1 Standing Lists**

- 3.1.1. The use of and process for establishing and maintaining standing (approved) lists must be approved by the relevant Strategic Director or Head of Service, in consultation with the *Welland Procurement Unit*, prior to the creation of the list.
- 3.1.2. The standing list will normally be created in the form of a *Framework Agreement* or dynamic purchasing system (see 3.7), through the full EU tender process, which includes a pre-qualification questionnaire and the completion of a health and safety audit where appropriate.
- 3.1.3. The list must be maintained continually and be open to new entrants who meet the same evaluation standards as those on the original list. The list must be re-tendered at intervals of no longer than 4 years.

#### **Mini Tendering via a Standing List**

- 3.1.4. Provided the list has been created according to 3.1.2, at least 5 suitably qualified suppliers on the standing list must be invited to submit a mini tender. In the event that fewer than 5 suitably qualified *Tenderers* are on the standing list then all the suitably qualified *Tenderers* shall be invited to participate.
- 3.1.5. The selection of potential *Tenderers* from the standing list must be made using *Pre-determined objective selection criteria* that must be documented.
- 3.1.6. The mini tender should proceed according to 3.2, 3.3 and 3.4 and reasonable time should be allowed for return of the mini tender.

### **3.2 Tender Preparation**

- 3.2.1. At least 5 suitably qualified suppliers must be invited to tender, unless otherwise stipulated in law or unless there are fewer than 5 suitably qualified respondents in which case all such respondents shall be invited to tender.
- 3.2.2. If publication of a notice in OJEU is not required, then the notice shall be published in at least two of the following media: the local newspapers circulating in the district, the Council's website, other websites recognised for offering local government tender opportunities (see Appendix D), appropriate national press, appropriate trade journal; in order to target the market for the particular contract. Two versions of the same medium are acceptable (e.g. two websites). OJEU may still be used on a voluntary basis, in which case the full OJEU process and remedies apply.
- 3.2.3. The specification and evaluation criteria must take into account the Council's priorities regarding Equality and Sustainable Procurement.

- 3.2.4 The specification for the requirement must be adequate, fair and without bias to allow tenders to be sought.
- 3.2.5 There must be an assessment of the quality of both *Tenderers* and tenders by *pre-determined non-discriminatory evaluation criteria* and weightings, including whole life cycle cost and social value criteria where appropriate as advised by Welland Procurement Unit. (See Rule 3.8 for more information.)
- 3.2.6 The risks associated with the contract must be assessed.
- 3.2.7 A tender file must be maintained to record all matters associated with the tender.
- 3.2.8 The standard terms and conditions which apply must be stipulated. Where it is proposed that a form of contract be used, which does not adopt the Council's *Approved Standard Terms* (including *Industry Standard Terms*); the use of such form must be approved by the *Welland Procurement Unit*.
- 3.2.9 The tender must explain how information provided in the tender will be treated with regard to statutory requirements.
- 3.2.10 Non *EU Threshold Tenderers* must be given adequate time to respond, consistent with the level of complexity of the requirement and, except where the industry norm is otherwise, this should be a minimum of 15 working days.
- 3.2.11 The *Invitation to Tender* must request that the tender is submitted in a plain envelope or package bearing a tender label giving only the tender title and opening date. The tender label must not identify the name of the tenderer.
- 3.2.12 *Tenderers* must be required to hold their tenders open for acceptance for a minimum of 90 days from the date of opening.
- 3.2.13 Tenders must include a statement that the Council does not bind itself to accept the lowest tender or any other tender.
- 3.2.14 Details of expected tenders must be notified to the Welland Procurement Unit or their nominee at least 5 days prior to the tender opening.

### **3.3 Receipt of Tenders**

- 3.3.1. Every reply to an *Invitation to Tender* (that is, for values above £50,000) must be addressed to the Solicitor to the Council.
- 3.3.2 All tender documents are to be kept securely in a locked cupboard until after the closing date and time. The cupboard to have unique key access using 2 keys and 2 people be present to open the cupboard.

3.3.3 Tenders (over the value of £50,000) submitted by fax or email will not be considered as the Council does not currently have an E Procurement system which meets the required standards.

3.3.4 Tender packets or envelopes received must be date stamped and locked away until the specified time for their opening.

### **3.4 Tender Opening**

3.4.1 At least two *Officers* must be present during the opening of the tender and at least one such *Officer* must not be from the Service responsible for the purchase.

3.4.2 The Welland Procurement Unit must ensure that all Tenders are opened at the same time when the period for their submission has ended.

3.4.3 A record of the tenders must be logged in the Corporate Tender Register held by Customer Services.

3.4.4 The opened tenders must be date stamped and signed by the two *Officers* at the time of opening on the page containing the overall contract value, alternatively on the pages containing the price information, where no overall value is quoted.

3.4.5. Tenders that are received after the closing date and time or tenders that are not submitted in accordance with these Rules are to be disqualified unless it is agreed otherwise by the Solicitor to the Council.

3.4.6. After tender opening a copy of the Tender Register and opened tender should be sent to the *Officer* responsible for the procurement.

3.4.7 An original version of the tender must be retained for a period of six years.

### **3.5 Electronic auctions**

3.5.1. Electronic auctions are online auctions where selected bidders submit offers electronically against the purchaser's specification. All communication following and including the invitation to pre-qualified bidders to submit new prices and/or values must be instantaneous (electronic).

An electronic auction requires the use of specialised software and tenderer support, and may then be used in these circumstances:

- (a) open or restricted procedures stating use of an auction;
- (b) open, restricted or competitive dialogue procedures have been implemented but cannot be brought to a satisfactory conclusion and the negotiated route with a contract notice is adopted;
- (c) mini competition within a framework if e-auctions were mentioned in the contract notice;



- (d) competition for contracts to be awarded through a dynamic purchasing system if stated in the contract notice; and
- (e) expressions of interest invited in accordance with the selected procedure. Contract notice states that an electronic auction will be used.

*Officers* wishing to undertake an electronic auction should contact the *Welland Procurement Unit* before undertaking this work.

### **3.6 Dynamic purchasing systems**

- 3.6.1. Dynamic purchasing systems are intended to address commonly used purchases. These systems are a type of electronic framework that allows bidders to apply to join at any time during their lifetime.
- 3.6.2. The open procedure must be used and the system must be advertised in the Official Journal through a contract notice providing the website at which the tender documents may be consulted.
- 3.6.3. Suppliers may at any time during the system's operation submit "indicative bids" for the product or service required and may be admitted to the system or not on the basis of the submission.
- 3.6.4. Bids must usually be assessed within 15 days.
- 3.6.5. When a specific requirement arises for the products covered by the system, the purchaser must conduct the following process:
  - i. publish a further simplified notice advertising the requirement;
  - ii. give 15 days for responses to be submitted;
  - iii. interview final tenders from all admitted suppliers once the new suppliers responding to the simplified notice have also been evaluated; and
  - iv. the award must be based on the criteria stated in the contract notice, which may be refined for the specific bid (*Call Off*).

### **3.7 Errors in Tenders**

- 3.7.1. The arithmetic in compliant tenders must be checked. If arithmetical errors are found they should be notified to the tenderer, who should be requested to confirm or withdraw their tender. Alternatively, if the rates in the tender, rather than the overall price, were stated within the tender invitation as being dominant, an amended tender price may be requested to accord with the rates given by the tenderer.

### **3.8 Tender Evaluation**

- 3.8.1. The procurement documentation should clearly explain the basis of the decision to bidding organisations, making clear how the evaluation

criteria specified in the process will be applied, the overall weightings to be attached to each of the high level criteria, how the high level criteria are divided into any sub criteria and the weightings attached to each of those sub criteria.

- 3.8.2 In any procurement exercise the successful bid should be the one which either offers the lowest price or offers the most economically advantageous balance between quality and price. Where the pre-determined weighting for price is less than 50%, the *Officer* must first consult with the Head of Central Services before finalising the weighting model.
- 3.8.3 Where both quality and price are being assessed the Council will use criterion linked to the subject matter of the contract to determine that an offer is the most economically advantageous. For example: price, quality, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost effectiveness, after sales service, technical assistance, delivery date, delivery period, period of completion.
- 3.8.4 Issues that are important to the Council in terms of meeting corporate objectives can be used to evaluate bids. The criteria can include, for example, sustainability characteristics, support for the local economy and/or community or the approach to continuous improvement.
- 3.8.5 The results of the tender evaluation must be retained on the tender file.
- 3.8.6 The evaluation shall include assessment of financial information supplied by the tenderer organisation. A *Financial Health Check* may be requested from an appropriate external body in consultation with Finance for all contracts where the criteria indicates that one may be required. This may include call-offs from framework contracts (standing lists). Reports from credit checking agencies are not to be used as the *sole* basis for exclusion of any tenderer.
- 3.8.7 The *Officer* must ensure that appropriate budgetary provision exists before any contract is entered into.

### **3.9 Post Tender Clarification**

- 3.9.1 Post-tender negotiations shall only take place where this does not have the effect of distorting competition
- 3.9.2 Negotiations shall be conducted by a team of at least two *Officers*, at least one of whom shall be from Legal Services unless agreed otherwise in advance by Legal Services such as in instances where this is not industry practice.
- 3.9.3 Negotiations shall be conducted with all *Tenderers*, unless there are clear reasons for excluding one or more *Tenderers*.
- 3.9.4 Full, written records must be made and retained.

### **3.10 Award of Contracts**

- 3.10.1 The tender may lead to an award decision; but there is no obligation for an award of contract to take place.
- 3.10.2 A contract may only be awarded by an *Officer* authorised to make such a commitment on behalf of the Council.
- 3.10.3 Contracts are to be authorised according to the *Total Value* of the Contract:
- 3.10.3.1 Up to £15,000: by an *Officer* so authorised;
  - 3.10.3.2 Up to £250,000: by the relevant Head of Service;
  - 3.10.3.3 Over £250,000: by the relevant Strategic Director; and
  - 3.10.3.4 Over £1,000,000: by the relevant Strategic Director in conjunction with the relevant Policy Chair. Committees may request that they are involved in the decision at any of these levels.
- 3.10.4 All contracts awarded, must be recorded on the *Contract Database* by the awarding *Officer*.
- 3.10.5 For OJEU contracts, *Officers* must allow a mandatory minimum standstill period of 10 calendar days between notification of award decision to all *Tenderers* and entering a contractually binding agreement. It is most important therefore that the notification of award decision is neither a contract award nor a conditional award which may need to be discarded in the event of a challenge within the standstill period.

### **3.11 Notification to Unsuccessful Tenderers**

- 3.11.1 Following contract award, unsuccessful *Tenderers* must be notified in writing in all cases.
- 3.11.2 In those instances where the standstill period and advance notification of award to all *Tenderers* (as in 3.10.5) does not apply, then unsuccessful *Tenderers* must be notified of the appeals procedure.

## **RULE 4 – CONTRACT AND OTHER FORMALITIES**

### **4.1 Contract Documents**

- 4.1.1. All Contracts must be in writing. Where the contract is of a non complex nature and is for values of up to £50,000, the use of a Purchase Order is an acceptable form of contract, which must make reference to the quotation and terms agreed, and attach a clear specification or description of the subject of the order.
- 4.1.2. Every Contract over £50,000 must be in writing and, as a minimum, state clearly, in a form approved by the Solicitor to the Council
- (a) that the supplier may not assign or sub-contract without prior written consent;

- (b) any insurance requirements;
- (c) ombudsman requirements;
- (d) requirements relating to legislative requirements;
- (e) that charter standards are to be met if relevant;
- (f) race relations, disability, anti-discrimination and equalities requirements;
- (g) any sustainability requirements;
- (h) a right of access to relevant documentation and records of the contractor for monitoring and audit purposes, if relevant;
- (i) pricing mechanism and arrangements for payment; and
- (j) rights of termination.

4.1.3. The formal advice of the Solicitor to the Council must be sought prior to award for the following contracts:

- (a) where the *Total Value* exceeds £500,000;
- (b) those involving leasing arrangements;
- (c) those which are complex or involve a recognisable risk;
- (d) where it is an extension or variation to an existing contract that will bring the overall value over £500,000; or
- (e) where invoice payments are made to finance or factoring companies.

4.1.4. Contract documents must be retained for a period of six years from the contract end date and, if under seal, for a period of twelve years.

## **4.2 Statistical Returns**

4.2.1. Each year the Council is required to make a statistical return to Communities and Local Government for onward transmission to the European Commission concerning the contracts awarded during the year under the EU Directives.

4.2.2. Where *Officers* have complied with the requirement to consult with the *Welland Procurement Unit* on EU procurements, then the Unit will be able to draft the statistical return on behalf of the Council. Heads of Service shall comply with these arrangements and expeditiously provide any information required.

## **4.3 Contract formalities**

4.3.1. Agreements must be completed as follows:

TOTAL VALUE	METHOD OF COMPLETION	BY
Up to £15,000 (See paragraph 4.1.1)	Signature Use of Purchase Order, or Written Contract for complex requirements	<i>Officer</i> with appropriate authority to enter into a contract (paragraphs 3.10.3 and 4.3.5).
Over £15,000 and up to £50,000 (See paragraph 4.1.1)	Signature Use of Purchase Order, or Written Contract for complex requirements	Head of Service (paragraphs 3.10.3 and 4.3.5).
Over £50,000 and up to £250,000 (see paragraph 4.1.2)	Signature on Written Contract	Head of Service (paragraphs 3.10.3 and 4.3.5).
Over £250,000 and up to £1,000,000 (see paragraph 4.1.2)	Signature on Written Contract	Strategic Director (paragraphs 3.10.3, 4.1.3 and 4.3.5);
Over £1,000,000	Signature on Written Contract	Strategic Director, once the appropriate Policy Chair has been consulted (paragraphs 3.10.3, 4.1.3 and 4.3.5)
Contracts for sealing	Sealing	See paragraph 4.3.6.

4.3.2. All contracts for the supply of *Goods* and *Services* must be concluded before the supply begins, except in exceptional circumstances, and then only with the written consent of the Chief Executive or a Strategic Director.

4.3.3. In exceptional circumstances and with the prior approval of Legal Services, a letter of intended acceptance can be issued to allow work to commence in advance of contract completion.

4.3.4. In the case of *Works Contracts* a tender acceptance letter is acceptable to allow work to commence, although the issue of a formal contract must follow without delay.

**4.3.5. Signature**

- (a) The *Officer* responsible for signing the contract must have been granted the appropriate authority and ensure that the person signing for the other contracting party has authority to bind it.
- (b) In the case of contracts for commissioning of care services, where the *Total Value* of the contract is not known, the *Officer* responsible must have been granted authority to enter into commissioning contracts.

**4.3.6. Sealing**

A contract must be sealed where:

- (a) the Council wishes to enforce the contract for more than six years after its end (e.g. for land or construction works); or
- (b) the price paid or received under the contract is a nominal price and

does not reflect the value of the *Goods* or *Services*; or

- (c) where there is any doubt about the authority of the person signing for the other contracting party; or
- (d) where a *bond* is established on behalf of the contractor(s) or their guarantors; or
- (e) where required by parties to the agreement.

Where contracts are completed by each side adding their common seal, the affixing must be attested by or on behalf of the Solicitor to the Council. The Solicitor to the Council is responsible for the process of sealing contracts.

#### **4.4 Bonds and Parent Company Guarantees**

4.4.1. The *Officer* responsible for the contract must consult the Head of Central Services and Solicitor to the Council about whether a *Parent Company Guarantee* or *Performance Bond* is necessary when a contract value exceeds £1m or a potential supplier is a subsidiary of a parent company; and

- (a) the award is based on an evaluation of the parent company, and the *Total Value* exceeds £250,000; or
- (b) there is concern about the stability of the subsidiary supplier.

4.4.2. The Council must never give a bond.

#### **4.5 Prevention of Corruption**

4.5.1 The *Officer* responsible for the contract must comply with the Council *Code of Conduct* and must not invite or accept any gift or reward in respect of the award or performance of any contract.

4.5.2. All contracts must contain an appropriate clause that provides protection and the right to terminate the contract in the event of a supplier offering any inducement, committing fraud or committing an offence under the prevention of Corruption Acts.

#### **4.6 Declaration of Interests**

4.6.1. If it comes to the knowledge of a member or an *Officer* of the Council that a contract in which he or she has a pecuniary interest has been or is proposed to be entered into by the Council, he or she shall immediately give written notice to the Solicitor to the Council.

### **RULE 5 – CONTRACT MANAGEMENT**

## 5.1 **Managing Contracts**

- 5.1.1. All contracts over the value of £50,000 and those of a complex nature below this value must have a designated Contract Manager whose name should be notified to the Supplier.
- 5.1.2. The Contract Manager shall be responsible for ensuring that the contractor fulfils his contractual obligations and that payment is made for satisfactory completion of those obligations.

**General Exceptions from Contract Procedure Rules**

These Contract Rules apply to all *Goods, Services and Works* purchased by the Council, with the following exceptions:

- (a) Procurements of *Goods, Services, or Works* where the procurement procedure to be followed by the Council is the subject of express legislation.
- (b) Low value purchases made by a *Purchasing Card* that are subject to guidelines issued on the use of *Purchasing Cards*.
- (c) Works or services procured in an emergency because of a need to respond to events that were beyond the control of the Council (e.g. natural disasters such as flooding or fires) as long as any expenditure in excess of £25,000 is first approved by the Chief Executive. Any contract entered into by the Council under this Exemption must not be for a term of more than 6 months.
- (d) Extension of an existing services or works contract with the same supplier provided that:
  - i) The circumstances for so doing were genuinely unforeseen;
  - ii) Such works or services are not practically separable from the original contract, or are necessary for its completion;
  - iii) The value of such an extension does not exceed 50% of the original contract value;
  - iv) The agreement of the *Welland Procurement Unit* is secured.
- (e) Most contracts for the acquisition and disposal of land or property that are covered by separate policies and procedures.
- (f) Contracts resulting from a competitive recruitment process.
- (g) Works orders with utility infrastructure providers, eg. Gas Mains.
- (h) *Call Off* or orders placed against *Framework Agreements* where the procedures defined in the contract for *Call Off* are followed.
- (i) Any contract which has had an exemption agreed in accordance with rule 1.3.
- (i) Grants properly approved through the appropriate Council procedures
- (j) The disposal of Council Assets that are covered by a separate regulation

Exemptions and Exceptions as defined under the EU Directive are not automatically exempted or excepted from these contract procedure rules.

*Officers* wishing to extend existing contracts may do so according to the extension provisions in that contract. Where no such provision is available, assistance should be sought from the Solicitor to the Council or Welland Procurement.



**EXEMPTION REQUEST FORM**

**Name of *Officer* seeking Exemption:**

**Service Area:**

**Contract Title:**

**Description of Contract** (attach supporting documentation if applicable)

**Estimated Total Value of Contract:**

**Target Contract Start Date:**

Date	Justification for Exemption Request	Authorised by Head of Service or Director
		<b>Signed:</b>  <b>Name:</b>

*This Form should be kept on file as evidence of compliance with Contract Procedure Rules.*

**LEGAL SERVICES (LS) ACTION**

**LS AUTHORISED: YES/NO**

**REFER TO POLICY COMMITTEE: YES/NO**

**REASON FOR REJECTION (IF APPLICABLE):**

**SIGNATURE: PRINT NAME:**

**DATE:**

**CENTRAL SERVICES ACTION**

**HOCS AUTHORISED: YES/NO**

**REFER TO POLICY COMMITTEE: YES/NO**

**REASON FOR REJECTION (IF APPLICABLE):**

**SIGNATURE: PRINT NAME:**

**DATE:**

**CONTRACT PROCEDURE RULES SUMMARY**

<b>Value of Contract</b>	<b>Quotation/Tender Process</b>	<b>Who</b>	<b>Contract documentation</b>	<b>Approval</b>
Goods and services up to £5,000, see 2.2	Obtain quotation prior to issue of Purchase Order	Service Area	Issue by Purchase Order or use of Purchasing Card	By authorised officer
Goods, services and works £5,000 - £50,000, see 2.3	Obtain at least 3 quotations	Service Area	Can use Purchase Order for non-complex requirements up to £50k. Written contract for requirements over £50k.	Up to £15,000 by authorised officer; over £15,000 by Head of Service
Goods, services and works that can be satisfied from an existing approved contract, see 2.4	Follow call off procedure within contract	Service Area	Follow call off procedure within contract	Up to £15,000 by authorised officer; over £15,000 by Head of Service; over £250,000 by Corporate Director
Goods, services and works between £50,000 and EU threshold, see 2.5	Obtain at least 5 tenders	Service Area	Written contract, complete as appropriate, see 4.3.	By Head of Service up to £250,000; over £250,000 by Corporate Director
Goods and services over EU threshold, see 2.6  <b>For definition of EU threshold, see Glossary of defined Terms</b>	Formal review of requirement prior to proceeding. All EU notices to be published centrally by Welland Procurement Unit. Details of all planned contracts with an anticipated value over the EU threshold will be reported to the Head of Central Services by the Head of Service.	Service Area to review with Legal Services/ Welland Procurement	Written contract, complete as appropriate, see 4.3.	By Head of Service up to £250,000; over £250,000 by Corporate Director. All contracts over £1,000,000 will require prior consultation with the appropriate Policy Chair
Works contracts anticipated to be over the EU works threshold in value, see 2.6	Formal review of requirement prior to proceeding. All EU notices (where applicable) to be published centrally by Welland Procurement Unit. Details of all planned contracts with an anticipated value of over the EU works threshold will be reported to the Head of Central Services by the Head of Service.	Service Area to review with Legal Services/ Welland Procurement	Written contract, complete as appropriate, see 4.3.	By Corporate Director. All contracts over £1,000,000 will require prior consultation with the appropriate Policy Chair

### **Variable data**

The following information is subject to change during the currency of these *Contract Procedure Rules*, and may be updated as changes occur by the Head of Central Services.

### **EU thresholds**

From 1st January 2012 to 31st December 2013, the EU thresholds are as follows:

£173,934 for the supply of *Goods* or *Services*, and  
£4,348,350 for building and engineering *Works Contracts*.

These figures apply up to 31st December 2013, and will then be revised. The thresholds are revised every two years.

### **Advertising websites**

Quotations (generally from £25,000 upwards) and tenders may be advertised without charge on Source Leicestershire. To place an advertisement on Source Leicestershire, contact Clare Ellis (cellis@melton.gov.uk) or any member of Welland Procurement.

### **Welland Procurement Unit**

The Welland Procurement Unit works with five councils in the East Midlands and may be contacted as follows:

Tony Hall, Head of Welland Procurement, thall@melton.gov.uk, 07768 915875

Paul Large, Procurement Strategy Manager, plarge@melton.gov.uk, 07769 918574

Clare Ellis, Welland Procurement Officer, cellis@melton.gov.uk, 07876 574944

### **Procurement Toolkit**

More detailed information on undertaking procurements can be found in the Procurement Toolkit, on the Melton Q drive under Procurement or contact Welland Procurement.

### **Receipt of tenders by e-mail by use of a locked tender box facility.**

Tenders may not be returned to the Council through conventional e-mail. This is not secure and any such tenders will be disqualified. A locked tender box is available through certain proprietary e-mail systems and may be accepted for use by the Solicitor to the Council. Melton Borough Council does not currently have access to a locked e-mail tender box facility.