

# Procurement FAQ's

## 1. What is procurement?

The purchasing of goods, services and or works. This includes the process of advertising, supplier selection and subsequent management of any contract arising.

## 2. Where can I find a copy of the Councils Contract Procedure Rules?

The Council's Contract Procedure Rules can be found the District Council's Constitution Part 4, Section 5.

## 3. Why do we have Contract Procedure Rules? Are every Councils rules the same?

The District Council has Contract Procedure Rules to ensure that we follow a consistent, fair and transparent procurement process when purchasing goods, services or works. Above a certain value set by the EU, the process is set out in statute and therefore should be the same across all public organisations. Below this value, not all Councils have the same procurement processes for purchases but they will adhere to the EU principles of fairness and transparency.

## 4. Are all goods and services procured by the Council subject to the Contract Procedure Rules?

Yes all procurement should follow the Contract Procedure Rules, although different procedures will need to be followed depending on the value of the procurement.

## 5. Can I obtain exemption from complying with Contract Procedure Rules?

Yes, there are exceptions contained within the Contract Procedure Rules provided the value of the contract is below EU levels, for example in the event of an emergency or if the purchase is made from a purchasing agent (e.g. ESPO)

## 6. Are there any standard templates/documents I should be using?

Yes there are standard template/documents that should be used for either a quote or a tender process. These can be found on the "Doing Business with the Council" webpage. The templates include standard request for quote documents and template award and rejection letters. Standard terms and conditions of contract are also available to download and should be sent out with every request for quote / tender.

## 7. Where can I get advice on procurement?

The Council contracts to receive procurement advice from the East of England Local Government Association (EELGA) or you can contact our own Legal Services team. Eddie Gibson from EELGA attends the District Council offices for at least one day a month - these dates are circulated round by the PA's and you can either make an appointment or pop in and see Eddie on these dates.

The arrangement with EELGA is in place until September 2014.

## 8. I invited quotes from three suppliers but only received two back. Do I have to obtain another quote?

The requirement for any purchasing between £1001- £75,000 is to invite quotes from 3 suppliers. If you only receive 2 back this does not prevent you from proceeding with one of the 2 suppliers that responded. However consider whether you are satisfied if you only receive 1 or 2 quotes back whether you have tested the market sufficiently. Questions to ask yourself might include:

- Did you pitch the quotation or tender correctly?
- Have you invited the right type of suppliers to quote?
- Did you advertise in the appropriate places, such as specialised journals or on-line?
- Have you tried to fit too much within specification for the value of procurement?

It is good practice to following up with suppliers who did not submit a quote to find out why as this will inform any similar procurement that you undertake in the future.

#### **9. Do I have to use district-based suppliers for sourcing lower value supplies and services?**

For procurements up to the value £5000 the Contract Procedure Rules requires district sourcing where practicable. This does not **require** you to select a district-based supplier if that supplier would not be best value (e.g. they are more expensive or their bid does not comply with the specification). The policy to use district-based suppliers where practicable is to ensure that the Council maximises spend within the District area, which supports local business growth and ultimately results in a return to the Council in the form of increased business rates and higher levels of employment.

#### **10. At what level of expenditure does a quote become a tender situation?**

Quotes should be sought for purchasing up to £75,000. Any purchasing above £75,001 becomes a tender.

Remember that this is over the “whole life” of the contract. If a contract is expected to be £26,000 per annum for 3 years (total £78,000), then this requires a formal tender to be conducted.

#### **11. I make regular “small value” payments to a supplier for the same type/nature of service. Do I have to follow Contract Procedure Rules?**

Yes, you should still be following the Contract Procedure Rules, consider if the expenditure is regular and predictable whether you could set up a contract for a period of time to cover the goods / services / works which are regularly required. Suppliers will often provide the Council with preferential rates if you can guarantee certainty of business for them over a longer period rather than just one-off or ad hoc pieces of work.

#### **12. Do I have to retain documentation, quotes, tenders etc to prove that I have followed proper procedures?**

Yes each Department should have a document retention policy in place, detailing the length of time that documents will be retained before they are destroyed, procurement documents are no different. You should retain on your file a copy of the quote / tender opening record and if you have used any exemptions under the Contract Procedure Rules, authorisation memo's should also be kept on your file so that if the procurement is audited you can show that you have followed the correct procedure rules.

Additionally if the procurement process is challenged then you would need the quote / tender / procurement documents and evaluation information to be able to justify any decision / award that

had been made and to demonstrate that the appropriate procurement process had been undertaken.

### **13. How do I calculate what a contract is worth?**

If there was a previous contract in place make an assessment based on the previous contract (allowing for increase in prices for works / services / goods etc).

If a contract has not been in place for the goods / services / works before then the Officer will need to make a judgement call as to how long the contract should last for and include all the costs associated with the contract. If you are still unsure look at the last 4 years aggregate spend, check all finance codes associated with the service and this should provide an estimate for what the contract is worth.

If the contract is for something completely new, conduct market research, including asking any prospective suppliers for an indication of what the contract might cost. This is perfectly permissible outside of a formal procurement process.

### **14. Another authority says that I can use their contract they already have in place with a supplier, is this allowed?**

If when the procurement was undertaken the procurement process stated that East Cambs District Council could use the supplier (either by naming them specifically or by County or District Councils generally) then yes, if the procurement did not state that East Cambs District Council could not use the supplier then no. Also check the period of time left on the contract that the authority who currently has the contract with the supplier is left. If the contract is close to ending, the Council may be better off running our own procurement exercise.

### **15. Can I extend a contract that is close to expiry without retendering?**

It will depend on the value of the contract. If the contract value is above EU levels then you will need to have already specified in the OJEU notice that the contract can be extended to a period and then only extend to that period.

If the extension was not included as part of the procurement process then you may be able to extend but only in accordance with the exceptions contained within the Contract Procedure Rules.

If none of the above applies the contract will have to be re-tendered, making sure sufficient time is allowed for the procurement and a handover with the existing supplier.

### **16. What is a framework agreement?**

It is an umbrella agreement which sets out the terms under which individual contacts (call-offs) can be made throughout the period of the agreement (normally a maximum of 4 years). East Cambs can use these if we are named in the agreement as a potential purchaser. The lead organisation / authority who put the framework in place may already have gone through the EU process so if we use the framework we do not need to go through the EU process. However, we may need to run a mini-competition with all the contractors on the framework unless there is a single supplier. Not all frameworks are set up the same and the onus is on the purchaser "calling off" from the framework to satisfy themselves of the process to use and to ensure that it is legally compliant.

## **17. How long can a framework agreement be let for?**

Frameworks should not last for longer than 4 years.

## **18. Who are ESPO?**

Eastern Shires Purchasing Organisation, a Professional Buying Organisation (PBO) owned and operated by a consortium of public bodies, in this case the County councils of Norfolk, Cambridgeshire, Leicestershire, Warwickshire and Lincolnshire, as well as the city councils of Peterborough and Leicester. ESPO lets framework agreements and provides procurement services for public bodies across the UK – it is one of a number of similar PBOs operating at a local, regional and national level.

## **19. Who ensures that I have complied with the Contract Procedure Rules? What happens if I don't comply?**

Audit check compliance with the Contract Procedure Rules. If an Officer does not follow the correct procedure rules then the Council could be at risk of a challenge to the procurement process. There is a relatively new remedy available to the Courts to set aside a contract in addition to awarding damages to an aggrieved party. As well as the considerable financial, reputational and organisational risk attached to poor procurement, it is the responsibility of Council officers to ensure the appropriate use of public money and to be able to demonstrate this.

## **20. At what stage does a purchase become a contract**

In simple terms, every purchase made by the Council from a supplier constitutes a "contract". A contract is a binding agreement with specific terms and conditions between two or more persons or entities in which there is a promise to do something in return for a valuable benefit known as consideration, usually in the form of money.

Every purchase (whether for goods / services / works) that is above £5000 should be on the Council's terms and conditions, or such other standard terms and conditions (i.e.: JCT (Joint contracts Tribunal) contract) as approved by the appropriate Legal Officer.

## **21. When do Legal need to get involved**

Officers should be able to make an assessment of when they require legal advice. Legal will need to be involved in drafting up contract documents and when a tender process is being undertaken

## **22. Why does the Data Protection Officer ask us about contracts over £500 if Legal have to draw all contracts up, wouldn't they know this**

Not all contracts / procurements go through Legal Services; therefore the monthly email to all Officers is asking about those contracts that are over £500 that Legal Services do not know about.

## **23. Why don't we have a procurement Officer.**

Many small district Councils do not spend a sufficient amount with suppliers to justify a full-time procurement officer. Currently the District Council has specialist procurement support provided by Eddie Gibson from the East of England LGA. If you have a procurement query please utilise the procurement support that the Council gets from Eddie, either at one of his monthly visits or by e-mailing [eddie.gibson@eelga.gov.uk](mailto:eddie.gibson@eelga.gov.uk)