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## **PART 11 – CONTRACT REGULATIONS**

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## 1 INTRODUCTION

- 1.1 The purpose of these Contract Procedure Rules is to set out the principles, roles and processes involved in procurement at the Council. All procurements must comply with these Rules, the Council's Financial Regulations, English law and European law in force in England.
- 1.2 All procurements must realise value for money through the optimum combination of whole life costs and quality of outcome.
- 1.3 These Rules seek to protect the Council's reputation by minimising the risk of allegations of corruption, dishonesty and failure to meet legal obligations, as such they must be followed in all procurement activity.
- 1.4 If there is any change to the law which affects these Rules, then that change must be observed until these Rules can be revised. If these Rules conflict in any way with the law, then the law takes precedence.
- 1.5 These Rules are supported by detailed, practical guidance available in the Procurement Toolkit, which can be accessed via the [procurement portal](#). The Procurement Toolkit covers:
- The Procurement Cycle
  - Assessing Needs
  - When does TUPE apply?
  - Assessing Risks
  - Valuing Your Requirement
  - Understanding Social Value
  - Sustainable Procurement
  - Procurement timetable
  - Specification
  - Evaluation Methodology and Criteria
  - Terms and Conditions
  - Due Diligence
  - The Procurement Process
  - Procuring via a Framework Agreement
  - Contract Management and Review
  - Variation
  - Extensions
- 1.6 Any values stated within these Rules are exclusive of VAT.
- 1.7 These Rules do not apply in the following circumstances:
- The purchase or lease of property, land acquisition, interest in land, transaction in land or disposal. This does not extend to any service, supplies or works contracts that may be required to make the land, existing

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buildings or immoveable property ready for acquisition, disposal or leasing.

- Direct employment of permanent or fixed term employees, for the avoidance of doubt these Rules do apply to consultancy and employment agency contracts.
- Instructing barristers or solicitors and those costs do not exceed the relevant EU Threshold.
- The lending or borrowing of money by the Council.
- Contracts between Local Authorities as defined by Clause 12 of the Public Contract Regulations 2015.
- Section 75 NHS Act 2006 arrangements (although details must be recorded on the Council's Contract Register).

## **2 ROLES AND RESPONSIBILITIES**

### **Officers**

- 2.1 The Officer responsible for the procurement must comply with these Contract Procedure Rules and the Financial Regulations. The Officer is also responsible for ensuring that any Agents acting on behalf of the Council do so in compliance with these Rules and should seek written confirmation of their agreement.
- 2.2 As part of the service planning process Officers are expected to highlight all required procurement support through the annual Procurement Service Plan in advance of the next financial year.
- 2.3 Officers are responsible for the contracting activity, and must ensure:
- a) Continued compliance with the Council's requirements;
  - b) Value for money;
  - c) Compliance with these Rules as well as any legal and statutory requirements; and
  - d) Compliance with any relevant Council policy and Key Decision Threshold.
- 2.4 The Officer is responsible for ensuring that Welland Procurement are aware of the timescales for upcoming procurement work, especially for contracts in excess of £50,000, in sufficient time.
- 2.5 The Officer must have regard to the guidance contained in the Procurement Toolkit which can be accessed via the [procurement portal](#).

- 2.6 Before beginning a purchase the Officer responsible for it must appraise the purchase and consider:
- Taking into account the requirements from any relevant Best Value or other review;
  - Appraising the need for the expenditure and its priority e.g. has a business case been developed which sets out the service objectives, the criteria for evaluation and the options for delivery;
  - Defining the objectives of the purchase;
  - Consider the risks associated with the purchase over its life and how to manage them;
  - Considering what procurement method is most likely to achieve the purchasing objectives, including internal or external sourcing, and collaboration with other purchasers;
  - Establish if corporate contracts and/or suitable frameworks exist and assess their suitability;
  - Consulting users as appropriate about the proposed procurement method, contract standards, and also performance and user satisfaction monitoring; and
  - Selecting the most appropriate procurement method.
- 2.7 The Officer must keep the records detailed in these Rules.
- 2.8 The requirements for the various procurement categories (based on [total value](#)) are detailed below. Where an EU procedure is required, the Officer **must** contact Welland Procurement before embarking on the procurement.
- 2.9 Officers should take all necessary legal, financial and other professional advice (e.g. HR, Communications etc.) and ensure the necessary decisions are in place before embarking upon any procurement process. If in doubt, please contact the Monitoring Officer.
- 2.9.1 Officers will need to ensure they have the relevant budget approved and available prior to embarking upon a procurement process. Budget approval ensures you have provision to fund any commitment within your own budget, and where sufficient budget isn't available the additional required funding has been sought and approved via members or delegated decision via the Chief Executive to access funding from reserves. Further information on this (and the process) can be found within the Financial Procedure Regulations; if in doubt, please speak to the Strategic Finance Manager.
- 2.9.2 Officers will need approval to award, in line with the Constitution. This approval needs to be sought regardless of the procurement route i.e. Tender, Quotation, Framework Award or Exemption.
- For contracts with a [total value](#) under £50,000, this must be done in writing (email is sufficient).

- For contracts with a [total value](#) of £50,000 or more, this must take the form of a Decision Notice (Record); please speak to Democratic Services or the Monitoring Officer.

2.9.3 A Key Decision must be on the forward plan. Democratic Services must be engaged prior to commencement of any procurement process with a [total value](#) of £50,000 or more. Note that any applicable “call in” period must be observed before the Decision is implemented.

A Key Decision is a Cabinet Executive decision which:

- Is in value worth more than £50,000 of the annual revenue budget for the service or of the capital allocation to the scheme concerned;
- Has a significant impact because it either:
  - Affects individuals or organisations outside the District;
  - Affects individuals or organisations in more than one Ward; or
  - Will have a long term (more than 5 year) or permanent effect on the Council or the District;
- Involves significant changes to the policy and budget framework (involves the adoption or amendment of a policy or strategy or to the budgets which the Executive has the power to adopt).

As part of the Key Decision, Officers will need approval to procure as well as approval to award, in line with the Constitution. This approval needs to be sought regardless of the procurement route i.e. Tender, Framework Award or Exemption. This must be a Decision Notice in the form of a recorded minute from Cabinet Executive or Council, or appropriate written delegation. Please speak to Democratic Services.

2.10 The provisions of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) apply to a relevant business transfer where the transferor (incumbent supplier) has a dedicated team of employee(s) that carry out the service activity that is to be transferred. In practice this will often apply where a Council service is:

- ‘out-sourced’
- brought back ‘in-house’ / in-sourced
- where a contract that former Council employees are undertaking comes up for renewal and is awarded again to the same supplier or to a new supplier
- transferred from one external organisation to another
- TUPE is also likely to apply where a supplier who has been awarded a contract subsequently awards or sub-contracts all or part of it to another supplier, whilst retaining the contract with the main client

TUPE can apply irrespective of whether there has been a formal procurement exercise or not. Officers must ask the current Supplier whether or not any

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employee of the Council or of the Supplier may be affected by any transfer arrangement (TUPE). Where this is relevant, the Officer must ensure that the Transfer of Undertaking (Protection of Employment) issues are considered and obtain relevant advice before undertaking the procurement process. This will include liaising with Leicestershire County Council where any employee of the Council or of the Supplier is a member of the Local Government Pension Scheme (LGPS). Guidance on whether TUPE applies must be referred to Human Resources or Legal services in the first instance, before proceeding, so that the scope of any legal obligations may be identified. If TUPE does apply this must be factored into your procurement strategy / plan and timescales.

Suppliers must seek their own legal guidance on the application of TUPE; the Council must not offer any such advice. The Council's only involvement with TUPE is to facilitate through the provision of TUPE information; it must not get involved in other TUPE related matters.

'TUPE Information' templates are available on the [Welland Procurement portal](#). This information will need to be completed by the current supplier which you will issue to the market as part of your procurement documentation on which potential suppliers are invited to bid. This information must be gathered prior to going out to market, and you would need to review the information to ensure it has been anonymised (TUPE information is confidential – please discuss with Welland Procurement whether TUPE information should be published with the tender pack, or to individual bidders, subject to the return of TUPE Confidentiality Agreement), and whether or not there are any LGPS (Local Government Pension Scheme) members. Officers can refer to the Procurement Toolkit available on the [Welland Procurement portal](#) for guidance on considerations for LGPS members.

- 2.11 Officers must ensure that the contracts for which they are responsible are effectively managed and monitored to ensure they deliver the requirement as intended.
- 2.12 It is the Officer's responsibility to carry out [due diligence](#) on successful suppliers, both at Contract Award, and for the duration of the Contract.
- 2.13 Where an Officer has a potential conflict of interest within a procurement, the Officer must declare this immediately to the relevant Director and Monitoring Officer. The Officer may be required to withdraw from the procurement process. Any Officer who fails to declare such a conflict of interest may be subject to disciplinary proceedings and sanctions.

A 'Conflict of Interest Declaration – Confidentiality Agreement' form can be obtained from the [procurement portal](#).

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### **Senior Leadership Team**

- 2.14 The Senior Leadership Team must ensure that they and their Officers comply with these Rules at all times.
- 2.15 The Senior Leadership Team must ensure that Value for Money is achieved in all procurements.
- 2.16 The Senior Leadership Team must ensure that they have in place a scheme of delegation that records in writing what action Officers are authorised to take under these Rules.
- 2.17 In the interests of forward planning, the Senior Leadership Team should prepare, maintain and review a rolling schedule in respect of procurement activities with a [total value](#) over £50,000.
- 2.18 The Senior Leadership Team are responsible for ensuring that the Council's central Contract Register is updated as required following purchasing activity within their service area.
- 2.19 Where an officer within the Senior Leadership Team has a potential conflict of interest within a procurement, the officer must declare this immediately to the relevant Director and Monitoring Officer. The Officer may be required to withdraw from the procurement process. Any Officer who fails to declare such a conflict of interest may be subject to disciplinary proceedings and sanctions.

A 'Conflict of Interest Declaration – Confidentiality Agreement' form can be obtained from the [procurement portal](#).

### **3 NON-COMPLIANCE WITH THESE RULES**

- 3.1 Where an Officer becomes aware of any non-compliance with these Rules (which cannot be remedied), they must declare this to the Strategic Director (Section 151) and Monitoring Officer.

### **4 TOTAL VALUE**

- 4.1 Total Value is the maximum potential contract value. This is an estimation of the annual value, multiplied by the maximum contract length (including any extensions). This calculation is to be used for contracts that fall under the Public Procurement Regulations 2015. All references to "value" within these Rules refer to Total Value.**

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- 4.2 For Concessions contracts (where the supplier makes money from the right given by the Council to provide), contract values are based on what it is worth to the supplier or the cost the Council would incur to provide the contract. The Total Value for these contracts shall be the total turnover of the concessionaire generated over the duration of the contract, as estimated by the Council, taking into account:
- (a) the value of any form of option and any extension of the duration of the concession contract;
  - (b) revenue from the payment of fees and fines by the users of the works or services other than those collected on behalf of the Council;
  - (c) payments or any other financial advantages, in any form, from the Council to the concessionaire, including compensation for compliance with a public service obligation and public investment subsidies;
  - (d) the value of grants or any other financial advantages, in any form, from third parties for the performance of the concession contract;
  - (e) revenue from sales of any assets which are part of the concession contract;
  - (f) the value of all the supplies and services that are made available to the concessionaire by the Council, provided that they are necessary for executing the works or providing the services;
  - (g) any prizes or payment.
- 4.3 Contracts shall not be subdivided with the effect of preventing it from falling within the scope of these Rules, thresholds or any relevant OJEU Regulations.
- 4.4 Re-occurring Contracts shall not be put in place with the effect of preventing it from falling within the scope of these Rules, thresholds or any relevant OJEU Regulations. Spend must be aggregated where it is appropriate to do so, whether that is within Council departments, or across multiple departments for the same scope of work; to ensure value for money is achieved and reduce the duplication of work. Examples of where aggregate spend would be appropriate includes (but is not be limited to):
- One department spot purchasing similar pieces of work on a regular basis throughout the financial year;
  - Multiple Council departments purchasing the same services under different contracts; and
  - Individual contracts being kept under a certain threshold to avoid procurement obligations within these Rules.

## **5 CONTRACT TERM**

- 5.1 **The term of a Contract should not exceed five years in total (including any potential extension options), without the written approval of the relevant service Director. This must be gained prior to the procurement process commencing.**

5.2 Framework agreements must not exceed four years. Call-off contracts based on framework agreements may be longer than four years, and may extend beyond the expiry date of the framework.

## **6 PROCUREMENTS VALUED UNDER £10,000**

6.1 Officers will need to ensure they have the relevant budget approved and available prior to embarking upon a procurement process. This approval will be from the budget holder, in accordance with budget authorisation limits (as outlined in the Financial Procedure Rules). Please see [2.9.1](#) for further information. Officers also need to speak to their manager about any further approvals required outside of these Rules, as well as whether or not approval to procure is required.

6.2 Where the contract has a total value below £10,000, Officers are required to seek at least one written quotation. Value for money remains a primary objective and so Officers may decide to seek more than one quotation to ensure that objective is achieved.

6.3 Quotations can be submitted via email, preferably in PDF format to prevent tampering or accusations thereof; the onus will be on the bidder to make this decision. Quotations are not to be “opened” prior to the deadline for return, if one is given (not applicable if only one quote is being sought).

6.4 The quotation(s) must be received before any order is processed and must include the following information:

- a) A description of the goods, services or works to be supplied;
- b) When and where they will be supplied;
- c) The total value of the requirement; and
- d) Payment terms.

In some instances Officers may need to consider [TUPE](#) implications.

6.5 Approval to award at this value will be in writing from the budget holder. The Contract or Purchase Order must be approved/signed by the relevant Budget Manager in accordance with budget authorisation limits (as outlined in the Financial Procedure Rules) via the Council’s Corporate Financial System (electronic Purchase Order).

If a Council Officer or Supplier needs to sign contract documentation electronically, please speak to Legal Services for advice and guidance on the use of electronic signatures.

6.6 Where the value of the contract is more than £5,000, the resultant contract must be added to the Contract Register to ensure compliance with Transparency Regulations.

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- 6.7 It is the Officer's responsibility to carry out [due diligence](#) on successful suppliers, both at Contract Award, and for the duration of the Contract.

## 7 PROCUREMENTS VALUED BETWEEN £10,000 AND £49,999

- 7.1 Officers will need to ensure they have the relevant budget approved and available prior to embarking upon a procurement process. This approval will be from the Budget Holder, in accordance with budget authorisation limits (as outlined in the Financial Procedure Rules). Please see [2.9.1](#) for further information. Officers also need to speak to their manager about any further approvals required outside of these Rules, as well as whether or not approval to procure is required.
- 7.2 Where the contract has a total value between £10,000 and £49,999 at least three comparable quotations must be obtained in writing (email is acceptable). Those quotations can be invited from identified suppliers as advertising is not mandatory.

For contracts with a [total value](#) of £25,000 or more, if the Council chooses to advertise a quotation, for example because:

- The Officer cannot immediately identify three potential suppliers to invite to quote; and/or
- The procurement opportunity is either politically sensitive or high profile then it must be simultaneously advertised via Welland Procurement on Contracts Finder.

- 7.3 Where Welland Procurement are instructed to support the procurement, the Officer must complete a Procurement Initiation Document (PID), available on the [procurement portal](#), prior to the commencement of the procurement process (at pre-procurement stage).
- 7.4 It is recommended that the Request for Quotation Template document is used which can be obtained from the [procurement portal](#). In any case the criteria for selecting the most advantageous quotation must be established before the quotations are invited and be made clear in the procurement documentation. The quotations must contain (as a minimum):
- a) The goods, services or works to be supplied;
  - b) The "where" and "when" they are to be supplied;
  - c) The total value;
  - d) Instructions to bidders:
    - a. Evaluation criteria
    - b. How to respond
    - c. How clarification messages are to be asked (who sent to, any deadlines for messages)
    - d. Information bidders need to include within response
    - e. Deadline for responses (day and time); and

- e) The short form terms and conditions to be applied (available on the [procurement portal](#)), or appropriate alternative to be agreed with Legal Services.

In some instances Officers may need to consider [TUPE](#) implications.

- 7.5 At least one of the suppliers invited to submit a quotation should be local, where local means the Blaby District. Where a local supplier cannot be identified, the Officer must keep a written record of the reason.
- 7.6 Where fewer than three potential suppliers can be identified, the Officer must keep a written record of the reason and all potential suppliers should be invited to quote. It is accepted that the Officer may receive fewer than three quotations even where three or more suppliers have been invited to quote.
- 7.7 As part of the procurement process (quotation), potential bidders can seek clarification on either the information published or the process itself.

The nature of any clarification or response from the Council must not materially change the scope/substance of the requirement. If it does, you may need to abandon the process and restart, using revised documentation. Please discuss this with Welland Procurement.

- All requests for clarification and questions relating to the quote (and its associated documents) must be submitted as per the instruction document (via email or ProContract)
- The Council must respond to all clarifications as soon as possible (via email or ProContract)
- A copy of all requests for clarifications and the responses must be anonymised and published to all potential bidders (who have either been invited to quote, or have expressed an interest in the quote) where the clarification and response are not considered confidential
- If a potential bidder wishes the Council to treat a clarification as confidential and therefore not publish the response to all, it must state this when submitting the clarification. If in the opinion of the Council, the clarification is not confidential, the Council will publish it in an anonymised format
- Officers must state a deadline for receipt of clarifications
- Officers must keep a record of communications between potential bidders and the Council

Unless it is part of a clarification and the above is observed, Officers must not:

- Make contact with suppliers/potential bidders
- Send information to suppliers/potential bidders

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If a supplier/potential bidder makes contact with an Officer, they should advise them that messages must be submitted as per the instruction document; via email or ProContract.

- 7.8 Quotations can be submitted via email, preferably in PDF format to prevent tampering or accusations thereof; the onus will be on the bidder to make this decision. Quotations are not to be “opened” prior to the deadline for return, if one is given.
- 7.9 The Officer must keep copies of the Council’s procurement documentation as well as copies of all quotations received and any communication between the Council and the successful bidder.
- 7.10 Evaluation of the quotations received must be carried out using the evaluation criteria identified in the procurement documentation. Any subjective evaluation (such as quality) must be carried out independently by a minimum of two evaluators (preferably three), and then moderated by an independent moderator to reach a final agreed score. The evaluators should be fully briefed on the evaluation process. The ‘Conflict of Interest Declaration – Confidentiality Agreement’ on the [procurement portal](#) gives further guidance on evaluation principles and best practice; it is advisable to ask all evaluators to complete, sign and return this document to the Council lead. Welland Procurement can act as the independent moderator but cannot undertake any scoring. Clarification questions may be asked where responses would not result in a material change of the bid received.
- 7.11 Contract award must be approved in line with paragraph [2.9](#) of this document.
- 7.12 The contract or terms and conditions must be signed by a member of the Senior Leadership Team or a person authorised by them in accordance with the delegation scheme.

If a Council Officer or Supplier needs to sign contract documentation electronically, please speak to Legal Services for advice and guidance on the use of electronic signatures.

- 7.13 The resultant contract must be added to the Council’s Contract Register to ensure compliance with Transparency Regulations. Details should be entered onto the [Contracts Register Form](#), which, together with an electronic copy of the signed contract, should be sent to [freedom.information@blaby.gov.uk](mailto:freedom.information@blaby.gov.uk). Officers must also provide Information Governance Services with the original hard copy of the Contract for the subsequent storage and safe keeping.
- 7.14 An award notice is required on Contracts Finder for all Contracts with a [total value](#) of £25,000 or above. Welland Procurement is responsible for such award notices. If an Officer has managed the procurement process without

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assistance from Welland Procurement, they must formally advise them of the award details, so that they can publish the award notice.

- 7.15 It is the Officer's responsibility to carry out [due diligence](#) on successful suppliers, both at Contract Award, and for the duration of the Contract.

## **8 PROCUREMENTS VALUED BETWEEN £50,000 AND THE CURRENT GOODS AND SERVICES OJEU THRESHOLD**

- 8.1 Officers will need to ensure they have approval to procure (as well the relevant budget approved and available) prior to embarking upon a procurement process (as per paragraph [2.9](#) of this document). Officers also need to speak to their Manager about any further approvals required outside of these Rules.

- 8.2 Welland Procurement should be notified in respect of all contracts with a [total value](#) between £50,000 and the current goods and services OJEU Threshold because a single stage/open tender process must be completed. This means that all interested suppliers are eligible to submit a Tender.

- 8.3 Where Welland are instructed to support the procurement, the Officer must complete a Procurement Initiation Document (PID), available on the [procurement portal](#), prior to the commencement of the procurement process (at pre-procurement stage).

- 8.4 The procurement must be advertised on Contracts Finder, Welland Procurement is responsible for managing this advertising.

- 8.5 The procurement will be managed using an electronic tendering system, the Officer must therefore contact Welland Procurement to access that system.

- 8.6 It is recommended that the Open Tender Document One and Document Four Template documents are used, in any case the Officer must ensure that the required Standard Suitability Questions are used – these can be requested from Welland Procurement The Officer must ensure that all relevant procurement documents are finalised before the procurement is advertised, these will include at least the Specification, Long Form Terms and Conditions of Contract\* (available on the [procurement portal](#)), [TUPE information](#) (where applicable) and evaluation criteria.

\* or appropriate alternative to be agreed with Legal Services.

- 8.7 As part of the procurement process (tender), potential bidders can seek clarification on either the information published or the process itself.

The nature of any clarification or response from the Council must not materially change the scope/substance of the requirement. If it does, you may

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need to abandon the process and restart, using revised documentation. Please discuss this with Welland Procurement.

- All requests for clarification and questions relating to the tender (and its associated documents) must be submitted as per the instruction document (via ProContract)
- The Council must respond to all clarifications as soon as possible (via ProContract)
- A copy of all requests for clarifications and the responses must be anonymised and published to all potential bidders (who have expressed an interest in the tender) where the clarification and response are not considered confidential
- If a potential bidder wishes the Council to treat a clarification as confidential and therefore not publish the response to all, it must state this when submitting the clarification. If in the opinion of the Council, the clarification is not confidential, the Council will publish it in an anonymised format
- Officers must state a deadline for receipt of clarifications
- Officers must keep a record of communications between potential bidders and the Council

Unless it is part of a clarification and the above is observed, Officers must not:

- Make contact with suppliers/potential bidders
- Send information to suppliers/potential bidders

If a supplier/potential bidder makes contact with an Officer, they should advise them that messages must be submitted as per the instruction document; via ProContract.

8.8 Tenders will be received via the electronic tendering system. An Officer or a representative of Welland Procurement will be responsible for opening tenders.

8.9 Tenders must be evaluated in accordance with the advertised evaluation criteria, clarification questions may be asked as long as the response would not have the effect of materially changing the tender received. Any subjective evaluation (such as quality) must be carried out independently by a minimum of two evaluators (preferably three), and then moderated by an independent moderator to reach a final agreed score. The evaluators should be fully briefed on the evaluation process. The 'Conflict of Interest Declaration – Confidentiality Agreement' on the [procurement portal](#) gives further guidance on evaluation principles and best practice; this form must be completed, signed and returned to the procurement lead. Welland Procurement can act as the independent moderator but cannot undertake any scoring.

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- 8.10 The bidder with the highest evaluation score will be awarded the contract. If this is not the case, the advice of Welland Procurement must be sought prior to award.
- 8.11 Contract award must be approved in line with paragraph [2.9](#) of this document.
- 8.12 All bidders must be notified of the Award decision simultaneously in writing (via the Council's electronic tendering system) by the Officer (or the Welland Procurement Unit), whether or not their bid was successful.
- 8.13 The contract will require sealing, please see Section [15.11](#) below.
- 8.14 The resultant contract must be added to the Council's Contract Register to ensure compliance with Transparency Regulations. Details should be entered onto the [Contracts Register Form](#), which, together with an electronic copy of the signed contract, should be sent to [freedom.information@blaby.gov.uk](mailto:freedom.information@blaby.gov.uk). Officers must also provide Information Governance Services with the original hard copy of the Contract for the subsequent storage and safe keeping.
- 8.15 The Officer must keep the following records:
- The method of obtaining tenders.
  - Tender documents produced by the Council.
  - Tenders received from bidders. The successful tender should be retained for at least the life of the contract. Unsuccessful tenders should be retained for the first 12 months of the contract.
  - A written record of the evaluation.
  - A record of the Award approval.
  - A signed copy of the Contract which should be retained for the life of the contract and in normal circumstances for 6 years thereafter.
  - Communications to and from bidders during the procurement process.
- 8.16 Where an Agent has managed the procurement on behalf of the Council, the Officer must ensure that the above documents are returned to the Council upon completion of the process and stored as detailed in clause 8.15 above.
- 8.17 An award notice is required to be published on Contracts Finder, Welland Procurement is responsible for such award notices. If an Officer has managed the procurement process without assistance from Welland Procurement, they must formally advise them of the award details, so that they can publish the award notice.
- 8.18 It is the Officer's responsibility to carry out [due diligence](#) on successful suppliers, both at Contract Award, and for the duration of the Contract.

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## **9 PROCUREMENTS FOR WORKS CONTRACTS VALUED BETWEEN THE GOODS AND SERVICES OJEU THRESHOLD AND THE WORKS OJEU THRESHOLD**

- 9.1 Officers will need to ensure they have approval to procure (as well the relevant budget approved and available) prior to embarking upon a procurement process (as per [2.9](#) of this document). Officers also need to speak to their Manager about any further approvals required outside of these Rules.
- 9.2 Welland Procurement should be instructed for all Works contracts with a [total value](#) between the Goods and Services OJEU Threshold and the Works OJEU Threshold. The authorised Officer can choose either a single stage/open tender or two stage/restricted process.
- 9.3 The procurement must be advertised on Contracts Finder, Welland Procurement is responsible for managing this advertising.
- 9.4 The procurement will be managed using an electronic tendering system, the Officer must therefore contact Welland Procurement to access that system.
- 9.5 It is recommended that the Open Tender Document One and Document Four Template documents or Restricted Tender Template are used. In any case, the Officer must ensure that the required Standard Suitability Questions are used – these can be requested from Welland Procurement. The Officer must ensure that all relevant procurement documents are finalised before the procurement is advertised, these will include at least the Specification, Long Form Terms and Conditions of Contract\* (available on the [procurement portal](#)), [TUPE information](#) (where applicable) and evaluation criteria.
- \* or appropriate alternative to be agreed with Legal Services.
- 9.6 Where conducting a two stage/restricted process, Officers should use the PAS91 PQQ for works contracts (including the procurement of goods and services needed in relation to the works).
- 9.7 Tenders will be received via the electronic tendering system. An Officer or a representative of Welland Procurement will be responsible for opening the tenders.
- 9.8 As part of the procurement process (tender), potential bidders can seek clarification on either the information published or the process itself. This must be conducted as per [8.7](#) of this document.
- 9.9 Tenders must be evaluated in accordance with the advertised weighted evaluation criteria, clarification questions may be asked as long as the response would not have the affect of materially changing the tender received. Any subjective evaluation (such as quality) must be carried out

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independently by a minimum of two evaluators (preferably three), and then moderated by an independent moderator to reach a final agreed score. The evaluators should be fully briefed on the evaluation process. The 'Conflict of Interest Declaration – Confidentiality Agreement' on the [procurement portal](#) gives further guidance on evaluation principles and best practice; this form must be completed, signed and returned to the procurement lead. Welland Procurement can act as the independent moderator but cannot undertake any scoring.

- 9.10 The bidder with the highest evaluation score will be awarded the contract. If this is not the case, the advice of Welland Procurement must be sought prior to award.
- 9.11 Contract award must be approved in line with paragraph [2.9](#) of this document.
- 9.12 All bidders must be notified of the Award decision simultaneously in writing (via the Council's electronic tendering system) by the Officer (or Welland Procurement), whether or not their bid was successful.
- 9.13 The contract will require sealing, please see Section [15.11](#) below.
- 9.14 The resultant contract must be added to the Council's Contract Register to ensure compliance with Transparency Regulations. Details should be entered onto the [Contracts Register Form](#), which, together with an electronic copy of the signed contract, should be sent to [freedom.information@blaby.gov.uk](mailto:freedom.information@blaby.gov.uk). Officers must also provide Information Governance Services with the original hard copy of the Contract for the subsequent storage and safe keeping.
- 9.15 The Officer must keep the following records:
- The method of obtaining tenders.
  - Tender documents produced by the Council.
  - Tenders received from bidders. The successful tender should be retained for at least the life of the contract. Unsuccessful tenders should be retained for the first 12 months of the contract.
  - A written record of the evaluation.
  - A record of the Award approval.
  - A signed copy of the Contract which should be retained for the life of the contract and in normal circumstances for 6 years thereafter.
  - Communications to and from bidders during the procurement process.
- 9.16 Where an Agent has managed the procurement on behalf of the Council, the Officer must ensure that the above documents are returned to the Council upon completion of the process and stored as detailed in clause 9.15 above.
- 9.17 An award notice is required on Contracts Finder; Welland Procurement is responsible for such award notices. If an Officer has managed the

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procurement process without assistance from Welland Procurement, they must formally advise them of the award details, so that they can publish the award notice.

- 9.18 It is the Officer's responsibility to carry out [due diligence](#) on successful suppliers, both at Contract Award, and for the duration of the Contract.

## 10 PROCUREMENTS VALUED OVER THE RELEVANT OJEU THRESHOLD

- 10.1 Officers will need to ensure they have approval to procure (as well the relevant budget approved and available) prior to embarking upon a procurement process (as per [2.9](#) of this document). Officers also need to speak to their Manager about any further approvals required outside of these Rules.
- 10.2 Where the anticipated [total value](#) of the contract exceeds the relevant [OJEU threshold](#), the formal advice of Welland Procurement must be sought as early as possible and in any case before any procurement activity takes place.
- 10.3 All goods, services and works with a procurement [total value](#) in excess of the relevant [OJEU threshold](#) are enforced by the Public Contracts Regulations 2015, and over threshold public works concessions and public services concessions are enforced by the Concessions Contracts Regulations 2016. These Regulations set out strict processes that have to be followed, as well as remedies available to suppliers. The European legal framework for public procurement is composed of the principles deriving from the Treaty on the Functioning of the European Union (TFEU):
- a) equal treatment;
  - b) non-discrimination;
  - c) mutual recognition;
  - d) proportionality; and
  - e) transparency.

Officers must comply with these Regulations and principles at all times.

- 10.4 Where the Officer is following one of the below procurement processes, the number of bidders invited to tender or to conduct a dialogue can be limited (out of those meeting the selection criteria). This must be indicated in the contract notice and the tender documentation (shortlisting criteria, the minimum number of candidates the Officer intends to invite and, where applicable the maximum number).
- a) In the restricted procedure, the minimum number of candidates shall be 5.
  - b) In the competitive procedure with negotiation, the competitive dialogue procedure and the innovation partnership procedure, the minimum number of candidates shall be 3.

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Where the number of candidates meeting the selection criteria and the minimum levels of ability is below this minimum number, the Officer may continue the procedure by inviting the candidates with the required capabilities, but must record the reason for doing so.

- 10.5 The Officer must:
- a) adhere to the minimum timescales stipulated in the Regulations;
  - b) ensure the specification clearly describes the intended outcomes or outputs, and that it is complete and fair;
  - c) assess the quality of tenders as per the Regulations;
  - d) ensure the evaluation criteria (and any sub criteria) is disclosed in the Tender documentation and advertisements;
  - e) ensure the Contract terms and conditions allow for modification, should the total value increase or decrease due to amended volumes/values;
  - f) treat selection and award criteria separately.
- 10.6 The Officer must complete a Procurement Initiation Document (PID), provided by Welland Procurement prior to the commencement of the procurement process (at pre-procurement stage).
- 10.7 The procurement must be advertised on Contracts Finder and on Find a Tender. Welland Procurement is responsible for managing this advertising.
- 10.8 The procurement will be managed using an electronic tendering system; the Officer must therefore contact Welland Procurement to access that system.
- 10.9 As part of the procurement process (tender), potential bidders can seek clarification on either the information published or the process itself. This must be conducted as per [8.7](#) of this document.
- 10.10 Tender Document One and Document Four Template documents must be used, which ensures the required Standard Suitability Questions are used – these can be requested from Welland Procurement. The Officer must ensure that all relevant procurement documents are finalised before the procurement is advertised, these will include at least the Specification, Long Form Terms and Conditions of Contract\* (available on the [procurement portal](#)), [TUPE information](#) (where applicable) and evaluation criteria.
- \* or appropriate alternative to be agreed with Legal Services.
- 10.11 Tenders will be received via the electronic tendering system. A representative of Welland Procurement will be responsible for opening tenders.
- 10.12 Tenders must be evaluated in accordance with the advertised evaluation criteria, clarification questions may be asked as long as the response would

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- not have the affect of materially changing the tender received. Any subjective evaluation (such as quality) must be carried out independently by a minimum of two evaluators (preferably three), and then moderated by an independent moderator to reach a final agreed score. The evaluators should be fully briefed on the evaluation process. The 'Conflict of Interest Declaration – Confidentiality Agreement' on the [procurement portal](#) gives further guidance on evaluation principles and best practice; this form must be completed, signed and returned to the procurement lead. Welland Procurement can act as the independent moderator but cannot undertake any scoring.
- 10.13 The bidder with the highest evaluation score will be awarded the contract, as per the award criteria detailed.
- 10.14 Contract award must be approved in line with paragraph [2.9](#) of this document.
- 10.15 All bidders must be notified of the Award decision simultaneously in writing (via the Council's electronic tendering system) by the Officer (or the Welland Procurement Unit), whether or not their bid was successful. The letters must include:
- a) the award criteria;
  - b) the name of the successful bidder(s);
  - c) the score of the recipient;
  - d) the score of the successful bidder(s);
  - e) details of the reason for the decision, including the characteristics and relative advantages of the successful tender; and
  - f) confirmation of the date before which the contracting authority will not enter into the contract or framework agreement (i.e., the date after the end of the standstill period).
- 10.16 The contract will require sealing, please see Section [15.11](#) below.
- 10.17 The resultant contract must be added to the Council's Contract Register to ensure compliance with Transparency Regulations. Details should be entered onto the [Contracts Register Form](#), which, together with an electronic copy of the signed contract, should be sent to [freedom.information@blaby.gov.uk](mailto:freedom.information@blaby.gov.uk). Officers must also provide Information Governance Services with the original hard copy of the Contract for the subsequent storage and safe keeping.
- 10.18 The Officer must keep the following records:
- a) A record of all decisions from pre to post procurement;
  - b) The method of obtaining tenders;
  - c) Tender documents produced by the Council;
  - d) Tenders received from bidders. The successful tender should be retained for at least the life of the contract. Unsuccessful tenders should be retained for the first 12 months of the contract;

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- e) A written record of the evaluation;
  - f) A record of the Award approval;
  - g) A signed copy of the Contract which should be retained for the life of the contract and in normal circumstances for 6 years thereafter;
  - h) Communications to and from bidders during the procurement process.
- 10.19 Where an Agent has managed the procurement on behalf of the Council, the Officer must ensure that the above documents are returned to the Council upon completion of the process and stored as detailed in clause 10.18 above.
- 10.20 An award notice is required on Contracts Finder and Find a Tender; Welland Procurement is responsible for such award notices. If an Officer has managed the procurement process without assistance from Welland Procurement, they must formally advise them of the award details, so that they can publish the award notices.
- 10.21 It is the Officer's responsibility to carry out [due diligence](#) on successful suppliers, both at Contract Award, and for the duration of the Contract.

## **11 PROCURING VIA A FRAMEWORK AGREEMENT OR DYNAMIC PURCHASING SYSTEM (DPS)**

- 11.1 Officers will need to ensure they have the relevant budget approved and available prior to embarking upon a procurement process. This approval will be from the budget holder, in accordance with budget authorisation limits (as outlined in the Financial Procedure Rules). Please see [2.9.1](#) for further information. Officers also need to speak to their Manager about any further approvals required outside of these Rules, as well as whether or not approval to procure is required.
- 11.2 For Contracts with a [total value](#) of £50,000 or more, Officers will need to ensure they have approval to procure prior to embarking upon a procurement process (as per [2.9](#) of this document).
- 11.3 A contract of any value can be procured via a framework agreement or DPS. Compliance with these Rules and relevant national and EU law is achieved through compliance with the framework agreement/DPS terms and conditions. This will involve:
- reviewing relevant Framework guidance document(s)
  - reviewing the correct process for call off (which may be through further competition or direct award)
  - following the stated call off process, as laid out in the Framework documentation

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As part of the procurement process (call off), potential bidders can seek clarification on either the information published or the process itself. This must be conducted as per [8.7](#) of this document.

Please speak to Welland Procurement for further advice regarding Framework and call off compliance.

- 11.4 For the avoidance of doubt, a framework agreement or DPS is considered a compliant procurement route where:
- a) It has been entered into by the Council in compliance with these Rules; or
  - b) Another contracting authority, purchasing consortium or Central Government has tendered the framework agreement or DPS in compliance with national and EU procurement law and the Council is named as a potential user of the arrangement.

This section applies to call offs in the circumstances detailed in both 11.4(a) and 11.4(b) above.

11.5 In some instances Officers may need to consider [TUPE](#) implications.

11.6 Contract award must be approved as per [2.9](#) of this document.

- 11.7 The contract must be signed/sealed in line with the appropriate Rule, dependent on the [total value](#) of the contract.
- Procurements valued under £10,000 see Rule [6.5](#)
  - Procurements valued between £10,000 and £49,999 see Rule [7.12](#)
  - Procurements valued between £50,000 and Current Goods and Services OJEU Threshold see Rule [8.13](#)
  - Procurements for Works Contracts Valued between the Goods and Services OJEU Threshold and the Works OJEU Threshold see Rule [9.13](#)
  - Procurements valued over the Relevant OJEU Threshold see Rule [10.16](#)

If a Council Officer or Supplier needs to sign contract documentation electronically, please speak to Legal Services for advice and guidance on the use of electronic signatures.

- 11.8 Where the Council is using an external framework, and the [total value](#) of the contract is £5,000 or above, the resultant contract must be added to the Contract Register to ensure compliance with Transparency Regulations.

Where the Council has set up a framework, only the framework is necessary to be recorded on the register. It is not necessary to record the individual call-offs from the framework.

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- 11.9 Signed contracts that have a [total value](#) of £10,000 or more must be added to the Council's Contract Register to ensure compliance with Transparency Regulations. Details should be entered onto the [Contracts Register Form](#), which, together with an electronic copy of the signed contract, should be sent to [freedom.information@blaby.gov.uk](mailto:freedom.information@blaby.gov.uk). Officers must also provide Information Governance Services with the original hard copy of the Contract for the subsequent storage and safe keeping.
- 11.10 Where the contract has a [total value](#) of £25,000 or above an award notice is required on Contracts Finder. The Officer must formally advise Welland Procurement of the award details, so that they can publish the award notice.
- 11.11 It is the Officer's responsibility to carry out [due diligence](#) on successful suppliers, both at Contract Award, and for the duration of the Contract.

## 12 SETTING UP A FRAMEWORK AGREEMENT

- 12.1 Officers will need to ensure they have the relevant budget approved and available prior to embarking upon a procurement process. This approval will be from the Budget Holder, in accordance with budget authorisation limits (as outlined in the Financial Procedure Rules). Please see [2.9.1](#) for further information. Officers also need to speak to their Manager about any further approvals required outside of these Rules, as well as whether or not approval to procure is required.
- 12.2 Framework agreements set out the general terms under which specific purchases ("call offs") can be made under the agreement. The purpose of using a framework is to enable contracting authorities to award individual contracts without going through a full procurement process each time. A framework agreement may be established with one supplier ("single supplier frameworks") or with more than one ("multiple supplier frameworks").
- 12.3 The minimum number of suppliers for a multiple supplier framework is two.
- 12.4 Framework agreements must not exceed four years. Call-off contracts based on framework agreements may be longer than four years, and may extend beyond the expiry date of the framework.
- 12.5 Framework agreements should be set up to allow for mini-competitions to run as the first option for selecting a supplier. Where this is not the case, Welland Procurement Unit should be consulted.
- 12.6 As part of the procurement process (either the creation of the Framework or any subsequent call off), potential bidders can seek clarification on either the information published or the process itself. This must be conducted as per [8.7](#) of this document.

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- 12.7 As Framework agreements are “closed” for the term, consideration should be given to the impact of this, and ensure that the benefits and length of the Framework are justified.
- 12.8 Formal advice from Welland Procurement must be sought as early as possible and in any case before any procurement activity takes place. The relevant Rules and Regulations should be followed according to [the total potential value](#) of the Framework (the value to be taken into consideration shall be the maximum estimated value net of VAT of all the contracts envisaged for the total term of the framework agreement). It is the Officer’s responsibility to monitor and track the spend against the framework.
- 12.9 Signed Framework Agreements that have a [total value](#) of £10,000 or more must be added to the Council’s Contract Register to ensure compliance with Transparency Regulations. Details should be entered onto the [Contracts Register Form](#), which, together with an electronic copy of the signed contract, should be sent to [freedom.information@blaby.gov](mailto:freedom.information@blaby.gov). Officers must also provide Information Governance Services with the original hard copy of the Contract for the subsequent storage and safe keeping.

If a Council Officer or Supplier needs to sign contract documentation electronically, please speak to Legal Services for advice and guidance on the use of electronic signatures.

- 12.10 Where the Council has set up a framework, details of the framework itself must be recorded on the Council’s Contract Register. The estimated value of the framework must be recorded and all of the suppliers associated with the framework must be listed. Any other relevant detail to the mechanics of the framework must also be recorded so the suppliers can be searched and found in the Register and cross referenced with Council spend.

Where the Council has set up a framework, only the framework is necessary to be recorded on the register. It is not necessary to record the individual call-offs from the framework.

- 12.11 It is the Officer’s responsibility to carry out [due diligence](#) on successful suppliers, both at Contract Award, and for the duration of the Contract.

### **13 SETTING UP A DYNAMIC PURCHASING SYSTEM (DPS)**

- 13.1 Officers will need to ensure they have the relevant budget approved and available prior to embarking upon a procurement process. This approval will be from the budget holder, in accordance with budget authorisation limits (as outlined in the Financial Procedure Rules). Please see [2.9.1](#) for further information. Officers also need to speak to their manager about any further approvals required outside of these Rules, as well as whether or not approval to procure is required.

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- 13.2 A Dynamic Purchasing System (DPS) is similar to an electronic framework agreement, with two exceptions, new suppliers can join at any time and it is to be run as a completely electronic process.
- 13.3 Dynamic Purchasing Systems are used exclusively by public sector organisations. They save time and money by being a quick and easy way to access goods, services and works through an OJEU compliant route.
- 13.4 There is no maximum term for a DPS; the period of validity of the DPS should be indicated in the call for competition. In line with [Rule 5](#), written approval for a DPS longer than five years must be sought from the relevant service Director. This must be gained prior to the procurement process commencing.
- 13.5 All bidders that meet the selection criteria shall be admitted to the DPS, and the number of bidders accepted on to the DPS shall not be limited.
- 13.6 Formal advice from Welland Procurement must be sought as early as possible and in any case before any procurement activity takes place. The relevant Rules and Regulations should be followed according to the [total potential value](#) of the DPS (the value to be taken into consideration shall be the maximum estimated value net of VAT of all the contracts envisaged for the total term of the DPS). It is the Officer's responsibility to monitor and track expenditure against the framework.
- 13.7 As part of the procurement process (either the creation of the DPS or any subsequent call off), potential bidders can seek clarification on either the information published or the process itself. This must be conducted in accordance with [8.7](#) of this document.
- 13.8 There is no obligation to notify DPS suppliers of a decision to award a contract under a DPS, to provide a de-briefing session or to run a standstill period.
- 13.9 There is a requirement to publish a contract award notice on Find a Tender for contracts awarded using a DPS. The contract award notice must be dispatched within 30 days of the contract award. Contract award notices can be grouped together and published on a quarterly basis within 30 days of the end of each quarter. The Officer must formally advise Welland Procurement of the award details, so that they can publish the award notice.
- 13.10 Contracting authorities are also required to publish information on Contracts Finder in respect of contracts awarded under a DPS for contracts with a [total value](#) of £25,000 or above. Publication on Contracts Finder is required within a "reasonable time" (no longer than 90 days following contract award).

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- 13.11 Signed DPS Agreements that have a [total value](#) of £10,000 or more must be added to the Council's Contract Register to ensure compliance with Transparency Regulations. Details should be entered onto the [Contracts Register Form](#), which, together with an electronic copy of the signed contract, should be sent to [freedom.information@blaby.gov.uk](mailto:freedom.information@blaby.gov.uk). Officers must also provide Information Governance Services with the original hard copy of the Contract for the subsequent storage and safe keeping.

If a Council Officer or Supplier needs to sign contract documentation electronically, please speak to Legal Services for advice and guidance on the use of electronic signatures.

- 13.12 Where the Council has set up a DPS, details of the DPS itself must be recorded on the Council's Contract Register. The estimated value of the DPS must be recorded and all of the suppliers associated with the DPS. Any other relevant detail to the mechanics of the DPS must also be recorded so the suppliers can be searched and found in the register and cross referenced with council spend.

Where the Council has set up a DPS, only the DPS is necessary to be recorded on the register. It is not necessary to record the individual call-offs from the DPS.

- 13.13 It is the Officer's responsibility to carry out [due diligence](#) on successful suppliers, both at Contract Award, and for the duration of the Contract.

## **14 PUBLIC SERVICES (SOCIAL VALUE) ACT 2012**

- 14.1 The Public Services (Social Value) Act requires people who commission public services to think about how they can also secure wider social, economic and environmental benefits.
- 14.2 Before starting a procurement process, the Officer should think about whether the services they are going to buy, or the way they are going to buy them, could secure these benefits for their area or stakeholders.
- 14.3 When considering this potential improvement, only what is relevant to the particular procurement should be taken into account, as well as whether or not it is proportionate.
- 14.4 The Officer must consult Welland Procurement for advice on specifying requirements under Social Value, and how to evaluate tenders against these requirements.

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## 15 OTHER MATTERS TO CONSIDER

These Rules are relevant to all Contracts with a [total value](#) above £10,000.

### 15.1 Conflict of Interest

15.1.1 Clause [2.13](#) and [2.19](#) define when a conflict of interest must be declared.

15.1.2 For contracts with a [total value](#) of £50,000 or more, all Officers, Members and other stakeholders involved in procuring for the Council must sign a Declaration of Interest form at the start of the procurement process. This form is available on the [procurement portal](#).

For contract with a [total value](#) of between £10,000 and £50,000, it is advisable that all Officers, Members and other stakeholders involved in procuring for the Council sign a Declaration of Interest form at the start of the procurement process. This form is available on the [procurement portal](#).

15.1.3 This form must be kept on file during the procurement itself and the contract term.

### 15.2 Abnormally Low Bids

15.2.1 Under the Public Contract Regulations 2015, the Council is required to request an explanation of the price or costs proposed in a tender where that price or those costs appear to be abnormally low in relation to the requirement.

15.2.2 Advice should be sought from Welland Procurement during this investigation process to ensure that the requirements of the Public Contract Regulations 2015 are adequately complied with.

### 15.3 Errors in Tenders

15.3.1 If it is identified that a bidder has made an error or omission that is “obvious”, the Officer can request the bidder to correct this, as long as:

- a) the Chief Officer has given written approval, and is in agreement that the error or omission was “obvious”;
- b) it has been determined that the bidder has gained no unfair advantage from correcting the error or omission; and
- c) any such corrections are recorded, along with the approval decision.

#### 15.4 Receiving Late Submissions

15.4.1 Where a Tender/Quote has been received late (beyond the stated response deadline), the Officer must get written approval to either accept or reject the submission from the relevant Group Manager **before** opening any of the responses. Late submissions must only be accepted in exceptional circumstances.

15.4.2 The Officer must record:

- a) the circumstances behind the late response;
- b) how late the response was received;
- c) if any advantage could have been gained by the bidder in submitting the late response (i.e. having longer to respond to the opportunity compared with other bidders); and
- d) the Group Manager's decision to accept or reject the late response (based on the above points).

#### 15.5 Receiving Irregular Tenders

15.5.1 Irregular tenders are those that:

- a) do not comply with the terms of the tender documents (i.e. fail to supply key information); or
- b) make reservations (i.e. if the pricing submitted contains conditions, when these are explicitly prohibited within the tender documentation).

15.5.2 If the Officer receives an irregular Tender, they shall immediately report this to the relevant Group Manager.

15.5.3 The Group Manager may accept the irregular tender if it has been determined that the bidder has gained no unfair advantage from the irregularity.

15.5.4 Any acceptance or rejection of irregular tenders shall be recorded in writing.

#### 15.6 GDPR Requirements

15.6.1 The General Data Protection Requirements impose greater obligations on the Council to protect individual's information.

15.6.2 Officers conducting a procurement should ensure that GDPR screening questions, available from Welland Procurement, are completed as early as possible in the planning stages of that procurement.

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- 15.6.3 Should any of the GDPR screening questions be answered positively, further advice must be sought from Welland Procurement and the Council's General Data Protection Officer before any further action is taken.

#### 15.7 Freedom of Information

- 15.7.1 The Council has specific obligations under the FOI Act 2000, regarding disclosure of information. Officers have an obligation to record and maintain accurate records relating to Contracts, as well as complying with FOI requests.
- 15.7.2 Bidders should be asked to identify any information they supply that is confidential or commercially sensitive, and detail why they consider this the case. This justification should be considering when responding to FOI requests.
- 15.7.3 Any queries relating to this should be directed to the Council's Data Protection Officer.

#### 15.8 Modern Slavery

- 15.8.1 The Council is committed to ensuring that modern slavery does not exist within its supply chains.
- 15.8.2 All procurements with a [total value](#) of £50,000 or more are required to include the Standard Selection Question regarding Modern Slavery Act compliance.
- 15.8.3 Where procurement is considered high risk in terms of modern slavery, for example transport and waste related procurements, additional award questions should be considered with advice from Welland Procurement.
- 15.8.4 Where a supplier is required to comply with the Modern Slavery Act, i.e. their turnover is above £36 million, that compliance should form part of the contract management (in accordance with [15.10](#)).
- 15.8.5 A Modern Slavery Helpline is available on Tel: 08000 121 700 or [online](#). The Helpline provides information and advice about modern slavery, a 24 hour telephone reporting line and an online reporting function through the website.

#### 15.9 Safeguarding Provisions in Contracts and Grant Arrangements

- 15.9.1 Any service engaged by the Council should be provided on the basis of agreed terms or a contract. Safeguarding compliance should be

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included in all arrangements. All services commissioned by the Council must operate within the requirements of the Council's Safeguarding Policy and meet the relevant legislative standards. Where appropriate, procuring officers will need to ensure that contractors demonstrate that they meet these requirements.

- 15.9.2 It is expected that the lead officer on any commissioning project be responsible for ensuring that any contract includes proper provision for the safeguarding of children, young people, and adults with care and support needs; this also includes making reasonable requests for evidence from suppliers that the requirements stated in the Safeguarding Policy (where applicable) are in place or ready to be implemented. Where there is any confusion about the need for the inclusion of safeguarding in a contract arrangement clarification and/or advice should be sought from the Safeguarding Lead.

#### 15.10 Due Diligence

- 15.10.1 It is the Officer's responsibility to carry out due diligence on successful suppliers, both at Contract Award, and for the duration of the Contract. This will involve requesting, obtaining and maintaining records (and asking for appropriate evidence) of relevant due diligence, annual inspections and any future expiration/renewals. This may include (but not be limited to):
- a) Insurance certificates (new certificates to be requested upon expiry of the individual insurance policy);
  - b) Details as required by the selection/suitability criteria asked as part of the procurement process (annually, upon anniversary of Contract start date):
    - i. Supplier policies
      - Quality Management
      - Environmental
      - Equality
      - Health and Safety
      - Data protection/GDPR
    - ii. Licences/certificates/registrations
    - iii. Business continuity plans
    - iv. Required training (and updates for staff (Council and supplier)
    - v. Staff certifications/qualifications (Council and staff); and
  - c) A financial appraisal, which may include a financial credit check and / or a review of submitted financial information (as per the standard selection questionnaire). Credit checks and financial ratio analysis will be undertaken by Finance on a case by case basis. Further information is available within the Procurement Toolkit on the [procurement portal](#).

- 15.10.2 Before the contract commences (and regularly throughout the duration of a contract), contract managers should request and inspect key health and safety records to provide assurance that controls are operating effectively. The frequency of requests and types of records to be reviewed should be agreed and outlined as part of the procurement process. Records should include but not be limited to:
- Up to date Health and safety policies
  - Risk Assessments
  - COSHH assessment
  - Induction and training records
  - Fire safety logbooks (if applicable)
  - PAT certificates
  - Health and Safety inspections (as well as any actions arisen, and how they are being followed up on, reviewed and regularly monitored) and whether these are carried out by the Council or the supplier
  - Accident reporting
- 15.10.3 Throughout the duration of the contract, Council Officer's must keep a record (and ask for appropriate evidence) of relevant due diligence as well as any future expiration/renewals.

## 15.11 Sealing A Contract

- 15.11.1 A contract must be sealed where:
- 15.11.1.1 The [total value](#) is over £50,000;
  - 15.11.1.2 The Council wishes to enforce the contract for up to twelve years following its expiry (e.g. for land or construction works); or
  - 15.11.1.3 The price paid or received under the contract is a nominal price and does not reflect the value of the goods, services or works; or
  - 15.11.1.4 There is any doubt about the authority of the person signing for the other contracting party; or
  - 15.11.1.5 A Bond is established on behalf of the Supplier(s) or their guarantors; or
  - 15.11.1.6 Required by the Parties to the agreement; or
  - 15.11.1.7 Where the Monitoring Officer deems it appropriate.
- 15.11.2 Where contracts are completed by each side adding their common seal, the affixing must be attested by or on behalf of the Council in accordance with the Constitution. The

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Democratic Services, Scrutiny and Governance Manager is responsible for the process of sealing a contract.

- 15.11.3 If a Council Officer or Supplier needs to sign contract documentation electronically, please speak to Legal Services for advice and guidance on the use of electronic signatures.

## 15.12 Performance Bonds

- 15.12.1 For contracts above £250,000 the Council require the Supplier to provide a Bond or financial deposit where the contract is in relation to the acquiring, building or repair of an asset. The form of the bond or a suitable financial deposit must be authorised by a Director and the relevant portfolio holder. Advice must be sought from the S151 Officer and the Monitoring Officer to determine that the bond is acceptable and on which a claim may be made should the need arise. The requirement for a bond or deposit and the nature of this financial instrument must be reported to Cabinet.

## 16 EXEMPTIONS

- 16.1 The exemptions listed in this Section do not apply to procurements with a [total value](#) above the relevant EU Threshold. The Officer must obtain a fully approved exemption in advance of awarding a contract, and must ensure that the actual spend does not exceed the [total value](#) stated in the approved exemption.
- 16.2 Officers will need to ensure they have the relevant budget approved and available prior to embarking upon a procurement process. This approval will be from the budget holder, in accordance with budget authorisation limits (as outlined in the Financial Procedure Rules). Please see [2.9.1](#) for further information. Officers also need to speak to their manager about any further approvals required outside of these Rules, as well as whether or not approval to procure is required.
- 16.3 Signed contracts that have a [total value](#) of £10,000 or more must be added to the Council's Contract Register to ensure compliance with Transparency Regulations. Details should be entered onto the [Contracts Register Form](#), which, together with an electronic copy of the signed contract, should be sent to [freedom.information@blaby.gov.uk](mailto:freedom.information@blaby.gov.uk). Officers must also provide Information Governance Services with the original hard copy of the Contract for the subsequent storage and safe keeping.

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If a Council Officer or Supplier needs to sign contract documentation electronically, please speak to Legal Services for advice and guidance on the use of electronic signatures.

- 16.4 Exemptions must be approved by the Strategic Director (S151) or the Corporate Services Manager upon completion of the form at [Appendix 3](#) subject to one or more of the following criteria being fulfilled. If the justification being relied upon is as detailed in 16.4.2 below, the relevant Group Manager will need to approve the exemption prior to it being submitted to the Strategic Director (S151) or the Corporate Services Manager for approval.
- 16.4.1 No genuine competition: proprietary or patented goods or services; requirement of such a specialist nature that it can genuinely only be fulfilled by one person or organisation; compatibility with existing goods or services is required and where those existing goods or services can only be sourced from the same supplier.
- 16.4.2 There is a sound business case and/or an independent review that there is no value for money in running a full procurement process. Supporting evidence will need to demonstrate market testing and enquiries to other suppliers. This should not be used to avoid competition or where decisions to procure have been postponed and there are insufficient timelines to procure.
- 16.4.3 Genuine emergencies: critical preventative or remedial work where there is a real and imminent risk to the safety of people or property arising from hitherto unforeseen 'catastrophic' events or incidents, for example fire, bombing, landslide etc.
- 16.4.4 Urgent Situations not of the Council's own making: the urgency must have been reasonably unforeseeable (e.g. existing supplier going into liquidation) and genuinely be a case of time is of the essence. Urgency arising from the Council's own making (e.g. lack of planning) shall not justify an exemption. Where this exemption is used, a compliant procurement must be implemented as soon as possible.
- 16.4.5 Collaborative/Joint Procurement: where another authority/public body is acting as the 'lead buyer' and provided that the Officer can demonstrate those arrangements comply with relevant Regulations and best practice.
- 16.4.6 Grants which the Council may receive or make: except where the grant is the form of payment for a contract for services where the Council specifies the output or outcomes to be delivered. The awarding of grants by the Council or on behalf of the Council must be carried out under the principles of openness, fairness, non-

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discrimination and value for money. Officers cannot choose to treat procurement as a grant in order to avoid conducting a competitive process.

- 16.4.7 Contracts for the execution of either mandatory works or provision of goods or services which must be provided by a Statutory Provider other than the Council. This includes but is not limited to public utility companies and other legal authorities.
- 16.5 Where the [total value](#) of the contract is £5,000 or more, the resultant contract must be added to the Contract Register to ensure compliance with Transparency Regulations.
- 16.6 An award notice is required on Contracts Finder for all Contracts with a [total value](#) of £25,000 or above. Welland Procurement is responsible for such award notices. Officers must formally advise Welland of the award details, so that they can publish the award notice.

## 17 CONTRACT MANAGEMENT

### 17.1 Contract Management

- 17.1.1 The named Contract Manager should be noted in the Contract Register. All contracts must have a named Contract Manager for the entirety of the contract and that Contract Manager is responsible for the application of these Rules.
- 17.1.2 For all contracts with a [total value](#) over £50,000, the Contract Manager must identify the risks by maintaining a suitable risk register and ensure that suitable contingency measures are in place.
- 17.1.3 During the life of the contract, the Contract Manager must monitor the overall performance of the contract closely in order to ensure any issues of under performance are addressed as soon as possible and any areas of added value are identified as soon as possible.
- 17.1.4 Where a supplier intends to sub-contract, Officers must assess whether it is appropriate for the supplier to obtain a local quotation as part of this process, where local means the Blaby District.

## 17.2 Variation

12.2.1 In any case where a variation means that the total value of a contract would exceed the relevant EU Threshold, or where there is any material change to the contract, the contract must be treated as a new procurement under these Rules.

If any variation (independently or cumulative) means that the total value of a contract would exceed a threshold set out in these Rules, Officers must seek advice from Welland Procurement.

17.2.2 A material change is one which:

17.2.2.1 Would have allowed the admission of other Bidders or the acceptance or another tender; or

12.7.2.2 Extends the scope of the contract considerably to goods, services or works not initially covered by the Specification;  
or

12.7.2.3 Changes the economic balance in favour of the contractor in a manner not provided for in the procurement documents.

17.2.3 For clarity, a change will be deemed immaterial if the value of the modification is both below the relevant EU Threshold and below 10% of the original contract value (15% for works contracts).

## 17.3 Extension

17.3.1 A contract should not be extended beyond its initial term unless the contract documents allow.

17.3.2 A Framework Agreement shall only be extended if the contract documents allow and the original term and extension together should not exceed four years except in exceptional circumstances.

17.3.3 Where a business need has been identified which means that a contract is required to be extended beyond the term permissible in the original contract documents, advice must be sought from Welland Procurement and the Council's legal team in the first instance and authority sought from the Monitoring Officer or the S151 Officer if such an extension is proposed.

If any extension (independently or cumulative) means that the [total value](#) of a contract would exceed a threshold set out in these Rules, Officers must seek advice from Welland Procurement.

- 17.3.4 The Officer must be satisfied that such an extension would achieve value for money and be reasonable in all circumstances. The Officer must record the reasons for these conclusions in writing.

**Appendix 1: Definitions**

Award Notice	A notice published on Find a Tender and/or Contracts Finder which provides details of the winning bidder and the <a href="#">total value</a> of the contract. Award notices are required to be published on Contracts Finder for all procurements with a <a href="#">total value</a> at £25,000 or above.
Bidder	An individual or organisation who submits a tender or quotation in a competitive procurement process.
Candidate	An individual or organisation that has sought an invitation or has been invited to take part in a restricted procedure, a competitive procedure with negotiation, a negotiated procedure without prior publication, a competitive dialogue or an innovation partnership.
Conflict of interest	The concept of conflicts of interest shall at least cover any situation where relevant staff members have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure.
Constitution	The Constitution sets out how the Council operates, how decisions are made and the procedures which are followed to make sure these are efficient, transparent and accountable to local people.
Contract	A legal document that states and explains a formal agreement between two different parties.
Contracting Authority	Has the definition contained within the Public Contract Regulations 2015. It means the State, regional or local authorities, bodies governed by public law or associations formed by one or more such authorities or one or more such bodies governed by public law, and includes central government authorities, but does not include Her Majesty in her private capacity.
Contract management	Is the process of managing contract creation, execution and analysis to maximise operational and financial performance at an organisation, all while reducing financial risk.
Contract Register	A register that stores details of the Council's Contracts, including duration and expiry dates. All Contracts with a

	<a href="#">total value</a> of £5,000 and above must be entered onto the register.
Contract term	The length of the contract including the initial term and any extension periods proposed.
Corporate Contract	A contract that has already been let by the Council for the benefit of Council staff, to support value for money.
Dynamic Purchasing System (DPS)	Is similar to an electronic framework agreement, with two exceptions, new suppliers can join at any time and it is to be run as a completely electronic process.
EU/OJEU Procedure	A procurement process where the <a href="#">total value</a> exceeds the relevant EU Threshold and so governed by the Public Contract Regulations 2015 and the Concessions Contracts Regulations 2016.
EU/OJEU Threshold	The threshold established by the EU above which an EU procedure must be carried out. There are thresholds for goods/services, works and concessions. The current thresholds are contained within <a href="#">Appendix 2</a> .
Evaluation	<p>The process of assessing received tenders or quotations against the published criteria to identify the winning bidder, i.e. the bidder with the highest evaluation score.</p> <p>Any subjective evaluation (such as quality) must be carried out independently by a minimum of two evaluators (preferably three), and then moderated by an independent moderator to reach a final agreed score. The evaluators should be fully briefed on the evaluation process. The 'Conflict of Interest Declaration – Confidentiality Agreement' on the <a href="#">procurement portal</a> gives further guidance on evaluation principles and best practice. Welland Procurement can act as the independent moderator but cannot undertake any scoring.</p>
Exemption	An act or instance of waiving a right to obey these Rules.
Extension (contract)	An additional period identified within the contract, beyond the initial term which may be used to lengthen the contract term.

Find a Tender	An e-notification service which has replaced OJEU, used to post and view public sector procurement notices.
Framework Agreement	A framework is an agreement with suppliers to establish terms governing contracts that may be awarded during the life of the agreement. It is a general term for agreements that set out terms and conditions for making specific purchases (call-offs).
Goods	Tangible products that satisfy a need.
Initial Term	The initial period of a contract; this may be subsequently extended.
OJEU	The Official Journal of the European Union.
Procurement	Procurement is the process of finding, agreeing terms and acquiring goods, services or works from an external source, often via a tendering or competitive bidding process.
Publicly available contract	A contract that has been let by another Contracting Authority and which is available for use by the Council. The Council must have been named specifically or generally within the procurement documentation in order to enable access.
Quotation	A formal statement setting out the estimated cost for a particular job or service.
Services	A valuable action, deed, or effort performed to satisfy a need or to fulfil a demand.
Specification	An exact statement of the particular needs to be satisfied, or essential characteristics that a customer requires (in a good, material, method, process, service, system, or work) and which a bidder must deliver.
Standard Suitability Questions/Questionnaire	The set of standard suitability or selection questions referred to in <a href="#">PPN 08/16</a> which must be used in all advertised procurements.
Tender	A written invitation sent to potential suppliers of a good or service to inform them about the information required for the buyer to choose between them.

Terms and Conditions	General and special arrangements, provisions, requirements, rules, specifications, and standards that form an integral part of an agreement or contract.
<a href="#">TUPE</a>	Stands for the Transfer of Undertakings (Protection of Employment) Regulations 2006. TUPE regulations ensure the rights of employees are transferred along with the service.
Variation	An alteration to the scope, term or any other part of a Contract. The limitations of the Public Contract Regulations 2015 should be borne in mind when varying a contract.
Whole life costs	The total cost of ownership over the whole length of the contract and sometimes beyond.
Works	As defined by the Public Contract Regulations 2015. Means public contracts which have as their object any of the following:—  (a) the execution, or both the design and execution, of works related to one of the activities listed in <a href="#">Schedule 2</a> ;  (b) the execution, or both the design and execution, of a work;  (c) the realisation, by whatever means, of a work corresponding to the requirements specified by the contracting authority exercising a decisive influence on the type or design of the work.

**Appendix 2: Variable Information**

The following information is subject to change during the currency of these Contract Procedure Rules and may be updated as changes occur by the relevant Chief Officer.

**Further Documentation and Guidance**

Available on [Welland Portal](#):

- Procurement Toolkit
- Procurement Initiation Document
- Roles and Responsibilities
- Risk Register
- A Guide to Tender Evaluation
- Electronic Tender Opening Procedures
- 2020 Guide to Contract Management
- Conflict of Interest – Confidentiality Agreement
- Awarding a Contract via a Framework Agreement
- Tender Timetable Planner
- Specification Template
- Quotation Documents (One and Four)
- Further Competition Documents (One and Four)
- Award Letter Templates
- Modification Notice Template
- Contracts Finder Award Notice Template
- TUPE Templates
- Evaluator Schedule Templates

**EU Thresholds**

Details of the current OJEU thresholds can be found on [Proactis](#).

Welland Procurement

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### **Appendix 3: Delegated Decision Record - Exemption Request Form**

This is available on the [Welland Procurement Portal](#).

#### Appendix 4 - Quick Reference Guide: Contract Procedure Rules

A decision to procure is required before procurement commences AND a decision to award must be obtained before a contract is awarded.

Procurements with a [total value](#) of £5,000 or more are subject to Transparency Regulations and will need to be entered on to the Council's Contracts Register.

<a href="#">Total Value</a>	Notices Required	Procurement Method	Notes
<b>Under £10,000</b>	None	At least <b>one written quotation</b> required.  (Rule <a href="#">6.2</a> )	<u>Finance Process:</u> Purchase Order can be authorised by Budget Holder in accordance with the Budget and Policy Framework.  <u>Legal Process:</u> Contract or Purchase Order must be approved / signed by the relevant Budget Holder (Rule <a href="#">6.5</a> ) unless sealing applies (Rule <a href="#">15.11</a> ).
<b>Between £10,000 and £49,999</b>	None however if advertised or tendered, then contact Welland Procurement for guidance.	At least <b>3 quotations</b> should be sought using RFQ template with one supplier being local.  (Rules <a href="#">7.2</a> and <a href="#">7.5</a> )	<u>Finance process:</u> Purchase Order can be authorised by a Chief Officer in accordance with the Budget and Policy Framework.  <u>Legal Process:</u> Contract signed by SLT (Rule <a href="#">7.12</a> ) unless sealing applies (Rule <a href="#">15.11</a> ).
<b>Between £50,000 and Goods and Services EU Threshold</b>	Contracts Finder Advertising and Award notices.  ( <a href="#">Rule 8</a> )	<b>Welland Procurement</b> must be instructed. A single stage (open) tender is required. Tenders at this level are run via Welland Procurement's e-tendering system.	<u>Finance process:</u> Purchase Orders can be authorised by a Chief Officer in accordance with the Budget and Policy Framework.  <u>Legal Process:</u> Contract must be sealed (Rule <a href="#">15.11</a> ).
<b>Works Contracts between the Goods and Services</b>	Contracts Finder Advertising and Award notices.	<b>Welland Procurement</b> must be instructed. A single stage (open) tender or two stage (restricted) tender can be used. Tenders at this	<u>Finance process:</u> Purchase Orders can be authorised by a Chief Officer in accordance with the Budget and Policy Framework.

<b>OJEU Threshold and the Works OJEU Threshold</b>	<a href="#">(Rule 9)</a>	level are run via Welland Procurement's e-tendering system.	<u>Legal Process:</u> Contract must be sealed (Rule <a href="#">15.11</a> ).
<b>Over relevant EU Threshold</b>	Contracts Finder and Find a Tender Advertising and Award notices.  <a href="#">(Rule 10)</a>	<b>Welland Procurement</b> must be instructed. A method defined by EU Procurement Regulations. Tenders at this level are run via Welland Procurement's e-tendering system.	<u>Finance process:</u> Purchase Orders can be authorised by a Chief Officer in accordance with the Budget and Policy Framework.  <u>Legal Process:</u> Contract must be sealed (Rule <a href="#">15.11</a> ).