

## Members' Library Service Request Form

Date of Document	12/06/14
Originator	Morag Ferguson
Originator's Ref (if any)	
Document Title	Changes to Corporate Procurement Procedures

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East Lothian Council
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Additional information:

Relates to agenda item - ELC 24 June 2014

Authorised By	Morag Ferguson
Designation	SM Legal
Date	12/06/14

For Office Use Only:	
Library Reference	100/14
Date Received	12/06/14
Bulletin	June 14

**REPORT TO:** East Lothian Council

**MEETING DATE:**

**BY:** Depute Chief Executive (Resources and People Services)

**SUBJECT:** Changes to Corporate Procurement Procedures

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## **1 PURPOSE**

- 1.1 To amend and update the Corporate Procurement Procedures.

## **2 RECOMMENDATIONS**

- 2.1 Council is asked to approve the amended Corporate Procurement Procedures (Version 10), which will form an Appendix to Standing Orders.

## **3 BACKGROUND**

- 3.1 The Council's Corporate Procurement Procedures, which are an Appendix to Standing Orders, set out the process to be followed by officers in selecting contractors and entering into contracts on behalf of the Council. They include details of legislation and regulation governing procurement and set out the roles and responsibilities of different parties in the procurement process. As legislation, regulation and the Council's structure changes, consequential changes are required to the Corporate Procurement Procedures. In particular, a recent report by Internal Audit noted that the reporting requirements in the Corporate Procurement Procedures was inconsistent with the reporting requirements set out in Standing Order 3.4, as adopted by the Council in June 2013.
- 3.2 In order to address these changes, an updated version of the Corporate Procurement Procedures (version 10) has been produced. Due to the size of this document, it has been placed in the Members Library Service, in accordance with Standing Order 3.4(b). However, Appendix 1 to this report contains a note of the changes.
- 3.3 There has been no change in Procurement Policy in this new version of the Corporate Procurement Procedures. There is currently a new EU

directive awaiting implementation by both the UK and Scottish Governments and the Procurement Reform (Scotland) Bill in is progress through the Scottish Parliament. When these new pieces of legislation are enacted, it is proposed that the Council's policy on procurement will be reviewed to take account of any changes.

#### **4 POLICY IMPLICATIONS**

- 4.1 There are no direct policy implications as a result of this report. The changes are confined to an update to reflect current legislation, regulation and the Council's own structure.

#### **5 EQUALITIES IMPACT ASSESSMENT**

- 5.1 This report is not applicable to the well being of equalities groups and an Equalities Impact Assessment is not required.

#### **6 RESOURCE IMPLICATIONS**

- 6.1 Financial - None  
6.2 Personnel - None  
6.3 Other - None

#### **7 BACKGROUND PAPERS**

- 7.1 Updated Corporate Procurement Procedures (V10) lodged in Members Library Service

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<b>DATE</b>	12/06/2014

## Appendix 1

Page	Change
5	Update to reflect new TUPE Regulations
6	Update to reflect new EU thresholds Note added regarding forthcoming EU Regulations and Procurement Reform (Scotland) Bill
9	New provisions regarding approval/award and reporting to ensure consistency with Standing Orders
10	Roles and Responsibilities updated to reflect Scheme of Delegation and Council Structure
11	Table updated to reflect new job titles in Council Structure
13	Table updated to reflect new job titles in Council Structure
14	Table updated to reflect change in process
17	Change to reflect new job titles in Council Structure
21	Addition of reference to Corporate Procurement Team
22	Change to reflect new job titles in Council Structure
26	Addition of reference to Shortlist in Supplier Selection
27	Change to reflect new job titles in Council Structure
30	Change to reflect new job titles in Council Structure New provisions regarding reporting to ensure consistency with Standing Orders
31	Update to reflect current EU Regulations
37	Change to reflect new job titles in Council Structure
48	'Lowest Cost' added to definitions



East Lothian Council

Corporate Procurement  
Procedures Manual

Version 3.10 June 2014

# CONTENTS

Foreword by Head of Council Resources	Page 2
Section 1: Setting the Scene	Page 3
Section 2: Roles & Responsibilities	Page 7
Section 3: Process Overview Flowchart	Page 13
Section 4: Quotations Process	Page 14
Section 5: Conducting a Tender Process	Page 18
Section 6 : Framework Agreements	Page 36
Section 7: Exceptions	Page 38
Section 8: Compliance & Consequences	Page 41
Section 9 : Glossary of Terms	Page 44
Section 10: Appendices	Page 48

## Foreword by the Head of Council Resources



The Council faces difficult decisions in the face of increasing demands on our services and reducing budgets. By having a strategic and intelligent approach to procurement we can make a difference and contribute to the overall aim of “spending money wisely”. Having good procurement procedures, which are well communicated and supported and consistently applied throughout the Council, is one crucial part of this plan. This will help us to ensure that our procurement practices are “more than compliance”.

Procurement has traditionally been thought of as tendering. This is no longer the case. Procurement is a value added activity that spans from market intelligence and stakeholder engagement, through to tendering and onwards to managing the contract and supplier performance. These “pre” and “post” tender activities offer even greater reward in terms of reducing costs to the Council and ultimately benefit the citizens of East Lothian through improved services.

World class procurement is about procurement making a valued and measurable contribution towards an organisation's performance in concert with its strategic direction and business imperatives.

It is also about procurement being recognised internally as a strategically important function that helps the business to achieve its objectives rather than just ensuring the process complies with the regulations and delivering savings. The emphasis is moving from technical capability, as this is now regarded as “business as usual”, to the recognition of the importance of change management and influencing skills.

Please note that following these procedures is the only approved way to engage with new suppliers.

Please ensure that you are familiar with the procedures and if you have any comments or feedback please do let the Procurement Team know by emailing [procurement@eastlothian.gov.uk](mailto:procurement@eastlothian.gov.uk)

## SECTION 1 – SETTING THE SCENE



## Introduction

This 3<sup>rd</sup> edition of procurement procedures is designed to significantly improve the procurement outcomes. We want procurement to be in line with Best Practice and to achieve the maximum impact we can with the budget available to us. We want to ensure the procurement is aligned with business objectives and offers a strategic service.

In 2011, the Scottish Government launched a new tool for people involved in procurement – the [Procurement Journey](#). This is an on-line tool, which takes us through the full procurement process stage by stage and has an “underground” journey as the theme. These procedures complement the Procurement Journey, and the journey has been threaded into these revised procedures.

These procedures were drafted by Julie Caughey, the Corporate Procurement Manager, in consultation with the Council’s Procurement Improvement Panel (PIP) and a sub-group from the extended procurement team of Authorised Procurement Officers.

Whilst every attempt has been made to ensure these procedures are of a high quality there is always room for improvement. If you have any suggestions for improvement please email [procurement@eastlothian.gov.uk](mailto:procurement@eastlothian.gov.uk)

## What can we expect to achieve?

We want to achieve the biggest impact we can with the budget we have. To do this we need to improve procurement outcomes. This means doing market research, becoming an intelligent customer and managing our suppliers post contract award. We need to know who our stakeholders are and engage with them in the appropriate way. We need to consider the social and environmental impact of what we are doing and take advantage of any opportunity for incorporating this into the procurement. All of this is in addition to getting the basic procurement process right and making the right choices along the way.

By getting these things right we can avoid some of the pitfalls such as selecting poor quality suppliers who then absorb time managing poor performance or even worse impacting on service users’ experience. Poor procurement can also lead to substandard goods, services or works which may have time or money consequences.

Yes, we need to comply with the regulations and avoid challenges wherever possible, but in addition to that we have to deliver added value.

## Scope

These procedures cover all expenditure by the Council with third parties i.e. the supply of goods, provision of services and delivery of works projects.

## Legal Context

Procurement is governed by many legal sources including:

The EU Treaty principles (regardless of value of procurement):

- Non-discrimination
- Equal treatment
- Transparency

The EU Directives are given force of law in Scotland by the Public Contracts (Scotland) Regulations 2012 which dictate rules on where to advertise, when it is appropriate to advertise, specifications, selection, timescales and awarding contracts. The EU Directives are currently being reviewed by the European Parliament. At the time of writing, the Scottish Government is consulting on the Scottish Procurement Reform Bill. Both of these may have an impact on how we conduct procurement in due course.

Case law from both UK courts and the European Court of Justice (ECJ) applies. The most common reasons for the European Commission taking cases to the ECJ are:

- Breach of EU Treaty principles (below EU thresholds)
- Using the accelerated or negotiated procedure (single sourcing) where not justified
- Not advertising contracts below the EU thresholds
- Not running framework agreements properly
- Failing to aggregate spend
- Failing to publish contract award notices
- Extending contracts wrongly

Other relevant Scottish & UK legislation includes demonstrating Best Value through the Local Government in Scotland Act 2003 s2 (1) a and TUPE Regulations 2006 as amended by the "Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014".

Scottish Procurement Policy Notes (SPPNs) – although these do not have legal status and are for guidance only these also influence how we do procurement.

Legal action, or less formal challenges for example by unsuccessful bidders or by the European Commission, could cost the Council money.

## Current EU Thresholds

For Local Authorities, the [EU Thresholds](#) are currently (January 2014 to January 2016):

1. Supplies & Services - £172,514
2. Works - £4,322,012

These thresholds change every two years so you should always check that you are working to the correct figures.

Above these values, the European Directives apply. These directives are currently legislated for in Scotland by the [Public Contracts \(Scotland\) Regulation 2012](#). New EU directives are in force since April 2014, and member states have 2 years to implement into national legislation. The Scottish Government has indicated that they will consult on these options during Summer 2014 with a view to introducing them in 2015, allowing any anomalies to be reflected in their own Procurement Reform (Scotland) Bill.

## Value Guidance

To determine the value you will look at the total value of your requirement (if a one-off). If it is an ongoing requirement you would look at your 4-year cost (regardless of the duration of your proposed contract).

Contract requirements must not be split, nor the estimated value set unjustifiably low, to avoid the provisions of the Directive. It is not legal to disaggregate a requirement specifically to avoid the intended procurement procedure i.e. you must not break a requirement up into smaller values or shorter duration contracts just to avoid advertising, or doing a tender, or doing a full EU Tender.

If a proposed contract includes one or more optional extensions, the total aggregated value is the highest possible amount that could be paid under the contract should all options to extend be exercised.

Further information on whether procurement is works or not and how to calculate values can be found [here](#)

## SECTION 2 – ROLES & RESPONSIBILITIES



## Scheme of Delegation

The Council has [Standing Orders](#) , including a scheme of delegation, and Financial Regulations. These set out who has authority to do what in the Council and there is specific reference to the initiation of tender processes, the acceptance of tenders and the signing of contracts above and below certain values.

The Council's Scheme of Delegation states that:

Officers shall have delegated authority to incur expenditure on behalf of the Council, including the signing of contracts and agreements to this effect, in accordance with Council policy, procurement procedures and other relevant financial procedures, as approved within the Council's Financial Regulations. All such expenditure must be within the authorised estimates of the expenditure of the Council as a whole. Only members of the Corporate Procurement Team have the authority to issue contract award/tender acceptance letters on behalf of the Council.

Officers are required to obtain authority to initiate a procurement process, in accordance with the Council's Scheme of Delegation and up to the following limits:

Value of Goods & Services	Value of Works	Authorisation Required to initiate procurement	Form Required	Reporting
Up to £5k	Up to £5k	Any officer	Under £5k form	None
£5k to £50k	£5k to £250k	Budget Holder	PID QQ	Discretionary Member's Library Report (see below)
Above £50k	Above £250k	Where there is specific revenue or capital budget approval - Head of Service	PID	Where the final cost is similar to the budget cost – Members Library Report
		Where there is no specific revenue or capital budget approval – Members via Cabinet Report	PID	Where the final costs exceeds the budget cost – Cabinet Report required
<p>Note1. The above refers to <u>new procurements only</u>. Where a Council framework agreement or framework contract exists, and the service area is <u>calling off</u> of that framework, then no further approval or reporting is required for that call off and the service area is authorised to issue award letters for call offs. The service will be required to keep track of expenditure under their framework agreements.</p>				

## Initiation

In summary, officers have authority to initiate a procurement process, without recourse to members, so long as the expenditure is below the tender threshold and/or it has been approved in the revenue or capital budget.

## Approval

Once the evaluation process is complete and the winning tenderer(s) have been identified, a Tender Report must be prepared, the only exception to this being contracts below £5k. The Tender Report must be approved by the relevant Head of Service.

## Award

The award of a legally binding contract takes place when the award letter is sent to the successful contractor, supplier or provider. Please note that only members of the Corporate Procurement Team have authority to issue award letters (exception – see Note 1 above). An award letter must only be issued after approval has been obtained – see above – and when a Procurement Completion Document has been completed.

## Reporting

In terms of reporting, the Council's standing orders provide that the Members Library service should be used for the following items:

- a) Reports advising of significant items of business where the decision has been taken under delegated powers; or
- b) Background papers linked to specific committee reports; or
- c) Items considered to be of general interest to Members

Therefore, for the purposes of reporting Contract Awards:

- 1) For contracts below the tendering threshold (up to £50k goods and service or £250k works) the relevant Head of Service will have discretion and will consider whether a) or c) above apply in deciding whether or not to report to the Members Library
- 2) All contracts above the tendering threshold (£50k goods and services or £250k works), with the exception of call offs under an existing framework, are considered significant items of business and should be reported to the Member's Library; or, if the tender value is significantly greater than the budgeted cost an award cannot proceed until approval is obtained from Cabinet.

## Roles & Responsibilities

There are many stakeholders involved in procurement. These have been expressed in a Stakeholder Map which is available upon request from the Procurement Team Leader. In these procedures the main roles that require to be defined are as follows:

Roles & Responsibilities	Corporate Procurement Team	APOs	Internal Customer	Service Users/ End Users	External Partners	Head of Service	Service Manager – Legal & Procurement
Initiate requirement & Complete PID			✓				The Service Manager – Legal & Procurement has responsibility for managing procurement activity and processes for the Council
PID approval							
Create entry in contract register	✓						
Complete Strategy Document / Market Analysis	The procurement officer will take the lead on this		The commodity strategy document should be completed together with key stakeholders				
Approve Strategy	✓						

Prepare Specification	Guidance Role		The customer/end users lead on this				
Prepare Tender Documents	The procurement officer will get a first draft for the customer		Involved in deciding on questions and weighting				
Publish Contract Notice or Quick Quote	✓						
Evaluate Tenders	Finance, Insurance etc	Technical Expertise	Technical Expertise	Involvement as deemed appropriate			
Send unsuccessful letters	✓						
Conduct Debriefs	Advisable	Always minimum of 2 people from ELC					
Update Contract Register	✓						
Send award letters	✓						
Report to MLS	✓						
Mobilise Contract	✓	✓	✓				
Contract & Supplier Management	Advisory and supporting role. Escalation if required	Normally the internal customer would lead on this				Escalation Route	Escalation Route

## Competency Levels

The Scottish Government has published a [procurement competency framework](#). The levels of competency required for each role has been assessed as follows:

	Procurement Process	Legal Aspects	Financial Aspects	Systems	Supplier Management	Markets & Market Analysis
Procurement Team Leader	4	3	4	4	4	3
Senior Procurement Officer	4	3	2	3	3	3
Procurement Officer	3	2	1	3	3	1
Authorised Procurement Officer	3	2	1	3	3	2
Key Service Contact / Regular internal customers	1	-	-	1	1	2
Other staff e.g. CMT and Councillors	1	-	-	-	-	-

An extensive Procurement Skills Training programme took place in Jan – March 2013 and thereafter a Procurement Forum will be held to ensure that there is a network of best practice and continuous improvement.

## Extended Procurement Team

The extended procurement team consists of officers throughout the Council who have responsibility for significant areas of expenditure and/or conduct procurement activities as laid out in this procedures manual. There will still be significant support as required provided by the Corporate Procurement Team.

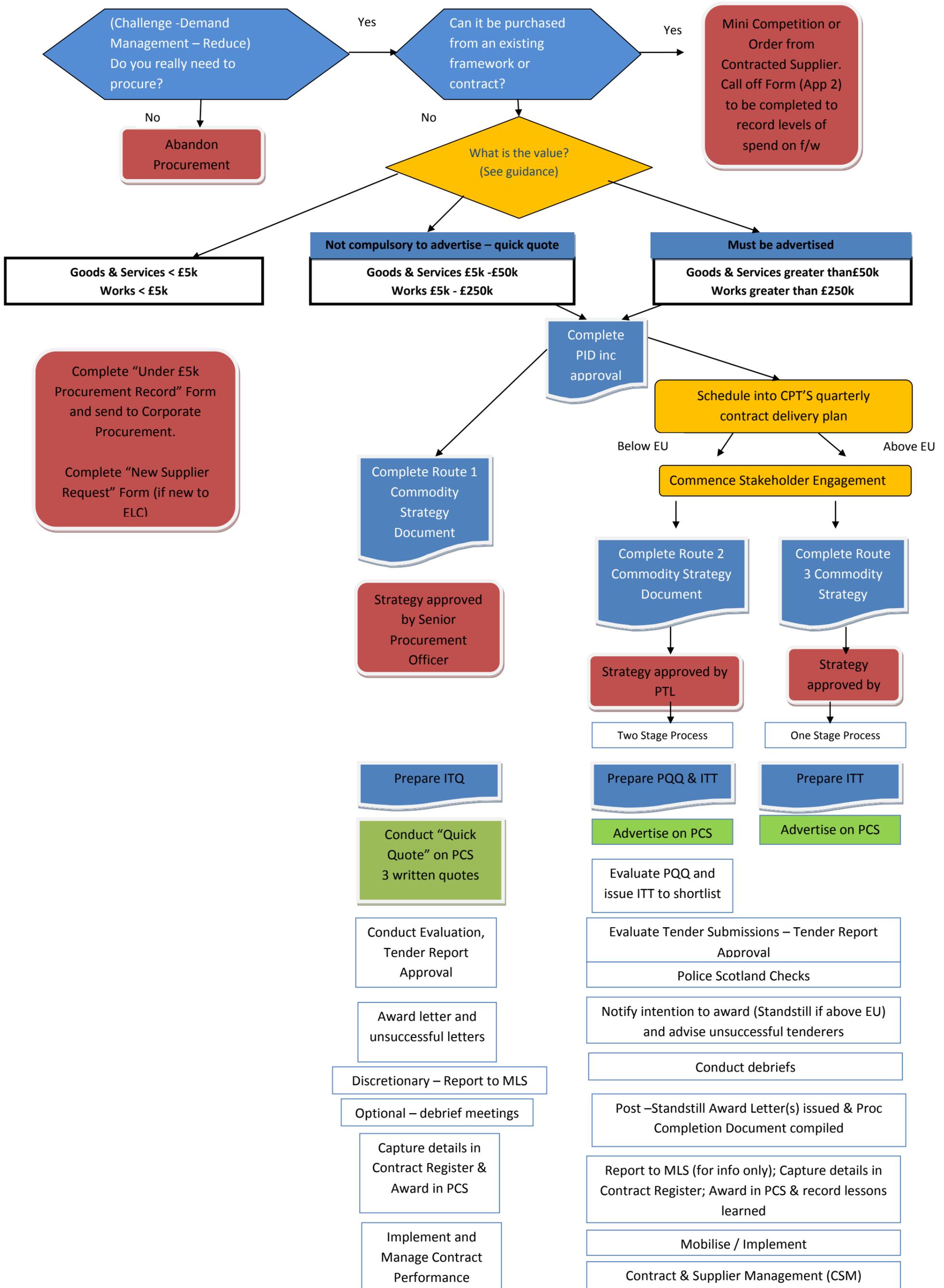
Some of the extended procurement team will also be authorised to conduct procurement activities (APOs). An APO will have had training on how to conduct procurement exercises up to a certain value, and can do so competently with minimal support from the Corporate Procurement Team.

The members of the extended procurement team as at the time of writing consists of:

Service	Extended Procurement Team
Adult Wellbeing	Kerry Brooks (strategy) Carol Jenner (strategy) Laura Marsh (strategy) Trish Leddy (area manager) Gillian Neil (area manager) Rod Mackenzie (area manager) Tricia Kaminski (criminal justice)
Children's Wellbeing	Celia Borland
Education	Richard Parker Fraser Parkinson
Infrastructure	Gary Miller (Property) Gary Fenwick (Property) Liz McLean (Property) Suzanne Greig (Property Maintenance) Paul Iannetta (Property Maintenance) Peter Forsyth (Roads Services) Stuart Baxter (Roads Services) Callum Redpath (Roads Services) Gill Smith (Roads Services) Alan Stubbs (Roads Services) Ian Dalglish (Transport Services) Andrew McLellan (Transport Services) Tom Reid (Waste Services) Stuart Pryde (Landscape & Countryside) James Coutts (Housing)
Strategy & Development	Esther Wilson (Housing Strategy) Wendy Maguire (Housing) Neil Gibbs (Housing)
Policy & Partnerships	Fiona Edgar (Business Development)
Council Resources	Alan Cruickshank (IT) Corporate Procurement Team: Siân Morris Pauline Sutherland

A subset of the above officers will be granted authority to procure (APOs). This will be determined by the Council Management Team in due course.

## SECTION 3 - PROCUREMENT PROCESS OVERVIEW – AT 10 JUNE 2014

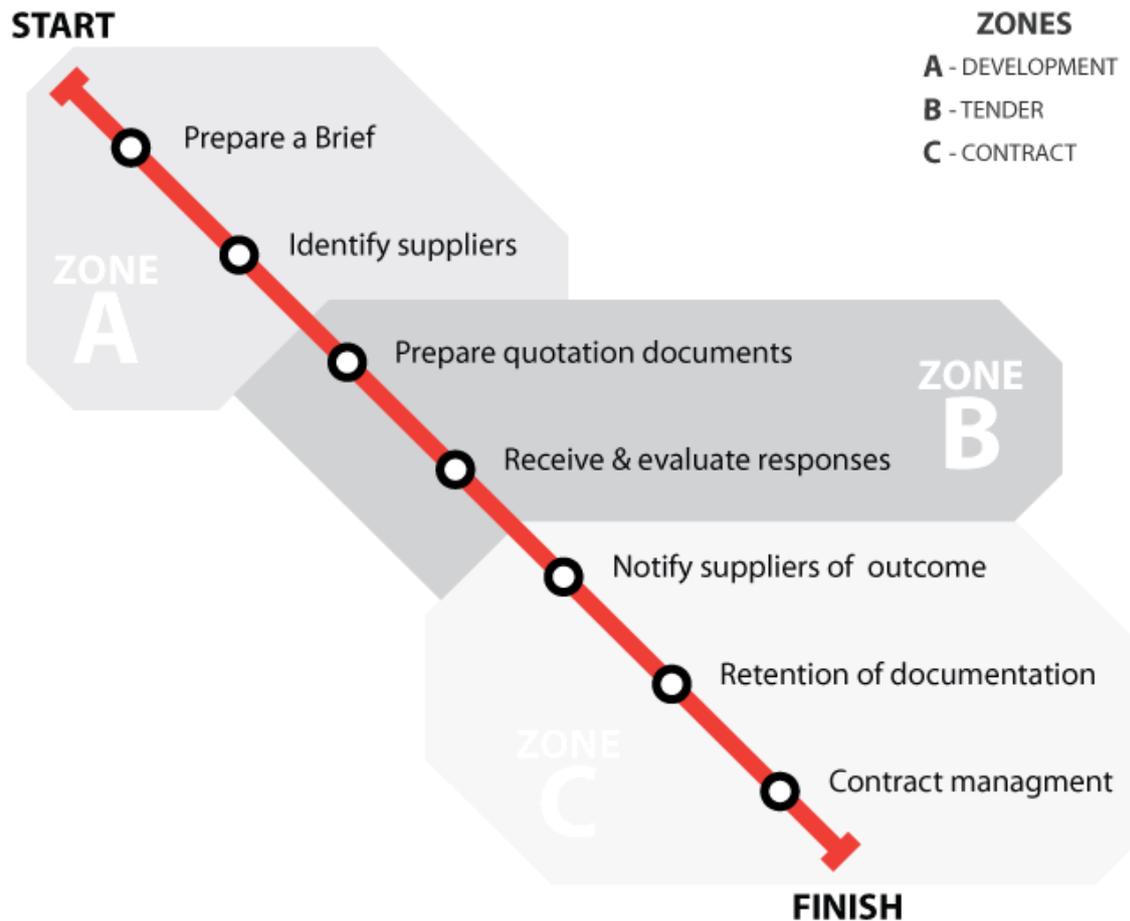


## SECTION 4 – CONDUCTING A QUOTATIONS PROCESS



## Conducting an Invitation to Quote Process (Journey Route 1)

Link to journey [here](#)



### Invitation to Quote v Tender Process

What is the difference? The difference is that with the quotations process you are in control of who is invited to tender and therefore you have already considered the capability of the suppliers you are inviting. With a tender the requirement is advertised and any supplier can apply therefore a pre-qualification stage is usually required.

### Sustainability

Quotations offer the perfect opportunity to consider small and micro organisations, as well as supported businesses (businesses where 50% or more employees have a disability) and social enterprises. It also provides an opportunity for local businesses.

## Procurement Initiation Document

A PID must be completed in every case. It gathers basic information about requirements and also evidences that there is budget provision for the goods, services or works and that the budget holder has approved the procurement.

## Commodity Strategy

This is the stage where you will record the main decisions you have made. For the latest version of this document please contact the Corporate Procurement Team.

## Invitation to Quote – Letter

You must complete an Invitation to Quote letter. This includes various things such as the evaluation criteria. You may have appendices etc such as drawings or a more detailed specification. The letter must be tailored to your requirements. For the latest ITQ template please contact the Corporate Procurement Team.

Give thought to who will evaluate the quotations (must be more than one person) and check they are available in the timescales.

## Identify Suppliers

Link to [journey](#)

You must invite a minimum of 3 suppliers, more if possible. Any exceptions to this must be justified in the commodity strategy and approved by the Procurement Team Leader. You will use your knowledge of existing suppliers but you should also investigate new suppliers. Sources include: internet search; other Councils; trade or professional bodies and the PCS supplier search (you can search by postcode as well as by commodity).

If you cannot identify at least 3 suppliers you may wish to advertise your requirement. Please discuss options with the procurement officer you are working with.

## Publish Quick Quote on PCS

Only the corporate procurement team and trained APOs can publish quick quotes on behalf of the Council. Send your Invitation to Quote letter plus any attachments to the Corporate Procurement Team/APO for publication. Questions and answers will be dealt with via PCS so that all suppliers get the same information. Answers must be given in good time.

## Receive and Evaluate Quotes

Quotes will be submitted via PCS which provides a good audit trail, negating the need to keep a separate record of who has submitted a quotation.

If you receive only one quotation please take the following action before proceeding:

- Contact the other suppliers who did not quote and ask them why they did not quote. It may be that they were not given enough time or that they were not

suitable choices for this type of supply. If this is the case you may be required to re-run the process; and

- Consider whether the quote received offers value for money. In order to do this you will have to know what your expectations were and how you arrived at these; and
- Contact Corporate Procurement for advice on how to proceed

When evaluating quotes the Corporate Procurement Team will issue you with an evaluation spreadsheet. It is extremely important that the evaluators are aware of the “Guidance for Evaluators” (available on the Intranet) and in particular that reasons for scores are recorded. This information will be used to debrief suppliers so please bear this in mind.

You may have decided to have an additional stage for presentations/site visits. If so, ensure this is part of the evaluation criteria and weighting. You must be careful at this stage to ensure that all suppliers are treated equally.

## **Tender Report & Approval**

A tender report must now be prepared and approved by the relevant Head of Service. The Head of Service must also decide whether the contract award meets the criteria set out in the Standing Order with regard to report to the Members Library Service. The Tender Report is required to be approved before notifying supplier or issuing award letters.

## **Notify Suppliers**

Link to [journey](#)

A member of the Corporate Procurement Team can now send award and unsuccessful letters. All letters should provide good feedback to the supplier on their quotation. The CPT has proforma letters and these must be used. Once the award letter is sent a legally binding contract is formed.

## **Contract Register & Award Notice**

The Council’s contract register must now be updated with the details of the successful bidder and any savings resulting from the process. The award notice must also be published on PCS. These tasks are performed by the Corporate Procurement Team.

## **Lessons Learned**

Please ensure that you complete the lessons learned document (Appendix I). It is extremely important that these are recorded and shared so that we are continually improving our performance and outcomes.

## **Contract Mobilisation**

The contract can now be put into place. Often a handbook with key contacts and service levels is useful.

## **Contract & Supplier Management**

The contract and supplier management should now be undertaken at the level and frequency appropriate to the risk/impact of the contract. Any significant or sustained problems should be discussed with the Corporate Procurement Team.

## SECTION 5 – CONDUCTING A TENDER PROCESS



## Conducting a Tender Process (Journey Routes 2 & 3)

For link to journey click [here](#). Please note these processes should always be carried out in conjunction with the Corporate Procurement Team.



### 5.1 Develop Commodity Strategy

Some excellent guidance and documents can be found [here](#)

A commodity strategy gives consideration to many things and is a key planning document. The commodity strategy gives consideration to various aspects of the procurement and records your decisions and the reasons for those decisions. Factors to consider include:

- Stakeholders / User Intelligence Groups (UIGs) / Evaluation – who, how and when should they be involved? What is their role? (A UIG Welcome pack is available at the above link)
- Other bodies who may be interested in collaborating?
- Contracts in place
- Research / information gathering undertaken
- Cost drivers
- Spend analysis (using Spikes or Great Plains)
- Lotting strategy – to enable SMEs and local suppliers to bid
- Sustainability – how this can be built in to each stage of the procurement cycle
- Procurement route - restricted, open or other

- Equality Impact Assessment
- Risks

The latest proforma document can be obtained from the Corporate Procurement Team. Once you have done this you will have a clear idea of how you wish to proceed and what the main opportunities and risks are.

Escalation Point :

You may reach the conclusion that you will benchmark or negotiate rather than proceed with a tendering process. If this is the case please note that this must be approved by the Procurement Team Leader.

## 5.2 Approval of Commodity Strategy

You must now submit this Strategy to the Procurement Team Leader (below EU) or Head of Service, if above EU Thresholds, for approval. This is a new stage in the process.

## 5.3 Develop Documents & Advertise

[Link to Journey](#)

At this stage you give consideration to:

- The specification – innovation, input/output, conformance v performance
- Selection & Award Criteria
- PQQ & ITT ( or just one stage ITT)
- Timescales
- Terms & Conditions

### 5.3.1 Writing the Specification

The above link provides excellent guidance re specifications. Some of this is captured in a checklist format below.

<b>Specification Checklist for CON-XX-XXX</b>	<b>Yes/No/ N/A</b>
1 Are previous specifications available (ELC or other) as a potential starting point?	
2 Is what is required clearly and unambiguously described?	
3 Does it avoid over-specification?	
4 Has an output specification been used (to encourage innovation)	
If the answer to the above is no, why is this?	
5 Is your specification written in a way to assist with “future proofing?”	
6 Does it include service levels and KPIs?	

7 Have you considered sustainability – social, economic, environment? E.g. community benefits & sustainable variants?	
8 Have you consulted all relevant stakeholders? Key stakeholders may be involved in writing the specification.	
9 Have you avoided trade names, or used “or equivalent”?	
10 Do specifications provide equal opportunity for all potential suppliers to offer a product or service which satisfies the needs of the user and which may incorporate alternative technical solutions? Ensure that specifications do not contain features that directly or indirectly unlawfully discriminate in favour of, or against any supplier, product or source.	
11 Is the specification achievable? (Refer back to market research)	
12 Does the specification encourage and enable competition?	
13 Have you considered if any requirements are mandatory or only desirable?	
14 Have you considered “eCommerce” ie catalogues, punch-out, eInvoices?	
15 Have you specified what Management Information you need and how often?	

The Corporate Procurement Team can assist with providing similar specifications. Once a contract is awarded the scope to make changes to the specification (e.g. asking the contractor to deliver more or less or something that was not specified at the time of tendering) is limited and any significant changes may be challenged in the Courts.

### 5.3.3 Developing the Pre Qualification Questionnaire (PQQ)

[Link back to Journey](#)

The Scottish Government has launched the standard PQQ (sPQQ) in 2012 which is the default method to be used by East Lothian Council.

The PQQ is your only opportunity to assess the suppliers’ capability and capacity. Everyone who passes this stage should have the required capacity and capability to supply the goods, provide the services or undertake the works specified.

#### **Selection Criteria**

These are questions that focus on the **supplier** - their capability, capacity and suitability. There are pass/fail elements and there can be scored elements. Typically these include financial health, insurance, equal opportunities, health & safety policies and records, membership of bodies as well as previous relevant experience.

The plan is that the Scottish Government will have a pre-accreditation process where insurance, accounts and health & safety documentation will be centrally filed, however this is not available at the time of writing.

The depth of the appraisal depends on the risk associated with what you are procuring, the value and the complexity. In the simplest of cases you may just want assurance of suitable experience and that they can supply what you require. It may not always be necessary, for example, to check financial health (for example in a one-off purchase with no after sales requirement). This is why there is no such thing as a one-size fits all PQQ – it must be tailored to each and every requirement. The main thing to remember is that it should be proportionate to your requirement and as simple as possible whilst meeting the requirement to shortlist only suppliers who are suitably experienced and competent.

You must always disclose your scoring methodology. An example methodology might be:

<b>0</b>	<b>Unacceptable</b>	Nil or inadequate response. Fails to demonstrate an ability to meet the requirement.
<b>1</b>	<b>Poor</b>	Response is partially relevant and poor. The response addresses some elements of the requirement but contains insufficient or limited detail or explanation to demonstrate how the requirement will be fulfilled
<b>2</b>	<b>Below Average</b>	Response is partially relevant but does not fully meet requirements. Addresses a broad understanding of the requirement but lacks detail on how the requirement will be fulfilled
<b>3</b>	<b>Average</b>	Response is relevant and good. The response is sufficiently detailed to demonstrate a good understanding and provides details on how the requirements will be fulfilled
<b>4</b>	<b>Very Good</b>	Response is relevant and very good. Contains full details and has something additional.
<b>5</b>	<b>Excellent</b>	Completely relevant and excellent overall. Comprehensive, unambiguous and demonstrates thorough understanding of the requirement and full details of how it will be fulfilled. Something above and beyond expectations.

Please contact the Corporate Procurement Team for an up-to-date sample / template PQQ.

### 5.3.4 Developing the Invitation to Tender (ITT)

[Link back to Journey](#)

The ITT is about looking forward – what can the supplier supply, how will they do it and at what cost (or whole life cost, where appropriate).

#### Award Criteria

These are questions that focus on the **goods, services or works** to be supplied. This can be price only or may include quality elements such as technical aspects, method statement, samples, quality assurance, management information, customer service, sustainability, key staff and so on.

If you have used an output based specification you are going to have to award more points for “quality” ie what solution are they proposing and how will they fulfil it. If you have used an input or conformance based specification you will have less requirement to assess quality.

This is the best place to take sustainability into consideration – in the specification as well as evaluation criteria and particularly using “whole life costs” to compare bids, rather than focussing simply on purchase price. For use of whole life costing please contact Corporate Procurement for advice and guidance.

You will use your “commodity strategy” to inform your ITT – e.g. lotting strategy to ensure maximum competition and opportunity for small or niche suppliers.

You may also wish to hold a “[Supplier Conference](#)” at this stage. Once you have a draft document it might be worth meeting with potential suppliers in an open forum to discuss the process, the timetable and review the specification/scope and approach to market. This can be a very useful two-way sharing of information and can lead to valuable amendments to your PQQ, ITT or even overall strategy.

A checklist of what you may want to include in your ITT is set out below:

	Section	Y/N
1	Covering letter – key info (e.g. deadline, how to submit, last date for questions)	
2	Instructions to tenderers – About East Lothian, purpose of the ITT, Contract Term, Procurement Process Timetable (if above EU thresholds please observe minimum <a href="#">timescales</a> ), Evaluation of the ITT (including presentations and site visits if applicable), Completion & Deadlines, How late tenders will be treated, Questions & Answers, Accuracy, Confidentiality and FOI and EI *	
3	Specification – Overview, Legislative Background, Outcomes, Service Delivery, Staffing (inc PVG), Equalities, SLA/KPI, Contract Management, Management Information, Administration / Invoicing (including catalogues/punch-out, eInvoicing if applicable), Sustainability (e.g. Community Benefits, variations)	
4	Organisation Details (non scoring) – Name, Address, Company, VAT and Charity Reference numbers, contact details	
5	Mandatory Requirements (if there are any) – e.g. products or service must meet minimum standards or grades	
6	Schedules to Tender (scoring elements) - Quality (Method statement, delivery timescales, staffing details, customer satisfaction, sustainability, community benefits, added value) and Price/ Cost Schedule	
7	Form of Tender	
8	Terms & Conditions (and acceptance form)	

\*If you are letting a framework agreement it is also important to have in your instructions to tenderers a section on “How this framework will operate” which details the process used to call-off from a multi-supplier framework.

You should also remember to state whether there is any guaranteed business or not and it is good practice to say that we may not accept any tenders.

In your Pricing / Cost Schedule you should lay this out in a way that will allow easy comparison between tenders. It is recommended that when doing your early market or industry research that you ask several suppliers about how they price jobs so that you can tailor the schedule to the goods/ services or works that you are buying. In some cases there will be industry standard pricing methodologies. You would also need to consider costs over the (whole or part) life of the product or service and the disposal costs. A typical cost schedule could be:

Cost Category	Detail	Yr 1	Yr 2	Yr 3	Total
Acquisition	Purchase Price				
	Any additional costs (e.g. hardware/software)				
Running	Consumables				
	Electricity consumption				
	Fuel costs				
	Repairs & Maintenance				
	Training costs / Consultancy days				
	Cost of changeover (internal costs)				
Disposal	Costs of Disposal				
TOTAL COST OF OWNERSHIP (TCO)					

### 5.3.5 Publish Contract Notice

Now that you have your PQQ and ITT ready the Corporate Procurement Team can publish your Contract Notice in [www.publiccontractsscotland.gov.uk](http://www.publiccontractsscotland.gov.uk)

It is acceptable to send “courtesy alerts” to potential suppliers.

You will issue the PQQ (or ITT if a one stage or open process) to all suppliers who express interest. This is automated through PCS.

## 5.4 Supplier Selection – Short-listing from PQQs

[Link to journey](#)

Once completed PQQs are received these should be evaluated in accordance with the procurement timetable. It is normally possible for the evaluation to be split into generic and technical. The generic requirements can be evaluated by Corporate Procurement (insurance, financial health, business probity etc) and the technical elements by the lead customer contact (e.g. relevant experience and capacity).

It is vital that sufficient records are kept so that good quality feedback can be provided to the suppliers and that scores can be adequately evidenced.

If it is an EU procurement (ie exceeds the thresholds) then a minimum of 5 applicants must be taken forward to the ITT stage (unless there aren't 5 who meet the criteria). It is advisable to state a range will be shortlisted (rather than a specific number) for example 5-7. This is to allow for the case where scores are very close and you may want to make the cut in a certain place so that there is a sufficient gap between successful and unsuccessful applications. It is also advisable to state that the Council reserves the right to be flexible with the number of suppliers on the short list or framework.

## 5.5 Issue ITT and Evaluate Tenders

It is advisable to review your ITT at this stage as the PQQ process may have highlighted areas that you need to have more focus on at the ITT stage. Now you can issue your ITT to your short-listed suppliers. Remember to answer any questions asked as helpfully as you can and in good time. Using an eTendering system or PCS means that all questions and answered can be shared easily.

You must ensure that Tender Evaluation, more than any other, can stand up to scrutiny. It is the most common area for challenge by unsuccessful tenderers and also the most common source of FOISA requests. **You must ensure you have a full audit trail.**

### 5.5.1 Receipt of Tenders

The instructions in your ITT must clearly and unambiguously state how and where tenders must be submitted (e.g. tenders must be submitted electronically via the PCS portal) and also that you will not accept late tenders (late tenders are not possible anyway when using electronic means).

If you are using a paper-based process this must be justifiable. An example might be that the ITT and/or tenders will have detailed drawings or plans that are not suitable for viewing electronically.

Should you only receive one submission you must advise the Procurement Team Leader of this. You must contact all short-listed suppliers and ask for reasons why they did not submit a tender. This report should then be submitted to the Procurement Team Leader for authorisation to proceed with a non-competitive action.

If there is any doubt about whether to accept a tender submission or not please contact the Procurement Team Leader and/or Legal Services for advice.

### 5.5.2 Tender Opening

When using ePS or PCS this is simply a case of “unlocking” the electronic post-box after the deadline has passed. If, however, your process is an exception and you are using a manual paper-based process then please note the following procedures:

#### Paper – Based Tender: Opening Procedures

1. Appoint Tender Opening Panel – minimum of 2 people to include one person from outwith customer service area (usually Legal Services). Note – no need for a Councillor to be involved
2. Meet to open tender submissions – as soon as possible after the closing time
3. Complete the “Tender Opening Form” – note price and whether form of tender is signed
4. Return any tenders received after the closing date/time, unopened, to the sender

### 5.5.3 Tender Evaluation

#### [Link to Journey](#)

The Evaluation Panel must consist of at least 2 people. Ideally, the people involved at this stage have also been involved throughout – e.g. developing the commodity strategy, and writing the PQQ and ITT.

The evaluators should score independently, using the scoring matrix (see above) and then come together for a “consensus” meeting. At the consensus meeting questions with differences in scores are discussed and if appropriate individual scores may be changed (for example if something has been missed). It is not necessary for scores to be changed as it is perfectly acceptable that people will score differently as they are coming from different perspectives.

When evaluating and scoring it’s very important to score the content of the tender and to avoid being overly influenced by the layout or presentation of the submission, although it is appreciated that this does have some bearing on the overall submission. Evaluators must not take prior knowledge into account and can only evaluate what’s in front of them.

Audit trail and feedback to suppliers must be at the forefront of the evaluator’s mind. Good quality comments are required to justify the score and ward off challenges. Good language to use is “the answer to this question would have been enhanced by...”

It is often better to score one question for all tenderers and then move on to the next question. This is more likely to lead to consistency of scores.

You may want to have a “scoring guidance sheet” which would have to be written in advance of the tenders being received. This would give examples of what you would expect to see for each of the scores 0-5 in the scoring matrix for each question.

Please contact Corporate Procurement for a sample [Evaluation Matrix](#), or use the one in the Procurement Journey.

Please note that there is “Guidance for evaluators” in Appendix III. In addition here are some do’s and don’ts of evaluation:

<b>Do’s</b>	<b>Don’ts</b>
Make notes of areas requiring clarification by the tenderer	Don’t make changes to the criteria or their weightings
Score the submission on face value and only score what is there	Don’t read between the lines or make assumptions
Score tenders independently and discuss differences at a consensus meeting	Don’t collude with others and arrive at collective scores
Ensure full justification is provided for each score and provide sufficient detail for the debrief	

#### 5.5.4 Presentations & Site Visits

Presentations and site visits can be included in the procurement process to allow a clearer and deeper understanding of the tenderers' proposal.

The purpose must be clearly stated in the ITT and also how the presentations and site visits will contribute to the overall scoring of the tender. You must state in advance how you will score the presentations and site visits.

#### 5.5.5 Post Tender Clarifications

Quite often there will be parts of tender submissions that are not entirely clear and you will have to seek clarifications. Prior to asking tenderers for clarifications please consult with the Corporate Procurement Team. It is vital that this is done in a transparent and fair way and that an audit trail is kept. Ensure that you treat all tenderers equitably. You must NOT negotiate on price at this stage – the tenders must be evaluated on the basis of the prices in the tender (unless there has been an error and this is verified via the clarifications process above).

#### 5.5.6 Post Tender Negotiation (PTN)

[Link to Journey](#)

You must not initiate PTN without first discussing with the Procurement Team and if necessary legal services. This is a high risk area that could lead to future challenge.

PTN is contact between you and the leading tenderer with a view to improving or enhancing Value for Money (VFM). PTN is conducted after the receipt of formal tenders, and before the award of any contract. It is the role of the Procurement Officer to ensure that any PTN conducted does not change the outcome of the competition.

The potential areas for [negotiation](#) will differ for every contract but typical topics might be the terms of payment; quality of goods or services; supply and cost of spare parts; earlier delivery or completion dates; warranties and guarantees; documentation requirements; expediting and inspection procedures; maintenance and support, repair or after-sales service; compensation for failure to meet specified requirements (e.g. of delivery, quality etc); and procedures for remedial action for unsatisfactory service. The list is not meant to be exhaustive.

PTN must not become any form of "Dutch Auction" i.e. unfairly trading off one tenderer against another by using the lowest tender to seek a reduction in costs from the other tenderers.

Competition must not be distorted by allowing a tenderer, not clearly in the lead, a chance to improve its offer. Nor should any changes be made which would result in a contract being awarded on terms more favourable to the tenderer. At all stages the competing tenderers must be treated in an honest, fair and ethical manner, whilst retaining confidentiality of their bids.

Procurement Officers engaging in PTN should comply with the [EU Regulations](#) - see section entitled "Post-Tender Negotiations in Open and Restricted Procedures".

It must be a controlled and documented process. It should not be used automatically on all procurements.

A clear "audit trail" must be available so that it can be seen that it was conducted in a fair manner. The file should show:

- the justification for PTN (soundly based prospect of improving value for money)
- evidence of prior approval for PTN (by the Procurement Team Leader and Legal Services as required)
- the aim of the negotiation
- the precise record of all exchanges written and verbal (including who was involved)
- the approval for the award of contract

When carried out in an atmosphere of openness and mutual trust negotiations can strengthen relationships with suppliers.

## 5.6 Tender Report

A tender report must now be prepared and approved by the relevant Head of Service. Due to the value of this contract it will meet the criteria of "significant matters" as set out in the Standing Orders and therefore must also be reported to the Members Library Service. The Tender Report is required to be approved before notifying supplier or issuing award letters, however, the Report to Members' Library can be lodged after the contract award as this is for information only.

## 5.7 Contract Award

[Link to Journey](#)

### 5.7.1 Authority to Award Contract

Assuming that you have had authority to initiate the procurement and the value of the winning tender is around the value it was expected to be / budgeted for and your Head of Service has approved the tender report then you can now proceed with the award process.

Please ensure that all stakeholders are in agreement with the decision to proceed with the award.

### 5.7.2 Police Checks

The Council entered into an information sharing protocol (ISP) with Police Scotland in 2012. This is a means to prevent public monies from funding serious and organised crime. The Procurement Team Leader is the contact and will be responsible for conducting this part of the process.

### 5.7.3 Successful & Unsuccessful notification

[Link to Journey](#)

If the standstill period applies (i.e. above EU Thresholds) then you must send the successful & unsuccessful letters containing the correct information (per Remedies Directive). Please note that only members of the Corporate Procurement Team are authorised to send successful and unsuccessful letters.

The pre-standstill letter advises the successful tenderer that we are in principle minded to award the contract and will be back in touch after the 10-day standstill period.

#### 5.7.4 Standstill Period

##### [Link to Journey](#)

The standstill period is a defined period of time between the contract award decision and the award of the contract – normally 10 calendar days. The purpose of the standstill period is to provide unsuccessful tenderers and candidates concerned (Candidates concerned - candidates who were not notified of the outcome of the PQQ stage) with feedback on their submissions ([SPPN3 2010](#)). If unsuccessful tenderers have any concerns with regards to the process and/or its outcome, they should be raised during this period. A supplier should inform the contracting authority before approaching the court seeking any legal remedies, explaining the basis for its application to the court. Therefore the contracting authority should be aware of any legal challenge prior to the end of the mandatory standstill period.

For all public sector and utilities procurements covered by the full regime of the EU Procurement Directives, the mandatory standstill period means that a period of not less than 10 calendar days must elapse between the written communication of the award decision to all tenderers and contract commencement where communication has been issued by e-mail otherwise duration increases to 15 days.

**If court proceedings are started during the standstill period for procurements falling under the new remedy rules, then the organisation cannot enter into the contract.**

The mandatory standstill period does not apply to below threshold procurements, to procurements otherwise outside the full scope of the Directives (e.g. Part B services) or where there is only one tenderer including those following the urgency provision under the negotiated procedure where single tendering takes place.

If a Contracting Authority decides to follow the standstill period on a voluntary basis, they should state that they are doing so on a voluntary basis and not because they believe that they are required to under the Public Contracts (Scotland) Regulations 2012. If this is not made clear, it may create a legitimate expectation on the part of challengers that the full procedural requirements of the Regulations should apply to the procurement.

#### 5.7.5 Conducting Debriefs

The objectives of debriefs are:

- To assist suppliers to improve their performance. Cover the positive aspects and suggest areas for improvement of the unsuccessful bid. Suppliers will then have the opportunity to address these issues and improve their competitiveness in any future bids.
- To offer unsuccessful tenderers the opportunity to provide feedback to us on the tender process and to help with continuous improvement of the process.

- To establish and maintain a reputation as a fair, honest and ethical client. This will help to ensure that high quality suppliers will be encouraged to submit tenders.

You must never conduct a face-to-face debrief alone, there must be a minimum of 2 people there. Always send out an agenda covering the objectives above to keep the meeting on track and relevant. Do not discuss other tenderers' bids. If you find that the meeting is very heated it might be best to stop the meeting, explaining again the purpose of the debrief, and to suggest the meeting is re-arranged.

Make a record of the debrief meeting (or phone call) and retain this on the CON- file.

Candidates eliminated at the PQQ stage

- legal requirement to notify candidates eliminated at the PQQ stage "as soon as reasonably practicable" (based on commercial judgement);
- provision of de-brief information is not required, but should be done as a matter of best practice;
- if candidates make a written request, de-brief information must be provided within 15 days.

There is no longer a requirement for notification at the standstill period.

Unsuccessful tenderers

- all tenderers must receive a standstill notice with the required information "as soon as possible" after the contract award decision has been made\*, including a summary of the reasons why they were unsuccessful;
- if tenderers make a written request, additional de-brief information must be provided within 15 days. It is recommended, however, to give full debrief information with the standstill notice.

The above timescales refer to EU procedures. For requirements where the value is below the EU threshold, debriefing should take place at a mutually convenient time within a reasonable period

For the avoidance of doubt, the decision to award the contract is made once the evaluation is complete and the Lothian & Border Police checks are carried out. It is at this point that letters should be sent (ie there is no need to wait for the Members' Library or other report).

### **5.7.6 Post Standstill Period & Awarding the Contract**

Provided there are no court proceedings or notices of court proceedings, and that all debriefs requested have now been conducted, and the standstill period has expired, you can now award the contract.

Only members of the Corporate Procurement Team can issue award letters.

Some suppliers also prefer to receive a contract document, even though the award letter is an acceptance of their offer and forms a legally binding contract. Often a contract document is good to have because it is good to refer to with regard to what goods or services are contracted for etc.

## 5.8 Member’s Library Report

You should now prepare the Members Library Report – you can obtain the most recent proforma from the Corporate Procurement Team.

The report should contain reference to the following:

- Summary of the process to date (which Route, when & where advertised, number of applicants)
- Pre-Qualification evaluation results (if not contained within previous report)
- Quality & Price/cost evaluation including details of any clarifications or PTN conducted
- Recommendation of Award
- Benefits and savings available
- Details of any risks still present
- Sustainability considerations (Social, Economic and Environmental)
- Equality Impact Assessment

This is not a request for approval and it is not a decision. The approval was sought and obtained both at the Procurement Initiation Stage and the Tender Report stage. This is purely to inform Members and officers of the outcome of the process they have previously approved.

## 5.10 Contract Mobilisation

This is the part of the process where:

1. Suppliers have all the information they require to commence supplying goods, providing services or commencing construction works; and
2. Prospective users know about the contract and are given sufficient information to enable them to get the best from the contract

Please use the checklist below, tailored to your specific requirements.

Ref	Contract Mobilisation Checklist	Completed Y/N
1	Update the Corporate Contracts Register	
2	Complete lessons learned document – see Appendix I	
3	Organise “kick-off” meeting(s) with supplier(s) to establish what the next steps are including (list is not exhaustive): what information they need from ELC ; roles & responsibilities; key contacts; timescales; handover information required from outgoing supplier; lessons learned from procurement process (see Appendix 1)	
4	Publicise the contract through ENews as well as direct communications to key stakeholders	
5	Develop a contract “handbook” which is a guide for users to enable them to use the contract effectively. This may include (not exhaustive):	

	Background to contract; ELC Contact details; Scope of contract; Suppliers on contract including contact details; Prices; How to use it (e.g. direct buy or mini competition) Ordering process Migration / Transition information FAQs How to provide feedback on performance of suppliers	
6	Consider whether you need to have a supplier/buyer roadshow or event where users can meet suppliers and suppliers can promote their products or services	
7	Ensure that the contract is included in the next Procurement Newsletter and on Supplier Finder	
8	Arrange for eCatalogue / Punch-out / Invoicing as applicable	

## 5.11 Contract & Supplier Management (CSM)

### 5.11.1 Purpose of contract & supplier management

[Link to Journey](#)

The purpose of Contract and Supplier Management is:

- To ensure the contract is successfully executed i.e. the Council gets what it is paying for (with reference to the contract specification, tender response, KPIs or SLAs)
- To provide a formalised system of monitoring supplier performance against the contract requirements
- To ensure there is clarity of the roles and responsibilities (both in the Council and with the supplier)
- To develop effective professional relationships with key supplier representatives
- To deal with issues on a pro-active way as well as reactive where necessary
- To identify possible areas for further and continual improvement e.g. ways of working, ways of saving money etc including looking at leakage ie off contract spend
- To ensure that planned savings are realised by monitoring of spend v target
- To provide a forum for development of initiatives/innovation

Please note that what follows is a draft process that requires to be piloted before being fully rolled out across the Council.

Also note that it is very important that the intentions for CSM are made clear in the tender documents.

### 5.11.2 Level of Contract Management – Assessment Tool

Before proceeding further you need to determine the level of contract management required. This will ensure that the appropriate amount of time, effort & skill are invested in this process.

Criteria		Score	Contract Score
Estimated Value	Up to £50k (£100k works)	1	
	£50k - £300k	2	
	£300k and above	3	
Potential Risk (see below)	Low	1	
	Medium	2	
	High	3	
	Very High	4	
Total Score			

Contract Score	CSM Level	Key Features
1-4	Low	Basic Contract & Supplier Management Plan Annual Contract Review Meeting
5- 6	Medium	Basic Contract & Supplier Management Plan Quarterly Review Meetings
7	High	Contract & Supplier Management Plan Governance – Project Board Risk Register Issues Log Full balanced scorecard approach Quarterly meetings as minimum

### How to assess Potential Risk

This is about risk to the Council should the performance of the supplier, contractor or provider fall below the expected standards and/or the impact of the supplier, contractor or provider failing ie. going out of business.

#### 5.11.3 Contract Management Plan

Complete the appropriate Contract Management Plan (tailoring as you see fit) and retain this in the CON-XX-XXX folder

CON-XX-XXX	Contract & Supplier Management Plan (HIGH)	Insert Date
Key Contacts	Lead ELC Officer	Name, email address & Phone number
	Lead Supplier Contact	Name, email address & Phone number
	Lead Customer Contact	Name, email address & Phone number
	Lead User Contact	Name, email address & Phone number
	Other key contacts	
Contract Review Meetings	Frequency of Meetings	Weekly/ Monthly/ Quarterly
	Date of annual review meetings	
Contract Management Level	Using Assessment Tool above determine level of contract management required	High / Medium/ Low
Contract	List key contract outputs &	

Overview & Objectives	objectives as per specification, bid, SLA or KPIs	
Performance Management Framework (PMF)	Use of <a href="#">balanced scorecard</a> as adapted for level of contract management required and tailored to specific contract requirements	
Governance	Project Board Details – Membership, frequency of meetings etc	
Risks	Risk register – who is responsible for maintaining this and how regularly will it be updated	
Issue Log	Issue log – who is responsible for maintaining this and how regularly will it be updated	
Escalation Process	First point of escalation in ELC	Name, email address & Phone number
	First point of escalation in Supplier organisation	Name, email address & Phone number

#### 5.11.4 Balanced Scorecard

The balanced scorecard will be tailored to the factors and requirements of the contract and certain aspects of the scorecard may be weighted more heavily. A sample scorecard can be provided by the Corporate Procurement Team. You have to think about what it's important to measure and tailor the card to your exact requirements.

#### 5.11.5 Contract Review Meetings

Contract review meetings should be chaired and agenda issued in advance. A record of the meeting must be kept. Please contact Corporate Procurement for the latest proforma meeting record.

#### 5.11.6 Dealing with supplier performance issues

Once you have gathered information for your Performance Management Framework, and balanced scorecard if appropriate, and you find that there are areas where the supplier is not performing to the standard required you need to know what to do next. What happens next depends on the severity and impact of the under-performance. A cumulative effect means the severity will be higher. Also if improvements are not made then the severity escalates.

Assessment of Action Required to address under performance		Severity		
		Low	Medium	High
Impact	Low	Improvement Action 1	Improvement Action 2	Improvement Action 3
	Medium	Improvement Action 2	Improvement Action 2	Improvement Action 3
	High	Improvement Action 3	Improvement Action 3	Improvement Action 4

Addressing under performance	
Improvement Action 1	Discussion with actions and timescales for improvement agreed and confirmed in an email to the contract manager / administrator
Improvement Action 2	Improvement Notice issued. Formal letter headed "Improvement Notice" with details of issues and requesting a formal action plan by a certain date identifying key person responsible and timescales for resolution. Action Plan will be formally accepted or rejected. Timescales may be extended by mutual agreement.
Improvement Action 3	Improvement Notice issued. Formal letter headed "Improvement Notice". May be restrictions placed on the business (e.g. no more referrals, no more new business, no further expansion). Action Plan requested by a certain date identifying key person responsible and times for resolution. Action plan will be formally accepted or rejected. If accepted it is made clear that failure to achieve the actions will result in the contract being terminated. No extension to timescales.
Improvement Action 4	Consider issuing termination of contract. This could be by service notice of intention to terminate or immediate termination depending on alternatives and seriousness of breach, and alternatives available. Legal advice must be sought before this action is taken. This action must be approved by the Procurement Team Leader, Head of Corporate Resources and Head of Service in advance. The supplier would have a right to appeal against this decision.

If a supplier continues to under-perform the accumulation of various issues and recurrence of the same issues may lead to Improvement Action 4. The detail of this should be laid out in the contract management plan that is agreed with the supplier – for example, if there are 3 improvement notices issued this may mean that this qualifies for contract termination. Advice from Corporate Procurement and Legal Services must always be obtained before terminating a contract.

# SECTION 6 – FRAMEWORK AGREEMENTS

## 6.1 Establishing a Framework Agreement

The definition of a framework agreement is “an agreement or other arrangement between a contracting authority, or contracting authorities, and one or more economic operators which establishes the terms (in particular the price) under which the economic operator will enter into a contract during the term of the agreement”. Guidance is available in a [SPPN here](#).

When establishing a framework there are many things to consider (and include in the ITT):

- Duration – cannot be longer than 4 years (unless in exceptional circumstances e.g. plant required to be purchased with a 10-year life)
- How many suppliers should be on the framework – too many and it is unmanageable and each supplier may not get enough business to make it worth their while; too few and there may not be enough competition to get Best Value. You may have one or three or more suppliers in a framework (not 2)
- Lotting – consider how to manage small businesses
- How the framework will operate – criteria for call off (see below)
- Terms & Conditions – these apply to all call-offs

A framework agreement may not always be the best vehicle. In some cases it is more likely that Best Value will be achieved by giving a firm commitment to future work and establishing a contract for that specific work. Please contact the Corporate Procurement Team for advice.

The result of a framework agreement is that you have what used to be referred to as a “preferred supplier list”. It is not the same as a preferred supplier list in that it cannot be added to and there are specific rules as to how to select from the suppliers on the agreement (see below).

## 6.2 Contract Management

Managing the suppliers on a framework is even more important than on a term contract. The reason for this is that there are ongoing requirements and the relationship is different because it’s not a one-off transaction.

## 6.3 “Calling-off” from a Framework Agreement

**Direct buy-** where it is possible to determine the Best Value supplier from the pricing submitted to get onto the framework agreement then direct buy is the only option available ie there must not be further competition.

**Further or Mini Competition** – where it cannot be determined from the pricing schedule submitted at the time where the framework agreement was established then a further (or mini) competition must be conducted. All suppliers in the framework must be invited to compete.

The procedure for a mini-competition is very similar to the “invitation to quote” (see Section above). There is no need for terms & conditions as the overarching conditions of the framework agreement apply.

#### **6.4 Award**

A contract award notice must be published when the framework is established but for each call off from the framework there is no requirement to publish award notices (although it is good practice to let all participants know the outcome).

## SECTION 7 – EXCEPTIONS



## 7.1 Single source requests

In cases of extreme emergency, or where it can be proven that this is the only suitable supplier in the marketplace, or where Best Value can be proven, and the value of the goods, services or works required are below the EU Thresholds, then you may apply for the appointment of a supplier, provider or contractor without competition (e.g. without placing an advert or getting 3 quotations). To do so, please complete the Procurement Initiation Document (PID) and the Single Source Application Form (SSAF) (Appendix II) and return it to the Corporate Procurement Team for consideration.

For values above the EU Thresholds, the Regulations provide for the Negotiated Procedure (with or without a contract notice). Negotiations may be conducted with one or more companies in the following situations only:

1. In the absence of response to an Open or Restricted notice subject to the terms being substantially unaltered
2. When the products are manufactured purely for the purpose of research, experiment, study or development
3. When, for technical or artistic reasons, or for reasons connected with protection of exclusive rights, the goods may be manufactured or supplied by only one particular company (technical reasons include the need for compatibility of spares, or with existing equipment)
4. When in cases of extreme urgency not attributable to the Council, the time limits laid down for the Open & Restricted procedures cannot be met

## 7.2 Part B Services

Certain services are categorised within the Regulations as requiring a lesser level of advertising and competitive tendering. These are set out in Part B of Schedule 3 to the Regulations. If you think your tender may fall within one of these categories, you should contact Corporate Procurement for further advice on the requirements.

The draft new European Directive is proposing to make some changes to these requirements and these procedures will be updated to reflect these changes in due course.

## 7.3 Social Care

Social care is currently a Part B service but has been singled out in the draft new European Directive. Once the details are known these procedures will be revised to reflect the content of the Directive.

It may not always be the best route to tender services in social care. Other options may be possible.

## 7.4 Emergency Requirements

There may be situations, for example when a child is taken into care, or when a dangerous building requires attention (and specialist work is not covered by an existing framework), and a provider or contractor will be required as a matter of urgency. In such circumstances, it may not be practical to complete a PID or a Single Source application form in advance. These forms can be completed retrospectively. Such situations can, however, be avoided. The way to do this is to have a framework agreement with potential providers or contractors that can be called up as and when a requirement arises. This is the strongly recommended course of action.

## SECTION 8 – COMPLIANCE & CONSEQUENCES



### 8.1 Compliance

Compliance with these procedures is mandatory. Any departure from these procedures must be approved in advance by the Head of Council Resources and the Head of Service relevant to the proposed procurement. This is the only valid means of selection of suppliers to the Council.

### 8.2 Consequences of non Compliance

Failure to follow the procedures may result in investigation and/or disciplinary action. In extreme cases, where fraud is suspected, criminal charges may be brought.

### 8.3 Using Previous Prices or Rates for new work

Please note that it is not acceptable to use prices or rates used from previous work and apply this to a new piece of work. This is a complex area and open to challenge from suppliers who are not given the opportunity to compete for the new work. Please contact the Corporate Procurement Team to discuss options.

## ETHICAL DO'S AND DON'TS

This refers to personal ethical considerations for the purchaser and the customer. There are also larger ethical considerations such as fair trade and sustainability, relating specifically to the subject matter of the procurement, which are not covered here.

### Do's

- ✓ Do seek to uphold and enhance the standing of East Lothian Council by:
  - Maintaining high standards of integrity in your business relationships both internally & externally;
  - Maintaining a high standard of professional competence
  - Optimising use of resources to provide Best Value for the Council
  - Complying with Scots Law and all contractual obligations
  - Rejecting any business practices which may be deemed improper
- ✓ Respect the confidentiality of information received in the course of duty and do not use for personal gain
- ✓ When supplying information it must be true and fair and never designed to mislead
- ✓ Declare any personal interest, and record it with the Head of Council Resources, if that interest could influence or be seen by others to influence, any decision you make regarding procurement. For example, if you have any friends or relations employed by an organisation bidding for Council business inform your line manager. It could be that you will not be permitted to undertake any role in the procurement process.
- ✓ Respect the Suppliers Charter
- ✓ Note that the Council has a whistle-blowing policy. Any supplier or member of staff who suspects wrongdoing can report this matter in confidence.

### Don'ts

- X Don't use your authority, position or information obtained for personal gain
- X In accordance with the [Policy on Hospitality and Employee gifts](#) you must not accept gifts or hospitality. The only exception is gifts of low intrinsic value such as pens & diaries.
- X Don't use the Council's name in any personal purchase. Don't accept a discount if the offer is made because of your connection or involvement in procurement. Only discounts that are open to all Council employees and are registered with the Corporate Procurement Team may be accepted. You must not take personal discounts into account during the evaluation process.

For further guidance please refer to the CIPS code of conduct ([www.cips.org](http://www.cips.org)). Please note that these provisions are for your own protection. If there are any allegations of wrongdoing the Council will invoke the Disciplinary Procedures. Criminal proceedings may also be appropriate.

## SECTION 9 – GLOSSARY OF TERMS

*Definitions extracted from the Institute of Public Finance Glossary of Best Value*

<i>Abnormally low tender</i>	An offer where the price is so low that it raises suspicion that the supplier will not be able to supply at the stated terms & conditions (must request explanation and consider merits of explanation then consider whether to accept or reject the bid)
<i>Aggregation</i>	The adding together of the estimated value of different procurement requirements by the same contracting authority in order to ascertain whether notices (adverts) have to be placed in OJEU in accordance with the directives.
<i>Applicants</i>	Respondents to contract adverts who ask to be invited to tender (also referred to as candidates or tenderers)
<i>Approved list</i>	Also known as a select list, approved list, approved supplier list, preferred supplier list (PSL). A list of organisations that have satisfied all of the contracting authorities selection criteria following appropriate publicity (normally an advert). See also framework agreement.
<i>Arrangements</i>	The term used in government departments for the forms of contract which they “award” to their own in-house / internal contractors with or without competition. See also service level agreements.
<i>Audit Trail</i>	Sufficient record keeping to be able to evidence the procurement process so enabling a third party to see why a certain decision was made
<i>Award</i>	A decision to accept a tenderer’s offer to supply / provide specified goods/services/works according to agree terms & conditions thereby creating a legally binding contract
<i>Award Notice</i>	A compulsory notice in OJEU, to provide information on the award of a contract, for procurements above the EU Thresholds
<i>Best Value</i>	The duty under the Local Government Act in Scotland 2003 to secure continuous improvement in the economy, efficiency and effectiveness with which they exercise their functions.
<i>Bid</i>	Another word for a tender submission. Can also mean an in-house tender.
<i>Bill of quantities</i>	List of items with quantities, against which tenderers insert their prices or rates. Similar to schedule of rates or pricing

	schedule.
<i>Block contracts</i>	Lump sum contracts normally for health care or social care
<i>Budget based tendering</i>	Maximum available budgets are stated in the tender document and the bids are assessed principally on quality. Similar to quality only tenders.
<i>Call-off contracts</i>	Agreements, sometimes called framework contracts, without full commitment. The undertaking is that all requirements of the specified nature which are required during the duration of the agreement, will order from these contracts / agreements. Also known as preferred supplier list.
<i>Candidates</i>	Respondents to OJEU notices who ask to be invited to tender. Also known as applicants.
<i>Commodity Strategy</i>	A document that shows the preparatory thinking that is done about a procurement process, including sustainability considerations, stakeholders to be involved, risks etc
<i>CPV</i>	Common Procurement Vocabulary. A set of standard definitions of services, suppliers or works for notices (adverts) in the OJEU.
<i>Contract award notice</i>	A notice in OJEU that a previously advertised opportunity has been awarded.
<i>Contract Notice</i>	Advert to invite applicants to express interest & apply to tender, or to be pre-qualified.
<i>Contractor</i>	The provider of any supplies, services or works under contract. Or, in the context of works at any stage of the process.
<i>Evaluation</i>	Simple tabular model for comparing different tenders. Each criterion is scored, e.g. out of 100, and this score is multiplied by the weighting of that criteria. A total score is then obtained.
<i>Firm price</i>	A price tendered or quoted which is not subject to any provision for variation
<i>Fixed price</i>	A price tendered or quoted which is subject to price variation, the basis of variations should be stated e.g. in accordance with the RPI.
<i>Fixed price contracts</i>	Contracts with prices which are not subject to price variation, even for inflation.
<i>Framework agreements</i>	Arrangements (sometimes referred to as standing offers) in which terms & conditions are agreed, and the client may or may not subsequently place orders (no commitment). Also a consortium can agree terms & conditions and the members may subsequently place orders.

<i>Framework contracts</i>	Agreements (sometimes called call-off contracts) in which clients accept some commitment without immediately placing orders, e.g. by undertaking to order, later, all jobs of a specified type from that contract.
<i>ITT</i>	Invitation to Tender
<i>Lots</i>	Subdivisions of a contract so that providers can tender for one or more lots.
<i>Lowest Cost</i>	The tender will be evaluated on Lowest Cost only.
<i>Market Testing</i>	The testing of in-house costs against external contractors' costs by direct comparison or benchmarking rather than by competition.
<i>MEAT</i>	Most economically advantageous tender. Common phrase used to indicate that the tender will not be only based on lowest price.
<i>Method Statements</i>	Tenderer's proposals for dealing with aspects of the work being procured.
<i>Negotiated Procedure</i>	An EU procedure, only available in limited circumstances, under which contracting bodies can negotiate with 3 eligible applicants who meet their selection criteria.
<i>Non-compliant tender</i>	A tender which fails in one or more respects to satisfy requirements or contract conditions. Also called non-conforming tender.
<i>Notice</i>	Advert
<i>OJEU</i>	Official Journal of the European Union
<i>Open Procedure</i>	An EU procedure whereby anyone can tender. A one-step process.
<i>Performance bonds</i>	Bonds given to clients by specialist insurers, on behalf of contractors and at their expense, binding the insurers to compensate clients in the event of default.
<i>Pre-qualification</i>	The selection process of suitably qualified and experienced applicants from which a short-list is obtained and then invited to tender. Used in the restricted process.
<i>PQQ</i>	Pre Qualification Questionnaire. The means by which the pre-qualification process takes place.
<i>Presentations</i>	Interviews at which tenderers expand on their tender submission and ask and answer any questions.
<i>PIN</i>	Prior information Notice. Early notices in OJEU to advise of the intention to advertise later in the OJEU.
	A tender made subject to some unsolicited condition, e.g.

<i>Qualified tender</i>	acceptance by a certain date.
<i>Quality-only tender</i>	A competition to provide the greatest quality or quantity for a pre-stated sum.
<i>Restricted procedure</i>	An EU procedure whereby there are 2 steps: selection of suitable candidates, and then evaluation of tenders from the short-listed tenderers.
<i>Select list</i>	A list of firms drawn up, normally following a competitive tender, from which tenders will be invited. See also preferred supplier list, approved list, standing list, and framework.
<i>Social enterprises</i>	Businesses whose primary objectives are social or “more than profit”
<i>Specifications</i>	The part of the invitation to quote or invitation to tender which details the nature and quality of the goods, services or works
<i>Standing list</i>	See select list
<i>Standing offers</i>	See framework arrangement
<i>Technical capacity</i>	One of the tenderer selection criteria provided for by the EU procurement directives, tested for example by number of employees, qualifications, equipment, experience.
<i>Tender</i>	An offer, or bid, by a tenderer in response to an invitation to tender (ITT) or a mini-tender in a framework agreement
<i>Term Contract</i>	A contract to provide specified services, goods or works for a specified term, or indefinitely as distinct from a contract for a discrete one-off purchase.
<i>User Intelligence Group (UIG)</i>	A group of people who have a stake in the success of the procurement outcome. May comprise procurement professionals, service or product users, internal customers, IT,HR, legal or finance (as examples).
<i>Variants</i>	Alternatives offered by tenderers to the goods, services or works as specified by the client. The client will state whether they will accept variants.
<i>Variations to contract</i>	The contract terms should allow for the client or contractor to request a variation, post -award. This could be a variation to the specification, core list, price etc. It is good practice to have a “Variation to Contract Form” which is the only means by which the contract can be varied.
<i>Whole-life costs</i>	The full cost to the client, whenever incurred, attributable to a contract of purchase, often referred to as cradle-to-grave and lifecycle costs. Includes cost of acquisition, set-up, development, maintenance, training, management, operational costs, documentation, decommissioning and disposal.

The term used in the EU Regulations for a building or civil engineering project or piece of work.

*Works*

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## SECTION 10 – APPENDICES

Appendices are held in a separate document so that they can be updated as required. The appendices are:

Appendix I Lessons Learned Document

Appendix II Procurement Route – open, restricted, other

Appendix III Guidance for Evaluators

### **Appendix I Lessons Learned Document**

STAGE	WHAT WENT WELL	WHAT COULD BE IMPROVED
PLANNING & PREPARATION STAGE INCLUDING COMMODITY STRATEGY	✓ AAA ✓	▪ BBB
PQQ/ ITT/ AWARD TENDER STAGE	✓ AAA ✓	▪ BBB
CONTRACT MOBILISATION	✓ AAA ✓	▪ BBB ▪
ONGOING	✓ AAA ✓	▪ BBB ▪
OTHER	✓	▪

## **Appendix II Procurement Forms**

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## **Appendix III    Guidance for Evaluators**

Thank you for agreeing to be an evaluator in a procurement exercise. This means that you have agreed to score tenders (often called “bids” or “submissions”) from potential suppliers, providers or contractors; or to score pre-qualification questionnaires (PQQs).

### **Key Principles**

Public Procurement is governed is government by the EU Treaty and in the UK by the Public Contracts (Scotland) Regulations 2006. The main principles, which apply in all cases, regardless of value or nature of purchase are:

#### **Non- Discrimination**

You must be careful not to discriminate against tenderers on the basis of gender, sexuality, ethnicity, race, religion, age or disability (this list is not exclusive).

You must also be able to set aside anecdotal evidence you may have heard or experienced. Your evaluation must be based on the evidence presented to you in the PQQ/Tender and only that evidence, with no bias.

You must be open-minded when starting out on the evaluation process and avoid having pre-conceived ideas of what the outcome will be.

#### **Equal Treatment / Consistency**

All tenderers must be given the same chance of success.

This is particularly important if you are evaluating a lot of PQQs or tenders – you must ensure that your scoring is consistent regardless of whether it is the first or last one that you are scoring. The same applies when you are conducting the evaluation over a number of days, you must have a way of keeping the scoring fair and consistent. You may have to allow time at the end to go over your scoring to ensure that you are content that it is consistent and fair.

#### **Transparency / Scrutiny**

The evaluation panel must be able to demonstrate that its decision is based on sound evaluation. This means that your comments and scores will be made available to the tenderer. Due to the Freedom of Information Act (FOISA), your comments may also be made available to all tenderers.

This transparency must be borne in mind when writing your comments. Please make sure that your comments can be understood by others, do not contain shorthand and most importantly that they substantiate your score. Your comments will be used in the debrief meetings for unsuccessful providers and therefore must stand up to scrutiny. More in Hints & Tips.

In addition to these principles of the EU Treaty, another important principle is that of Confidentiality.

## **Confidentiality**

You are being given access to tender submissions or PQQs which may contain commercially sensitive information such as pricing schedules or “trade secrets” which would be protected from release by the FOISA. It is therefore very important that you treat this information with confidentiality and keep all information safe and secure.

You must not discuss the tenders or PQQs with anyone outwith the Evaluation Panel and you must not make contact with any of the tenderers. If any of the tenderers approach you asking for feedback or any information please direct them to the Corporate Procurement representative. Suppliers tend to have good techniques to get information from you, so don't run the risk!

## **Consequences**

It is very important that the evaluation process is carried out to a high standard because unsuccessful tenderers have the right to challenge decisions. This can result in officers having to spend a lot of time and money responding to the challenge, and it may get to court. Regardless of the outcome this can result in a loss of reputation for the Council.

## **SCORING MATRIX**

You should be scoring each question as described in the PQQ / ITT. Please refer to that and keep it to hand as you score the submissions.

## **HINTS & TIPS FOR SCORING**

- Try to block out time in your diary for evaluations. You really need uninterrupted time. If this is difficult in your office, we may have a desk in Corporate Procurement that you can use.
- Start with 5 – is the answer satisfactory? If yes, then it is at least a score of 5. If not, it is a score of 4 or below. Is it better than satisfactory, is it good? Then it is an 8 or 9 and so on.
- In order to achieve consistency, you might find it easier to go “across the way” ie to evaluate the same question for all tenderers, then go on to the next question.
- Have the eTendering system and your excel spreadsheet open at the same time, and toggle between the two. Type your answers into the excel spreadsheet as you go. Don't be tempted to come back to that later, you won't remember what you thought or meant by scribbles/notes.
- Save your scoring spreadsheet at regular intervals (!)

- Some people like to think in terms of pluses and minuses or what I liked and didn't like e.g. "I liked the part about XYZ but it could have been more specific about ABC".
- Make sure you are not using shorthand or abbreviations that others would not understand. Your comments will be picked out and used for debrief information without amendments.
- Evaluate on your own, without discussion with other evaluators. There will be an opportunity for discussion at the consensus-scoring meeting.

## **FAQs**

### ***Q1 How much time is this going to take?***

A1 This is a difficult question to answer. It depends how much of the PQQ or ITT you are evaluating. As a rough rule, I would say that it takes about ½ a day per ITT – but this is only a rough guide. As well as the time to evaluate, you will need to account for time to take part in a consensus-scoring meeting (if applicable) and perhaps debrief meetings if you are required.

### ***Q2 What is the process?***

A2 Normally there will be a briefing – this may take place by email or phone or in person. This briefing will establish what has to be done and what the timescales/ deadlines are. You will then evaluate and score. There may be a requirement to meet for consensus scoring – at this meeting you will discuss significant differences in scores between evaluators for example if one evaluator scores 8 (good) and another scores 4 (unsatisfactory) then a discussion needs to take place. It may be that something was missed or misinterpreted and scores may or may not be changed. It could be that the scores are not changed but the differences reflect different perceptions due to experience/background etc. After the consensus meeting the average score is taken and a short-list drawn up. There may or may not be a further stage e.g. presentations. If not, an award is made (with a 10-day standstill period if appropriate) and debrief sessions will take place with unsuccessful tenderers.

### ***Q3 I am having difficulty getting time to evaluate, can we delay?***

A3 Normally there is a challenging timetable to getting a contract in place and slippage can cause problems further down the line. However, this is not always the case. If you feel that you will not complete your evaluation on time please make this clear to the lead procurement officers as soon as possible.

### ***Q4 Now that I see the responses, I would like to change the weightings – can we do that?***

A4 No. Once the weightings are set (either at the advertising stage or when the PQQ/ITT/ITQ is issued) they cannot be changed under any circumstances. If there is a significant issue with that, normally the only option is to stop the process and start again.

### ***Q5 Can I do this from home?***

A5 Yes you can. The eTendering system is web-based so you can type in the web address and access it anywhere.

***Q6 There are attachments that I can't open, what do I do?***

A6 Contact the lead procurement officer asap and they will decide whether to go back to the tenderer and ask for versions that we can open.

***Q7 Can I have a printed version?***

A7 We try not to, for time and environmental reasons but it is possible.