

REPORT TO: Cabinet

MEETING DATE: 17 January 2023

BY: Executive Director for Council Resources

SUBJECT: Procurement Procedures

1 PURPOSE

- 1.1 To inform, and seek approval from, Cabinet for the revised East Lothian Council Procurement Procedures (attached as an appendix to this report).

2 RECOMMENDATIONS

- 2.1 To approve the revised procurement procedures.

3 BACKGROUND

- 3.1 The current Procurement Procedures have been in place for a number of years.
- 3.2 Many elements of the current procurement procedures remain relevant.
- 3.3 The revised ELC Procurement Procedures, aim to build on those, while making them applicable to the 2022 operating environment.
- 3.4 The revised procedures provide high-level details on:
- Scope and Context
 - Roles and Responsibilities
 - Procurement Process Governance
 - Delegated Quotation Process for Low Value (and Low Risk) Purchases, and
 - Definitions
- 3.5 The procedures cover all expenditure by the Council with third parties i.e. the supply of goods, provision of services and delivery of works projects.
- 3.6 Delivery of procurement activities in accordance with these revised procurement procedures will ensure compliance with procurement Legislation, good governance, alignment with the principles of

procurement and the duty of Best Value in public service as well as contributing to and support for the council's sustainability and economic recovery objectives.

- 3.7 The ELC Procurement Procedures, will be supplemented by more detail provided in Procurement Working Instructions for use by council officers when procuring goods, works and services.
- 3.8 The Procurement Working Instructions will not be published externally but will be available to staff on the council's intranet.
- 3.9 Support for Council officers when procuring goods, works and services will also be provided by the Procurement Service.

4 POLICY IMPLICATIONS

- 4.1 The Council requires to use UK and Scottish regulations, policies, guidance and tools concerning public procurement activity, in conjunction with the council's own regulations, policies, guidance and tools concerning procurement activity. Details of these Regulations, Policies, Guidance and Tools are provided on p17 of the council's Procurement Strategy 2023-28.

5 INTEGRATED IMPACT ASSESSMENT

- 5.1 The subject of this report does not affect the wellbeing of the community or have a significant impact on equality, the environment or economy.

6 RESOURCE IMPLACATIONS

- 6.1 Financial - None
- 6.2 Personnel - None
- 6.3 Other – N/A

7 BACKGROUND PAPERS

- 7.1 East Lothian Council Procurement Strategy 2023-2028

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East Lothian Council

Procurement Procedures

Contents

Section 1 – Scope and Context	4
1.1. Scope.....	4
1.2. Legal Context.....	4
Table 1 – Procurement Legislation	4
1.3. Principles of Procurement	5
1.4. Value Guidance	5
1.5. Duty of Best Value in Public Services	6
1.6. Climate Emergency	7
Section 2 – Roles & Responsibilities	8
2.1 Scheme of Delegation	8
2.2 Award of Contracts subsequent to PID.....	9
2.3 Reporting.....	9
2.4 Roles and Responsibilities.....	9
2.5 Procurement Competency Levels	10
2.6 Authorised Procurement Officers.....	10
Section 3 - Procurement Process Governance	11
3.1 Exemptions from Scope of These Procedures	11
3.2 Procurement Processes (by Value\Threshold)	11
3.3 Health and Social Care Services	14
3.4 Information Communications Technology (ICT) Related Requirements & Requirements Affecting Council Assets and Infrastructure	15
3.5 Consultancy Requirements	16
3.6 Grants.....	16
3.7 General Procurement Guidance and Procurement Working Instructions	16
3.8 Tender Documents.....	16
3.9 Late Tenders.....	17
3.10 Evaluation of Tenders and Quotations	17
3.11 Form, Acceptance, Award and Termination Of Contracts.....	17
3.12 Contract Variation/Extension	19
3.13 Contract Novation and Assignment	19
3.14 Contracts Register.....	19
3.15 Strategic Review of Service Provision	20
3.16 Community Benefits Requirement	20
3.17 Procurement Strategy and Annual Report.....	20

3.18	Compliance with Procurement Strategy.....	20
Section 4 – Delegated Quotation Process for Low Value (And Low Risk) Purchases		21
4.1	Conducting Low Value\Low Risk Quotation Process (Under £15k form)	21
Appendix A – Definitions.....		22

Note: All titles of posts referenced in these procedures are correct at time of issue and will be updated to reflect any future restructuring without the requirement for further approval of these procedures.

Section 1 – Scope and Context

1.1. 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.

1.2. Legal Context

Procurement is governed by many legal sources, principally derived from the EU Treaty principles. The following principles (referred to as the “Fundamental Principles” in this document) apply to all procurement activity regardless of the value:

- Proportionality
- Mutual Recognition
- Non-discrimination
- Equal treatment
- Transparency

All contracts let by or on behalf of the Council must be done so in a proportionate manner that demonstrates compliance with the above principles to all parties having an interest in that procedure.

The **Public Contracts (Scotland) Regulations 2015** dictate rules for procurements\contracts above a threshold, set by the World Trade Association's Agreement on Government Procurement (GPA). These are referred to in these Procedures as GPA Procurements\Contracts. These rules cover many aspects including where to advertise, specifications, selection, timescales and awarding contracts.

The Scottish Government introduced the **Procurement Reform (Scotland) Act** in 2014 and the **Public Contracts (Scotland) Regulations 2016** which provide specific rules for procurements\contracts below the GPA threshold. These are referred to in these Procedures as Regulated Procurements\Contracts.

Table 1 – Procurement Legislation

Procurement \ Contract tier	Legislation	Advertising	Threshold
Regulated Procurements\Contracts	Procurement Reform (Scotland) Act 2014	PCS	Equal to or greater than £50k for goods\services and £2m for works up to the GPA threshold.
GPA Procurements\Contracts	The Public Contracts (Scotland) Regulations 2015.	PCS and FTS	GPA threshold

Other relevant Scottish & UK legislation includes:

- demonstrating Best Value through the Local Government in Scotland Act 2003 s2 (1) a and TUPE Regulations 2006.
- Scottish Procurement Policy Notes (SPPNs) – although these do not have legal status and are for guidance only, these also influence how we do procurement.
- Case law from both UK courts and, prior to EU exit, the European Court of Justice (ECJ) applies. UK courts may still have regard for ECJ rulings in this area.
- Legal action, or less formal challenges for example by unsuccessful bidders, could cost the Council money.

The Council should also have due regard to the statutory guidance produced under the Procurement Reform (Scotland) Act 2014 ('the Act') and the Procurement of Care and Support Services: best practice guidance.

1.3. Principles of Procurement

It is mandatory that all procurements undertaken by the Council shall take account of the following principles which shall be applied in a proportionate manner having due regard to the value, complexity and importance of each contract:

- 1.3.1. All contracts let by or on behalf of the Council, shall be subject to an obligation to seek Best Value for the Council;
- 1.3.2. All contracts let by or on behalf of the Council must be done so in a proportionate manner that demonstrates compliance with the Fundamental Principles to all parties having an interest in that procedure;
- 1.3.3. Any overriding requirements of the Procurement Legislation and any other UK or Scottish Legislation or Statutory Guidance on the co-ordination of procedures for the award of public works contracts, public supply contracts and public service contracts;
- 1.3.4. The remainder of the council's governance scheme, in particular the Scheme of Delegation and the Financial Regulations;
- 1.3.5. The Council's Procurement Working Instructions;
- 1.3.6. All procurements will comply with these Procurement Procedures.

1.4. Value Guidance

To determine the value of a Contract officers shall look at the total value of the requirement (if a one-off). Where there is an ongoing requirement then the 4-year cost should be considered (regardless of the duration of the proposed contract).

- Contract requirements must not be split, nor the estimated value set unjustifiably low, to avoid the provisions of the Public Contracts (Scotland) Regulations 2015. 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 undertaking a tender process.
- When estimating the value of a Contract the Procurement Officer must consider the total aggregate value across The Council of all similar requirements for the works/ goods/ supplies/ services. If the aggregate value for all similar requirements over the Contract term equals or exceeds the relevant Regulated or GPA Threshold, then the appropriate Procurement Legislation applies to the award of each Contract;
- Even if the procurement of any such requirement is split among a number of Contracts which, taken individually, are below the Regulated and /or GPA Threshold values, each of these Contracts is subject to the Procurement Legislation in the same way as if the requirement were procured through a single large Contract;
- Breaking down or disaggregating requirements in order to avoid the necessity of exposing them to competition is prohibited as being contrary to Procurement Legislation and must not be carried out under any circumstances.
- 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.
- Thresholds for Works contracts only apply to specific activities constituting Works as defined by the Procurement Legislation CPV codes. Please refer to the Procurement Service to check whether a proposed procurement or contract can be defined as Works for the purposes of a procurement exercise.

1.5. Duty of Best Value in Public Services

The Council's procurements shall include the consideration of Best Value characteristics that public service organisations are expected to demonstrate, which may include the following:

- Purchase Demand Management
 - Reduce consumption
 - Consolidate spend
 - Improve specification
- Supply Base Management
 - Restructure relationships
 - Increase competition
 - Restructure supply base
- Total Cost Management
 - Optimise total supply chain costs
 - Reduce total life cycle / ownership costs

- Reduce / eliminate transactions
- Sustainable Procurement
 - Maximise sustainable opportunities
 - The requirements of the of the Climate Change Act where appropriate
 - Consider Fair Work Practices where appropriate

1.6. Climate Emergency

Public procurement in Scotland is expected to contribute to Scotland's climate change targets. The Council has declared a Climate Emergency in 2020 and has its own Climate Change Strategy.

How the Council procures goods, services and works is a key way to achieve net zero carbon emissions and respond to the Climate Emergency.

When developing strategies for procurements Council officers are expected to consider climate change in:

- whether to buy at all
- what to buy
- how to buy
- how much to buy
- end of life/recycle/reuse options

Council procurements are increasingly expected to ask bidders and suppliers to provide low carbon goods, services and works, and deliver circular solutions.

Please refer to further guidance in the Procurement Working Instructions for more information.

The Service Manager Procurement will ensure that the Council's Procurement Strategy and Service reporting align with Scottish Government requirements with regard to Climate Change as well as requirements of the Council's Climate Change Strategy.

Section 2 – Roles & Responsibilities

2.1 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 Procurement Service 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:

Table 2 – Scheme of Delegation

Value of Goods & Services	Value of Works	Authorisation Required to initiate procurement	Form Required
Up to £15k	Up to £15k	Any officer with relevant FAS	Under £15k form
£15k to £50k	£15k to £500k	Budget Holder	PID QQ
Above £50k	Above £500k	Where there is specific revenue or capital budget approval - Head of Service	PID
		Where there is no specific revenue or capital budget approval – report to Council*.	PID

**New, higher value requirements, those that are not within the scope of a current budget, and which have a potential duration (excluding options to extend) in excess of the Council's financial planning timeframe (usually 3 years or 5 years) approval will also be required from Council by means of a private paper which must be submitted prior to tender publication.*

Procurement Initiation for Call-Off Contracts

Call-offs from frameworks should have the appropriate PID authorisation for each Call-Off contract awarded unless the specific budget for all anticipated call-offs has been approved in advance in one PID e.g. ELC establish a bathroom adaptations framework which has a

specific budget approved at start for 50 bathrooms, in which case a shorter 'call-off' PID form can be used.

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.

Officers must adhere to the Council's **Financial Authorisation Signatory Policy** and the officer authorising a procurement must have the appropriate FAS limit for the proposed spend.

2.2 Award of Contracts subsequent to PID

Once the procurement process is complete, the Service Manager Procurement has authority to enter into a contract, by approving the issue of the contract Award letter by the Procurement Service, without further recourse to members so long as the tender value is generally in line with the original estimate and/or budgeted cost (no more than 10% discretion on the budgeted cost is permitted).

If the tender value is significantly greater than the budgeted cost, outwith the discretionary 10%) then an Award cannot proceed until approval is obtained as follows:

- Where the Service area has available revenue\capital budget:
the budget holder with the appropriate FAS limit may approve the additional budget by submitting a revised PID for the requirement prior to Award of the contract.
- Where there is no revenue\capital budget available:
approval is required by report to Council or the relevant committee prior to the contract being awarded.

In the event that budget approval is not granted the procurement process shall be cancelled.

2.3 Reporting

The Procurement Service will provide a quarterly summary of contracts awarded (below the Regulated thresholds) to the Members Library. Regulated and GPA contracts will be published in the Council's publicly available contract register in accordance with the Procurement Regulations.

2.4 Roles and Responsibilities

The Service Manager Procurement shall be responsible for ensuring that roles and responsibilities for Procurement activity equal to or greater than £15k i.e. quotation and tender processes are documented in the Procurement Working Instructions and that such are regularly reviewed and updated.

2.5 Procurement Competency Levels

The Service Manager Procurement will have due regard for the Scottish Government's Procurement Competency Framework or equivalent for the levels of competency for roles within the Council with responsibility for Procurement activity.

2.6 Authorised Procurement Officers

The Council can create an extended procurement team consisting of officers throughout the Council who have responsibility for significant areas of expenditure and/or conduct procurement activities as laid out in these procurement procedures. There will still be appropriate support provided by the Procurement Service.

Some of the extended procurement team will also be authorised to conduct procurement activities (Authorised Procurement Officers). 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 Procurement Service.

The Council Management Team will grant authority to procure to APOs nominated by the Service Manager Procurement.

Section 3 - Procurement Process Governance

3.1 Exemptions from Scope of These Procedures

Contracts shall be exempted from the Procurement Procedures, for procurements with a value above the GPA Thresholds, where the relevant Head of Service and the Procurement Service has satisfied the Service Manager Governance that circumstances as set out in Regulations 7 to 18 inclusive of the Public Contracts (Scotland) Regulations 2015, apply to the procurement.

3.2 Procurement Processes (by Value\Threshold)

3.2.1 Table 3 and Table 4 set out the processes that must be followed when undertaking procurements. The process to be followed depends on the aggregate value of the Contract (as per Clause 1.4);

3.2.2 Pre-existing Contracts and Frameworks:

3.2.2.1 It is incumbent on the officer undertaking the procurement to check if there is a suitable pre-existing Contract / framework (these may include East Lothian Council, Scotland Excel, Scottish Government, Crown Commercial Services etc.) that could be used to fulfil the requirement. Where such a Contract / framework exists, it should be used unless advice and guidance from the Procurement Service indicates that an alternative procurement route represents Best Value and is compliant with the Procurement Legislation.

3.2.2.2 Information about existing Contracts / frameworks can be found in the Council's Procurement Intranet pages.

3.2.2.3 When using a pre-existing Contract/ framework the procedures set out for use of the particular Contract / framework must be followed;

3.2.2.4 Any identified or known omissions of Contracts\Frameworks must be notified to the Procurement Service for inclusion where appropriate on the Contract development pipeline or current Contracts Register;

Table 3 - Goods/ Supplies/ Services Thresholds

Value Threshold ¹	Process
Up to £15,000 (N.B. section 3.4 and refer to Section 4)	Make decision on basis of Best Value if no Contract/ framework exists for same/similar (good practice to obtain three quotations/evidence of firm/ fixed prices).
£15,000 to £49,999 (Refer also to clause 3.4 below)	Below Regulated Procurements Threshold procedure - obtain at least three quotations using PCS Quick Quote portal
£50,000 to current GPA Threshold value	Follow the procurement process for a Regulated Procurement
Current GPA goods/ supplies/ services threshold value	Follow the procurement process for a GPA Procurement

3.2.3 See Clause 3.3 for Health & Social Care Thresholds and Processes

Table 4 - Works Thresholds

Value Threshold ¹	Process
Up to £15,000	Make decision on basis of Best Value if no Contract/ framework exists for same/ similar (good practice to obtain three quotations/ evidence of firm/ fixed prices).
£15,000 to £499,999	Obtain at least three quotations via PCS Quick Quote. Documentary evidence must be retained by the Procurement Service.
£500,000 to £1,999,999	Advertise on Public Contracts Scotland – Contract Notice (i.e. Open Procedure or Restricted Procedure). See also 3.2.6 below.
£2,000,000 to current GPA Works threshold value	Follow the procurement process for a Regulated Procurement
Current GPA Works threshold value	Follow the procurement process for a GPA Procurement

1 Consider the potential total value (expenditure) of the contract over the maximum duration of the contract. Where the contract duration is not known, the value for the purposes of applying the thresholds must be based on a 4 year duration for an ongoing requirement. Refer to section 1.4 for further guidance.

- 3.2.4 It is mandatory that processes stated in Tables 3 and 4 are followed for the applicable financial thresholds. However stated processes within the applicable financial thresholds may be adjusted to suit individual Service needs if they believe it is proportionate and appropriate to their business needs to have more stringent procedures in place;
- 3.2.5 Where a requirement is likely to be close to any threshold, advice should be sought from Procurement as to which process it is most appropriate to apply, see also the Procurement Working Instructions and SPPN 8/21 for the rules with regard to inclusion of VAT for the purposes of checking whether the GPA Procurement Threshold will apply;
- 3.2.6 In exceptional circumstances, a Quick Quote can be published for Works greater than £500k but less than £1M. The relevant exemption form, provided by the Procurement Service, must be completed and submitted to the Service Manager Procurement for approval.
- 3.2.7 Direct Purchasing (Single Source Application).

The relevant Procurement Service forms shall be completed for requests for direct purchasing (single sourcing) where these are in accordance with the following:

- 3.2.7.1 For requirements below the Regulated Contracts Threshold values direct purchasing above £15,000 without seeking quotations may be acceptable where the Service Manager Procurement is satisfied the Award meets Best Value and:
- a. the requirement is not readily obtainable from more than one supplier, service provider, or Contractor, and it can be demonstrated that no equivalent is available; or
 - b. there is an immediate need caused by real and demonstrable emergency which creates a real risk to life, property or Council systems; or
 - c. an assessment of risk, the market place and competition has been deemed to be low; or
 - d. the prices of the goods/ supplies, services or works are wholly controlled by trade organisations or government order and it can be demonstrated that no equivalent is available; or that
 - e. the requirements are subject to intellectual property rights and it can be shown that either no suitable alternative is available, or that exposure to competition of an item covered by copyright, patent, or trademark would breach such rights. Note that where an item is described by a reference to a trade name, it must be followed by the phrase “or equivalent”;

- 3.2.7.2 Evidence justifying such direct purchasing must be provided to and agreed by the Service Manager Procurement;
- 3.2.7.3 For requirements above the Regulated Contracts Threshold value for goods/supplies/services or works, direct purchasing may be acceptable where the Procuring Officer has satisfied the Service Manager Procurement that the circumstances as set out in Regulation 6 of The Procurement (Scotland) Regulations 2016, circumstances in which a contract can be awarded without competition, apply to the procurement;
- 3.2.7.4 For requirements above the GPA Contracts Threshold value for goods/supplies/services or works, direct purchasing may be acceptable where the Procuring Officer has satisfied the Service Manager Procurement that the circumstances as set out in Regulation 33 of The Procurement (Scotland) Regulations 2015, circumstances in which a contract can be awarded without competition, apply to the procurement;
- 3.2.8 The Procurement Service may carry out procurement activity for other relevant organisations and for Services which have devolved procurement authority and where this activity occurs, out with business as usual processes for undertaking delegated procurement, the Procurement Service may charge a fee for professional services where appropriate;
- 3.2.9 If there are any queries or concerns about the processes to be followed then contact the Procurement Service for advice and/ or guidance.

3.3 Health and Social Care Services

- 3.3.1 This section shall apply to the procurement of Health and Social Care Services.
- 3.3.2 Contracts for Health and Social Care Services must be procured having due regard to:
 - a. The Procurement Legislation;
 - b. The statutory “Guidance under the Procurement Reform (Scotland) Act 2014” issued by the Scottish Government;
 - c. The statutory “Guidance on the Procurement of Care and Support Services 2016 (Best-Practice)” issued by the Scottish Government.
 - d. The different rules which apply to health and social care Contracts at different thresholds.

- 3.3.3 Where a requirement is likely to be close to a threshold, advice should be sought from Procurement as to which process it is most appropriate to apply;
- 3.3.4 Any competitive process must be carried out in line with the requirements of these Procurement Procedures and the Procurement Working Instructions.

3.4 Information Communications Technology (ICT) Related Requirements & Requirements Affecting Council Assets and Infrastructure

3.4.1 ICT

- 3.4.1.1 Where a proposed purchase or Tender of any value involves the use, adoption or purchase of information communication technologies (ICT), such as a digital service, software or hardware, the advice of the Council's IT service must be sought in addition to that of the Procurement Service;
- 3.4.1.2 The Council's ICT Contract(s) should be used for any Council requirements unless it can be demonstrated that it will not provide Best Value;
- 3.4.1.3 All requirements for ICT goods, services and solutions must follow the Council IT service's procedures for IT Requirements and Information Governance prior to being procured.

3.4.2 Council Assets and Infrastructure

Where a proposed purchase or Tender of any value involves the installation of goods that may have an impact on Council **buildings/sites** or infrastructure, or have health and safety implications or maintenance obligations, the advice of the relevant team within the Council's Infrastructure Division must be sought before any such goods are procured, in addition to that of the Procurement Service;

- 3.4.3 Advice, as required by sections 3.4.1 and 3.4.2, must be obtained where the expenditure of third-party funds will result in the purchase of IT equipment, alterations to Council land or buildings or require equipment to be fixed to Council land or buildings, have health or safety implications or maintenance obligations.

3.5 Consultancy Requirements

- 3.5.1 Any requirements for Consultancy with the potential to exceed £15,000 in value should be directed to the Procurement Service;
- 3.5.2 When the procurement of Consultancy is undertaken the Scottish Government's Guidance for the public sector on Use of Consultants shall be followed by the officer initiating the procurement and the Procurement Service.

3.6 Grants

- 3.6.1 Where the procurement is made using monies received in the form of a grant to the Council not only must the procurement comply with these Procurement Procedures but also any additional requirements imposed by the body awarding the grant;
- 3.6.2 Any request not to comply with this must follow the process stated at 3.3.7 (Direct Purchasing).

3.7 Procurement Working Instructions

- 3.7.1 The Procurement Working Instructions shall be maintained by the Service Manager Procurement in consultation with the Head of Finance and Head of Corporate Support;
- 3.7.2 The Procurement Working Instructions shall provide all officers with instructions and guidance on best practice for conducting procurement exercises, including appropriate templates;
- 3.7.3 The Procurement Working Instructions shall be deemed to form part of these Procurement Procedures for the purpose of determining whether any action is a breach of these Procurement Procedures.

3.8 Tender Documents

- 3.8.1 Only the latest version of templates issued by the Procurement Service should be employed. Any other template should only be used if agreed by the Service Manager Procurement;
- 3.8.2 Terms and Conditions of Contract

- 3.8.2.1 All Contracts/ frameworks entered into by the Council should be on the basis of the appropriate East Lothian Council Terms and Conditions. No amendment to Council conditions should be adopted without the agreement of the Head of Finance and Head of Corporate Support. Where the Service Manager Governance considers that the Council's standard terms and conditions are not appropriate for a particular Contract, due to the significance or complexity, alternative terms and conditions can be used subject to the approval of the Service Manager Governance;
- 3.8.2.2 For works Contracts recognised industry terms and conditions of Contract e.g. I.C.E, J.C.T, NEC3 and SBCC may be used.
- 3.8.2.3 For call-off contracts from third party frameworks the relevant framework terms and conditions, subject to checks and approval by the Procurement Service, may be used.

3.9 Late Tenders

Tenders and quotations received after the closing date and time stipulated for return of Tenders, or Tenders which are incomplete or in an incorrect format must not be opened or considered except with the express approval of both the Service Manager Procurement and Service Manager Governance (for the avoidance of doubt two approvals are required therefore in the case of a Service Manager not being available, approval should be sought from the Head of Finance or Head of Corporate Support instead).

3.10 Evaluation of Tenders and Quotations

- 3.10.1 Tenders and quotations for procurements with values above the Regulated and GPA Procurements Thresholds shall be evaluated on the basis of Most Economically Advantageous Tender (MEAT);
- 3.10.2 Lowest cost will only be permitted for Contracts below Regulated Contracts Thresholds and Contracts placed under frameworks where the Procurement Officer can demonstrate that Best Value has already been established and the Procurement Working Instructions allow for lowest cost;
- 3.10.3 The evaluation process must be fully and appropriately documented, and a record retained in all cases.

3.11 Form, Acceptance, Award and Termination of Contracts

- 3.11.1 Except in circumstances where the Head of Corporate Support and the Head of Finance agree otherwise, every Contract shall be:
 - a. In the name of East Lothian Council; and
 - b. Awarded by Procurement Officer (or APO); and
 - c. Entered on the Council Contracts Register
 - d. Subject to the law of Scotland and the exclusive jurisdiction of the Scottish Courts. In the case of a call-off contract, from a Framework which is not subject Scots Law and does not permit a change in the applicable law or legal

jurisdiction then such call-off contract shall be subject to the law of England and the exclusive jurisdiction of the English Courts.

- 3.11.2 The Procurement Officer shall retain a copy of the Contract, keep proper records of all Contracts and Tenders and record where they are stored, and ensure the Council's Contracts Register is updated;
- 3.11.3 The Service Manager Procurement in consultation with Service Manager Governance may terminate or suspend a Contract, in accordance with the express or implied terms of the Contract, and may also take such further action with regard to any Contract as the Council is legally entitled to take. For Regulated or GPA Contracts, approval shall be sought from the relevant Head of Service.

3.12 Contract Variation/Extension

- 3.12.1 The relevant Head of Service may authorise an extension to a Contract, or any other variation, including a consequent change in price, provided such extension or variation has been provided for in the initial Procurement Documents including the PID and contract documentation, and is not contrary to the Procurement Legislation;
- 3.12.2 A Contract shall not be extended, modified or amended if such extension or variation is not expressly permitted by the Contract, without seeking advice from the Service Manager Procurement or Service Manager Governance;
- 3.12.3 Where a Contract, subject to the Procurement Legislation, does not include provision for an extension or variation then the relevant Procurement Extension or Variation Form (or equivalent) shall be completed by the Procurement Service and the officer initiating the procurement, and agreed by the relevant Head of Service and the Service Manager Procurement.

3.13 Contract Novation and Assignment

- 3.13.1 In every Contract, there shall be included a provision whereby the Contractor shall be prohibited from transferring, novating or assigning to any person or persons whatever, any portion of the Contract without the prior written consent of the Council;
- 3.13.2 The Service Manager Procurement and/or Service Manager Governance shall have the power to consent on behalf of the Council to the assignment of a Contract;
- 3.13.3 The assignment, novation or sub-contracting of any part of a Contract except to the extent permitted in writing by the Service Manager Procurement or Service Manager Governance, shall be prohibited.

3.14 Contracts Register

The Service Manager Procurement shall maintain a register of all Contracts awarded by East Lothian Council as required by the Procurement Reform (Scotland) Act 2014.

3.15 Strategic Review of Service Provision

Where a Service plans to undertake a strategic review of their service provision, the Service Manager Procurement should be contacted at the outset of any such review to ensure that any relevant procurement issues are identified and addressed.

3.16 Community Benefits Requirement

The Procurement Service and the officer initiating the procurement shall include of Community Benefits requirements within the procurement process for all procurements over £50k in total value except where the Service Manager Procurement agrees that such requirements would not be proportionate or otherwise practical to include within the procurement process.

3.17 Procurement Strategy and Annual Report

The Service Manager Procurement shall prepare a Procurement Strategy, in consultation with Council management and relevant stakeholders, in accordance with the current Scottish Government guidance and ensure that data is captured by the Procurement Service to facilitate reporting to the Scottish Government.

3.18 Compliance with Procurement Strategy

The appropriate Executive Director shall carry out all Regulated and GPA Procurements, so far as reasonably practicable, in accordance with the Procurement Strategy applicable to the financial year during which the procurement exercise commenced.

Section 4 – Delegated Quotation Process for Low Value (And Low Risk) Purchases

4.1 Conducting Low Value\Low Risk Quotation Process (Under £15k form)

Officers may have delegated authority to conduct their own procurement activity for purchases below £15k where the Under £15k form is completed and the following criteria are met:

- The officer completes the Under £15k form prior to any purchase being made or order being placed with a supplier.
- The officer can make a decision on basis of Best Value. If no Contract\Framework exists for the same\similar goods it is good practice to obtain three quotations with evidence of firm\fixed prices.
 - Before proceeding, the officer should check SupplierFinder on ELNET and\or contact the Procurement Service to check if there is an existing contract that could be used for the requirement.
- The officer retains evidence of how the purchase\supplier decision was made along with the completed Under £15k form for audit purposes.
- The form is authorised by an officer with the correct level of financial authorisation in accordance with the Council Standing Orders.
- The officer follows the guidance included within the Under £15k form.
- Where the selected supplier is not already on the Council's finance system, the officer completes the New Supplier Request Form process **prior to raising any purchases or orders.**

The officer does not proceed with any purchases or orders if:

- Market analysis indicates that the price is likely to be greater than £15k
- Completing the Under £15k form Confirmation and Screening sections indicates that there are additional risk factors in the purchase – in which case the officer must contact the Procurement Service in the first instance.
- Purchases are to be made via a Framework Agreement that the Council is permitted to utilise.

Where a requirement is likely to be close to the low value\low risk procurement threshold or a recurring requirement, advice should be sought from Procurement.

Officers must refer to the Financial Authorisation Signatory Policy (available on ELNET) which stipulates that at least 2 people must be involved in all financial transactions, i.e., one to prepare (requisitioner) and one to authorise (approver) – please refer to the Finance section on ELNET for further guidance on ordering procedures.

Appendix A – Glossary

Term	Definition
Authorised Procurement Officer (APO)	A member of the extended Council procurement team trained and authorised to conduct procurement activities.
Award	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
Best Value	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.
Call-off contracts	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.
Community Benefits	Requirements which deliver wider benefits in addition to the core purpose of a contract. These can relate to jobs, training and other social-economic and/or environmental benefits
Contract	An agreement concluded between the council and the supplier that is legally binding, containing terms of the agreement, any schedules and appendices, the Tender Specification and any other specifications, drawings, official purchase order(s) and other documents which are relevant to the Contract
Contract Notice	Advert to invite applicants to express interest & apply to tender, or to be pre-qualified.
Contractor\Supplier	An entity who supplies goods or provides services or execution of works.
CPV	Common Procurement Vocabulary. A set of standard definitions of services, suppliers or works for notices (adverts) in the FTS or PCS.
Framework agreements	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.
Find a Tender Service (FTS)	UK e-notification system called Find a Tender Service (FTS)
Fundamental Principles	<ul style="list-style-type: none"> • Transparency - contract procedures must be transparent and contract opportunities should generally be publicised; • Equal treatment and non-discrimination - potential suppliers must be treated equally; • Proportionality - procurement procedures and decisions must be proportionate;

	<ul style="list-style-type: none"> • Mutual recognition – giving equal validity to qualifications and standards from other States where appropriate.
GPA	Agreement on Government Procurement
GPA Thresholds	The Threshold amounts are reviewed every two years. The GPA Thresholds in accordance with Regulations 5 and 5A of The Public Contracts (Scotland) Regulations 2015 are published by the Scottish Government.
MEAT	Most economically advantageous tender. Common phrase used to indicate that the tender will not be only based on lowest price.
Net Zero	The term net zero means achieving a balance between the carbon emitted into the atmosphere, and the carbon removed from it. This balance – or net zero – will happen when the amount of carbon we add to the atmosphere is no more than the amount removed.
Notice	Advert
Open Procedure	A procedure whereby anyone can tender. A one-step process
Public Contracts Scotland (PCS)	The advertising portal provided by the Scottish Government for the advertising of public contract opportunities using a Contract Notice, and for the award of contracts via a Contract Award Notice.
Procurement Legislation	The Procurement (Scotland) Regulations 2016, The Public Contracts (Scotland) Regulations 2015 and the Procurement Reform (Scotland) Act 2014 (“The Act”).
Procurement Service	The Council’s Corporate Procurement Team
Procurement Strategy	A document required as part of Scottish Procurement Regulations that sets out how the council intends to carry out its regulated procurements i.e. procurements with an estimated value equal to or greater than £50,000 (excluding VAT) for supplies for supplies & services (or £2,000,000 excluding VAT for a public works contract).
PID	Procurement Initiation Document
Quick Quote (QQ)	Quick Quote is a part of Public Contracts Scotland which allows Buyers to obtain competitive quotes for low value or low risk procurements. QQs are created through the Notice creation wizard and distributed to a select list of suppliers. Buyers can filter and select the suppliers to invite to quote. QQs are only distributed to the suppliers the Buyer selects and are not made public on the portal. The selected suppliers can provide the requested details and submit a quotation using the electronic postbox feature on PCS.
Restricted procedure	A procurement procedure whereby there are 2 steps: selection of suitable candidates, and then evaluation of tenders from the short-listed tenderers.
Specification	The part of the invitation to quote or invitation to tender which details the nature and quality of the goods, services or works

Sustainable procurement	A process whereby organisations meet their needs for supplies, services, works and utilities in a way that achieves value for money on a whole life basis and generates benefits, not only for the organisation but also to society, the economy and the environment.
Tender	An offer, or bid, by a tenderer in response to an invitation to tender (ITT) or a mini-tender in a framework agreement
Variation [to contract]	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.
Works	The term used in the Procurement Legislation for a building or civil engineering project or piece of work and as defined by CPV codes in Schedule 1 of The Public Contracts (Scotland) Regulations 2015