



IVYBRIDGE TOWN COUNCIL



PROCUREMENT POLICY

Preamble

This policy which takes account of a Procurement Paper issued by NALC in January 2018 also takes account of a 2022 paper by the LGA on 'National Procurement Strategy for Local Government in England 2022'. The policy is subject to both the requirements of s.135 of the Local Government Act 1972 and the Public Contracts Regulations 2015 (The 2015 Regulations) should be read in conjunction with sections 10 to 12 of the Council's Financial Regulations and section 20 of the Council's Standing Orders.

The LGA paper discusses new procurement rules likely to move the winning tender test from 'the most economically advantageous tender' (MEAT) to 'most advantageous tender' (MAT) which will help councils to focus on value in its broader sense beyond economic value. This approach also encompasses 'Social Value' defined as improving economic, social and environmental wellbeing from public sector contracts over and above the delivery of the services directly required at no extra cost.

1. Introduction

1.1 The Council's Vision and Values

The Council's core vision and values to encompass the whole of the community include:

- Maintaining and improving the environment including leisure and transport facilities and quality of life
- Improving public health
- Encouraging economic sustainability and levels of employment
- Providing high quality cost efficient services
- Undertaking projects for the well-being of the community
- Maintenance of traditions including supporting public events exemplified by Remembrance Day and Christmas celebrations
- The Town Council has signed up to the Devon Climate Emergency.

As part of the Council's Procurement Policy, it is committed to:

- Community Involvement – Listening and talking to communities about what they want
- Service Quality – trying improve the quality of Council services
- Easy Access – making services open and available to all
- Value for Money – Provided the best services at the best possible cost

- Sustainable Procurement – Recognising the economic, social, bio-diversity and environmental impacts resulting from the procurement practice
- Business Partnership – working closely with the business community to achieve the best for the town
- Working with other service providers to achieve the best for the community and to allay concerns.
- Valuing Staff – Acknowledging that the Town Council Staff are a key resource and should be valued and respected

1.2 Procurement in the context of local councils is the process by which they award contracts to third parties (frequently individuals or companies) to provide goods, services or to undertake works. The procurement process is designed to source the most suitable contractors based on factors such as cost and their knowledge, experience, quality, capability, financial standing and adequate health and safety procedures and levels of insurance cover where appropriate.

Procurement can range from the day to day purchasing of commodities to purchasing key strategic items including capital assets, commissioning a survey or buying an entire service.

1.3 Procurement is important as all of the Council's services involve procurement to some degree. There is a demonstrable link between good procurement and the delivery of high quality and cost effective services for which the Council is responsible.

The importance of getting procurement right is reflected in national strategies:

- The Gershon Efficiency Review (2003-2004) identified procurement as one of the most important areas for efficiency gain.
- The National Procurement Strategy (2003-2006) for Local Government set out how councils can improve the delivery and cost effectiveness of high quality services through more effective, prudent and innovative procurement practices.
- Councils have a duty to provide 'value for money' and must continually review and improve services.
- S135 of the Local Government Act 1972 (The 1972 Act) requires for councils to have standing orders with respect to procurement procedures.

1.4 In a procurement exercise the Council will comply with the 2015 regulations or any replacement or update of them.

1.5 The 2015 Regulations apply to ‘public contracts’ which are defined as ‘contracts having as their object the execution of works, the supply of products or the provision of services. The definition excludes ‘public works contracts’.

‘**Public supply contracts**’ are those for the purchase, lease, rental or hire purchase, with or without an option to buy, of products whether or not the contract also includes, as an incidental matter, siting and installation operations.

‘**Public service contracts**’ have as their objective the provision of public services other than those referred to in the definition of ‘Public works contracts’.

‘**Public works contracts**’ include site preparation, demolition of buildings, and construction of new buildings (and any required ancillary work) as well as construction of roads, airfields, sport facilities etc.

1.6 Public contracts which are exempted from the 2015 Regulations

The Regulations provide that certain public contracts are exempted from the requirements of the 2015 Regulations. Regulation 10 confirms that contracts for the acquisition of land and buildings, legal services (legal advice and representation) and bank services are exempted in the context of local authorities. Regulation 12 excludes:

- A contract with an incorporated body, controlled by a local authority, where more than 80% of the body’s activities are controlled by the local authority and there is no private sector ownership of the body, with certain exceptions
- A contract between two or more local authorities who come together to provide a service to achieve objectives they have in common and that the joint venture is governed solely by considerations relating to the public interest (e.g. where a parish council enters into arrangements with a principal council) and
- An incorporated body which is a contracting authority awards the contract to its controlling local authority or to an incorporated body controlled by the same local authority

1.7 S135 of the 1972 Act specifies that local councils shall make standing orders in respect of contracts for the supply of goods or materials or for the execution of works and these are included within sections 10 to 12 of the Council’s Financial Regulations.

The Council’s Financial Regulations include provision for securing competition and regulating the manner in which tenders are invited but should be read in conjunction with this Procurement Policy.

A person entering into a contract with the Council shall not be bound to inquire whether its standing orders (financial regulations) have been complied with and non-compliance with such orders shall not invalidate any contract entered into by the Council.

The Council's provisions may exempt contracts from a tendering exercise in cases of *de minimis* value as specified in the Financial Regulations.

2 The Contracts Finder website

2.1 In accordance with Regulation 110 of the 2015 Regulations Where the estimated value of a public contract exceeds £25,000 (Net of VAT) the Council will advertise a contract opportunity as below:

- The 'Contracts Finder' website which it will do whether or not it advertises the contract opportunity elsewhere
- It will advertise the contract opportunity on the Contracts Finder website within 24 hours of advertising it elsewhere
- It will also advertise the contract as it deems appropriate but will ensure that it is in the public domain and not just to a group of potential suppliers.
- The information to be published on Contracts Finder will include a response date, how and to whom to make the response and any other requirements for participating in the procurement.
- When using the Contracts Finder the Council must by means of the internet offer unrestricted and full direct access free of charge to any relevant contract documents and specify in the information on Contracts Finder the internet address at which those documents are accessible.
- The Council will have regard to guidance issued by the Minister for the Cabinet Office.

2.2 Under Regulation 111 the Council may not include a pre-qualification stage in the procurement by which candidates are assessed as to their suitability to perform the contract with a view to reducing the number of candidates to a smaller number who are to proceed to a later stage. However, the Council may ask tenderers to answer 'suitability assessment questions' to assess whether the candidates meet requirements or minimum standards of suitability, capability, legal status or financial standing.

2.3 Under Regulation 113 the Council will ensure that contracts contain suitable provisions stating that valid undisputed invoices will be paid by within 30 days. Public service contractors should make the same provision for their suppliers.

2.4 Under guidance issued by the Minister for the Cabinet Office, when a contract is awarded the Council will publish on the Contracts Finder information set out in Regulation 112 including;

- The name of the contractor
- The date on which the contract was entered into
- The value of the contract

- Whether the contractor is a SME – micro, small and medium sized or a non-profit making organization / social enterprise.

It is anticipated in the regulations that that the above information will be entered onto the contracts finder website between 1 month and 12 months after the contract has been awarded.

2.5 However, the Council will withhold the information set out in 2.4 above from publication where its release –

- a) Would impede law enforcement or would otherwise be contrary to the public interest
- b) Would prejudice the legitimate commercial interests of a particular economic operator, whether public or private, or
- c) Might prejudice fair competition between economic operators.

3. Detailed and complex requirements of the 2015 Regulations.

3.1 More complex regulations come into effect where the Public service or Public supply contract exceeds £181,302 and the Council will take appropriate technical and/or legal advice.

3.2 The requirements include

- Procurement must take one of five forms; the open procedure, the restricted procedure, competitive dialogue, the innovations partnership procedure and competitive procedure with negotiations
- Accelerated forms of the open procedure and competitive procedure with negotiation and the restricted procedure in situations of urgency that the Council can substantiate.
- Relevant contractual notices have to be published in the Official Journal of the European Union (OJEU)
- There is a pre-qualification stage
- Contracts should be awarded on the ‘most economically advantageous tender
- Contracts can be varied without going through a new procurement exercise
- Contracts should be advertised on the Contracts Finder website.