

Procurement Strategy & Guidance Manual 2020 to 2024

PROCUREMENT

Being Economical

Buying Legally

Contributing to the Corporate Plan

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1. Introduction

Procurement has a key role in ensuring that the Council achieves value for money in the delivery of services, which is the over-riding requirement of all public procurement. In doing so, the Council, as a public body, must also demonstrate that its procurement process is fair and transparent.

This Document is split into two parts. Firstly, a Procurement Strategy, which sets out the aims of procurement, together with ensuring that the process complies with legislative requirements and delivers value for money (*Parts 2 and 3*).

The second part of the Document is a guidance manual which details the process for ensuring that the aims of the Strategy are met (*Part 4*).

Definition of Procurement

Procurement is the process of acquiring goods, services and works to obtain the best mix of quality and effectiveness for the least outlay. This should be achieved through competition unless there are compelling reasons to the contrary.

The process spans the whole cycle from the identification of needs, through to the end of a service contract or the end of the useful life of an asset. The extent of the process will depend on the value and length of the supply or works being procured.

The process also includes an options appraisal and the critical “make or buy” decision which may result in the provision of supplies and services in-house in appropriate circumstances.

Achieving Value for Money

Under its Financial Management Code, the Council is required to demonstrate that it delivers value for money in the provision of its services. Procurement is a key process that helps the Council to achieve this objective.

National Expectations

The wider role of procurement should not be underestimated, as highlighted in the Government’s National Procurement Strategy:

“During these challenging times we must embrace the opportunities procurement can bring, to drive social value, economic growth and sustainability.”



2. The Procurement Strategy

The Council's Strategy is based around three themes as follows:

- **Being economical:** getting the best price for a service, supply or contract.
- **Adhering to Statute:** having due regard to the Public Contract Regulations 2015 (*as amended by the Public Procurement {Amendment, etc.} [EU Exit) Regulations 2019*) together with the Council's own Contract Procedure Rules.
- **Supporting the Council's Objectives:** delivering environmental, economic and social gains.

Fundamentally, procurement is about being economic by getting the best price for a service, supply or contract that meets service requirements, a certain quality or specification, etc. However, these quality requirements will also need to be balanced against "affordability", i.e. the amount of available resources or budget provision.

As a public body, the Council is required to undertake procurement within statute and its own [Contract Procedure Rules](#) as laid down in Section 28 of the Constitution. Together, this ensures that procurement is fair, transparent and helps to deliver value for money through a competitive process.

Procurement can also provide wider benefits. For example, supplies and services can be sourced that help the Council:

- ✓ reduce its carbon emissions or support sustainable supply chains.
- ✓ that awards work and contracts to local and small businesses.
- ✓ that provide opportunities for apprenticeships and vulnerable groups and engages with the voluntary sector.

Whilst attaining the best price and the application of rules and regulations are mandatory in any procurement activity, achieving wider benefits in all procurement will be a balanced decision on a case by case basis.

Assessment criteria should clearly take account of cost, but also include quality and reflect opportunities where environmental, social and economic gains are achievable.

Large contracts, together with the regular supply of goods and services to the Council, should aim to secure these wider benefits as a matter of course.



3. Delivering the Strategy

The Council's Procurement Service

The Council has for several years, outsourced its Procurement Service. This is to ensure capacity and resilience, together with enabling access to a wider pool of support, skills and advice.

Since 2018, the Council has been part of a shared service arrangement with Derbyshire Shared Facilities Service (**DSFS**) which is an arrangement involving an NHS Trust, a College and local authorities in Derbyshire.

The main role of the DSFS is to:

- Provide advice and guidance to Council Officers regarding compliance and access to markets.
- Co-ordinate tendering and major contract procurements.
- Provide regular training for Council Officers.

Training

All officers undertaking procurement on behalf of the Council should undergo training and be aware of the Public Contract Regulations 2015, the Council's Contract Procedure Rules and the Guidance detailed in Part 4 of this Document.

Specifying what is being Procured

Before any procurement exercise, it is important that a clear specification is set out. Although this will be proportionate to the size of the procurement, it is essential that Officers approach the market with a clear definition of their needs and quality of service or supply being sourced.

Where a specification is not immediately clear or where various options may be available in the market, then prior research and testing should be undertaken to help define specific requirements.

Being Economical

Generally, Officers should "know the market" where they are procuring. This may arise through experience or networking, etc. Advice should also be sought from the DSFS. As highlighted above, market research should be undertaken and particularly where large values are involved and/or where long-term contractual commitments are being made.



In accordance with the Regulations:

- For **low value** procurement (*less than £25,000 cumulatively over a four-year period*) prices should be compared through quotations from different suppliers.
- For all other **high value** procurement, a menu of options is available including:
 - Open tenders
 - Frameworks
 - Collaboration and Shared Services
 - Competitive Negotiation

Officers should always seek advice from DSFS regarding the best procurement route for high value procurement.

Adhering to Statute

Public sector procurement is subject to a legal framework which encourages free and open competition. It is subject to the EU Treaty** and associated directives which ensure suppliers are treated fairly and equally.

(** Note: Although the UK has left the EU, the Treaty still applies in UK law until statute determines otherwise).

EU Thresholds: The following thresholds apply over which procurement is subject to the EU Treaty.

- Supplies and service contracts - £189,330
- Works Contracts - £4,733,252.
- Light Touch Regime (Social Care Services) - £663,540

These thresholds are currently fixed until 31 December 2021 and *apply to the total value of services over the Contract period, including any potential extensions.*

All other procurement activity below these thresholds is subject to the Contract Procedure Rules with reference to the Public Contract Regulations. Care should be taken that where expenditure on annual basis is below the tendering threshold of £25,000, if the cumulative cost over four years is greater than £25,000, then Tendering Procedures apply.

It should be noted that the use of Frameworks may satisfy the EU Treaty if the establishment of a Framework itself, has been subject to that process.

Exemptions

Provisions, in specific and rare circumstances, to exempt the need for a competitive process, are detailed in the Contract Procedure Rules.



Supporting the Council’s Objectives

The Council’s Corporate Plan (2020 to 2024) has three priorities of “*Our Environment, Our People and Our Future*”.

Corporate Plan Priority	Outcomes	Procurement considerations
<p>Our Environment</p> <p><i>In consultation with the Head of Environmental Services</i></p>	<p>Strive to make the Council carbon neutral by 2030</p>	<p>Asset replacement and maintenance programmes - retrofit or lower emission alternatives.</p> <p>Potential suppliers are 14001 or EMAS accredited.</p> <p>Do contractors or suppliers have environmental performance targets and are they aligned to the Council’s?</p> <p>Sustainable supply chains:</p> <ul style="list-style-type: none"> • Materials used are environmentally sourced. • Can an item or packaging be recycled to reduce or eliminate waste.
<p>Our People</p> <p><i>In consultation with the Head of Culture and Community Services</i></p>	<p>Support Community Groups and the Voluntary Sector</p>	<p>Can supplies and services be commissioned through these organisations? Are partnership arrangements available?</p> <p>Are there opportunities for vulnerable groups to become involved?</p> <p>Do potential suppliers offer any community support or volunteering opportunities for their employees?</p>
<p>Our Future</p> <p><i>In consultation with the Head of Economic Development and Growth</i></p>	<p>Attract and retain jobs in the District</p> <p>Encourage and support business development and new investment in the District</p>	<p>Do potential suppliers offer apprenticeship programmes or employ local people?</p> <p>Will potential suppliers from outside the District relocate or set up hub facilities?</p>

Wherever possible, assessment criteria should include marks for environmental, social and economic gains. Although this may not be appropriate or possible for smaller value procurement, large contracts, together with the regular supply of goods and services to the Council, should ask potential suppliers how they can contribute to the Council’s Corporate Plan as detailed above.



4. Procurement Guidance: The Adopted Approach

Guiding Principles

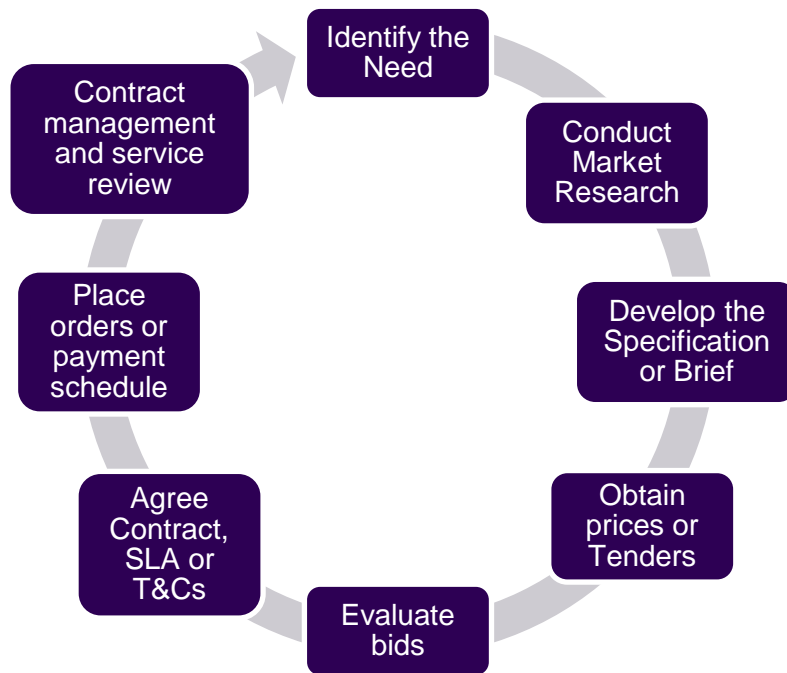
- 4.1 During the procurement process, sound governance is critical so that the Council can evidence that it carefully manages the spending of public money. Tender and quotation exercises are designed to ensure that the Council spends money wisely and obtains value for money, taking into cost and quality, when acquiring goods, services and supplies.
- 4.2 Therefore, all procurement should follow the [Contract Procedure Rules](#).
- 4.3 Where applicable, rules governing **European Tendering Thresholds** should be followed.
- 4.4 All tenderers must sign a document to confirm there is no **conflict of interest** for any Member or Officer of the Council, or otherwise declare where they believe a potential conflict may exist.
- 4.5 Officers should be mindful of the Employee Code of Conduct in this regard and not put themselves in a compromising position at any point during a procurement exercise.
- 4.6 Before a procurement exercise is undertaken, a **Pre-Procurement Authorisation** (PPA) should be completed and authorised by a Strategic Director. This confirms the parameters of the exercise and ensures proper authorisation in accordance with budgets and priorities, etc.

Guiding Principles: Summary

- ✓ Obtain authorisation through the PPA
- ✓ Follow the process and obtain advice
- ✓ Refer to the Contract Procedural Rules
- ✓ Be mindful of potential conflicts



The Procurement Cycle: Key Stages



Identifying the Need

4.7 This may arise due to:

- A new requirement
- The need to renew an existing arrangement
- The need to ensure compliance with regulations
- Aggregate spend for increased leverage in the marketplace

4.8 The process is then initiated through a PPA. This should also include a timetable of the key stages in the exercise.

Market Research

4.9 The Public Contract Regulations recommend that prior to major procurement exercises, market consultations should be conducted with key suppliers, including market leaders, SMEs and the Third Sector. This is to better understand what is available in the Market and to inform the Market of the Council's intentions. The DSFS can support this process.

4.10 This can provide the Council with useful information to help in determining its strategy and specification. Pre-engagement is an opportunity to stimulate new and innovative ways to improve efficiency, reduce costs and improve service provision.



- 4.11 However, care should be taken to ensure no discrimination or distortion of competition occurs and all engagement is open and transparent. The use of “open days” and “meet the buyer” events are useful ways to engage the Market.
- 4.12 For low value procurement, a less formal approach is allowable. Key suppliers can be contacted direct and asked to quote based on a brief or simple specification of requirements
- 4.13 At this stage, the “route to market” should also be considered and finalised, especially for high value procurement. This can include:
- ✓ Open Tenders
 - ✓ Frameworks
 - ✓ Consortiums
 - ✓ Shared Services and Partnerships
- 4.14 At this stage, DSFS should be consulted so that they are aware of forthcoming procurement exercises and they will advise on potential routes to market. In addition, they can support the preparation of the timetable, especially for high value procurement above the EU Treaty thresholds where pre-determined timescales need to be met.
- 4.15 In addition, **the Council’s Legal Team** should also be notified of high value, complex procurements, where they will be required to input and advise on contract terms, conditions and agreements, etc.

Specifications

- 4.16 A robust performance-based specification should be produced. Specifications should avoid trade names or brands (except for reasons of compatibility with legacy equipment or systems) but should describe the functions and outcomes required. Any potential compatibility issues must be highlighted so proposed solutions are feasible.
- 4.17 Specifications should be clear on expected outcomes and performance measures, not on current methods of working or how a solution is to be achieved. Suppliers should be considered experts in their field and should be allowed to develop creative proposals to meet the Council’s needs.

Assessment Criteria

- 4.18 Before the tendering or quotation stage, the assessment criteria must be determined and circulated with the final specification. Questions should be devised so all Bidders can respond in a way which allows them to demonstrate their strengths and which can be compared with other Bidders. It is also essential to consider how the responses will be evaluated when devising questions.
- 4.19 Details of the scoring process and the criteria to be used, including the relative weightings must be up front at the tendering stage to ensure transparency and fairness. All questions and their weightings must be relevant and proportionate to their importance in the procurement exercise and to the Council.



4.20 In most procurement exercises, cost will be the main element in the assessment criteria. Typically, most procurement will award between 60% and 90% of the total marks to cost.

4.21 However, it is important to look beyond the initial price and to undertake the assessment based on the “*Whole Life Cost*”. For example, consider where relevant:

Purchase Price	Set-up costs	Delivery Charges	Maintenance	Replacements	Spare Parts
Call out charges	Running costs	Training	Future upgrades	Development	Decommissioning

4.22 The above factors (or equivalent) should be considered when producing the “*pricing matrix*” for bidders to complete and submit.

4.23 Besides price, *quality criteria* should also be devised. This will vary depending on what is required. However, as highlighted in the Strategy, this should consider opportunities or ideas to deliver **environmental, economic and social benefits in accordance with the Council’s Corporate Plan**.

4.24 In addition, consider where relevant:

Health and Safety	Management systems	Qualifications	Service Standards	Back-up & Support	Compatibility
Response times	Experience	Monitoring and Reporting	Accreditations	Growth and Expansion	Innovation

4.25 In the quality assessment, only the most appropriate items should be included to ensure a manageable process and to ensure that the essential criteria is not diluted.

Note that this criteria should also be applied to any sub-contractors proposed.

4.26 Once a service brief or specification, together with the assessment criteria are complete, the formal process of obtaining prices or tendering should commence.

Quotations

4.27 These should be obtained in accordance with the Contract Procedure Rules.

Tendering

4.28 For all tendering exercises, early contact should be made with DSFS for appropriate arrangements and advice to be put in place. There will also be generic documentation issued, together with instructions, alongside the technical documents. Depending on the nature of the procurement, Bidders should be asked to provide policies relating to Health and Safety, Environmental Management, together with Equality and Diversity.



- 4.29 Unless a Framework or Consortium route to market is being used, an Open Tender should be used for procurement exercises below the EU Treaty thresholds.
- 4.30 Where EU Treaty thresholds apply, a Prior Indicative Notice (PIN) will be placed in the OJEU to alert the Market of the Council's broad proposals.
- 4.31 An EU Treaty procurement allows a two-stage process to be used through a Pre-Qualification Questionnaire (PQQ). The PQQ is a useful tool to ensure that only those suppliers who can meet the key technical requirements and that have the necessary capability and experience to deliver the Council's needs, submit tenders. This saves time and expense for all parties.
- 4.32 The use of PQQs should be considered where the market is potentially large, and transformation is an important factor for which the Council is willing to consider alternative bids. This ensures that the Council can ultimately focus on specific bidders, especially where additional dialogue needs to take place to refine bids later in the process.
- 4.33 All relevant documentation should be packaged and included in the Invitation to Tender (ITT). This should include the specification and assessment criteria, etc. and where applicable, the draft Heads of Terms for the Contract.
- 4.34 DSFS will arrange for the relevant advertising notices in accordance with the EU Treaty where applicable. Details of all tenders should also be advertised on Source Derbyshire, the Government's Contracts Finder Portal, together with trade journals if necessary. All tenders should be advertised as widely as possible.
- 4.35 Once the tendering exercise has commenced, all communication with potential bidders during the process must be carefully managed to ensure there can be no accusation of favouring or disadvantaging any bidders or distorting competition in anyway.
- 4.36 Any communication with Bidders regarding existing contracts or on-going work must be reduced to an absolute minimum during the tender process. Contract meetings should avoid any discussion regarding a tender exercise.
- 4.37 During the tender process, questions raised by Bidders will be co-ordinated through DSFS. The Council's responses will be made available for all Bidders.
- 4.38 Where a briefing or site visit is required, all potential Bidders should be invited. This should be undertaken after the opportunity to express an interest has passed. This ensures all Bidders are given the same information and that any questions raised and responses given, are heard by all.
- 4.39 The receipt and opening of tenders are managed electronically and co-ordinated by DSFS through an approved E-tendering portal.

Frameworks and Consortiums

- 4.40 The use of Frameworks and Consortiums have become a familiar way to procure in recent years. This is because they avoid the time and cost of a separate tendering



exercise (above) and with Consortiums, can be an effective way to achieve the best prices through bulk purchasing.

4.41 However, not all Frameworks will meet the needs of the Council if it has bespoke requirements or is seeking transformation. Therefore, the use of Frameworks should be considered carefully before potentially compromising longer-term benefits in favour of a quick process.

4.42 Therefore, before entering a Framework or Consortium arrangement, the Value for Money Test as detailed in the Council's Annual Value for Money Statement, must be satisfied.

Partnerships and Shared Services

4.43 The legal basis for a transfer of functions from one local authority to another or to operate a shared service is contained within provisions of the Local Government Act 1972 and Section 20 of the Local Government Act 2000. This legislation effectively allows another public body to discharge the functions of another local authority without the need for a tender process.

Evaluation

4.44 Tenders should be evaluated by a panel of assessors using the criteria published in the ITT. Some evaluators may just evaluate responses to questions within their specialist area of expertise. However, they must score those questions for all the viable tenders to be assessed to ensure a fair balance.

4.45 Individual scores should be entered into a worksheet and allow comments on why marks have been awarded. This is essential to allow feedback at a later stage and to avoid a potential challenge.

4.46 Individual scores should be consolidated into a master table which should also include the pricing elements to enable a total score, incorporating the weightings between price and quality, to be calculated. This should be administered by Procurement.

4.47 In more complex or higher value procurement, DSFS will support the evaluation process and scores should be checked and moderated by an independent Officer.

Negotiation

4.48 The route to market chosen could allow negotiation at certain stages of the process, including after selecting a preferred supplier to fine tune requirements.

4.49 Negotiation is a useful mechanism to better understand requirements and solutions being offered.

4.50 Negotiation should not favour or disadvantage any supplier or distort competition, etc. and needs to be open and transparent. However, care should be taken not to disclose the commercial position and bid of any-one supplier during the process.



Due Diligence

- 4.51 As part of the process, further independent checks should be undertaken regarding the capability, competency and financial sustainability of potential contractors. This can be achieved through references from former and existing clients, together with credit checks by Financial Services.
- 4.52 In addition, where relevant, performance relating to Health and Safety, Environmental Management, together with approach towards Equality Diversity and Inclusion, should also be scrutinised to ensure that they align with legislative requirements and the Council's expectations.

Recommendation Report

- 4.53 To complete the evaluation stage, a final report should be produced for the Strategic Director to review and authorise the appointment of a supplier/contractor. This report should detail key parts of the process, bids and scores, together with due diligence undertaken and reasons for recommending the preferred bidder.

Contract Award

- 4.54 Formal notification should be sent to the successful Bidder. In addition, unsuccessful bidders should be notified including basic feedback to indicate where the successful bidder was more competitive.
- 4.55 For tenders subject to the EU Treaty, a standstill period of 10 days from when notification is sent must be observed, before the Award becomes effective.
- 4.56 Depending on its size, conditions and complexity, etc. associated with a procurement exercise, final terms should not be agreed until the Legal Services Team have been consulted.
- 4.57 All major contracts and agreements should be officially sealed. No Contract or Supply should commence until it has been officially signed and/or sealed in accordance with the appropriate delegated authority.
- 4.58 These conditions also apply to contracts awarded under a Framework, a Shared Service arrangement or where national measured terms apply. This ensures that they are bespoke (if necessary) and reflect the Council's specific requirements.
- 4.59 Following this, the Contract can commence and payment terms set-up. For lower value procurement, an official order should be raised on the Council's Financial Management System in accordance with the Financial Regulations.

Contract Management

- 4.60 Good contract management is essential to ensure that performance is maintained and that the Council's requirements continue to be met.



4.61 Reviews should be undertaken throughout the life a contract on two distinct levels:

- **Operational**, covering day-to-day issues on at least a monthly basis to focus on:
 - Health and Safety
 - Reviewing performance
 - Progress against planned work
 - Work scheduling
 - Budgets
 - Feedback form customers

- **Strategic**, covering high level review of contract performance, to focus on:
 - Delivery against the Council's objectives
 - Performance against key indicators
 - Trends
 - Contract development and efficiencies
 - Issues escalated from operational management
 - Contract variations
 - Emerging issues which could impact on service provision

Summary: Key Points

- ✓ Plan ahead
- ✓ Research the Market
- ✓ Have a clear specification
- ✓ Consider alternatives
- ✓ Be open and transparent
- ✓ Undertake Due Diligence
- ✓ Authorise the Contract or Agreement
- ✓ Manage the Contract/Service

