



## PROCUREMENT POLICY

### WRITTEN BY:

Mrs Sarah Haydon, Chief Officer

### CREATED:

September 2019

### APPROVAL DATE:

Finance Strategy & Management Committee – 24 September 2019

Town Council – 8 October 2019

### REVIEW DATE:

September 2021

## INTRODUCTION

1.1 In the context of local councils, 'procurement' is the process by which they award contracts to third parties to provide goods, services or to undertake works.

This Procurement Policy is designed to support Biddulph Town Council to source the most suitable contractors based on cost and their knowledge, experience, capability and financial standing.

1.2 In a procurement exercise, three sets of legal requirements are relevant. These legal requirements are summarised in the table below:

Value of contract (net of VAT)	Legal requirements
Up to £25,000	Requirements in the council's standing orders and financial regulations.
Over £25,000	Use of Contract Finder website and other light touch rules in the Public Contract Regulations 2015 ('the 2015 Regulations').

Over £181,302 or £4,551,413	Other detailed and complex requirements in the 2015 Regulations.
-----------------------------	--

1.3 This policy covers procurement for goods, services or works costing under £181,302 as this will be the most frequent activity undertaken by Biddulph Town Council. Should the council wish to consider larger procurement exercises, specialist advice should be sought in relation to the detailed and complex requirements in the 2015 Regulations.

## OBJECTIVES OF THE POLICY

2.1 Good procurement depends on ensuring that requirements are reliably determined, appropriate contract strategies are developed and contracts are well managed. Failure to procure in this way can result in additional cost and put the achievement of the strategic priorities at risk.

The objectives of this policy are to:

- Ensure the selection of suppliers is fair and transparent
- Promote accessibility for local and small/ medium-sized enterprises
- Ensure that spending complies with legal requirements

Improve procurement practices to achieve better value for money.

## PRE-TENDER STAGE

3.1 Before starting any procurement exercise, Biddulph Town Council will give consideration to the following questions:

1. Are we clear what we want to achieve?
2. What do the financial regulations/ standing orders or procurement legislation say we need to do?
3. Have we got the budget for the purchase and ongoing costs?
4. What would happen if we did nothing?
5. Could this be done in stages?
6. Are we clear on the outcome/ output we want to achieve?
7. Can we achieve this by borrowing from someone else or buying it together with others to share costs? Or by recycling something we already have or use elsewhere?
8. Could residents/ voluntary groups help us to deliver part of it at no cost?
9. Could we rent or lease it instead?
10. How much time will it take to run a compliant tender process to attract sufficient quality bids?
11. How can we encourage small businesses and voluntary sector to bid for this work, at the very least how can I make the tender process accessible?

What are the risks and opportunities associated with purchase of a product or the long term risks of a service provided over a period time? Risks come in many shapes and sizes, and can include risk to council reputation, financial risk such as loss of income, health and safety risk, significant time loss, difficulty of replacement if things go wrong, insurance risk, and risks associated with people such as the need to take on contract staff at the end of a contract term, under TUPE legislation (Transfer of Undertakings).

3.2 At this stage, some market research can be undertaken. This is the time to speak to suppliers, as long as the council does not do anything that may give the perception that they are treating one supplier more favourably than any other. These discussions help to understand the market place and some of the detail needed by possible suppliers.

It is also prudent to speak to other town and parish councils to determine whether they have experience of procuring the type of product or service that the council are considering.

Time must also be built into the project to allow for engagement and feedback with residents, community groups or other partners.

3.3 When considering the possible contract value, the Town Council's Financial Regulations provide advice in relation to contract values. Section 11 states:

- Contracts of more than £3,000 and less than £25,000 require 3 quotations (priced descriptions of the proposed supply).
- Contracts below £3,000 and above £100 require 3 estimates.
- If this is not possible, Officers and Members should ensure that, as far as reasonably practicable, the best value/ terms have been achieved.

Detail in relation to authority to spend is also included within the Financial Regulations. Section 4 states:

Expenditure on revenue items may be authorised up to the amounts included for that class of expenditure in the approved budget. This authority is to be determined by:

- the council for all items over £5,000;
- a duly delegated committee of the council for items over £500; or
- the Clerk, in conjunction with Chairman of Council or Chairman of the appropriate committee, for any items below £500.

Such authority is to be evidenced by a minute or by an authorisation slip duly signed by the Chief Officer, and where necessary also by the appropriate Chairman.

Contracts may not be disaggregated to avoid controls imposed by these regulations.

3.4 When the council has collected the information above, a report will be created and presented to the appropriate committee. This report will set out the options and recommendations and provide the opportunity for scrutiny. Based on this, the committee will consider whether to progress to the next stage.

## TENDER STAGE

4.1 Biddulph Town Council must ensure that every stage of the tender process is

fair, transparent and does not discriminate for/ against any supplier. Actions are subject to scrutiny under the Freedom of Information Act as well as the council's own Financial Regulations.

The following is a short summary of the key requirements of a tender.

### **4.2 Calculate the contract value**

This will either be the actual standalone cost of a one-off purchase of goods or the total year-on-year value if there are ongoing costs or it is a service contract.

Terms over 10 years are regarded as unacceptably long for council contracts, as they prohibit new tenderers from entering the market. This will include all maintenance, licensing, upgrades, consultancy, training and anything else associated with that purchase.

Contracts should not exceed three years, with an option to extend for a maximum of a further two years.

### **4.3 Establish a project plan**

It is good practice to develop a project team and to identify who will sign off the final documents before publication. It may be that the Chief Officer completes the required documentation and reports back to the entire committee; this should be determined at the outset.

### **4.4 Write the specification/ evaluation criteria and legal terms and conditions of contract**

A 'Specification of Requirement' (SOR) must be produced prior to tender for all supplies, services or works required.

No specific technical specifications, product range or brand names should be used.

The specification must be accurate as to the requirements of the contract. A poor description may mean that the product or service is not delivered to the required standard and late changes to a specification may result in additional or abortive costs.

The specification should:

- Be outcome focussed (include performance indicators that inform the supplier how the 'success' of the contract will be monitored)
- Be standardised, and the use of specific detail that would limit tender opportunities should be avoided
- Include the agreed evaluation criteria (price and quality or other factors such as their health and safety record); and
- Form part of the terms of reference of the contract.

Attention should be given to the development of legal terms and conditions, specific to what is being procured, and also to how the contract will be managed.

#### **4.5 An 'open tender' process**

Biddulph Town Council will normally use an 'open tender' process. With this option, all suppliers who request tender documentation will be invited to submit a tender by a set date. Following evaluation, the contract will be awarded to the successful bidder. This approach enables the council to make tendering as accessible as possible to smaller local organisations who may not have the capacity to complete two or three-stage tender processes, as well as to those who have more experience of tendering.

#### **4.6 Advertising**

It is important to advertise opportunities for an appropriate length of time, and to allow organisations time to respond fully. The requirement should be advertised as widely as possible (taking into consideration the need for publication on the Contract Finder website).

Organisations who are invited to provide an estimate (section 3.4 above, extract from Financial Regulations) will be required to submit this information within 14 days.

Where the contract value is over £3,000, opportunities will normally be advertised for 30 days and responses should be received within that time.

## EVALUATING TENDERS

### 5.1 Sharing information

During the period the tender is awaiting bids, various questions may arise. If the council answer a question for one bidder, then they should ensure that all the other known bidders receive the question and the answer that has been provided. No bidder should be able to claim that someone else had additional knowledge before the tender submission period.

Conversely, there will be some information that bidders provide that they regard as confidential. They may, for example, have given an added value option that other tenderers may not have thought of. This information should not be shared between bidders. It is the council that must determine whether an issue is deemed confidential or not (as bidders will always say that everything is commercially confidential.)

### 5.2 Evaluation of tenders and scoring

The council will only apply evaluation criteria that is included in the tender documents. This may include additional weighting for local providers and/ or those with proven track records, depending on the requirements of the Town Council. The council will not use additional criteria or introduce something new or different after tenders have been received. Equally the council will not accept tenders or amendments after the published deadline, unless there are very special reasons for doing so.

Evaluation of tenders should be undertaken by at least three people, or at a formal council/ committee meeting, which may need to be a part two meeting, excluding the public and the press. The evaluation should be completed by a panel of suitably qualified individuals who are experienced in evaluating tenders. Scoring should be undertaken individually, then the panel should come together to produce a moderated score. This should be done in writing with a pre-agreed scoring template that allows comments on each bid.

### 5.3 Award stage

Once the evaluation is completed, the recommendation in relation to the successful bid should be presented to full council for scrutiny and approval. Following approval, consideration should be given to the award of the contract.

The contract award should be in writing, and reference the terms and conditions issued at the tender stage. The full contract will include the specification, the bid and the terms and conditions of contract.

Good practice is to provide all unsuccessful bidders with feedback on their bids; this should be done as soon as possible after the winning bidder is decided.

## CONTRACT MANAGEMENT

6.1 This is the stage where things can go wrong and where costs can increase if not managed carefully. The specification and terms/ conditions of contract should have a direct reference to who is responsible for doing what, when payments are triggered, what happens when it goes wrong and what standards/performance indicators the supplier must meet.

### 6.2 Pre-contract start

Before the contract starts, representatives from Biddulph Town Council will meet with the supplier and reach a common understanding of the contract so there are no surprises later on.

Whatever the length of the contract, the council will agree a delivery plan, with dates, outcomes and owners of activity. The council will meet regularly with the supplier to manage the risks and opportunities associated with the contract.

### 6.3 Contract delivery phase

Service contracts require ongoing management and some degree of flexibility from both parties as the situation may evolve over a longer period of time. Contract monitoring may include volumetrics (i.e. number of times service used), number of complaints by residents, number of health and safety issues raised, quality improvements logged, etc. At regular contract meetings, formal minutes will be taken and shared with all parties. Any contract changes should be signed, and added to the signed service contract.

Short term contracts such as minor works, installation of play equipment or street furniture may require a short burst of scrutiny focussing on ensuring that health and safety matters are covered, the public is safe and the materials used are as specified. Biddulph Town Council may engage professionals, such as a project manager experienced in delivery, to ensure the council can adequately manage these contracts.

## 6.4 Change control

Things do not always go to plan so each contract will have a clause that sets out how the council will manage change and the resulting costs/savings. All contract changes must be agreed in writing, and only by the persons named as responsible in the contract documents.

Extensions should not be entered into if they are included in the contract conditions and must be agreed by both parties in writing. Where the Chief Officer proposes to extend a contract to include additional works, services, goods or materials, similar to those included in the original contract, they can do so only where all the following criteria are met:

- a) The original contract has been undertaken to a satisfactory standard.
- b) The proposed additional works, services, goods or materials are substantially similar to those included in the original contracts.
- c) The original contractor has submitted a further offer to the council for the proposed additional works, services, goods, or material, and that tender does not exceed the value or amount of his original successful tender by more than £,7,500 or 20%, whichever is the greater (e.g. where the original value of contract is £25,000 an extension can be granted up to the value of £32,500)
- d) The original contract has not been completed more than 18 months prior to the submission of the further offer.
- e) Tenders were invited for the performance of the original contract and the supplier's tender provided best value for the council.
- f) The original contract has not previously been extended by this rule
- g) The duration of the contract, including extension, shall not exceed five years.

6.5 At the end of the contract, Biddulph Town Council will ensure that an appropriate notice period is given. The Chief Officer will complete a review of the contract and activities undertaken and present this to the relevant committee for analysis.

## RELEVANT LEGISLATION

### 7.1 The Public Contract Regulations 2015 ('the 2015 Regulations')

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.'

Regulation 2 of the 2015 Regulations defines each of those three contracts as follows:



‘public service contracts’ meaning public contracts which have as their object the provision of service other than those referred to in the definition of ‘public works contracts’.

‘public supply contracts’ meaning public contracts which have as their object 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 works contracts’ meaning public contracts which have as their object any of the following:

- a) the execution, or both the design and execution, or works related to one of the activities listed in Schedule 2 (including site preparation, demolition of buildings, construction of new buildings, bricklaying, plumbing, plastering, civil engineering, etc.);
- b) the execution, or both the design and execution, of the work;
- c) the realisation, by whatever means, of the work corresponding to the requirements specified by the contracting authority exercising a decisive influence on the type or design of the work.

(Exemptions are set out in Regulations 7 to 12).

7.2 The requirements of councils in England to have **standing orders** with respect to procuring and entering into contracts is set out in **s.135 of the Local Government Act 1972**.

S.135 provides:

- 1) A local authority (which includes local councils in England and Wales) may make standing orders with respect to the making of contracts by them or on their behalf.
- 2) A local authority shall make standing orders with respect to the making by them or on their behalf of contracts for the supply of goods or materials or for the execution of works.
- 3) Standing orders made by the local authority with respect to contract for the supply of goods or materials or for the execution of works shall include provision for securing competition for such contract and for regulating the manner in which tenders are invited, but may exempt from any such provision contracts for a price below that specified in standing orders and may authorise the authority to exempt any contract from any such provision when the authority are satisfied that the exemption is justified by special circumstances.
- 4) A person entering into a contract with a local authority shall not be bound to inquire whether the standing orders of the authority which apply to the contract have been complied with, and non-compliance

with such orders shall not invalidate any contract entered into by or on behalf of the authority.

S.135(3) confirms that, in England and Wales, a local council's standing orders may exempt contract from a tendering exercise if they are below a certain value or if special circumstances apply.

### **7.3 The Contracts Finder website and other light touch rules in 2015**

#### **Regulations**

Where the estimate value of a public contract exceeds £25,000 (net of VAT) a local council in England must comply with Articles 109 to 114 of the 2015 Regulations Regulation 10, which provides that a council must advertise a contract opportunity, is summarised below:

- It must advertise the contract opportunity on the 'Contract Finder' website- whether or not it advertises the contract opportunity elsewhere;
- It must advertise the contract opportunity on Contract Finder within 24 hours of advertising it elsewhere;
- A council is deemed to advertise a contract opportunity if it does anything to put the opportunity in the public domain or bring the opportunity to the attention of economic operators generally or to any class or description of economic operators which is potentially open-ended, with a view to receiving responses from economic operators who wish to be considered for the award of the contract. A council is not deemed to advertise an opportunity where it makes the opportunity available only to a number of particular economic operators who have been selected for that purpose (whether ad hoc or by virtue of their membership of some closed category such as a framework agreement), regardless of how it draws the opportunity to the attention of these economic operators.
- The information to be published on Contracts Finder shall include at least the following: a) the time by which any interested economic operator must respond if it wishes to be considered; b) how and to whom such an economic operator is to respond; and, c) any other requirements for participating in the procurement;
- Where a council publishes information on Contracts Finder it must- a) by means of the internet, offer unrestricted and full direct access free of charge to any relevant documents; and b) specify in the information published on Contracts Finder the internet address at which those documents are accessible;
- It must have regard to guidance by the Minister for the Cabinet Office.

Regulation 111 provides that councils cannot include a pre-qualification stage. A 'pre-qualification stage' is defined as 'a stage in the procurement process during which the contracting authority assesses the suitability of candidates to perform a public contract for the purpose of reducing the number of candidates to a smaller number who are to proceed to a later stage in the process'. A council may ask tenderers to answer a 'suitability assessment question', which is defined as relating to 'information or evidence which the contracting authority requires for the purpose of assessing whether candidates meet requirements or minimum standards of suitability, capability, legal status or financial standing' if the questions are relevant to the subject-matter of the procurement; and proportionate. Councils must have regard to guidance issued by the Minister for the Cabinet Office.

Regulation 113 provides that councils must ensure that contracts contain suitable provisions stating that valid undisputed invoices will be paid within 30 days. Public contracts must also contain a condition requiring contractors to include similar provisions in their contracts, and so on down the supply chain. Councils shall have regard to any guidance issued by the Minister for the Cabinet Office.

When a contract is awarded, a council, having regard to guidance issued by the Minister for the Cabinet Office, must publish on the Contracts Finder website the information set out in Regulation 112. This includes:

- 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 or VCSE (definitions below).

**SME:** The category of micro, small and medium-sized enterprises (SMEs) is made up of enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding 50 million euro, and/or an annual balance sheet total not exceeding 43 million euro.

**VCSE:** Voluntary, Community and Social Enterprise

A council can withhold the information 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

Might prejudice fair competition between economic operators.