



**MINUTES OF THE PROCEEDINGS OF THE MEETING OF THE
GOVERNANCE WORKING GROUP
HELD IN CONFERENCE ROOM 2, CIVIC HEADQUARTERS
WEDNESDAY 5 DECEMBER 2018 AT 6.00 PM**

Present : Alderman Hillis and Councillor Beattie.

Officer Present : D Jackson, Chief Executive
D Wright, Chief Finance Officer

1. APOLOGIES

Apologies were recorded for Councillors Duddy, McCorkell and McShane.

2. DECLARATIONS OF INTEREST

There were no declarations of interest.

3. CONSIDER STANDING ORDERS:

Standing Orders 15.1 (6) Motions on Notice. Members recommended that, having been proposed and seconded at full Council, there was no further need for proposal and seconding at Committee prior to the motion being debated.

Standing Orders 15.2 – Without Notice, Information Reports. Members recommended that information reports could be debated if that was the will of the Committee.

Standing Orders 19 – Voting – Non recommendation by Committee

Members recommended that the full Council should still have the opportunity to debate a matter notwithstanding a Committee not making a recommendation.

Standing Orders 19.5 – Recorded Vote. Member recommended the continuation of the current standing order.

4. ELECTRONIC VOTING DEMONSTRATION

Members considered the option to use electronic voting in the Chamber. The present system would require upgrading if it was to be used for recorded voting.

5. SCHEME OF DELEGATION/PROCUREMENT POLICY.

Mr Wright briefed Members on the revised draft procurement policy (attached) and the competitive thresholds for tenders. A draft scheme of delegation was shared for Member feedback at the next meeting of the Working Group.

6. ANY OTHER RELEVANT BUSINESS

There was no other relevant business.

7. DATE OF NEXT MEETING

To be arranged



Procurement Policy

| | |
|-----------------------------|-----------------------|
| Policy Number | |
| Version Number | 2018-1.5 |
| Author | Chief Finance Officer |
| Date of Screening of Policy | |
| EQIA Recommended? | YES |
| Date Adopted by Council | |
| Date Policy Revised | |

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Executive Summary

The focus of this document is to promote best value procurement of goods and services throughout all areas of Causeway Coast and Glens Borough Council, while providing staff with an overview of the procurement process and some of the legal requirements involved.

The Procurement Process Table overleaf should be used as a reference guide for all procurement activity as it will quickly show what action is required to complete that procurement activity in a compliant manner. Please refer to the appropriate section of this policy for further information.

Signed: _____ Date: _____
 Mayor
 Causeway Coast and Glens Council

Signed: _____ Date: _____
 Chief Executive
 Causeway Coast and Glens Council

Procurement Process Table

| Process | Value Range | Authorisation |
|--|---|--|
| Staff should ensure value for money before making a purchase. Where possible three or more prices should be compared. | Up to £1,000 | Budget Holder |
| A minimum of three written quotations should be sent via email to request prices for the goods or services required. These quotations should clearly detail the requirement but should be kept as brief as possible. | £1,001 to £5,000 | Head of Service |
| A minimum of three tenders should be invited via email. These tender documents should be more detailed than quotations to help bidders price the requirement as clearly as possible. | £5,001 to £15,000 | Director/SMT Member |
| A minimum of three tenders should be invited via email. These tender documents should be more detailed than quotations to help bidders price the requirement as clearly as possible. | £15,001 to £30,000 | SMT |
| Open tender | £30,001 to EU Threshold value (circa £170,000) for goods and services (correct at March 2015) | Council approval required to tender and Council approval required to award. See pages 11 to 13 for details. |
| EU Tender | EU Threshold spend or above | Council approval required to tender and Council approval required to award. See pages 11 to 13 for details. |

1. Introduction

The Causeway Coast and Glens Borough Council requires a wide range of goods, services and capital works to meet the organisation's goals and objectives while ultimately delivering the services and facilities expected by the ratepayer. The sourcing of items within any of these categories by Causeway Coast and Glens Borough Council can be classed as "public procurement". Northern Ireland Public Procurement Policy – Procurement Policy Principles defines public procurement as "the process of the acquisition, usually by means of a contractual arrangement after public competition, of goods, services and works and other supplies by the public service".

To ensure that such goods, services and capital works are sourced in the most cost effective manner possible and deliver best value for money for Council and the ratepayer, it is essential to utilise good procurement practice at all times which strikes an appropriate balance between sourcing goods, services and capital works of the required quality in a timely fashion, while also ensuring compliance with procurement legislation.

It is recognised that low value purchases can generate a significant amount of additional indirect cost incurred as a result of following a highly detailed and prescriptive procurement process. This procurement policy strives to promote a proportional approach to the procurement process. Such an approach enables low value purchases to be processed in a straightforward manner that minimises unnecessary administration while ensuring that larger value procurement projects receive the necessary attention to achieve both best value for Council and compliance with European procurement rules.

Causeway Coast and Glens Borough Council is fully committed to a sustainable future for the organisation as set out in Council's Sustainable Development

Strategy. Procurement has an important role to play in the delivery of a sustainable future through sourcing goods and services that cause minimal negative environmental impact. Where possible, Council will give due consideration to the options available to reduce the carbon footprint of the organisation including sustainable energy procurement. Council should consider the energy efficiency rating of goods regulated by the European Directive on Energy Efficiency. Goods with better energy efficiency ratings are likely to save money through reduced operating costs while also reducing carbon emissions through reduced energy consumption.

Council have an important role to fulfil within the social and economic development of the council area and beyond. To this end, Council will strive to include relevant and permissible social and economic objectives within procurement competitions when there is opportunity to do so.

2. Monitoring & Review

This policy will be monitored and reviewed through a series of measures. Reviews will be undertaken by the procurement officer, local government audit and internal audit. The procurement officer will review the policy as and when required, typically, this will be on an annual basis. An annual monitoring report will also be drawn up by the procurement officer to include:

- Total spend by category i.e. works, goods and services
- Number of procurement exercises undertaken during the year
- Number of challenges received from bidders (if any)
- Complaints received from internal customers and bidders (if any)

In addition to the policy review set out above, any major issues identified in the monitoring report may trigger a review of the policy. In order for compliance with this provision the procurement officer will require an update regarding any procurement exercise carried out.

3. Training

Staff throughout the Causeway Coast and Glens Borough Council will be made aware of this policy and given training (when appropriate) as to how this policy will apply to procurement exercises they undertake.

4. EU Procurement Legislation & Principles

Public procurement exercises that are undertaken which are above the EC Procurement Thresholds are subject to the rules set out in the Public Contracts Regulations 2015 – (“the Regulations”) which transpose the EU Procurement Directives into UK law. At the time of writing thresholds, exclusive of VAT, are in the order of **£175k** for supplies and services and **£4.4m** for works, but the current threshold figures must be accessed via the following link <http://www.ojec.com/Thresholds.aspx>

Procurement activity undertaken for works, goods or services up to a value of £30,000 does not trigger the enactment of the EU procurement rules, however, general EU principles should still be considered when undertaking procurement at this low value level particularly the following principles set out within the Treaty on the Functioning of the European Union (TFEU):

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

5. Principles Governing Public Procurement

The Central Procurement Directorate (CPD) has set out twelve principles that aim to guide public procurement practice in Northern Ireland toward achieving best value for money. While Council is not bound by the policies issued by CPD it is widely accepted that CPD represent public procurement best practice in Northern Ireland and therefore these principles should act as a useful starting point for any member of Council staff engaged in delivering procurement activities:

- i. **Accountability:** effective mechanisms must be in place in order to enable Departmental Accounting Officers and their equivalents in other public bodies to discharge their personal responsibility on issues of procurement risk and expenditure.
- ii. **Competitive Supply:** procurement should be carried out by competition unless there are convincing reasons to the contrary.
- iii. **Consistency:** suppliers should, all other things being equal, be able to expect the same general procurement policy across the public sector.
- iv. **Effectiveness:** public bodies should meet the commercial, regulatory and socioeconomic goals of government in a balanced manner appropriate to the procurement requirement.
- v. **Efficiency:** procurement processes should be carried out as cost effectively as possible.
- vi. **Fair-dealing:** suppliers should be treated fairly and without unfair discrimination, including protection of commercial confidentiality where required. Public bodies should not impose unnecessary burdens or constraints on suppliers or potential suppliers.

vii. Integration: in line with the Executive's policy on joined-up government, procurement policy should pay due regard to the Executive's other economic and social policies, rather than cut across them.

viii. Integrity: there should be no corruption or collusion with suppliers or others.

ix. Informed decision-making: public bodies need to base decisions on accurate information and to monitor requirements to ensure that they are being met.

x. Legality: public bodies must conform to European Community and other legal requirements.

xi. Responsiveness: public bodies should endeavour to meet the aspirations, expectations and needs of the community served by the procurement.

xii. Transparency: public bodies should ensure that there is openness and clarity on procurement policy and its delivery.

6. Collaborative Procurement

It is widely recognised that many areas of public sector spend operate in a closed environment whereby goods or services for a particular department are purchased in isolation to another department which may require similar goods or services in the near future. This method of procurement can lead to increased costs and large variations in pricing from one procurement exercise to another. A report from the Northern Ireland Audit Office "Department of Finance and Personnel – Collaborative Procurement and Aggregated Demand" highlights the problems associated with such methods of working and encourages public sector organisations to collaborate and aggregate demand to help secure both procurement and financial efficiencies.

Effective collaboration between Council departments is important to aggregate demand and ensure that duplication of procurement effort is minimised as far as possible. Departments should therefore hold regular procurement meetings to discuss and agree upcoming requirements. Such an approach will ensure that the greatest number of requirements can be satisfied with the minimum number of procurement exercises. Collaboration will also encourage the aggregation of demand which will in turn enable Council to issue fewer requirements to the market that are larger in scope.

While collaboration in procurement is generally viewed as beneficial, it is important to be aware of the increased likelihood of legal challenges from unsuccessful bidders if very large collaborative arrangements are put in place, as unsuccessful bidders will be frozen out of the market for the duration of the contract. It is also worth noting that very large collaborative procurement exercises generate a significantly larger impact on Council should the successful bidder fail at any point following the award of contract. Due consideration should be given to these aspects of collaboration before proceeding to ensure that the proposed collaboration project is manageable and beneficial to both the marketplace and Council.

7. Council Procurement Aims

To deliver procurement effectively and efficiently throughout Council it is essential to have clear guidelines as to what Council staff should achieve during the procurement process.

All procurement activity undertaken by Council staff that results in the issue of a tender to the market should achieve the following:

- Provide value for money
- Meet the business need
- Comply with the law

In achieving these outcomes, procurement activity undertaken by Causeway Coast and Glens Borough Council should:

- i. be fair, efficient, firm and courteous;
- ii. properly specified to meet Council need and open to competition by giving due care and attention to the development of specifications taking into account future needs and changing requirements where appropriate;
- iii. aim for the highest standards in the preparation and award of contracts;
- iv. publicise procurement contact points and make available as much information as suppliers need to respond to the bidding process;
- v. notify the bidders of the outcome of tender competitions promptly and, within the bounds of commercial confidentiality, debriefing successful and unsuccessful contractor on the outcome of the bidding process and the relative merits of their bids to facilitate better performance on future occasions;
- vi. engage with the market.

8. Capital Procurement

All procurement resulting in capital expenditure i.e. the purchase of a new asset, vehicle or piece of equipment must be authorised by Council Committee where the value exceeds £30,000. This approach ensures that Council have appropriate control over the release of funding for capital expenses.

In addition to Council Committee approval, **all capital expenditure** in excess of £30,000 should follow the four stage capital project management process outlined **overleaf**.

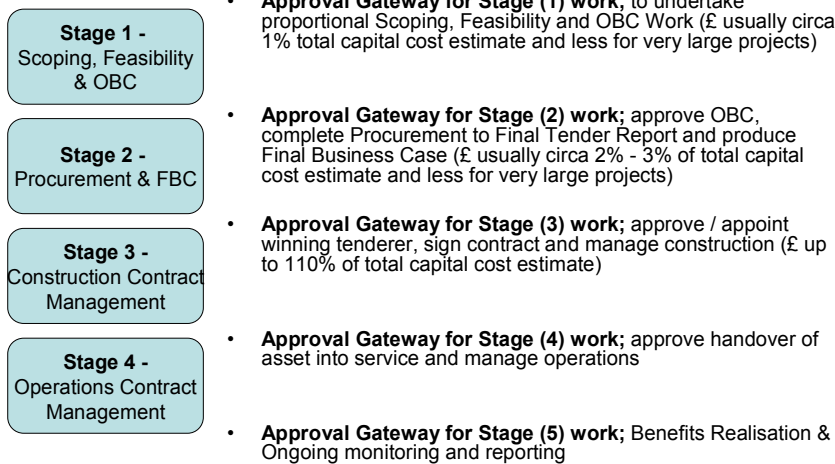
How are Capital Projects managed?



(* HM Treasury Gateway Review Points)

Key Decision Points

Note - Process must always be **proportional** to the value of the Project



Decision Making Criteria

Approval Gateway to commence Stage (1)

- Is the proposal consistent with the Corporate Plan?
- Does the proposal appear to meet the perceived need?
- Does the scale of the proposal appear appropriate?
- Is the scope and cost of the Stage (1) work being considered proportionate to the overall scale of the proposal?
- Does Council have appropriate vires?
- Is their potential for grant aid for “shovel ready” schemes?
- Is there Political Will to proceed?

Approval Gateway to commence Stage (2)

Does the Stage (1) work provide objective evidence that;

- There is need for the Project and it fits with the strategic Service Objectives and Corporate Plan?
- Scale has been considered and the scope matches evidenced need?
- Alternative locations have been considered and the Project is optimally located?
- Conventional, Private and Hybrid contract and finance models have been considered and the optimal models are proposed?
- Construction, maintenance, annual operating and whole of life costs have been considered and income estimates are realistic?
- Opportunities for Grant Aid and Partnership Working have been identified and analysed?
- Subject to the outcome of the FBC, the Project can be affordable?
- The risks and mitigations are understood and tolerable?
- Benefits Realisation is clearly identified and measurable?
- The Project is consistent with the vires and will of Council?

Approval Gateway to commence Stage (3)

Does the Stage (2) work evidence that:

- After procurement, the cost remains affordable?
 - All material areas of the Final Business Case are either favourable or are not materially adverse compared to the Outline Business Case position?
- Note;** This is the final “go / no-go” decision and represents full and legally binding commitment to the expenditure

Approval Gateway to commence Stage (4)

- The procured asset meets the specified quality standards?
- Operational Management arrangements for the asset are in place as per the FBC and contract requirements?
- Maintenance arrangements for the asset are in place as per the FBC and contract requirements?
- Risk Management arrangements for the asset are in place as per the FBC and contract requirements?

When complete, each capital project above £30,000 in value should be accompanied by a post contract evaluation. Details of the template to be used may be found in **Annexe 4** below.

8.1 Health and Safety Requirements

Before proceeding with a procurement exercise for the required capital asset, the member of Council staff who has identified a need for that asset should make contact with the health and safety advisor to ensure that the health and safety implications of any equipment required are duly considered before purchase.

9. The Procurement Process – For purchases up to £15,000

Procurement Guidance Note (PGN) 06/14 (<https://www.finance-ni.gov.uk/publications/procurement-guidance-note-0614-standard-conditions-contract-supplies-and-services>) issued by the Central Procurement Directorate on behalf of the Northern Ireland Department of Finance and Personnel provides guidance on procurement control limits. Council should follow this guidance. For procurements under £15,000 Council staff should ensure that:

- (i) the purchase is not covered by an existing framework agreement, call-off contract or e-catalogue;
- (ii) the purchase is a one-off requirement;
- (iii) the total spend is up to £15,000; and
- (iv) the requirement is clearly specified.

When existing arrangements at (i) are not available, then staff should seek written quotations from at least three contractors/suppliers to ensure value for money has been achieved. Quotations should be documented and retained on file for audit purposes. For ease of traceability and record management, these quotations should be obtained from contractors/suppliers via email.

In the exceptional circumstance when it is not possible to obtain quotations (e.g., emergencies) then an order may be placed directly with a contractor/supplier in accordance with the provisions set out in section 13 of this policy.

Comparison Table for Reference - purchases up to £15,000

| <u>Existing Policy</u> | <u>New Policy (based on CPD guidelines)</u> | <u>Reasons for using CPD guidelines</u> |
|--|---|---|
| Requires at least three written quotations via email or on company letterhead. Option to tender if required. | At least three written quotations required. Preference for such quotations to be received via email. Orders may be placed directly with a supplier in emergency situations. | Following CPD guidelines provides Council with a robust reference point to support the content of the policy. CPD guidelines also allow greater flexibility with regard to quotations and provision for emergency situations. CPD approach will also support more efficient administration through the promotion of email based quotations. |

10. The Procurement Process – For purchases valued between £15,000 and £30,000

Note: Please contact the procurement officer via email procurement@causewaycoastandglens.gov.uk to inform them of your procurement project before proceeding. This is to ensure that the procurement officer is aware of the project. Please also provide a contact for the procurement project with whom interested bidders may seek further information.

In accordance with the Procurement Control Limits stated within Procurement Guidance Note (PGN) 06/14 (<https://www.finance-ni.gov.uk/publications/procurement-guidance-note-0614-standard-conditions-contract-supplies-and-services>) issued by the Central Procurement Directorate on behalf of the Northern Ireland Department of Finance and Personnel, the following procurement activities are recommended for purchases between £15,000 and £30,000:

A minimum of three tenders are to be invited by the member of Council staff undertaking the procurement activity. These tenders should be drawn up and issued to the market in accordance with the ITT template.

The tender must be appropriately prepared and advertised, bearing in mind the principles related to the functioning of the European Union, in particular:

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

One of the most straightforward and cost effective solutions to complying with advertising requirements is to use the eSourcing NI webpage to advertise tender

opportunities. Placing an advert via eSourcing NI ensures that all interested suppliers can view the tender opportunity and submit their bids as appropriate.

Comparison Table for Reference - purchases up to £30,000

| <u>Existing Policy</u> | <u>New Policy (based on CPD guidelines)</u> | <u>Reasons for using CPD guidelines</u> |
|---|---|---|
| Requires at least four written quotations via email or on company letterhead. | A minimum of three tenders are mandatory. Guidance provided with regard to EU procurement principles. | Again, following guidelines from CPD mirrors good procurement practice in Northern Ireland. Use of a tender process provides greater transparency for the procurement decision taken. This process also requires the use of the standard ITT template which will foster a consistent approach to procurement exercises. |

11. The Procurement Process – For purchases valued above £30,000 and below the EU Thresholds

Note: Please contact the procurement officer via email procurement@causewaycoastandglens.gov.uk to inform them of your procurement project before proceeding. This is to ensure that the procurement officer is aware of the project. Please also provide a contact for the procurement project with whom interested bidders may seek further information. The Officer requiring the procurement process to be undertaken must seek authorisation from Council to commence the procurement process.

Procurement Guidance Note (PGN) 05/12 (<https://www.finance-ni.gov.uk/publications/procurement-guidance-note-0512-simplified-approach-procurement-over-%C2%A330000-and-under>) issued by the Central Procurement Directorate on behalf of the Northern Ireland Department of Finance and Personnel provides guidance on procurements valued above £30,000 and below EU Thresholds. Council staff undertaking procurement activity between these values must read and follow the guidance provided within PGN 05/12. In summary the guidance stipulates that the following approach should be adopted:

11.1 General Principles

- The value of a contract must be calculated over its whole life (including options), but excluding VAT. For example, a 1 year contract with options to extend for two further periods of one year, with an estimated spend of £25,000 per year, excluding VAT, has an estimated value of £75,000. When the estimated value of a contract is above the applicable EU threshold the procedures set out in the EU Directives and UK Regulations must be followed.
- If the estimated value of a contract is above £30,000 and below the relevant EU threshold, and it is a one-off procurement which cannot be procured using an existing framework, call off arrangement, standing list or e-catalogue, then this guidance should be followed.

- Specifications should be unambiguous and include a clear statement of requirements. This is particularly important in a single stage competition to ensure that only those Applicants capable of delivering the contract, submit tenders.
- Contracts over £30,000 should be publicly advertised on the eSourcingNI portal.
- Arbitrary minimum requirements should not be imposed which may have the unintended effect of deterring new or small businesses from bidding. Applicants will however be expected to meet minimum standards in respect of supplier acceptability; e.g. they should not have been convicted of any offences in relation to non-compliance with employment, financial or legal obligations.
- Departments should, depending on the nature and value of the contract, undertake a financial check as part of the supplier evaluation process.
- However, in the spirit of encouraging supplier growth, suppliers should not be ruled out unless there is clear evidence that the supplier's financial position places public money or services at unacceptable risk.
- For construction contracts a financial check through Constructionline² is recommended.
- Construction related contracts may be procured in a number of ways – as orders placed under an existing term contract; through a framework agreement; using standing lists of pre-qualified contractors; or, separately, on an individual basis.

11.2 Award and Debriefing

- An award letter should be issued to the winning Applicant and at the same time unsuccessful Applicants should be informed of the outcome of the process and the name of the winning bidder. Consideration should be given to a short period of notice between the notification and award of contract.
- Council staff should be prepared to provide information to Applicants on request, sufficient to meet EU Treaty requirements, as to why they were unsuccessful.
- All contracts should be awarded on the appropriate Council Terms and Conditions of Contract for goods and services or works.

11.3 Procurement Procedures – Goods

| Value | Procedure |
|-------|-----------|
|-------|-----------|

| | |
|--------------------------------------|---|
| <p>Over £30,000 to EU Thresholds</p> | <p>Advertised on eSourcingNI.</p> <p>A one stage procurement process, or when particular business circumstances require, a two stage process.</p> <p>Award on the basis of the lowest acceptable price which meets the specification and any mandatory requirements/minimum quality standards that have been set.</p> <p>When bids are received that are significantly lower than the average bid price, in the opinion of the Council, bidders should be notified of this and offered an opportunity to withdraw. They must be made aware that, if successful, their performance will be carefully monitored by the contract manager and that poor performance will lead to sanctions.</p> |
|--------------------------------------|---|

11.4 Procurement Procedures – Non-construction Services

| Value | Procedure |
|--|--|
| Over £30,000 to EU Thresholds | <p data-bbox="443 338 831 371">Advertised on eSourcingNI.</p> <p data-bbox="443 412 1348 479">A one stage procurement process or, where particular business circumstances require a two stage process.</p> <p data-bbox="443 519 1348 622">Award on the basis of the lowest acceptable price which meets the specification and any mandatory requirements/minimum quality standards set.</p> <p data-bbox="443 663 1348 904">Exceptionally, quality (non-price criteria) may also be used; e.g. previous experience/capability, methodology, etc. If quality criteria are used, there should be no more than two and the quality element should be a minimum of 30% of the price quality ratio. Criteria must be selected on a clear rationale that ensures that the award is based on the best combination of price and quality. This rationale should be documented on the contract file.</p> <p data-bbox="443 945 1348 1012">Applicants must be told what the criteria are and the allocated marks for each in advance of tender submission.</p> <p data-bbox="443 1052 1348 1263">When tenders are evaluated purely on price and bids are received that are significantly lower than the average bid price, bidders should be notified of this and offered an opportunity to withdraw. They must be made aware that, if successful, their performance will be carefully monitored by the contract manager and that poor performance will lead to sanctions.</p> |

11.5 Procurement Procedures – Construction Services (£30,000 up to EU Thresholds)

| Value | Procedure |
|--------------------------|--|
| £30,000 to EU Thresholds | <p>In advance of the competition:</p> <p><u>Consultants must be registered with Constructionline and hold a valid health and safety certificate issued by an organisation that is a member of the SSIP Forum³.</u></p> <p>The competition</p> <p>Contract advertised on eSourcingNI.</p> <p>Interested consultants submit their H&S certificate,</p> <p>Constructionline Category Value and experience details which will be assessed on a pass/fail basis.</p> <p><u>Use a random selection process to select six consultants. The random selection process should be transparent and fully auditable. COUNCIL CAN'T DO THIS. ...DELETE</u></p> <p>Straightforward contracts.</p> <p>Selected consultants invited to tender submit a price only tender plus experience details of their sub-consultants, if required, which are assessed on a pass/fail basis.</p> <p>Contract awarded on the basis of lowest acceptable price. Applicants should be informed of the outcome of the process and the name of the winning bidder.</p> <p>Other contracts</p> <p>Selected consultants are invited to submit tenders which are assessed on the basis of quality and price.</p> |

11.6 Procurement Procedures – Construction Works (up to £500,000)

| Value | Procedure |
|-------|-----------|
|-------|-----------|

| | |
|---|--|
| <p>Over £30,000 to £500,000</p> | <p>In advance of the competition:</p> <p><u>Contractors must be registered with Constructionline and hold:</u></p> <ul style="list-style-type: none"> • <u>a valid 3rd party certification of their Health and Safety (H&S) management system satisfying the requirements of the BuildsafeNI initiative; and</u> • <u>a valid health and safety competence assessment certificate issued by an organisation that is a member of the Safety Systems in Procurement (SSIP) Forum.</u> <p>The competition:</p> <p>Contract advertised on eSourcingNI. Interested contractors submit their <u>H&S certificates, Constructionline Category Value and experience details which will be assessed on a pass/fail basis.</u></p> <p><u>Use a random selection process to select six contractors, who meet requirements, to be invited to tender. The random selection process should be transparent and fully auditable. COUNCIL CAN'T DO THIS..... DELETE</u></p> <p>Contract awarded on the basis of lowest acceptable price but exceptionally, quality (non price) criteria may be used.</p> |
|---|--|

11.7 Procurement Procedures – Construction Works (up to £2,000,000)

| Value | Procedure |
|------------------------|--|
| £500,000 to £2,000,000 | <p>In advance of the competition:</p> <p><u>Contractors must be registered with Constructionline and hold:</u></p> <ul style="list-style-type: none"> • <u>a valid 3rd party certification of their health and safety management system satisfying the requirements of the BuildsafeNI initiative; and</u> • <u>a valid health and safety competence assessment certificate issued by an organisation that is a member of the SSIP Forum.</u> <p>The competition:</p> <p>Contract advertised on eSourcingNI.</p> <p><u>Interested contractors submit their Constructionline Category Value and H&S certificates. If more than ten contractors apply, use a random selection process to select ten. The random selection process should be transparent and fully auditable. COUNCIL CAN'T DO THIS.....DELETE.</u></p> <p><u>The selected contractors are invited to submit a simplified Pre-Qualification Questionnaire (PQQ) with up to four responses detailing their previous experience, but excluding details of their subcontractors' experience.</u></p> <p><u>The PQQs are assessed and the top six contractors are invited to submit a price only tender plus H&S and experience details of their key subcontractors, if required, which are assessed on a pass/fail basis. DELETE</u></p> <p>Contract awarded on the basis of lowest acceptable price but exceptionally, quality (non price) criteria may be used.</p> |

11.8 Procurement Procedures – Construction Works (£2,000,000 up to EU Thresholds)

| Value | Procedure |
|-------|-----------|
|-------|-----------|

| | |
|--|---|
| <p>£2,000,000 to EU Thresholds</p> | <p>In advance of the competition:</p> <p><u>Contractors must be registered with Constructionline and hold:</u></p> <ul style="list-style-type: none"> • <u>a valid 3rd party certification of their health and safety management system satisfying the requirements of the BuildsafeNI initiative; and</u> • <u>a valid health and safety competence assessment certificate issued by an organisation that is a member of the SSIP Forum.</u> <p>The competition</p> <p>Contract advertised on eSourcingNI.</p> <p>Interested contractors submit a simplified PQQ, excluding details of subcontractors. PQQs are assessed and the top 6 contractors are invited to tender.</p> <p>Straightforward contracts:</p> <p><u>Contractors invited to tender submit a price only tender plus H&S and experience details of their key subcontractors, if required, which are assessed on a pass/fail basis. UNSURE IF THIS REFLECTS COUNCIL PROCESS.</u></p> <p>Contract should awarded on the basis of lowest acceptable price.</p> <p>Other contracts:</p> <p>Contractors invited to tender submit tenders which are assessed on the basis of quality and price.</p> |
|--|---|

12. The Procurement Process – For purchases valued above the EU Thresholds

12.1 Introduction

Note: Please contact the procurement officer via email procurement@causewaycoastandglens.gov.uk to inform them of your procurement project before proceeding. This is to ensure that the procurement officer is aware of the project. Please also provide a contact for the procurement project with whom interested bidders may seek further information.

Where Council staff are seeking offers in relation to a proposed public contract or framework agreement that is above the relevant EU Threshold, the requirements set out in the Regulations will apply. There are however some exceptions outlined within The Public Contracts Regulations 2015 – (the Regulations) where the thresholds do not apply. Council staff leading the procurement should familiarise themselves with the Regulations. Links to the Regulations are provided in **Annexe 5**. It should be noted that procurement activity undertaken in accordance with this legislation places numerous additional legal requirements upon Causeway Coast and Glens Borough Council as a “Contracting Authority”.

In determining the total value of the public contract, the Council staff member will take account of the following:

- Any form of option (e.g. extension period)
- Any renewal of the contract
- Any prize or payment to be awarded by Council to the successful bidder
- The premium payable and other forms of remuneration for insurance services
- Fees, commission, interest or other forms of remuneration payable for banking and other financial services
- Fees, commission or other forms of remuneration payable for design services.

Depending on the nature of the requirement, Council can choose a range of procurement procedures that lead to the award of the contract. These include the Open Procedure and the Restricted Procedure which will be the two most common types of public procurement procedure used by Council to satisfy its requirements. A brief checklist covering any EU procurement procedure is provided at **Annexe 1**. This checklist should only be used as a supplement to the detailed guidance provided below. Regardless of the procedure selected the following four areas are to be considered in accordance with the Regulations:

12.2 Drawing up Technical Specifications

The member of Council staff undertaking the procurement exercise must draft technical specifications for the goods, services or works required in accordance with the requirements set out in SECTION 5 of the Regulations. The rules that apply to variant bids, if acceptable, are also set out in this section.

12.3 Selection of the procurement procedure

SECTION 3 of the Regulations outlines the procurement procedures available and defines the rules applicable to the desired contract award procedure. This part of the legislation then goes on to explore the rules governing all of the available procedures. The open procedure and the restricted procedure should tend to be the options most frequently used by Council when procuring a requirement above the EU Threshold.

12.4 Selection of Economic Operators

Economic operators (bidders) are to be selected on the basis of the process set out in SECTION 5 of the Regulations. This part of the Regulations provides information as to what criteria can be considered for the rejection of bidders including information with respect to economic and financial standing and technical or professional ability.

12.5 The Award of a Public Contract

Any contract awarded by Council must be awarded in accordance with the Regulations. Full details of the requirements are set out in SECTION 5 of the Regulations. In summary, they cover, amongst other information, the criteria that are to be considered when awarding a public contract and the information that should be contained within a contract award notice which must be published via the Official Journal within 30 days of the contract award or conclusion of the evaluation process.

12.6 Service contracts

It is important to note that specific exclusions from the Regulations apply to some service contracts. These are outlined in SECTION 1 of the Regulations and include services such as contracts for the acquisition or rental of land or immovable property and certain types of legal services. **It is important to verify the type of service required before proceeding with the procurement process.**

12.7 Other considerations

It is important to consider how the performance of the contractor will be assessed both prior to contract award and during the lifetime of the contract. Further guidance on this area is provided in **Annexe 2**. Social, economic and environmental considerations can also be integrated into contract documents as appropriate. Further information is provided in **Annexe 3**.

12.8 The Open Procedure

The Open Procedure is the least complex of the available procurement procedures that satisfy the legislative requirements. It should be used when no supplier pre-selection is required. Before continuing to develop a procurement exercise via the Open Procedure, it is important to highlight once again that **should Council staff use a “Central Purchasing Body” to source their requirement for goods, services or works this will satisfy the requirements of the procurement Regulations insofar as the Central Purchasing Body has complied with the Regulations**. The use of a Central Purchasing Body should always be considered before proceeding with a procurement exercise as use of an appropriate Central Purchasing Body will save much time and effort associated with satisfying the Regulations. Moreover, it is commonplace that the Central Purchasing Body will have drawn up a contract to provide to supply a substantial quantity of goods or services to their clients, therefore, use of such contracts often delivers good value due to aggregation of requirements. **Before using any Central Purchasing Body contract to source goods or services, Council staff must make contact with the administrators of that Body and confirm that Council are named within the contract**. If Council are not named within such contracts, they may not be suitable for use and further guidance should be sought from the procurement officer as to how the procurement should proceed.

A Central Purchasing Body is defined as a contracting authority which:

- a. acquires goods or services intended for one or more contracting authorities;
- b. awards public contracts intended for one or more contracting authorities; or
- c. concludes framework agreements for work, works, goods or services intended for one or more contracting authorities.

When it is deemed to be inappropriate to use a “Central Purchasing Body” to meet requirements that are above the EU Threshold, the Open Procedure must be followed as prescribed in The Public Contracts Regulations 2015 – (“the Regulations”). The details governing the Open Procedure are set out in Regulation 27. Council staff should fully consider all preceding text within the Regulations with reference to variants, technical specifications, thresholds etc. before following the requirements of the Open Procedure set out in Regulation 27.

12.9 Evaluation of tenders under the Open Procedure

The Central Procurement Directorate has issued specific guidance with regard to the evaluation of tenders. This information is set out in Procurement Guidance Note (PGN) 04/16 – Selection and Tender Evaluation Procedures (<https://www.finance-ni.gov.uk/publications/pgn-0416-selection-and-tender-evaluation-procedures>). Staff undertaking a procurement exercise should review this guidance and apply it as necessary. While Council are not legally bound to comply with any PGN, the information they contain is accepted as good procurement practice across Northern Ireland. A set of EU rules apply with regard to the evaluation of any tender ran under a procedure specified in The Public Contracts Regulations 2015. Further details on these rules can be found in SECTION 5 of the Regulations.

12.10 The Restricted Procedure

The Restricted Procedure provides Council staff with a useful procurement route to pre-select bidders, via a Pre-Qualification Questionnaire (PQQ), to take through to the next stage in the procurement process – the invitation to tender. Using this procurement route ensures that bidders have reached a given standard of;

- i. economic and financial standing or;
- ii. technical or professional ability;

in addition to the standard rejection criteria set out in the Regulations which includes offences such as bribery, fraud and cheating the revenue.

The Restricted Procedure is recommended when the procurement exercise has been identified as complex and of high value. Utilising such an approach limits the number of bids that have to be evaluated and ensures that only technically acceptable bids are considered.

Before proceeding with the Restricted Procedure, please consider the reference made to a “Central Purchasing Body” in the Open Procedure above. Where a procurement requirement can be met via a Central Purchasing Body it is highly recommended to use that option and avoid the time and complexity associated with the Restricted Procedure.

Should a Restricted Procedure procurement exercise still be required, the Restricted Procedure must be followed as prescribed in The Public Contracts Regulations 2015. The details governing the Restricted Procedure are set out in regulation 28. Council staff should fully consider all preceding text within the Regulations with reference to variants, technical specifications, thresholds etc. before following the requirements of the Restricted Procedure set out in regulation 28.

12.11 Evaluation of tenders under the Restricted Procedure

The Central Procurement Directorate has issued specific guidance with regard to the evaluation of tenders. This information is set out in Procurement Guidance Note (PGN) 04/16 – Selection and Tender Evaluation Procedures (<https://www.finance-ni.gov.uk/publications/pgn-0416-selection-and-tender-evaluation-procedures>). Staff undertaking a procurement exercise should review this guidance and apply it as necessary. While Council are not legally bound to comply with any PGN, the information they contain is accepted as good procurement practice across Northern Ireland. A set of EU rules apply with regard to the evaluation of any tender ran under a procedure specified in The Public Contracts Regulations 2015. Further details on these rules can be found in SECTION 5 of the Regulations.

12.12 Actions required following tender evaluation above EU Thresholds

Once a decision has been reached with regard to the preferred bidder (i.e. the successful bidder following the conclusion of the evaluation process), Council should notify all bidders of the tender outcome. The preferred bidder should be issued with a letter indicating that they are the preferred bidder for the contract and will be awarded the contract subject to the mandatory 10 day standstill period. This letter must be sent by the most rapid means of communication practicable (usually email) and contain the information set out in Regulation 86. This includes:

- a. the criteria for the award of the contract
- b. the reasons for the decision, including the characteristics and relative advantages of the successful tender (including scoring, if relevant, as prescribed in the regulations)
- c. the name of the tenderer to be awarded the contract or to become party to the framework agreement.
- d. A precise description as to when the standstill period will end (see the regulations for full details) **or** the date before which the contracting

authority will not enter into the contract or conclude the framework agreement.

If no challenges to the award decision are received from bidders within this standstill period, the preferred bidder will have won the contract. A formal contract award letter should be issued to the preferred bidder at this point advising them that the standstill period has passed and that they have been successful.

Debrief information should also be supplied to unsuccessful bidders when requested advising them of their score and the winning bidders score. Finally, a contract award notice should be published in OJEU within 30 days of contract award.

12.13 Other procedures available under the Regulations

Council can also award a public contract in accordance with the competitive dialogue procedure, following the innovation partnership procedure, via the use of framework agreements or electronic auctions. Each of these options, can be complex and should not be entered into without seeking further guidance from the procurement officer and any external advice as necessary to ensure the procedures are conducted correctly.

13. Exceptional Procurement Measures – Award of contracts without a competition

There are a limited number of circumstances whereby a public contract can be awarded by Council to a supplier without running a procurement competition in the usual manner inviting open competition.

The Central Procurement Directorate have provided further guidance on this area within Procurement Guidance Note (PGN) 03/11 <https://www.finance-ni.gov.uk/publications/procurement-guidance-note-0311-award-contracts-without-competition> It is also important to note that any contract awarded is still subject to the overarching EU principles.

In addition to circumstances set out in the CPD guidance it is also important to note that procurement case law has dictated that **significant material contract variations are deemed to automatically create a “new contract”**. This “new contract” would remain with the existing supplier and would therefore be seen by the courts as awarding a contract to that supplier without a competition. Changes to a contract will be considered material and are likely to lead to the automatic creation of a “new contract” if:

- It introduces conditions which would have altered who could have bid for the contract, or which bid might have won;
- it extends the scope of the contract considerably to encompass services not initially covered;
- It changes the economic balance of the contract in favour of the contractor in a way which wasn't provided for in the original contract.

In all cases where council staff are considering the use of the award of a contract without competition, they must seek guidance from the procurement officer before proceeding as such an approach will be easily challenged in the courts unless rigorously supported by appropriate documentation and completed in accordance with the legislative requirements.

Authorisation required

When a member of council staff has spoken with the procurement officer - and discussed all the alternative options available - and wishes to proceed with the award of a contract without competition the staff member should seek approval of their approach from the Senior Management Team before seeking Council approval to award.

A detailed report should be completed by the member of staff requesting the contract award explaining their rationale and the consideration given to all alternative options in conjunction with discussions between the staff member and the procurement officer. The template provided in **Annexe 6 – Direct Award Contract Form** should be fully completed by the member of staff requesting the contract award.

Once completed, this document will require authorisation from the Senior Management Team before proceeding to the relevant committee for consideration. Upon agreement from the Council the staff member should contract the procurement officer to assist with the contract award to the chosen supplier.

Annex 1 – Checklist for all procurement exercises above EU Thresholds

| Process Step | Required Action | Completed (✓) & initial |
|---------------------|---|------------------------------------|
| 1 | <p>Scope requirements. Consider any changes in requirements that may take place throughout the lifetime of the contract. Decide whether the contract is for goods, services or works. Should the contract involve a mix of these elements, the contract should be classified based upon the majority of the activity undertaken within it. For example a 70/30 goods/services contract would be classified as a goods contract for the purposes of the Regulations.</p> <p>The length of the contract and any options such as extensions should be also be finalised at this point. Confirm that the contract value exceeds the relevant EU Threshold (if the contract value is below the EU Threshold please refer to the guidance provided at 8 and 9 above).</p> | |
| 2 | <p>Draft all tender documentation including specifications, using the ITT template as a guide. Evaluation criteria must also be developed to include selection and award criteria not limited to financial standing, suitable past experience, quality and cost. Both the criteria and the scoring methodology used within the contract evaluation process must be developed and documented at this point. Tender documentation must also contain information with reference to the contract management procedures that will be used throughout the life of the contract.</p> | |
| 3 | <p>Select the desired EU Procedure and issue the contract notice as required following all time limits and requirements of that procedure.</p> | |
| 4 | <p>Receive bids from the market and complete an evaluation of those bids in accordance with the evaluation and award criteria set out within the tender documents.</p> | |

| | | |
|----------|--|--|
| 5 | Identify the preferred bidder in accordance with the methodology set out in the tender documents e.g. the bidder who met all selection criteria and achieved the highest score overall with regard to both price and quality. | |
| 6 | Notify the preferred bidder of their status and advise them that the contract will be awarded to them subject to the completion of the required 10 day standstill period Also notify all unsuccessful bidders of the tender outcome. | |
| 7 | Upon completion of the 10 day standstill period, issue a letter to the preferred bidder advising them that they have been awarded the contract. Provide debrief information to unsuccessful bidders outlining their score and the score of the winning bidder. | |
| 8 | Publish an award notice in OJEU within 30 days of awarding the contract. | |
| 9 | Monitor the delivery of the contract in accordance with the contract management procedures set out within the tender documentation. | |

Annexe 2 - Measuring contractor performance

A series of Key Performance Indicators (KPI's) should be included within the tender documents that are related to the delivery of the contract. These KPI's

should set out what is required of the contractor with regard to relevant areas of the contract such as delivery times, warranty, guarantees, quality standards etc. KPI's also provide Council with the opportunity to set penalties for the contractor should performance against the indicator fall below an acceptable standard. Setting out such requirements within the tender documents makes them much easier to enforce throughout the lifetime of the contract, helping ensure that the contract is fulfilled to the standard expected.

Annexe 3 – Social, Economic and Environmental Clauses

For some contracts it may be possible, and beneficial, to build in specific social, economic or environmental requirements that the contractor must fulfil. These should be included in the form of clauses within the contract documents. There is little guidance provided within the regulations with regard to what information such clauses should contain, however, the Chartered Institute of Purchasing and Supply has issued a useful guide which should be consulted for further information. It can be accessed here: (<https://www.cips.org/Documents/Knowledge/social-and-environmental-issues.pdf>)

The Central Procurement Directorate have also provided guidance on the integration of social considerations into contracts. This guidance has been published under Procurement Guidance Note (PGN) 01/13 and can be accessed via this link <https://www.finance-ni.gov.uk/publications/procurement-guidance-note-0113-integrating-social-considerations-contracts>

The overriding factor when integrating any social, economic or environmental clause into a contract is to consider what clauses are proportional and beneficial to that contract. The specific requirements detailed within such clauses are left to the discretion of the member of staff drafting the document but should always follow the principles of proportionality and benefit.

Annexe 4 – Post Contract Evaluation Template (Capital Projects above £30,000 only)

| | | |
|------------------|-----------------------------|--|
| File Ref: | Complete as required | |
| Project Title: | Insert Project Title | |
| Main Contractor: | Name of main contractor | |
| Cost of Project | £ _____ | |

| | | | |
|--------------|----------------------|--------------|----------------------|
| Prepared by: | (Print or type name) | Approved by: | (Print or type name) |
| Signed: | | Signed: | |
| Date: | | Date: | |

Section 1: Background

Provide a brief description of the project including:

What was the purpose of the project (principal objectives)?

What was the need for the project?

Who were project participants (internal and external)?

What was procurement route/form of contract?

Who was the appointed supplier and when were they appointed?

What was actual contract duration (weeks)/include contract completion date?

Section 2: Assessment of Costs

This section should provide a comparison of the actual costs of the project with the agreed contract value. Actual costs should be split into the main project components (e.g. acquisition/works/professional fees and services/furniture and fittings). Details of any contractual claims should also be provided.

Section 3: Assessment of Deliverables

This section should provide detail on what was delivered by the project provider. The extent to which projected deliverables, as outlined in the Terms of Reference, were met by the supplier, and the quality should be assessed.

Section 4: Assessment of Benefits

This section should provide detail on the benefits provided by the project. For example:

Were the deliverables achieved within the timescale specified in the contract? Give reasons for any slippage.

Reasons for any delays and the impact on expected benefits should be explained.

Was the project used for the purpose originally intended?

How were the outputs delivered by the project used?

Section 5: Assessment of Project Management Arrangements

This section should provide an assessment of the project management arrangements. For example:

What monitoring arrangements were put in place to manage the project supplier satisfactory?

Was there an opportunity to influence performance interim stages?

Was the project managed effectively?

Section 6: Conclusions and Recommendations

Conclusions

Provide a summary of what value was added by this project and assess whether, on balance, value for money was achieved. Identify key success areas.

Recommendations

Provide a summary of the lessons learnt and provide details on how these will be disseminated within Causeway Coast and Glens Borough Council and to related parties. Identify whether or not a post occupancy evaluation will be carried out within 2-3 years of occupation.

Annexe 5 – Public Contracts Regulations 2015

A full copy of The Public Contracts Regulations 2015 can be accessed via the link below:

http://www.legislation.gov.uk/uksi/2015/102/pdfs/uksi_20150102_en.pdf

**Annexe 6 – Direct Award Contract Form
Request for approval of a Direct Award Contract (DAC)**

In order to seek approval in respect of a DAC seek advice and the following form must be completed with all relevant details and be presented to the Senior Management Team for decision.

| Section 1. Contact Details | |
|--------------------------------|--|
| Name of Officer Requesting DAC | |
| Job Title | |
| Department | |

| Section 2. DAC Details | |
|--|---|
| Title of DAC requested | |
| What is the estimated value of this DAC? | |
| Is a Business Case required? Yes/No* NB: Business Cases must be produced for all new spend equal to or greater than £30,000. *Delete as appropriate | If 'yes', an approved business case must be attached. |
| Confirm budget exists for requirement if no business case is required. | |
| Name, address and contact email of proposed supplier and length of contract as appropriate. | |

| Section 3. New Requirement | | | |
|---|--|----|--|
| Is this a new requirement which has not been purchased before? (Please tick one of the options below) | | | |
| Yes | | No | |

If you ticked 'Yes' above, please proceed to Section 5.

Section 4. Previous Contract

Was the previous requirement subject to competition or tender or was it awarded directly to a supplier? (Please tick one of the options below)

| | | | |
|--------------------|--------------------------|-----------------------|--------------------------|
| Competition/Tender | <input type="checkbox"/> | Direct Award Contract | <input type="checkbox"/> |
|--------------------|--------------------------|-----------------------|--------------------------|

Please state the start and end dates of the previous Contract:

| | | | |
|------------|----------------------|----------|----------------------|
| Start Date | <input type="text"/> | End Date | <input type="text"/> |
|------------|----------------------|----------|----------------------|

If the Contract has been extended beyond the original end date stated above, please provide dates of any extensions:

| | | | |
|---|----------------------|---|----------------------|
| Please state the total value of the previous contract | <input type="text"/> | £ | <input type="text"/> |
|---|----------------------|---|----------------------|

Section 5. DAC Justification

Please provide a detailed rationale to justify the request (ie ownership of any intellectual property or exclusive rights, sole provider, etc)

By making a request and signing this form, the Requesting Officer will be deemed to have confirmed that they have no conflict of interest associated with the award of business that may result from this process.

Signature of Requesting Officer:

Name of Head of Department:

Signature of Head of Department:
