

# MIDDLETON ST. GEORGE PARISH COUNCIL

## PROCUREMENT POLICY – JULY 2021

### CONTENTS

	PAGE
Introduction	1
1. Definitions and Legal Background	1
2. Exemptions from the Policy	1
3. Requirements before entering procurement	2
4. Written Specification	2
5. Tender Stage	3
6. Supplier Pre-qualification and Due Diligence	3
7. Requirement for Quotation/Tender and Public Advertising	3
8. Contracts/Expenditure below £200	4
9. Contracts above £200 and below £3,000	4
10. Contracts above £3,000 and below £25,000	4
11. Contracts above £25,000	4
12. Contract Procedure Rules 9 and 10 shall not apply to the following	4
13. Every written contract shall specify	4
14. Every contract which exceeds £25,000 and is either for the execution of work or the supply of goods or materials shall provide	5
15. Submission of Tenders	5
16. Evaluating Tender	5
17. Acceptance of Quotations and Tenders	6
18. Signing and Sealing of Contracts	6
19. Nominated Sub-Contractors and Suppliers	6
20. Contracts Record	6
21. Contract Project Management	7
21.1 Pre-contract start	7
21.2 Contract delivery phase	7
21.3 Change control	7
21.4 Contract end	7
22. Contract Variations to Scope	8
23. Bonds, Guarantees and Insurances	8
24. Termination of Contracts	8
25. Frequently asked questions	8
 Appendices	
 Appendix 1 Pre Tender Stage	
Appendix 2 Frequently asked questions	

## **Introduction**

Middleton St. George Parish Council, hereinafter referred to as “the Council”. The Council is aware of the Public Contracts Regulations 2015 and has set out this policy in order to comply with relevant legislation. The Council will follow NALC’s Procurement Toolkit as published in April 2015 and NALC Legal Topic Note 87 – February 2021.

Every Contract by the Council or person acting on its behalf shall comply with this Procurement Policy.

### **1. Definitions and Legal Background**

“procurement” is the process by which they award contracts to third parties (frequently individuals or companies) to provide goods, services or to undertake works. A procurement process is designed to source the most suitable contractors based on factors such as cost and their knowledge, experience, quality, capability, and financial standing.

A Contract is an agreement between the Council and an individual or organisation for the individual or organisation to provide works, goods or services (including the engagement of consultants) for which the Council will provide consideration.

A procurement exercise by the Parish Council is subject to the requirements in s. 135 of the Local Government Act 1972 (“the 1972 Act”) and the Public Contracts Regulations 2015 (“the 2015 Regulations”). These legal requirements are summarised in the table below.

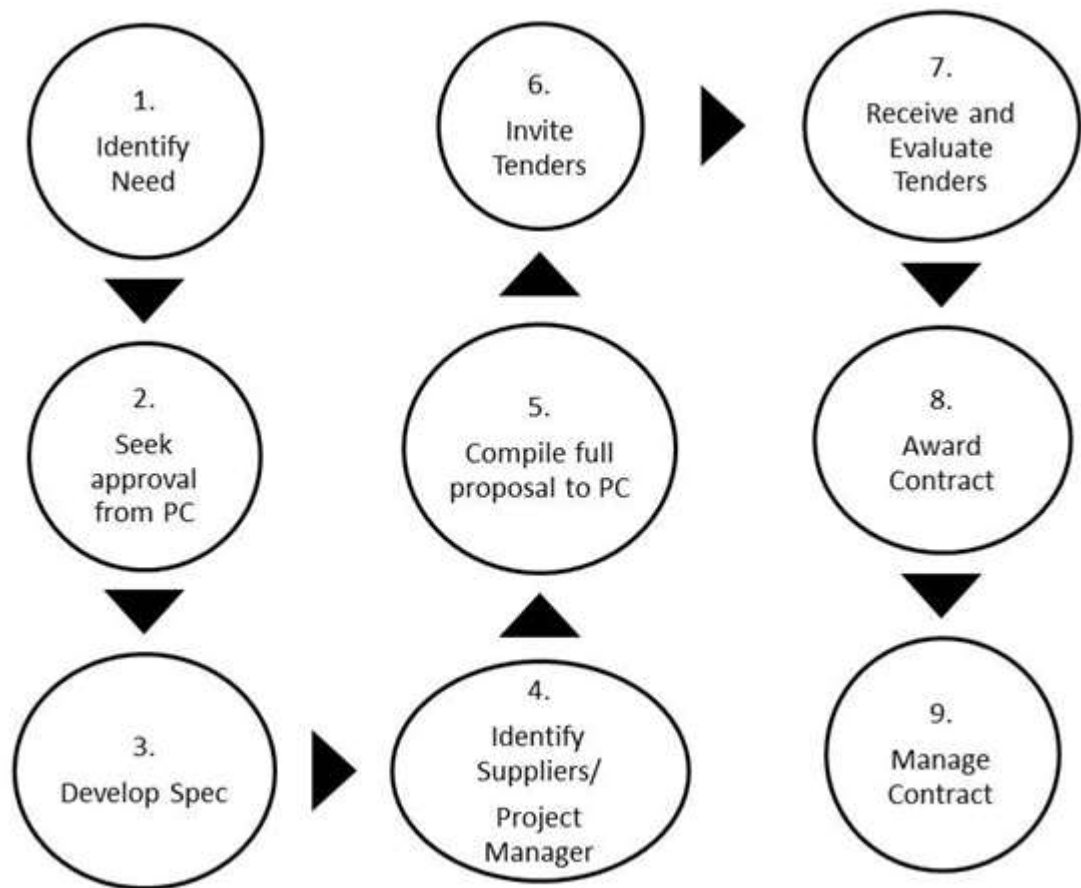
The procurement process shall also have regard to the Parish Council’s Financial Regulations and Standing Orders

### **2. Exemptions from the Policy**

The following contracts are exempt from the requirement of these rules:

- contracts relating solely to disposal or acquisition of land
- employment contracts
- individual agency contracts for the provision of temporary staff.

Exceptions from any of the following provisions of these Contract Procurement Rules may be made under the direction of the Council where they are satisfied that the exception is justified in special circumstances. Every exception and reason therefore shall be recorded.



### 3. Requirements before entering Procurement

Persons involved in the awarding of a Contract on behalf of the Council must ensure that the best value for money is obtained.

Before commencing a procurement, it is essential that the authorised person leading the procurement has identified the need and fully assessed the options for meeting those needs.

The best use of purchase power shall be sought. The Council will also strive to use local suppliers from within the Borough where possible but not exclusively.

Please refer to Appendix 1 for the questions to ask before entering the procurement exercise.

### 4. Written Specification

Enquiries and invitations to Tender shall be based on a written specification.

The specification shall adequately describe the requirement procedure in sufficient detail to enable effective procurement in accordance with these rules.

Write a comprehensive specification detailing what outcomes are required, what the essential requirements are, how you will measure performance, how you will manage the contract and most importantly what evaluation criteria and weighting you will use when you get the tenders back. You must tell suppliers how you will conduct the tender exercise, what criteria they will be measured against (price and quality or other factors such as their health and safety record) and the rules around canvassing officers or councillors during the tender period.

You will also need your own set of legal terms and conditions drafting specific to what is being procured.

Consider how the contract will be managed at this stage, who will be the key contact points, what performance management process will be used, will there be any opportunity for suppliers to provide you with innovative solutions that may add further value to the procurement you are undertaking. It is very important that suppliers understand how you will measure their bids, because it is more often than not that this is the issue that results in a legal challenge. Do not have any 'hidden' criteria, or unpublished sub-criteria.

## **5. Tender Stage**

The following actions must be taken at the tender state

- Calculate the contract value
- Establish project plan

If it is below the threshold then you must allow sufficient time for suppliers to prepare and submit quality tenders - no less than two weeks for a lower value requirement, but up to a month if it is technical, riskier or more complicated. You must establish a project team and identify who will sign off final documents before publication. You will need to block diaries out for the evaluation phase and also establish a mechanism for responding to questions from suppliers whilst it is out to tender. If you are consulting on the specification with residents before tendering you will need to build extra time in for this.

Write the specification and evaluation criteria and legal terms and conditions of contract

## **6. Supplier Pre-qualification and Due Diligence**

The Council shall only enter into a contract with a supplier if it is satisfied as to the supplier's suitability, eligibility, financial standing and technical capacity to undertake the contract by carrying out appropriate due diligence. Due diligence means the detailed examination of a company and its financial records, done before becoming involved in a business arrangement with it.

## **7. Requirement for Quotation/Tender and Public Advertising**

Consideration shall be given to other costs associated with the procurement (lifetime costings including, for example, maintenance costs and power consumption). Where these could be significant such as in the final disposal of a product, appropriate arrangements shall be put in place to

consider these costs against alternative options.

## **8. Contracts/Expenditure below £200**

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 Clerk, in conjunction with Chairman of Council or Chairman of the appropriate committee, for any items below £200.

## **9. Contracts above £200 and below £3,000**

The Clerk/RFO shall strive to obtain 3 estimates.

## **10. Contracts above £3,000 and below £25,000**

Written quotations must be sought by not less than three individuals or organisations that could undertake the contract.

## **11. Contracts above £25,000**

- A public notice must be made setting out particulars of the contract and inviting persons interested to apply, within a period of not less than 10 days, for opportunity to tender.
- After the expiration of the period specified in the public notice, invitations to tender shall be sent to not less than four individuals or organisations that could undertake the contract (or, if fewer than four apply, to those that are suitable).
- Tenders to be submitted and opened at Parish Council meetings.

## **12. Contract Procedure Rules 9 and 10 shall not apply to the following but, wherever possible, alternative quotations shall be obtained:**

- Purchase by auction or at public fairs.
- Contracts involving special technical, scientific or artistic knowledge.
- Contracts comprising spare or replacement parts of existing machinery or plant or repairs to such machinery or plant.
- Urgent situations as agreed with the Chairman of the Council where the Council is put at significant risk, or where significant costs could be incurred, by not taking urgent remedial action.

## **13. Every written contract shall specify:**

- The work, materials, matters or things to be furnished, had or done.

- The price to be paid, with a statement of discounts or other deductions (if any).
- The time or times within which the contract is to be performed.

**14. Every contract which exceeds £25,000 and is either for the execution of work or the supply of goods or materials** shall provide for payment of liquidated damages by the contractor in case the terms of the contract are not performed.

## **15. Submission of Tenders**

Submission procedures for contracts above £25,000

- Where an invitation to tender is made, such invitation to tender shall state the general nature of the intended contract and the Responsible Financial Officer shall obtain the necessary technical assistance to prepare a specification in appropriate cases. The invitations shall, in addition, state that tenders must be addressed to the Responsible Financial Officer in the ordinary course of the post.
- Each tendering firm shall be supplied with a specifically marked envelope in which the tender is to be sealed and remain sealed until the prescribed dates for opening tenders for the contract.
- The tenders shall be kept in the custody of the appropriate nominated person until the time and date specified for their opening.
- Tenders shall be opened by the Responsible Financial Officer in the presence of at least one Councillor. Tenders shall be date stamped and signed on all pages containing price information.
- Quotations and tenders may be received electronically provided they are kept in a separate secure folder under the control of the Responsible Financial Officer which is not opened until the deadline has passed for receipt of tenders.

## **16. Evaluating Tenders**

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

The contract award should be in writing and reference the terms and conditions of contract issued at the tender stage. The full contract will include the specification, the bid and the terms and conditions of contract. If you are letting an OJEU or high value/sub OJEU contract you should seek legal advice on the documents at the pre tender and award stages.

Good practice is to provide all unsuccessful bidders with feedback on their bids, you should do this as soon as possible after the winning bidder is decided. This is mandatory for OJEU tenders and

you must provide details of the relative characteristics of the winning bid. Actual pricing or any other commercial in confidence information must not be disclosed amongst bidders but you must tell them their position relative to the winning tender.

## **17. Acceptance of Quotations and Tenders**

The tender that offers the best value to the Council shall be accepted. Each tender shall be evaluated for price and quality to ascertain the most economically advantageous tender. Local companies should be encouraged to apply.

For procurements over £25,000 the questions and scoring systems used shall be written before tenders are received. The basis of this exercise shall be explained in any invitation to tender documentation.

Where the authorised person considers it in the best interests of the Council, he or she may negotiate with the tenderers whose tenders are being considered for acceptance. No negotiation on contracts whose value is in excess of £25,000 can take place without reference to the Chairman of the Council. Any negotiation which would distort competition is expressly forbidden. Details of the negotiation must be placed on the contract file.

Arithmetical errors found in any tender when checking shall be dealt with as follows: The tenderer shall have the error pointed out to them and be offered the opportunity to stand by their original tender, or their corrected tender, or to withdraw it.

## **18. Signing and Sealing of Contracts**

Every successful quotation/tender shall be accepted in writing, provided that contracts as the Solicitors to the Council shall determine shall be set out in a formal contract document.

## **19. Nominated Sub-Contractors and Suppliers**

Where a sub-contractor or supplier is to be nominated to a main contractor, the procurement of the services of the sub-contractor or supplier shall be subject to these Contract Procedure Rules. In the event of a main contractor nominating any sub-contractor for delivery of all or part of the services, the Council's contract will remain with the main contractor and the main contractor remains responsible and liable for delivering the agreed contract. The main contractor holds responsibility for delivery of the contract and any associated penalties, financial or otherwise, to the Council as agreed in the main contract.

## **20. Contracts Record**

A record of all contracts in excess of £25,000 in value placed by the Council shall be kept by the Clerk. This record shall specify for each contract the name of the contractor, the works to be executed or the goods or services to be supplied, the contract value and the contract period. It is the responsibility of the appointed person authorising the contract to ensure that an accurate record is maintained.

## **21. Contract Project Management**

Often forgotten in the rush to buy something is the process for actually making sure you get what you specified for the price you have agreed in the contract, hence the need to consider this at pre-procurement and tendering stages. This is the stage where things can go wrong and where costs can increase if not managed carefully. Your specification and terms and 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.

### **21.1 Pre-contract start**

Before the contract starts sit down with the supplier and reach a common understanding of the contract so there are no surprises later on!

Whatever the length of the contract agree a delivery plan, with dates, outcomes and owners of activity. Set dates for regular meetings/updates, make these relevant to the contract and the risks and opportunities associated with it.

### **21.2 Contract delivery phase**

All contract managers require good communication skills, a shared understanding of what is to be delivered and clear standards of performance.

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. You may need to engage professionals such as a clerk of works or project manager experienced in delivery to ensure you adequately manage these contracts. Ensure you complete a snagging list in time to point out to the organisation all those areas which you are not happy with. The contract should have a built in period for snags to be reported.

### **21.3 Change control**

Things do not always go to plan so your contract should have a clause that sets out how you 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.

### **21.4 Contract end**

Make sure you have copies of all the relevant warranties/insurance relating to any goods/works contracts so you can recover costs if needed in the future. Build in retention money if this is a works contract to cover the costs of any defects that arise when they have left site. Ensure that if things do not go to plan, you have the ability to levy a schedule of contra-charges, against those components of the contract that were not met.



## **22. Contract Variations to Scope**

Any necessary instructions to vary a contract shall be made in writing by the Chairman, Clerk/RFO or persons responsible for supervising the contract. Where a variation occurs during the currency of the contract that is material and cannot be met from within the original contract sum, an immediate report shall be made to the Council who shall decide what further action is necessary.

## **23. Bonds, Guarantees and Insurances**

For procurement projects where the spend is greater than £25,000, consideration must be given as part of the pre-qualification assessment and evaluation process as to whether a performance bond and/or parent company guarantee (if applicable) shall be required from the successful tenderer.

Consideration must be given as to the appropriate type (employee liability, public liability, professional indemnity etc.) and level of insurance requirements for each contract.

## **24. Termination of Contracts**

The Council reserves the right to terminate any contract immediately for any of the following reasons:

Termination for Cause – where a supplier commits a material breach of the agreement to deliver services, or fails to deliver agreed services, in the agreed timeframe without a plan to address the failings.

## **25. Frequently asked questions**

Please see Appendix 2 for the frequently asked questions on procurement.

## **26. Status**

This policy was approved and adopted by the full Middleton St George Parish Council meeting on 12<sup>th</sup> July 2021, and will be reviewed annually.

## APPENDIX 1      PRE-TENDER STAGE

Before starting any procurement ask yourself the following questions:

1. Am I clear on the outcome/output I want to achieve?
2. What do the financial regulations/standing orders or Procurement legislation say I need to do? (Also don't forget that the Public Contracts (Social Value) Act of 2012 requires you to consider social value in all services contracts over the EU threshold. It is also good practice to consider social value in all contracts). NALC / CALC member councils should see NALC Legal Topic Note 87 for the procurement regulations that apply in England and Wales. This is available on the NALC website at [www.nalc.gov.uk/members-area/legal](http://www.nalc.gov.uk/members-area/legal) (member councils will need to log in using their NALC log in passwords and usernames)
3. Have I got the budget for the purchase and ongoing costs?
4. What would happen if I did nothing?
5. Could I do this in stages?
6. Am I clear on the outcome/output I want to achieve?
7. Can I achieve this by borrowing from someone else or buying it together with others to share costs? Or by recycling something you already have or use elsewhere?
8. Could residents/voluntary groups help me to deliver part of it at no cost?
9. Could I 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 I encourage small businesses and voluntary sector to bid for this work, at the very least how can I make the tender process 'SME friendly'?
12. What are the risks and opportunities associated with purchase of a product or the long term risks of a service provided to you 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)

Consultation with residents and service users is essential to make sure you are clear on what is needed, who will use it and what the essentials are. Time must be built into the procurement project plan to allow for engagement and feedback. Consider if residents should be on the project team and provide help in evaluating part of the tenders but you retain ownership of the project overall.

Find out what other parishes have paid and find out how their procurement went to build that learning into your project. Did they get any extra external funding to contribute to the costs and if so where from? Could you slip the timing of your project to enable you to access extra funds? Could you break down the project into affordable pieces without any significant risk?

In the pre-tender stage you can do market research and speak to suppliers as long as you do not then discriminate in their favour once the procurement starts by specifying something that only one company can provide, or give them information that you do not then share with all suppliers at tender stage. You should take care not to do anything that may give the perception that you are treating one supplier more favourably than any other and should avoid accepting hospitality or free gifts/trials etc. during your research. If your project is over the EU threshold, the new PCT 15 Regulations for OJEU procurement make the assumption you have broken your project down into 'lots' which encourages small and medium size enterprises to bid. If you don't use 'lots' for a large project, you need to provide an explanation as to why you have not.

You also need to decide on how you will advertise any tender. Would a procurement portal be of use to you, where you can advertise your tender as widely as possible? Do you just need to advertise in the local paper?

At the very least, your tender should be advertised on your own parish website. You may also need to consider advertising on Contracts Finder anything over £25k which will be a new rule in the Public Contracts Regulations 2015. You can enquire whether there are any expressions of interest instead of simply submitting the tender, and hold 'market' days for those interested bidders to discover what the issues may be that you not have thought of.

## **APPENDIX 2 FREQUENTLY ASKED QUESTIONS**

### **Do I have to advertise tenders and quotes?**

Your Financial rules will set out exact details. However if you do not advertise you are unable to demonstrate you have value for money and could potentially give the appearance of having favourite contractors which may put you in breach of your rules and or legislation.

### **Can I just ring suppliers I know for verbal quotes?**

Your financial rules will set out exact details, and if the value is very low (under £1000) then this may be appropriate but you must always ring more than one supplier and keep a written record. If your requirement involves any warranties/guarantees then you should get quotes put in writing so you fully understand what is provided, covered and where liability sits for faults etc.

### **What happens if I tender and do not have anyone to help me?**

Ring around other parishes who may have experience in what you are procuring, look at pre-established contracts/frameworks to understand if they meet need and allow for a shorter process. If a tender exercise is essential then consider engaging a third party to provide support, advice and templates.

### **What's the worst that could happen if I just buy something direct from a supplier and do not get any other prices?**

You could be held in breach of your employment contract, your financial rules and potentially the UK law if the value exceeds the OJEU threshold. You could lose your job, be prosecuted and/or face unlimited fines from the courts. But most importantly you could be wasting public funds and bringing your Council into disrepute.

### **Can I use other contracts set up by other parishes/councils?**

If the contract was advertised for use by others and the terms and conditions allow - then yes. Professional Buying Organisations (PBOs) exist to tender on behalf of the wider public sector and have hundreds of contracts that you can use. **[Link to later page with CJC, ESPO/YPO etc.).**

### **What if the tenders come back well over budget?**

Clarify with bidders that they understood the requirement and have not priced for extras not specified. If the value is below the OJEU threshold then you could amend the specification and ask all bidders to resubmit pricing – if above then get professional advice.

### **Do you already know what you want?**

Go direct to a buying portal. If you know what you want, have a specification and the budget then you may want to take advantage of an existing National/Regional contract/framework agreement already set up by the Professional Buying Organisations. They provide a vast array of compliant contracts to choose from covering categories for everyday suppliers to specialist equipment. They have all been set up in compliance with UK and EU regulations and are ready for you to use. You can contact them directly and they can also run mini competitions for you from their contracts