

11.5 Pre-Qualification Questionnaires (PQQ)

11.5.1 The new Public Contracts Regulations 2015 have resulted in a profound change in the use of Restricted (2-Stage) process.

Contracting Authorities (CA) may **not** include a Pre-Qualification Questionnaire (PQQ) stage in any procurement process where the value of the procurement is below the OJEU threshold for goods and services. This therefore precludes the use of the 2-Stage process.

This also applies for tenders for Works where the threshold value is significantly higher. PQQs are not permitted, but CA may ask questions relating to potential suppliers providing that the questions are relevant to the subject matter of the procurement and proportionate.

11.5.2 A Restricted tendering procedure, Pre-Qualification Questionnaires may be used where the value is greater than the specified threshold to ascertain certain information from potential suppliers/contractors.

11.5.3 Where a restricted tender process is used it should be noted that Company information requested in the 1st stage PQQ process, cannot be asked for in the resulting ITT process.

11.5.4 If successful after the shortlisting process has been concluded, suppliers/contractors will be given an Invitation to Tender (see CPR 11.6). If unsuccessful, a formal letter should be issued to inform them that they have not been successful on this occasion. The letter should identify their scores in relation to the cut off which should have been noted in the PQQ document.

11.6 Invitation To Tender (ITT)

11.6.1 The Invitation To Tender must state that no tenders will be considered unless it is received by the date and time stipulated in the tender documentation. No tender delivered in contravention of this CPR shall be considered.

11.6.2 All Invitations To Tender should include a prescribed address label or pre-printed envelope that **must** include the date and time of the deadline for the return of tenders.

11.6.3 Tenders may be invited for submission by electronic methods. Contract Officers wishing to conduct electronic tender exercises should contact the LSPM. Only portals approved by the Monitoring Officer may be used. This is currently the Due-North system www.eastmidstenders.org.

11.7 Return of Invitations To Tender (ITT)

11.7.1 Every Invitation to Tender for a transaction valued over £50,000 should state that:

11.7.2 For e-Tenders

- a) Where possible and practical **all** bids (tenders, Quotations and RFQs), correspondence, clarifications and dialogue **must** be processed through the e-Tendering system (Due-North).
- b) Bids must be received through the e-Tendering system, by the return date and time identified through the system. The e-Tendering system operated a locked vault which will close at the precise date and time. Therefore late bids will **not** be accepted by the system.
- c) Any bid received from outside the e-Tendering system through e-mails, post or other means **must** be rejected and **not** evaluated. In this situation suppliers should be informed accordingly as a matter of priority.

use the specialised machine to produce bins for any other organisation without our agreement, and we obtained all or most of the output from the machine, this would indicate that we had the right to use the asset.

APPENDIX K

Flow Chart B – Assessment of Leased Assets

For each vehicle, plant or equipment over £10,000, answer each question, by 'X' in the relevant box sign off (e-mail is acceptable in place of signature) and forward to Cheryl Scott, Accountancy when prompted, with a copy of the lease agreement.

| | | |
|--|------------------------------|--|
| 1) Is the transaction in substance a purchase or disposal? | Yes <input type="checkbox"/> | Complete the Leased Asset Recording Sheet and forward with a copy of the lease agreement & this sheet to Governance Accountant |
| N o | | |
| 2) Does the ownership of the asset transfer to the lessee by the end of the lease term? | Yes <input type="checkbox"/> | Complete the Leased Asset Recording Sheet and forward with a copy of the lease agreement & this sheet to Governance Accountant |
| N o | | |
| 3) Is the lease term for more than 50% of the economic life of the asset? | Yes <input type="checkbox"/> | Complete the Leased Asset Recording Sheet and forward with a copy of the lease agreement & this sheet to Governance Accountant |
| N o | | |
| 4) Do you have the option to purchase the asset at a price that is less than it is worth at the end of the lease? | Yes <input type="checkbox"/> | Complete the Leased Asset Recording Sheet and forward with a copy of the lease agreement & this sheet to Governance Accountant |
| N o | | |
| 5) Are the leased assets of a specialised nature so that only the lessee can use them without major modifications? | Yes <input type="checkbox"/> | Complete the Leased Asset Recording Sheet and forward with a copy of the lease agreement & this sheet to Governance Accountant |
| N o | | |
| 6) If the lessee can cancel the lease, will they have to continue to pay rental until another lessee is found? | Yes <input type="checkbox"/> | Complete the Leased Asset Recording Sheet and forward with a copy of the lease agreement & this sheet to Governance Accountant |
| N o | | |
| 7) Will the gains and losses from the fluctuation in the value of the residual value fall to the lessee?. | Yes <input type="checkbox"/> | Complete the Leased Asset Recording Sheet and forward with a copy of the lease agreement & this sheet to Governance Accountant |
| N o | | |
| 8) Does the lessee have the ability to continue the lease for a secondary period at a rent that is substantially lower than market rate? | Yes <input type="checkbox"/> | Complete the Leased Asset Recording Sheet and forward with a copy of the lease agreement & this sheet to Governance Accountant |
| N o | | |
| Forward a copy of this sheet to Governance Accountant | | Service:..... Authorising Officer:..... Date:..... |

APPENDIX J (Continued).

Flow Chart B – Assessment of Leased Assets

1. Is the transaction in substance a purchase or disposal?

If a premium lump sum has been paid upfront for the lease, and the amount of the premium is approximately equal to what the asset being leased could be purchased for on the market – answer “Yes”. Other indicators of a “Yes” answer are a peppercorn rent thereafter the premium, and a rental period of material length e.g. 50 years or more. E.g. you pay £25k up front to hire a piece of equipment for five years, and then don’t make any (or only very small e.g. £1 per year) further rentals over the five year period. If this is the case, please complete the Leased Asset recording sheet and forward with a copy of the lease agreement to the Accountancy Section.

3. Is the lease term for more than 50% of the economic life of the asset?

The economic life of an asset is the lifetime of the asset over which it could be leased out or used internally by the lessor, which may be more than the length of time that we are leasing it for. E.g. if a vehicle will be not fit for purpose in 10 years’ time and we are leasing/hiring it for 5 or more of those years then the answer to this question is “yes”.

4. Does the lessee have the option to purchase the asset at a price that is less than what it is really worth at the end of the lease?

The value of the asset is the value that an equivalent asset e.g. in type, age, condition, could be purchased for, in an open market transaction. E.g. If you hire a cherry picker for 5 years, and in 5 years time you have the option to purchase that picker (instead of returning it to the hire company), for much less money than you could if you went out and bought one in the same condition - answer “Yes”.

5. Are the leased assets of a specialised nature so that only the lessee can use them without major modifications?

For example, trade marks, or assets in locations where other entities couldn’t use them. E.g. if you hire a piece of equipment that no one else could use, or would want to use, without major modifications being done to it as it is specialised to a function that only the council carries out, then the answer to this question is “Yes”.

7. Will the gains and losses from the fluctuation in the fair value of the residual value fall to the lessee?

For example, if the lessor sells the asset to a third party at the end of the lease for less than the expected residual value, the former lessee will make up the difference, or if it is sold for more, then the former lessee receives the ‘profit’. The residual value is the value that an asset of equivalent type, age, condition etc that the asset is expected to be in at the end of the lease, could be purchased for, in an open market transaction, at the beginning of the lease. E.g. if the company we hire a vehicle from intends to sell the vehicle on when we have finished with it, and it is sold for less than it should be worth when we hand it back, and we promise to make up the shortfall between what it was sold for and what it should be worth then the answer to the question is “Yes”. Similarly if the company sells the vehicle on for more than what it is worth, and the agreement is that we receive the profit they make, then again the answer to the question is “Yes”.

OFFICER EMPLOYMENT PROCEDURE RULES

1. Statutory Rules

1.1 In these rules–

“the 1989 Act “ means the Local Government and Housing Act 1989;

“disciplinary action” has the same meaning as in the Local Authorities (Standing) Orders (England) Regulations 2001;

“member of staff” means a person appointed to or holding a paid office or employment under the authority; and

“proper officer” means an officer appointed by the authority for the purposes of the provisions in this Part, which shall be the Chief Executive.

1.2 Subject to paragraphs 1.3 and 1.8, the function of appointment and dismissal of, and taking disciplinary action against, a member of staff of the authority must be discharged , on behalf of the authority, by the officer designated under section 4(1) of the 1989 Act as the head of the authority’s paid service or by an officer nominated by him.

1.3 Paragraph 1.2 shall not apply to the appointment or dismissal of, or disciplinary action against –

- (a) the officer designated as the head of the authority’s paid service;
- (b) a statutory chief officer within the meaning of section 2(6) of the 1989 Act (politically restricted posts);
- (c) a non-statutory chief officer within the meaning of section 2(7) of the 1989 Act;
- (d) a deputy chief officer within the meaning of section 2(8) of the 1989 Act; or
- (e) a person appointed in pursuance of section 9 of the 1989 Act (assistants for political groups).

1.4 Where a committee, sub-committee or officer is discharging, on behalf of the authority, the function of the appointment or dismissal of an officer designated as the head of the authority’s paid service, the authority must approve that appointment before an offer of appointment is made or, as the case may be, must approve that dismissal.

Where a committee or a sub-committee of the authority is discharging, on behalf of the authority, the function of the appointment or dismissal of any officer referred to in sub-paragraph (a), (b), (c), or (d) of paragraph 1.3, at least one member of the Cabinet must be a member of that committee or sub-committee.

1.5 In this paragraph, “appointor” means, in relation to the appointment of a person as an officer of the authority, the authority or, where a committee, sub-committee or officer is discharging the function of appointment on behalf of the authority, that committee, sub-committee or officer, as the case may be.

An offer of an appointment as an officer referred to in sub-paragraph (a), (b), (c) or (d) of paragraph 3 must not be made by the appointor until –

- (a) the appointor has notified the proper officer of the name of the person to whom the appointor wishes to make the offer and any other particulars which the appointor considers are relevant to the appointment;

- (b) the proper officer has notified every member of the Cabinet of the authority of–
 - (i) the name of the person to whom the appointor wishes to make the offer;
 - (ii) any other particulars relevant to the appointment which the appointor has notified to the proper officer; and
 - (iii) the period within which any objection to the making of the offer is to be made by the Leader on behalf of the Cabinet to the proper officer; and
- (c) either –
 - (i) the Leader has, within the period specified in the notice under sub-paragraph (b)(iii), notified the appointor that neither he nor any other member of the cabinet has any objection to the making of the offer;
 - (ii) the proper officer has notified the appointor that no objection was received by him within that period from the Leader; or
 - (iii) the appointor is satisfied that any objection received from the Cabinet Leader within that period is not material or is not well-founded.

1.6 In this paragraph, “dismissor” means, in relation to the dismissal of an officer of the authority, the authority or, where a committee, sub-committee or another officer is discharging the function of dismissal on behalf of the authority, that committee, sub-committee or other officer, as the case may be.

Notice of the dismissal of an officer referred to in sub-paragraph (a), (b), (c) or (d) or paragraph 1.3 must not be given by the dismissor until –

- (a) the dismissor has notified the proper officer of the name of the person who the dismissor wishes to dismiss and any other particulars which the dismissor considers are relevant to the dismissal;
- (b) the proper officer has notified every member of the Cabinet of the authority of–
 - (i) the name of the person who the dismissor wishes to dismiss;
 - (ii) any other particulars relevant to the dismissal which the dismissor has notified to the proper officer; and
 - (iii) the period within which any objection to the dismissal is to be made by the Leader on behalf of the Cabinet to the proper officer; and
- (c) either –
 - (i) the Leader has, within the period specified in the notice under sub-paragraph (b)(iii), notified the dismissor that neither he nor any other member of the Cabinet has any objection to the dismissal;
 - (ii) the proper officer has notified the dismissor that no objection was received

by him within that period from the Leader; or

- (iii) the dismissor is satisfied that any objection received from the Cabinet Leader within that period is not material or is not well founded.

- 1.7. No disciplinary action in respect of the head of the authority's paid service, its Monitoring Officer or its Chief Finance Officer, except action described in paragraph 1.7.1, may be taken by the authority, or by a committee, a sub-committee, a joint committee on which the authority is represented or any other person acting on behalf of the authority, other than in accordance with a recommendation in a report made by a designated independent person under regulation 7 of the Local Authorities (Standing Orders) (England) Regulations 2001 (investigation of alleged misconduct).
 - 1.7.1 The action mentioned in paragraph 1.7 is suspension of the officer for the purpose of investigating the alleged misconduct occasioning the action; and any such suspension must be on full pay and terminate no later than the expiry of two months beginning on the day on which the suspension takes effect.
 - 1.7.2 Councillors will not be involved in the dismissal of any officer below heads of service level except where such involvement is necessary for any investigation or inquiry into alleged misconduct, though the Council's disciplinary, capability and related procedures, as adopted from time to time may allow a right of appeal to members in respect of dismissals.
- 1.8 Nothing in paragraph 1.2 shall prevent a person from serving as a member of any committee or sub-committee established by the authority to consider an appeal by –
 - (a) another person against any decision relating to the appointment of that other person as a member of staff of the authority; or
 - (b) a member of staff of the authority against any decision relating to the dismissal of, or taking disciplinary action against, that member of staff.

2 Local Rules

2.1 Discussion in Public

If any question arises at a meeting as to the appointment, promotion, dismissal, salary, pension or conditions of service, or as to the conduct of any person employed by the Council, such questions shall not be the subject of discussion until the meeting has decided whether to exercise the power to exclude the public under Section 100A of the Local Government Act 1972.

2.2 Recruitment and appointment

- (a) Declarations
 - i) The Council will draw up a statement requiring any candidate for appointment as an officer to state in writing whether they are the parent, grandparent, partner, child, stepchild, adopted child, grandchild, brother, sister, uncle, aunt, nephew or niece of an existing councillor or officer of the Council; or of the partner of such persons.
 - ii) No candidate so related to a councillor or an officer will be appointed

without the authority of the relevant Head of Service or an officer nominated by him/her.

- (b) Seeking support for appointment.
 - i) Subject to paragraph (iii), the Council will disqualify any applicant who directly or indirectly seeks the support of any councillor for any appointment with the Council. The content of this paragraph will be included in any recruitment information.
 - ii) Subject to paragraph (iii), no councillor will seek support for any person for any appointment with the Council.
 - iii) Nothing in paragraphs (i) and (ii) above will preclude a councillor from giving a written reference for a candidate for submission with an application for appointment.

2.3 **Recruitment of Head of Paid Service and Directors and Heads of Service**

Where the Council proposes to appoint a head of paid service, a director or a head of service and it is not proposed that the appointment be made exclusively from among their existing officers, the Council will:

- (a) draw up a statement specifying:
 - i) the duties of the officer concerned; and
 - ii) any qualifications or qualities to be sought in the person to be appointed;
- (b) make arrangements for the post to be advertised in such a way as is likely to bring it to the attention of persons who are qualified to apply for it; and
- (c) make arrangements for a copy of the statement mentioned in paragraph (a) to be sent to any person on request.

2.4 **Other appointments**

- a) **Officers below heads of service.** Appointment of officers below heads of service, (other than assistants to political groups) is the responsibility of the Head of Paid Service or his/her nominee, and may not be made by councillors.
- b) **Assistants to political groups.** Appointment of an assistant to a political group shall be made in accordance with the wishes of that political group.