



PROCUREMENT POLICY

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Introduction

The purpose of this document is to set out the governance framework for how the Plymouth and South Devon (PASD) Freeport Company (the Company) undertakes commercial spend with third party suppliers for the provision of Supplies, Services and Works from those suppliers.

It aims to empower the PASD Freeport executive team with an efficient process that protects the organisation and its partners from risk. It is designed to align with our company goals and values, whilst also providing the necessary level of due diligence.

Where relevant this policy is designed to be compliant with Public Contract Regulations to deliver against the expectations of our Memorandum of Understanding (MOU) with Central Government.

The Regulations can be viewed at: <http://www.legislation.gov.uk/ukxi/2015/102/contents/made>. Our Accountable Body has approved this policy as compatible with our obligations under the MOU.

The policy covers procurement undertaken by the Company, or where relevant, procurement undertaken on its behalf by partner agencies acting on its behalf and covers the following elements:

Our Freeport seed capital grant funding – procurement will be regulated by Plymouth City Council in line with its procurement policies or third parties it contracts with where it is satisfied that procurement will be conducted to an equivalent standard.

Our Freeport capacity grant funding – Any procurement using these funds will be subject to the Company Policy and thresholds..

Local authority matched funding – procurement will be regulated by the policy of the Local Authority providing the match or third parties it contracts with where it is satisfied that procurement will be conducted to an equivalent standard.

Retained Business Rates – Funds transferred to the Company by the Billing Authority will not be subject to transferral of the Billing Authority's Procurement Policy. Any procurement using these funds will be subject to the Company Policy and thresholds.

Any other procurement conducted by, or on behalf of, the Company will be conducted in accordance with the terms of this Policy.

The approach taken shall at all times be proportionate to the risks and resources required to fulfil the requirements. In the case of requirements which are subject to WTO GPA Thresholds then compliance with the regulations is the minimum expectation.

Exemptions

Breach or conflict of statutory duties or UK company law would occur if the policy was applied.

Evidence of Limited Market that negates wider public interest.

Unavoidable / time critical considerations that would result in negative reputational implications.

Detriment to personal welfare of service users

A record should be kept of the exemption and the reasons it was applied. The process adopted must still comply with National and European Union laws and regulations.

Policy is Not Applicable

Employment contracts and external appointments for which the Company is not responsible.

Allocation of grant payments by the Company to third parties.

Acquisitions and disposals of land or buildings.

Contracts where a sole supplier has exclusive rights.

Loan payments or loans from the Company to third parties provided on market terms (otherwise State Aid considerations may apply) however Member Steering Group agreement may be required.

Procurement of certain insurances not available on open market e.g. Marine.

Other Relevant Laws, Regulations and Policy

Relevant national and EU procurement law, rules and guidance.

The Company Memorandum and Articles of Association and Members Agreement.

In the event of an unforeseen emergency or a disaster involving immediate risk to persons, property or serious disruption to Company services or significant financial loss the Chief Executive Officer can approve progressing work as required. The Chief Executive Officer must ensure due process fulfilling the requirements of this policy is in place as soon as practically possible once the risk is mitigated.

Any potential misuse or non-compliance with the policy should be reported to the Chair of the Board of Directors. Wilful non-compliance with the Policy could result in the disciplinary action. Concerns can also be raised anonymously in line with the Company's Whistle Blowing Policy.

Sourcing Strategy

Key Principles

Transparency

Equal Treatment

Proportionality

Non-discrimination

Mutual Recognition

Route to Market

The Local Authority Partners will be the default route for the delivery of capital works where they are wholly or principally funded from the public purse.

Where the Company or one of its partners could undertake the service, this option should be considered before external sourcing routes are considered.

Where the Company or one of its partners has an existing commercial arrangement, this may be used if compliance with National and European Union laws and regulations is maintained.

Where an additional or new requirement exists a business case may be required, this will depend on the threshold reached as set out below.

The authorisation required prior to contract award will depend on the threshold reached as set out in the relevant section below.

Any reasonable procurement approach may be taken, e.g., Open, Restricted, Competitive procedure with negotiation, Competitive dialogue, Innovation partnership, or Negotiation without prior publication, if it is compliant with Public Contracts Regulations 2015.

Sourcing Strategy Steps

The majority of the Freeport capital programme will be delivered through the Local Authorities funded by seed capital and borrowing against retained business rates. They will use their own procurement procedures to tender for the capital works. These will be compliant with public contract regulations but may not fully reflect the obligations placed on the Company by the MOU and grant conditions. The Freeport Accountable Body will advise on any necessary steps to secure full compliance, and these will need to be addressed in the relevant business case.

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A smaller proportion of the Freeport seed capital will be allocated to the private sector. Where a contract includes a proportion of public funds Public Sector procurement rules must be applied in a way that is proportionate to public spend. Evidence of the approach taken will form part of the relevant business case and will be assessed for compliance as a part of the viability assessment process. The Freeport Accountable Body will advise on any necessary steps to secure full compliance.

For all other procurement activity, the following steps will apply.

Step 1 – Grant Funding Conditions - Where external grant funding is relied on, due diligence should include checking that the Company can comply with any necessary conditions and that these are satisfied and complied with to avoid the risk of loss of funding,

Step 2 – Due consideration should be given to whether an existing contract, or the modification of an existing contract, could provide value for money.

Step 3 – Due consideration should be given as to whether a local authority or other partner organisation could provide the service, this could be in conjunction with Step 4.

Step 4 – The formal procurement process should be applied keeping in mind the key principles set out above. This should aim to carry out due diligence in relation to: -

- Establishing the business case for the proposed supplies, services or work.
- This may already be provided within the overarching Freeport Full Business Case, or Annual Plan, a proportionate approach should be taken to the level of detail required.
- Ensuring the Company has the legal power to enter into the contract and that any relevant reserved matters are agreed by the Member Steering Group.
- Considering options and establishing the best route to market.
- Considering the Company's Annual Plan and ensuring that the delivery of Freeport objectives is supported.
- For works contracts considering the Freeport Skills Plan and ensuring that the delivery of Freeport objectives is supported.
- Ensure all compliance issues that are specific to the Freeport are addressed e.g. money laundering regulations (See appendix I)
- Determining the most appropriate commercial model and contract type and the resources that will be required to monitor contract delivery.

Financial Thresholds

Calculation of Contract Values

When estimating the total contract value: -

The estimate will be based on the whole life term of any anticipated contract, for example, if the contract value is estimated at £50,000 per annum for two years, then the total contract value will be an estimated £100,000.

If the duration is unknown, it should be assumed to be for 4 years. If it includes any option to extend it beyond the normal duration this should be included, e.g., a 2-year contract with an option to extend for 2 years would count as a four-year contract.

Values should be net of Value Added Tax.

The estimate should include the value of any non-monetary consideration or benefit the Company is giving.

The estimate should include the value of anything the Company is getting for free as part of the contract.

Where the estimate is within 10% of WTO GPA thresholds a more detailed calculation will be required in accordance with Regulation 6 of the Public Contracts Regulations where applicable.

A single contract must not be undervalued or split into smaller contracts to circumvent the thresholds as set out in the Public Contract Regulations.

Application and Approach

Due Diligence

Relevant subject matter experts should be consulted at appropriate times during the procurement process.

Prior to the commencement of the procurement anyone involved in the process should declare any direct or indirect interest, canvassing or confidentiality issues.

Timescales

Where required, quotation and tender timescales should enable suppliers to submit a suitable response and facilitate genuine competition.

Due regard should be taken of the Public Contract Regulations in regard to WTO GPA Threshold Tenders and associated timescales.

Market Testing

Securing appropriate market intelligence through preliminary market consultation is permitted and encouraged with the intention to inform the procurement process and potential Suppliers. Care must be taken that it is in line with the Public Contract Regulations, in particular Regulations 40 and 41 where the regulations apply.

Advertising Opportunities

Tendering/quotation opportunities that exceed the minimum threshold value must be advertised on the Freeport Company Website.

Where procurement activity is undertaken by a Local Authority or partner organisation and there is a requirement to publish a tendering/quotation opportunity a notice should be placed on the Freeport Company Website, this may simply provide a brief explanation and a link to another site or procurement portal e.g. Plymouth City Council's E-Tendering System.

Advertising of WTO GPA shall be in line with the requirements of the Public Sector Procurement Regulations 49, 50 and 106 where applicable and as a minimum published on the Freeport Company Website.

Opening of Quotes/Tenders

Where a Quotation or Tender is received late, the default position will be for the tender not to be evaluated.

If the supplier can provide evidence that the Quotation or Tender was sent in good time, then it may be evaluated at the discretion of the Freeport CEO.

Where it appears that there is an error in the information submitted within the Quotation / Tender, including missing or omitted material, the relevant supplier will be given the opportunity to provide the information within one working day.

This should not give the supplier an advantage over other suppliers, and it is at the discretion of the CEO to take a view as to whether the information provided was available in a format that would have been ready and available at the time of the submission.

In exercising discretion in these matters, the CEO may take advice from the Accountable Body before reaching a decision, which will be final.

Contract Award

Public Contracts awarded over £25,000 shall have the award notified on Contracts Finder in line with Public Sector Procurement Regulations 109 and 112.

Contract Award Notices for WTO GPA Tenders shall be in line with the Public Contract Regulations and take into account any requirements and conditions. Advice may be sought from the Accountable Body about the form these should take.

A contract may only be awarded by a person with the requisite delegated authority to award contracts. The authorised officer should make sure that the budget holder responsible for the contract has sufficient funds in place to sustain the contract prior to award. Board/Member approval will be required for all contracts above the applicable WTO GPA threshold.

Terms and Conditions

Wherever possible and appropriate to do so, contracts shall be based on the Company's Terms and Conditions, related to the subject matter of the contract. A model Service Level Agreement template has been developed for this purpose.

In relation to capital works funded by Freeport seed capital or in relation to service level agreements that are not grant in aid funded by the public purse, the contract will be issued by Plymouth City Council as the Freeport Accountable Body. In the case of capital awards this will follow completion of the Capital Approval Process as set out in the Freeport Governance Guide.

Local authorities following their own procurement processes will follow their normal contract award processes supplemented with any additional terms and conditions the Accountable Body may impose that are Freeport specific.

Where the terms and conditions are 'called off' from other parties Framework Agreements advice shall be obtained from the Freeports Legal Advisors about the implications where it is proportionate to the scale of the contract award to do so.

Contracts must be in writing. Electronic signatures may be used in accordance with the Electronic Signature Regulations 2002 provided assurance the arrangements are secure.

Contracts shall be executed as a deed (Sealed Contract) if they are: -

- For Works contracts (e.g. construction)
- Where the Council may wish to enforce the contract more than six years after its end
- The total value exceeds £1,000,000
- We or a relevant Partner have received legal counsel that it should be executed as a deed.

Contract management and monitoring arrangements shall be undertaken in a manner that is commensurate to risks.

Ensuring the suitable contract records are in place is the responsibility of the CEO, or the responsible person, he or she may delegate for this purpose.

The Freeport office will maintain a contract register covering all contracts with a value above £5,000.

Roles and Responsibilities

Defined roles and responsibilities:

Accountable body (SI51)	<p>Ensuring overall probity in respect of related financial matters, through relevant controls and monitoring, in particular our compliance with the MOU we have signed with Central Government.</p> <p>Acting as primary advisory service in relation to public sector procurement, commercial and contract management matters.</p>
Board of Directors	<p>Maintaining a strategic overview of compliance with this policy and overall accountability for non-compliance. Instructing relevant changes to ensure compliance and controls remain effective. Authorisation in line with levels as set out in the Authorisation Process.</p> <p>Individual directors will be responsible for any procurement activity carried out on behalf of the Freeport. In accordance with the Freeport Articles of Association, they cannot cast a vote on any contract, arrangement or any other kind of proposal in which they have an interest.</p>
Member Steering Group	<p>Have responsibility for reserved matters as set out in the Members agreement, e.g.</p> <p>Approval of the Annual Procurement Rules applicable to the Company.</p> <p>Entry into a contract where the value of the contract exceeds £100,000.</p> <p>The Company giving any guarantee or indemnity not approved in the Annual Plan</p> <p>The Company entering any contract or transaction except in the ordinary course of the Business and on arm's length terms.</p> <p>The Company entering into any legal partnership or profit-sharing arrangement.</p> <p>The Company appointing any agent or other intermediary to conduct any aspect of the Business.</p> <p>Engagement by the Company of (and terms of engagement of) any person as a consultant not included in the Annual Plan.</p> <p>Following approval of this policy these reserved matters will be considered discharged provided that the policy is followed and where it dictates that they must, member's views are sought.</p> <p>Authorisation in line with levels as set out in the Authorisation Process.</p>
	<p>Authorisation in line with levels as set out in the Authorisation Process.</p> <p>Escalation point to investigate and / or action breaches and non-compliance and, where necessary, onward escalation to the Accountable Body.</p>
Chief Executive Officer	<p>Act as the 'accounting officer' for our organisation – i.e. accounting for the efficient and effective use of public resources, including relevant procurement and public subsidy regimes.</p> <p>Responsible for the implementation of the policy framework and supporting systems.</p>

	Authorisation in line with levels as set out in the Authorisation Process.
Legal Services Provider	Advice and support around commercial matters related to Contract Terms and Conditions. Escalation of formal challenges related to procurement or contract matters.
Advisory Boards	Providing subject matter expert support as may be required.
Responsible Officer	<p>Generally, the person leading the procurement exercise.</p> <p>Quoting, Tendering or contract renewals in line with the Policy</p> <p>Seeking additional advice where the Policy does not apply.</p> <p>Ensuring there is a genuine and legitimate business requirement for the spend and an approved budget and acting with the authority as budget holder or the budget holder.</p> <p>Ensuring that the appropriate Authorisations have been received in respect of committing spend.</p> <p>Drafting fit for purpose specifications that meet the requirements of the procurement.</p> <p>Providing justification for any deviation from the approved Sourcing Strategy.</p> <p>Accurately estimating the total contract value at the start of each procurement.</p> <p>Conducting sourcing / procurement in line with the Authorisation Process.</p> <p>Diligently applying relevant Exemptions.</p> <p>Diligent contract management for contracts which are within their jurisdiction.</p> <p>Reporting matters of breach or non-compliance.</p>

Appendix

a) Key thresholds table

Activity Contract Value	Up to £40k	£40k- £100K	£100k – WTO GPA threshold	Over WTO GPA threshold
Process	One quote	Three quotes	Formal tender process	WTO GPA Process
Sign off	Freeport Team (with approval from CEO)	Freeport Team (with approval from CEO)	CEO and Chair Board of Directors ¹	Board of Directors/Members
Advertisement	Optional	Optional	Optional (If advertised contracts finder should be used).	Find a Tender (FTS) & Contracts Finder
Publication of award	No	No	Contracts Finder	Find a Tender (FTS) & Contracts Finder

b) Compliance issues that are specific to the Freeport as set out in our MOU with Central Government

Contracts must include a clause: -

- Defining confidential information.
- Requiring that documents and data are kept for a minimum of 7 years.
- Requiring that information is provided to the Governing Body if required.
- Requiring the provider to manage the Freeport's data and its stakeholders' data effectively and commit to complying with Company data retention policies and Data Protection Legislation.
- Requiring the provider to provide service-related data as may be required to support Freeport monitoring and evaluation returns to government.
- Requiring the provider to advance equality and foster good relations and ensure that any opportunities to reduce inequalities are maximised.

Requiring activities to fully support and cooperate with HMG in honouring the obligations set out in the OECD Code of Conduct for Clean Free Trade Zones,² and the UK's Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.

¹If service and budget are not identified in the Annual Plan.

²<https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0454>