MANX DEVELOPMENT CORPORATION: MANAGEMENT SYSTEM

PROCUREMENT POLICY

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Author:	L. Swales, Head of Finance
Policy Owner:	D. Harrop, Managing Director, MDC
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Access permissions:	All MDC Employees, Shareholder & Auditors. Third parties after approval from the Board

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1. Purpose, Audience, Scope and Delegated Authority

Purpose

The Manx Development Corporation (MDC) Procurement Policy supports MDC's purpose "*to be a catalyst for the positive transformation of the Island's urban landscape for the benefit of all Manx Citizens*".

MDC's purchasing and sourcing strategies and processes enable a positive transformation to be achieved within a structured framework of financial governance, risk management, sustainable practices/methods and understanding stakeholders needs and expectations.

As a Government owned arms-length, limited company, MDC is not bound by the Isle of Man Financial Regulations and this Procurement Policy does not need to fulfil the Government's requirements for a Government managed tendering process or the ongoing contract reporting for Government funded and managed projects. However, the MDC Procurement Policy takes full account of the need to uphold the Isle of Man Governments Code of Good Practice and Financial Values in how it conducts and its procurement activities.

This Procurement Policy sits within MDC's Framework of Financial Governance. The two central tenets of MDC's Procurement Policy are: -

Best value for money for MDC. Best value for money is defined as the most advantageous combination of cost, quality, and risk management to implement the Strategic Direction agreed with the Shareholder/BRSG and to fulfil MDC's Purpose and achieve its Vision. In this context:

- evaluating the "best value" bids from a monetary perspective includes a consideration of the anticipated costings and the bidders' financial proposals referenced against industry benchmarks and construction frameworks. These provide an indicative "average" costing for a specific type of development, which assist with determining a tolerance threshold and appropriate parameters.

- all bidders will need to satisfy a set of non-financial "best value" quality and risk management criteria. These include relevant and contemporaneous experience and delivery, a level of professional indemnity insurance, commensurate with the scale and risk implications of the Project, availability and ability to resource, an excellent record of health and safety and, through reputation and profile, be aligned with MDC's Corporate Values; Respect*, Integrity, Collaboration and Innovation*.

Sustainable procurement at both a strategic and operational level. This means seeking out innovative and ethical providers of services, goods, and products. MDC has also integrated a circular economy perspective within its approach to procurement and this entails designing out waste and pollution, keeping products and materials in use at the highest possible value, and taking the opportunity to regenerate and repurpose, albeit that this may entail a larger financial investment than with new builds and might yield a more modest profit than many private developers would tolerate.

MDC understands that bidders for procurement contracts and other suppliers of products and services will be on their own journeys of integrating sustainability into their business models and operational practices. Therefore, MDC will use its discretion, on a project-by-project basis, on the level of priority it will give to the structured evidence of sustainable policies and practices, balancing these requirements with other selection criteria.

Audience for this Policy

This Procurement Policy applies to all MDC directors, Executive Management Team, all staff and secondees, as well as any agent(s) for MDC seeking to acquire and/or manage ongoing contractual relationships for the provision of services and/or goods on behalf of MDC. Adhering to this Policy is mandatory; transgressions may result in disciplinary action.

This Policy may be shared with the Shareholder and auditors. It may also be shared with third parties with Board approval.

Scope of this Policy

This policy covers the processes for sourcing and procuring of all professional services and the purchasing of all products and material goods from vendors. These procurement processes take into account the need to check if the identified needs can first be sourced from IOMG shared services prior to seeking the services or goods from private contractors and vendors. As mentioned in the Purpose sub-clause, MDC is not bound by the IOMG Financial Regulations, nor any specific government procurement rules and it does not use the Government's procurement portal.

Delegated Authority within the Procurement Processes

The Managing Director is authorised and responsible for the management of the Company and financial operations by way of delegated authority from the MDC Board, as defined in the *Reserved Powers to the Board Policy* and the *Financial Governance Policy.* This delegated authority includes, subject to Board oversight, the responsibility for managing the Company's budget, accounts, cashflow and internal control and reporting mechanisms.

The MDC Board has reserved its powers of approval for all purchases to the likely or fixed value of £5000 or above. The limit operates on the annual value of any contract, e.g. a monthly commitment of £450 for 12 months is determined to be £5400 and therefore requires Board approval. The spending limits are set out in the table below:-

POSITION	SIGNING & SPENDING LIMIT WITHOUT BOARD APPROVAL	REQUIREMENT FOR BOARD SCRUTINY AND APPROVAL
	Per annual value of any contract / purchase	
MDC Board		All expenditures of £5000 and above require the approval of the Board, such approval to be minuted.
Managing Director	Up to £4999.00 (each expenditure over £500.00, not already agreed via contract spend or payroll related, should be noted and justified in the MD's monthly report to the Board)	Equal to or more than £5000

The delegated authority above does not override the operation of the MDC's bank mandate, which requires dual approval for any payment from the bank account.

2. Definitions and Applications

The below are definitions of terms used throughout this Policy and the associated Procurement Processes. When in doubt, speak to MDC's Managing Director and/or the Non-Executive Director responsible for Finance and Governance.

2.1 **Bid, proposal, quote** or **tender:** is the proposal from an organisation responding to an invitation from MDC. MDC generally uses the term "**quote**" for procuring services or goods in a competitive or non-competitive scenario, where the service or goods provided are straightforward and standard and the likely total cost is less than £100,000 or will follow an industry standard fixed rates or pricing.

"**Tenders**" are requested in scenarios where the provision of the services or goods is bespoke, to match a unique set of requirements or where the likely total cost of the goods or services is more than £100,000 and requires an increased level of financial probity. Tendering for work normally generates significantly more information pertaining to **how** the services or goods will be provided (the methodology), as well as **what** will be provided and **when**. MDC's Tendering sub-process requires the technical proposal to be separately defined from the quoted cost of providing the goods or services.

As the provision of a tender can be both time consuming and labour intensive for the contractor/consultant and for MDC, tendering should be used only where there is an operational need to do so or where the Board requires it from a governance perspective.

2.2 **Contract:** MDC uses its own suite of agreements for the majority of its contracts in the built environment. The relevant templates are located within the MDC Management System within the Project Resources Library. MDC takes legal advice on contracts as required.

2.3 **Contractor's Confidentiality Agreement:** This is a specific form of NDA for use with contractors in the built environment who are contracted to work on an MDC assignment. Where it is determined by the Managing Director that an NDA is required, the document should be signed and returned to MDC on commencement of the contract. The relevant Template is in the Project Resources Library.

2.4 **Expressions of Interest (EOI):** This is an informal, verbal approach used by MDC with prospective service providers/vendors to gauge their level of interest/capacity to respond to a formal invitation to quote or tender for a piece of work. MDC's choice of companies to approach is based on their known **professional reputation**, **demonstrated experience** and **achievements**, **known financial stability**, **peer feedback**, **sustainability** and **innovation credentials** and public domain information illustrating an **alignment** with **MDC's Values**. MDC will actively seek to be inclusive in terms of the companies it approaches (on and off-Island companies and a combination of very established with more recent entrants to the market). A minimum of three vendors will be approached although, in most cases, MDC will approach additional companies on the assumption that some will not wish to move to the next stage of the procurement process.

The EOI stage is used in all situations where confidential information will be shared with the interested parties as part of generating a meaningful quote or tender. A goods or service provider's expression of interest in moving to the next stage in the procurement process triggers the provision by MDC of a **Project Brief** (the specification) and **Enquiry Documents/Packs**, in exchange for a **signed NDA**. The use of NDAs manages the risks attached to sharing information of a confidential nature and jeopardising MDC's commercial strategies and plans due to the indiscretion of a vendor.

For the avoidance of doubt, MDC may choose to carry out a public invite for EOI but is not obliged to do so.

2.5 **Invitation to Quote /Tender (ITQ/T):** is an invitation from MDC to vendors/service providers (minimum of three), who are pre-qualified to receive the invitation through the EOI process, including the return of a signed NDA. All invited parties will be required to demonstrate their availability for undertaking the required activities, their level of Professional Indemnity insurance, their relevant and contemporaneous experience and their price/fee for the specified goods or services.

MDC will use best endeavors to include Manx companies in all ITQ/Ts but there will be occasions when the Island does not have any local service providers, making an off-Island selection inevitable. MDC is bound by its commitment for best value and sustainable procurement, and this will, in most cases, require MDC to seek quotes from both on and off-Island companies. Where a local company meets all criteria and is less than 20% higher than its off-Island equivalent, MDC may, at its discretion, exercise a "local premium" principle due to the added benefits to the exchequer's purse of selecting a local service provider.

2.6 **Non-Disclosure Agreements:** are used by MDC at the point at which MDC first approaches a contractor/consultant to ascertain their level of interest (or capacity) in receiving a formal invitation to tender. Whether there is a verbal or written expression of interest, MDC requires an NDA to be accepted, prior to sending any Project brief/enquiry pack. The first NDA is a simple agreement via email not to disclose any of the information within the Project Brief and is accepted using a read receipt, once the email has been acknowledged as having been read. The second NDA (should the relationship progress) is a more in-depth agreement signed by both parties as part of the appointment process. The move to two NDA's is in recognition of the need to protect MDC and its work whilst at the same time recognising the need to be practical and not add an undue administrative burden on the MDC staff. By agreeing to participate in the procurement process, the company is allowing MDC to process information belonging to the company, in line with GDPR requirements.

2.7 **Procurement Policy Owner**: this is the Managing Director of MDC. This person is responsible for ensuring Policy reviewed/updates/improvements to reflect current legislation.

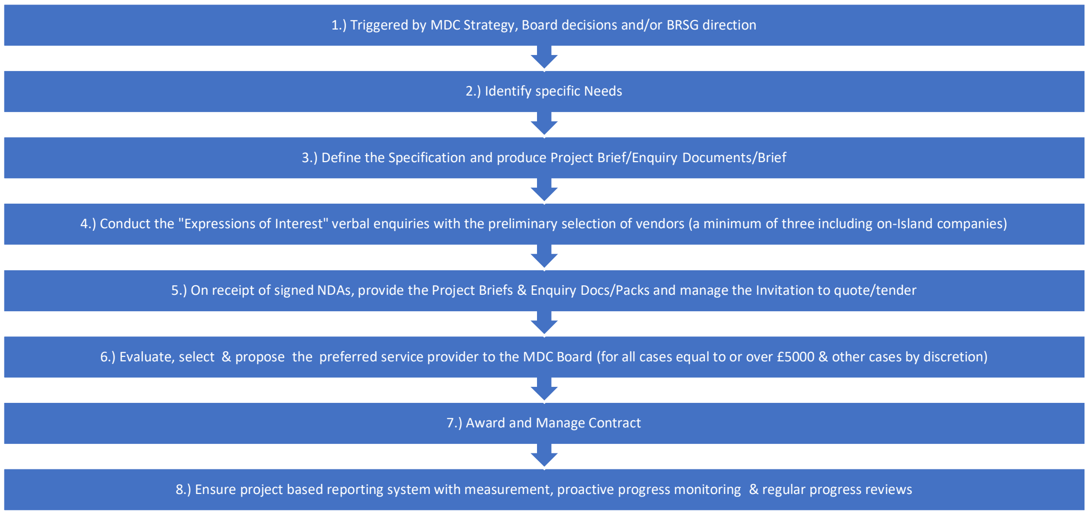
2.8 **Procurement Processes**: are the acquisition processes (one for purchases of £4999 or less and the other for £5000 or more) for the acquisition of all goods and services.

2.9 **Project Briefs and Enquiry Documents/Packs:** The same specification information is provided to all contractors/consultants invited to quote/submit a tender for a specific piece of work or to provide a set of services or specific goods. All Project Briefs and Enquiry Document Packs will be watermarked "Confidential Information". Where a prospective vendor or service provider seeks further information, the response will be provided to all bidders.

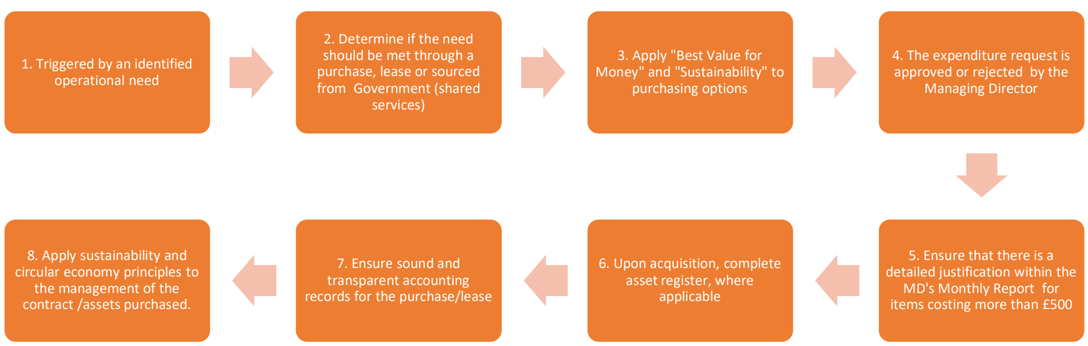
At the point where a company has accepted the invitation to put forward a quote or tender for a piece of work, there is an expectation on MDC's part, reinforced by the NDA, that the prospective vendor/service provider will not disclose specific details pertaining to the nature of the potential contract, unless that information has already been released into the public domain by MDC or the Isle of Man Government. If MDC discovers that a potential vendor/service provider has disclosed MDC's confidential information, without the prior permission of MDC, the discloser may be removed from any future procurement selection.

3. The MDC Procurement Processes

Process A: For all procurement with a likely or known value of = to or >£5000



Process B: For procurement of goods or services with a likely or known value of <£5000



4. The Evaluation & Selection Sub-Process

The Evaluation & Selection sub-processes will be managed in accordance with the criteria referenced in Sections 1, 2 and 3 of this Policy. The selection process shall correspond to the delegation of authority referenced in Sections 1 and 2 of this Policy and illustrated within the Process A and Process B diagrams in Section 3.

The purchasing of goods or engagement for services from external sources bears inherent risks. Any selection process shall also take due consideration to manage any pre-identified risks of the acquisition and any potential risks of the engagement itself, including vis-à-vis the selected vendor or consultant.

Unsuccessful quotes or tenders should be notified to the relevant participant as soon as possible, while taking care to maintain confidentiality vis-à-vis other participants, including the successful contractor/consultant. In particular, participants' email addresses should not be disclosed to other participants and the use of "group" emails is **not advised** due to the high risk of inadvertently sharing the identity of other participants within a group email.

Non-Competitive Actions

Although fair and open competition represents a corner stone of MDC's approach to the selection of a vendor or service provider, there will be certain circumstances where competition is not possible or practicable due to the absence of a pool of available or qualified vendors service providers located on the Isle of Man or elsewhere.

In such circumstances, contracts may need to be awarded on a non-competitive basis. Grounds where such an approach may be considered appropriate are:

- For work of exceptional urgency caused by unforeseeable circumstances where competitive tendering would cause unacceptable delay such as after critical equipment breakdown, storm damage etc.

- The proposed supplier has, by recent experience (within the last 12 months, or a shorter period if dictated by market conditions), proved to offer best value for money and competency as the result of a fully compliant, competitive procurement exercise. Further competition would be highly likely to produce the same outcome.

- The proposed supplier is the only one known to provide the goods and/or services required. Adequate research must have been carried out to clearly and objectively demonstrate that this is the case and there are no satisfactory alternatives.

- Where Intellectual Property Rights are an issue, such as bespoke designs and/or software licensing. In such circumstances, it is essential that procedures are in place to ensure best value for money has been achieved.

The reasons for not following the standard MDC procurement processes should be documented on a case-by-case basis in the minutes of the Board of Directors.

5. Legal and Ethical Standards

This Procurement Policy sits within MDC's approach to Financial Governance and, as such, this Policy is informed by the Financial Governance Framework and its requirement for compliance with the following laws and regulations:

- The Companies Act 1931 - 2004
- The Audit Act 2006
- The Bribery Act 2013
- Employment Act 2006 (including Whistleblowing)
- Fair Trading Act 1996
- Data Protection Act 2018
- Income Tax legislation
- Customs & Excise legislation

MDC also aspires to be guided by aspects of BS 8903:2010 Principles and framework for procuring sustainably, ISO 20400:2017 Sustainable procurement, ISO 26000:2010 Social Responsibility, the IOM Government's Climate Change Action Plan and MDC's Sustainability Policy. This includes an impact and risk assessment. It is recognized that MDC will develop this over time.

MDC shall use best endeavours to ensure it is procuring products and services from an ethical and equality based value chain, free of forced labour practices, discriminatory actions or policies and/or where it is apparent that there is a significant ethical misalignment between MDC's values and the vendor/service provider's behaviours and values. This is in accordance with MDC's *Policy on Anti-slavery and Human Traffick*ing.

Good governance within the MDC procurement processes relies on the conduct of MDC's Board, Executive Team, other employees or other agents acting on behalf of MDC. All employees must play their part in ensuring that the processes are:

> **Transparent –** *clearly communicated, open to scrutiny and documented sufficiently to enable scrutiny.*
> **Impartial –** *unbiased with no preferential treatment to individuals or firms. Real or potential conflicts of interest must be identified/disclosed prior to any MDC employee participating in a procurement process in order to ensure fairness.*
> **Reasonable** – *made with sufficient diligence to ensure benefits and risks are appropriately managed.*
> **Accurate** – *made using sufficiently accurate information and accurately transacted and recorded.*
> **Accountable** -*clearly taken by someone with appropriate delegated authority in the Company who, if required, has to account for his/her/their decisions to someone with appropriate powers to take sanctions against them.*

6. Government Shared Services & the MDC Procurement Processes

MDC avails of shared services from the Isle of Man Government Attorney General's Chambers. This enables MDC to access procurement advice and legal representation in situations where MDC requires contact frameworks outside of those within the ACE suite of contracts. MDC's Managing Director is the main point of contact for the relationship with the AG's Chambers. The MDC Managing Director is empowered to use external legal advice, procured in accordance with this policy, where the AG Chambers is unable to assist in a sufficiently timely manner.

MDC also has a shared services arrangement with the Department for Enterprise. This arrangement enables MDC to access built environment advice, GDPR advice and marketing skills. However, DfE's role as a facilitator of inward commercial investment means that attention must be paid to inadvertent anti-competitive practice or disclosure of commercially sensitive information to MDC or to another party by a DfE Officer or from MDC to the Government Officer. To mitigate the risk, NDAs shall be used with DfE Officers seconded to MDC, which specifically address the risks attached to sharing MDC's confidential information or to revealing to MDC a third party's confidential information.

MDC is also able to call upon DoI's services and advice. As this relationship is more transactional in nature, it does not represent the same Privacy and Confidentiality risks as DfE.

7. Notification of Breaches of this Policy

Perceived or evidenced breaches of this Policy should be reported to MDC's Managing Director, in the first instance. However, if the breach is perceived to implicate the Managing Director, the Non-Executive Director with the lead for Financial Governance (who also acts as the Chair of the Audit and Risk Committee) should be notified immediately. Any breaches will be reported to the Board.

8. Measurement of the Success of this Policy and Processes

The measurement of the usefulness and overall efficacy of the Policy and its associated Processes is vital to ensuring sound Governance, for delivering "Best Value for Money" and "Sustainable Procurement" and for enabling MDC to fulfil its purpose and achieve its Vision. On a calendar quarterly basis, the Board will receive the below KPIs relating to compliance with this policy:

Key Performance Indicator	Method of Measurement	Target	Performance level reported
Adherence to Procurement rules for delegated authority for expenditure	Number of breaches of the rules by MDC personnel / Board	0 reported /identified	
Adherence to the legal and ethical standards by MDC or a vendor /service provider.	Number of breaches - internally identified or externally called-out with or without legal consequences Amount of money spent on legal services by MDC to prosecute or defend. Negative media/press	0 breaches £0 None	
Delivery of goods or services in line with agreed contract	Time, cost and quality/ risk against agreed contract fulfilment or service levels	100% in line with agreed contract/SLA	
Purchases / services for which an environmental /sustainable/social criterion is required	Percentage of quotes or tenders where the sustainability of the goods or services is a core component	100%	
Meeting Payment deadlines	Number of times MDC has been contacted by a	0%	

	supplier about late payment.		
Level of satisfaction with this Policy/Processes	Negative feedback or complaints received from internal & external stakeholders	0%	

9. Feedback on this Policy and/or its associated Processes

MDC is committed to policy and process improvement. It welcomes all feedback aimed at ensuring that this policy and associated processes are "fit-for-purpose". All Feedback should be directed at the Policy Owner. Feedback will also be actively sought from its users at the annual review of the policy and associated processes. The policy will be reviewed on at least an annual basis.

10. Policy Approval

POLICY APPROVAL	
NAME: MDC Board represented by	Signature:
DATE APPROVED:	
NEXT REVIEW	July 2023