

Part I

CONTRACT PROCEDURE RULES

Contract Procedure Rules for the Supply of Goods, Services and Works ("The Rules")

Contents: **Page Number**

CHAPTER ONE: INTRODUCTION

1. Compliance with these Rules, Council Policies, Relevant Legislation and Legal Requirements
 - 1.1 What these Rules apply to
 - 1.4 What Contracts must comply with
 - 1.5 Compliance with the Rules
 - 1.6 When these Rules do not apply

2. Where to get advice

CHAPTER TWO: PRE-PROCUREMENT

3. Pre-Tender Authorisations and Requirements
 - 3.2 Small and Medium Enterprises (SMEs) and Lots
 - 3.3 Preliminary market consultation

4. Establishing the Value of the Contract/Expenditure per Contract
 - 4.5 EU Thresholds

CHAPTER THREE: THE PROCUREMENT PROCESS

5. Best Value – Competitive Quotes and Tenders
 - 5.2 Framework Agreements
 - 5.3 Call-off Contracts
 - 5.4 Concession Contracts
 - 5.5 Advertising a contract and publication on the Contracts Finder
 - 5.6 Frontloading the procurement
 - 5.7 Prior Information Notices (PINs)
 - 5.8 Two stage Procurement Process

6. Pre-Qualification Requirements/Minimum Standards for Suppliers
 - 6.1 Grounds for Exclusion of potential tenderers
 - 6.2 Minimum standards for Suppliers

7. Invitations to Tender

8. Evaluation Criteria
 - 8.6 Abnormally low tenders

9. Terms and Conditions of Contracts
 - 9.2 Payment terms
 - 9.3 Liquidated and Ascertained Damages

9.4 Security and Guarantee

10. Receipt of Tenders (including under Framework Agreements) and Opening of Tenders
 - 10.1 Submission of Tenders
 - 10.5 Late Submissions, Errors, Discrepancies and Alterations
11. Evaluation of Tenders
12. No Material Changes to Contract Post-Tender

CHAPTER FOUR: CONTRACT AWARD

13. Authorisation for the Award of Contracts
 - 13.4 Energy Contracts
 - 13.7 Contracts Exceeding the written estimate
14. Scrutiny and Standstill Period
 - 14.1 Scrutiny
 - 14.2 Standstill Period and Notification Letter
 - 14.3 Execution of Contracts
15. Commencement of Contracts

CHAPTER FIVE: POST-AWARD

16. Contract and Risk Management
 - 16.1 Risk Register
 - 16.2 Records and Reports
 - 16.3 Reporting other information required by the Cabinet Office
17. Extensions and Variations of Contracts and Framework Agreements

CHAPTER SIX: GENERAL

18. Exemptions from these Rules
 - 18.6 Contracts to which the Rules on tendering do not apply
 - 18.7 Reserved Contracts
19. Non-compliance with these Rules

Contract Procedure Rules for the Supply of Goods, Services and Works

CHAPTER ONE: INTRODUCTION

1. Compliance with these Rules, Council Policies, Relevant Legislation and Legal Requirements

1.1 What these Rules apply to

These Rules apply to all contracts for the provision of goods, services and works to the Council unless otherwise specified in these Rules¹. The Rules also cover the procurement of Framework Agreements (see **Rule 5.2**) and contracts entered into under them.

- 1.2 These Rules also apply to a procurement process for a service which has been triggered by a Community Right to Challenge under the Localism Act 2011 which enables charities, voluntary groups, parish councils and two or more employees of the Council to express an interest in providing or assisting with the provision of a service on behalf of the Council.

The Council has published a statement on its website containing detailed procedures, including the information required in an expression of interest for those wishing to challenge, the timeframes for submission of such expressions of interest and how the expression of interest will be considered. These procedures must be followed.

- 1.3 An extension or variation to a contract is subject to these Rules where relevant (see Rule 17).

1.4 What contracts must comply with

- (i) EU law in particular the Public Contracts Regulations 2015 (“the Regulations”);
- (ii) English law (including the Council’s statutory duties and powers and the Council’s fiduciary duty to safeguard public funds);
- (iii) these Rules and the Council’s Financial Procedure Rules;

¹ See in particular Rules 1.5 and 1.6

- (iv) the Council's Procurement Code of Practice ("the Procurement Code");
- (v) any relevant Council policies; and
- (vi) any legal requirement stipulated by the Head of Law.

1.4.1 All contracts must comply with all of the following principles of EU law:

- (i) free movement of goods and services;
- (ii) non-discrimination;
- (iii) openness/transparency;
- (iv) equal treatment for all; and
- (v) proportionality.

1.4.2 Where a contract requires the tender procedure to be carried out under European Union public procurement legislation (an "EU Tender"), additional rules applying to such tender procedures must be complied with and are set out within these Rules. The relevant procurement team (see **Rule 2**) and/or Legal Services should be consulted for advice.

1.5 **Compliance with the Rules**

These Rules are mandatory and must be complied with by all officers of the Council authorised to undertake a procurement² ("Authorised Officers") and all other persons who are authorised to carry out procurement and contracting on behalf of the Council (such as the Council's agents for property services) ("Agents"). It must be a term of all contracts between the Council and its Agents that the Agents comply with these Rules.

1.6 **When these Rules do not apply**

These Rules do not apply to:

² **Authorised Officers** means those officers of the Council identified as such by Executive Directors in their Schemes of Delegation and approved by the s151 Officer to undertake procurement and contracting on behalf of the Council (including authorisation of expenditure, preparing and/or negotiating contract documentation, awarding and signing contracts and/or managing contracts) and any Agents as defined in Rule 1.8 with such authority;

- (i) contracts which are not for the provision of goods, services or works, except that they may in certain circumstances apply to the award of grants or contracts relating to land. Legal advice will be required in relation to such awards or contracts. Note also that these Rules do not apply to contracts of employment but they do apply to consultancy contracts which are contracts for services.
 - (ii) contracts entered into by schools with delegated budgets should instead be awarded in accordance with the School's Financial Handbook.
 - (iii) low value purchases which may be made by procurement cards provided that they are made in accordance with any operational instructions and financial limits issued by the s151 Officer.
- 1.7 In specific circumstances and for certain contracts some of these Rules do not apply details are set out in Rules 18 and 19 and Authorised Officers should refer to these Rules.
- 1.8 In exceptional circumstances, exemptions to these Rules may be granted. Details are set out in Rule 18 and Authorised Officer's should refer to this Rule.

2. Where to get advice

- 2.1 Officers requiring advice on procurement practice and EU requirements should contact their Relevant Procurement Team, being:
- (i) the Corporate Procurement Team; or
 - (ii) the Directorate Commissioning Team; or
 - (iii) in relation to contracts for Social Care and Health, the Joint Commissioning Team.
- 2.2 In all cases officers must seek legal advice from Legal Services in relation to the drafting of the legal terms and conditions of contracts.

CHAPTER TWO: PRE-PROCUREMENT

3. Pre-Tender Authorisations and Requirements and Permissions

- 3.1 Authorised Officers must ensure, before entering into any process which will or may result in the incurring of any expenditure for the supply of goods, services or works be it capital or revenue, that:

- (i) they produce a robust business case which must show that the expenditure required has been fully considered and approved by the Authorised Officer and/or the Executive Director and sufficient money has been allocated in the relevant budget. In this regard it will be necessary to check that adequate financial provision is included in the Council's approved revenue budget or capital programme (as appropriate) and an audit trail is maintained to support the business justification and approval process;
- (ii) an estimate of the contract value is prepared and recorded in writing. This is to be calculated on the basis of the total amount payable to the contractor, supplier, or service provider over the whole contract period. All such estimates shall be kept in a central register by the relevant Executive Director;
- (iii) where it is a key decision, the requirements of Part II, Article 16, of the Constitution have been complied with³;
- (iv) written authorisation has been obtained in accordance with the following two tables.

Table 1 Goods and Services

Cumulative expenditure per contract	Authorisation	Category
£500,000 and above	Mayor and Cabinet (Contracts) Committee	A
Up to but not exceeding £500,000	Executive Director in accordance with his or her delegated financial limits under the Mayoral Scheme of Delegation set out at page XX of the Constitution	B

Table 2 Works

Cumulative expenditure per contract	Authorisation	Category
£1,000,001 and above	Mayor and Cabinet (Contracts) Committee	A

³ A decision taker may only take a key decision in accordance with the requirements of the Article 16 (Principles of Decision Making including key decisions on page XX and Access to Information Rules in the Constitution at paragraphs 17 – 20 at pages xxx - . This section sets out further details of what a Key Decision is and what Procedure is required

Up to but not exceeding £1,000,000	Executive Director in accordance with their delegated financial limits under the Mayoral Scheme of Delegation set out at XX	B
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(v) they have considered whether any consultation requirements apply, including whether the Public Services (Social Value) Act 2012 applies to any services. This Act requires the Council when procuring services above the EU threshold to consider:

(a) how what is to be procured might improve the economic, social and environmental wellbeing of the relevant area; and

(b) in conducting the procurement how it might act with a view to securing that improvement,

provided that those matters to be considered must only be matters that are relevant to the services to be procured and it must be proportionate in all the circumstances to take those matters into account.

3.2 **Small and Medium Enterprises (SMEs) and Lots**

In order to ensure access to the market by SMEs, Councils are encouraged by the Regulations to consider subdividing contracts into smaller lower value packages (“Lots”). Reasons for not dividing into lots must be set out in the Procurement Documents and the reasons reported in the reports set out at Rule 16.2.

3.3 **Preliminary market consultation**

Before commencing a procurement procedure, Authorised Officers may conduct a market consultation with a view to preparing the procurement and informing economic operators of the Council’s procurement plans and requirements. For this purpose:

- (i) they can seek or accept advice from independent authorities or market participants;
- (ii) use such advice in the planning and conduct of the procurement provided that it does not distort competition or breach the principles of non-discrimination and transparency or cause a conflict of interest.

4. **Establishing the Value of the Contract/Expenditure per Contract**

- 4.1 The value of a contract (that is, the expenditure per contract) means the estimated amount payable by the Council to the supplier for the goods, services or works (excluding VAT) over the entire length of the contract including, if the contract confers an option to extend, the amount payable in the exercise of that option. For example, a three-year contract with an option to extend for two years under which £200,000 is payable per annum has a value of £1,000,000.
- 4.2 The value of a Framework Agreement means the estimated amount payable by the users of the framework for the goods, services or works (excluding VAT) under Call-off Contracts entered into over the entire possible duration of the framework.
- 4.3 Contracts must not be split into smaller contracts in order to avoid any of these Rules.
- 4.4 For contracts of an indefinite length the value must be established on the basis that the contract will last for a period of 48 months.
- 4.5 **EU Thresholds**
- 4.5.1 The requirements of the Regulations apply to contracts the total value of which meet or exceed the relevant threshold set out by the EU Directive.
- 4.5.2 These thresholds are;
- (i) £ 172,514 for goods and services;
 - (ii) £4,322,012 for works
 - (iii) £ 625,050 for Light Touch Regime contracts (which covers social, health and community services).
- After 31st December 2015, these value are likely to change and officers must comply with the relevant EU Directive enforced from time to time, seeking advice from Legal Services or the Relevant Procurement Team on the threshold which applies.
- 4.5.3 The total value of a contract may include all contracts to meet a single requirement for goods or services.

CHAPTER THREE: THE PROCUREMENT PROCESS

5. Best Value – Competitive Quotes and Tenders

Works, Goods and Services

5.1 In letting contracts Authorised Officers must take practicable steps to secure value for money through a combination of cost, quality and competition. Competitive tenders or quotations must be sought as shown in the Table 3 below. For convenience, the contracts are divided into categories according to value.

Table 3

Estimated cumulative expenditure per contract	Competition	Category
Building, construction and engineering works contracts ("Works Contracts") above the EU threshold	<p>By an invitation to tender by public advertisement (OJEU notice) or subject to the approval of the Executive Director for Resources and Regeneration upon the advice of the Head of Law:</p> <p>a) by the use of a public consortium Framework Agreement (see Rule 5.2); or</p> <p>b) by a dynamic purchasing system (an electronic purchasing system open to new bidders throughout the term),</p> <p>both of which must have been established by the Council or a public sector body or bodies, be competitively tendered and be EU compliant</p>	A
Building, construction and engineering works contracts ("Works Contracts") below the EU threshold	<p>By an invitation to tender by public advertisement or subject to the approval of the Executive Director for Resources and Regeneration upon the advice of the Head of Law:</p> <p>a) by the use of a public consortium Framework Agreement; or</p> <p>b) by a dynamic purchasing system (an electronic purchasing system open to new bidders throughout the term);</p> <p>both of which must have been established by a public sector body or bodies, been competitively tendered and be EU compliant; or</p>	B

	<p>c) by selecting a minimum of 5 contractors, where the Council does not maintain an appropriate approved list; or</p> <p>subject to the approval of the relevant Executive Director by selecting a minimum of 5 contractors from an approved list.</p>	
<p>Contracts for Goods and Services above the EU threshold</p>	<p>By an invitation to tender by public advertisement (OJEU Notice) or subject to the approval of the Executive Director for Resources and Regeneration upon the advice of the Head of Law:</p> <p>b) by the use of a public consortium Framework Agreement; or</p> <p>c) by a dynamic purchasing system (an electronic purchasing system open to new bidders throughout the term),</p> <p>both of which must have been established by the Council or a public sector body or bodies, have been competitively tendered and be EU compliant.</p>	A/B
<p>Contracts for Goods and Services below the EU threshold</p>	<p>By an invitation to tender by public advertisement or subject to the approval of the Executive Director for Resources and Regeneration upon the advice of the Head of Law:</p> <p>a) by the use of a public consortium Framework Agreement; or</p> <p>b) by a dynamic purchasing system (an electronic purchasing system open to new bidders throughout the term); or</p> <p>both of which must have been established by a public sector body or bodies, have been competitively tendered and are EU compliant; or</p> <p>c) by selecting a minimum of 5 contractors, where the Council does not maintain an appropriate approved list; or</p> <p>subject to the approval of the relevant</p>	B

	Executive Director by selecting a minimum of 5 contractors from an approved list.	
Contracts for services procured under the Light Touch Regime above the EU threshold	By an invitation to tender by public advertisement (OJEU notice); and <ul style="list-style-type: none"> - following the process described in the contract notice (open, restricted etc); - setting time limits which are reasonable and proportionate; - complying with the EU principles of transparency and equal treatment; - publishing a contract award notice – such notices may be published on a quarterly basis, within 30 days of the end of each quarter, setting out details of contracts awarded under this procedure in the relevant quarter. 	A
All contracts between £25,001 – £50,000	Four written quotations for the goods, services or works required by the Council must be obtained.	C
All contracts between £10,000 – £25,000	Three written quotations for the goods, services or works required by the Council must be obtained.	C
All contracts under £10,000	Two written quotations for the goods, services or works required by the Council must be obtained.	C

5.2 Framework Agreements

A Framework Agreement is a contract between one or more contracting authorities with a single contractor or several contractors which establishes the terms and conditions (in particular as to price) under which orders/individual contracts can be made during the length of the Framework Agreement. The individual orders made/contracts entered into under Framework Agreements are known as Call-off Contracts and Rule 5.3 sets out the application of these Rules to Call-off Contracts.

5.3 Call-off Contracts

Call-off Contracts must be entered into in accordance with the terms of the relevant Framework Agreement and a mini-competition (the tender process required by the Framework Agreement) must be held unless otherwise permissible in law upon which legal advice must be sought. Where a Framework Agreement has been set up following an EU Tender, there must be full compliance with EU law when awarding Call-off Contracts under it.

5.4 Concession Contracts

5.4.1 In the case of service contracts where part or all of the remuneration received by the contractor consists of the right to exploit the services in question, these are excluded from the application of the EU Directive requiring them to be advertised in Europe. (For example, a waste disposal contract allowing the contractor to recycle waste products and keep the proceeds to recover its costs, possibly paying the Council for the right to do so.) They are still subject to competition and the relevant Category for determining the procurement route under these Contract Procedure Rules will be calculated by applying the estimated consideration which would have been given if the entire cost of the services had been paid for by the Council.

5.4.2 Where the contractor is willing to pay the Council for exploiting the services, then a competitive process must still be undertaken to determine which offer represents best value taking into account the obligations which will be placed upon the contractor.

5.4.3 In the case of a works concession contract, this will be subject to the EU Directive where the estimated value exceeds the relevant EU threshold, applying the estimated consideration which would have been given if the entire cost of the works had been paid for by the Council. If the value is below the EU threshold, it must still be subject to a competitive process in accordance with these Rules.

5.5 Advertising a contract and publication on the Contracts Finder

If advertising is required, it must be advertised on the Contracts Finder which is the web-based portal provided by or on behalf of the Cabinet Office and the London Tenders Portal in accordance with advice from the Relevant Procurement Team.

5.6 Frontloading the procurement

Authorised Officers must ensure that, by electronic means, full direct and unrestricted access, free of charge is provided to all the procurement documents from the date of the publication in the Official Journal of the European Union (OJEU) of the notice advertising the

contract. The procurement documents include:

- (i) the Invitation to Tender;
- (ii) the specification/design;
- (iii) the terms and conditions of contract;
- (iv) pricing documents

together referred to as "Procurement Documents".

5.7 Prior Information Notices (PINs)

Authorised Officers may make known the Council's intentions to advertise a contract through the publication of a Prior Information Notice in the OJEU and can use it as an invitation to tender provided:

- (i) it refers specifically to the goods/services/works which are the subject matter of the contract;
- (ii) it indicates which EU procedure will be used and if it is a two stage procurement;
- (iii) makes it clear that the contract will be awarded without further publication; and
- (iv) it is sent to OJEU between 35 days and 12 months prior to the date of the invitation to tender.

5.8 Two Stage Procurement Process

5.8.1 A two stage procurement process involves the invitation of expressions of interest from potential tenderers at stage 1 and then subsequently inviting tenders from those shortlisted at stage 2. This is only permitted when the value of the contract is above the EU threshold. Where a two stage process is permissible and used, then authority to agree the shortlist has to be obtained from the relevant Executive Director upon the advice of the Head of Law.

5.8.2 The decision to accept or reject the shortlist can only be taken where the application for such a shortlist is submitted by a written report containing service, legal and financial implications and fully documenting the circumstances and explaining the process, including the criteria for choosing the shortlist.

6 Pre-qualification Requirements

6.1 Grounds for Exclusion of potential tenderers

The Regulations provide for:

- (i) mandatory grounds which are, in the main, for serious offences

such as corruption, bribery, HMRC offences, fraud or theft, tax offences or money laundering. The exclusion lasts for 5 years; and

- (ii) Discretionary grounds which include non-compliance with EU environmental or social and labour law, insolvency, grave professional conduct, distorting competition or conflicts of interest and importantly poor prior performance. In relation to the latter ground, evidence of a serious breach such as termination or damages awarded against a contractor (but not liquidated and ascertained damages) has to be proven.

6.2 Minimum Standards for Tenderers

6.2.1 Authorised Officers are responsible for ensuring that all persons awarded Contracts for the supply of goods, services or works to the Council have met the Council's minimum standards of suitability, capability, legal status and financial standing.

6.2.2 Statutory guidance has been issued by the Minister for the Cabinet Office in relation to the processes for selection of tenderers which should be followed unless there is good reason for departing from it. To this end a model pre-qualification questionnaire has been issued by the Crown Commercial Services which should be used to determine these requirements and only derogated from for project specific reasons, e.g. special technical requirements or professional ability are required, which are relevant and proportionate. A report setting out the reason for the deviation has to be sent to the Cabinet Office.

6.2.3 Where the contract is not subject to an EU tender, Authorised Officers must not carry out a separate pre-qualification stage. Questions can be asked of candidates to check suitability, capability, legal status and financial standing but such questions must be relevant to the subject matter of the contract and proportionate.

7. Invitations to Tender

7.1 An invitation to tender/request for quotation must be sent out for all procurement processes listed in Table 3.

All invitations to tender must:

- (i) clearly specify the goods, services or works that are required (subject to appropriate adjustment where the negotiated, competitive procedure with negotiation or competitive dialogue procedure is being used);
- (ii) list the criteria on which the tender(s) will be evaluated (see Rule 8) showing the weighting of the various evaluation criteria unless otherwise advised by the Relevant Procurement Team and Legal Services;

- (iii) include a requirement for tenderers to declare that the tender content, price and all other figures or particulars concerning the tender have not been disclosed by the tenderer to any other party (see guidance on pro formas for use as set out in the *Procurement Handbook*);
- (iv) include a requirement for tenderers to complete fully and sign all tender documents including certificates confirming that no canvassing or collusion has taken place; and
- (v) state that the contract will be on the Council's conditions of contract which are to be enclosed with the invitation to tender.

8. Evaluation criteria

8.1 Evaluation should be based upon the most economically advantageous tender.

8.2 The evaluation criteria must be set out in the invitation to tender documents including scoring methodology and any weighting.

8.3 The Council will apply the following general principles in selecting candidates/tenderers for an award of contract:

- (i) suitability to undertake the activity. In relation to this criterion, such requirements must be related and proportionate to the subject matter of the contract;
- (ii) economic and financial standing. In assessing this, the minimum yearly turnover that candidates/ tenderers are required to have cannot exceed twice the estimated contract value, except in duly justified cases, such as by reference to special risks attached to the nature of the goods/services or works. When there is a requirement for this limit to be exceeded, this has to be reported under the reporting requirements at Rule 16.2;

Ratios between assets and liabilities may be taken into consideration where the method for such assessment is set out in the evaluation criteria and where such method is transparent and non-discriminatory;

- (iii) technical and professional ability. Authorised Officers may impose requirements that candidates possess the necessary human and technical resources and experience to perform the contract.

A requirement that candidates/tenderers have a sufficient level of experience demonstrated by suitable references from contracts performed in the past including for the Council can be imposed.

8.4 It is now possible to take into consideration life-cycle costing to include warranties and post completion maintenance, energy consumption or recycling costs. The parameters should be set out in the evaluation criteria contained within the Invitation to Tender.

8.5 Environmental and social considerations can be taken into account provided that these are relevant to the subject matter of the contract.

8.5.1 In relation to environmental criteria, the following are examples of the matters which can be taken into account:

- (i) the cost of reduction in greenhouse gases;
- (ii) other climate change mitigation costs;
- (iii) or the impact of the activity under the contract on the environment.

8.5.2 In relation to social considerations, the following are examples of the matters which can be taken into account:

- (i) mitigation of unemployment;
- (ii) trainee opportunities for young people including apprenticeships;
- (iii) opportunities for disadvantaged groups.

8.5.3 Further details of environmental and social considerations which can be taken into account are set out in the Procurement Code.

8.6 **Abnormally low tenders**

Authorised Officers must require tenderers to explain the price or costs proposed in the tender where tenders appear to be abnormally low in relation to works, goods or services. The tender can only be rejected where the evidence supplied by the tenderer does not satisfactorily account for the low level of the price or costs. In relation to tenders above the EU threshold, taking into account the criteria set out in the Regulations and upon the advice.

9. **Terms and Conditions of Contracts**

9.1 Terms and conditions for all contracts for goods, services and works must be in accordance with terms and conditions prepared or approved by the Head of Law unless otherwise agreed by the Head of Law.

9.2 **Payment terms**

All written contracts (whatever their value) shall require that:

(i) any payment due from the Council is made no later than 30 days from the date on which the relevant invoice is regarded as valid and undisputed;

(ii) any invoices submitted by the contractor are considered and verified by the Council in a timely fashion and undue delay in doing so is not to be regarded as sufficient justification for failing to treat an invoice as valid and undisputed;

(iii) any subcontract imposes obligations similar to those which (i) and (ii) require and an obligation that the subcontractor is required to impose such obligations in any further subcontract.

9.3 Liquidated and Ascertained Damages

All service and works contracts with the exception of those contracts which have a value below £50,000, shall provide for liquidated damages, save where the Executive Director for Resources and Regeneration upon the advice of the Head of Law determines that it is not appropriate.

9.4 Security and Guarantee

9.4.1 The Council shall take such security and/or guarantee for the due performance of every contract as is, in the opinion of the Executive Director for Resources and Regeneration upon the advice of the Head of Law, sufficient in all the circumstances.

9.4.2 A performance guarantee bond and/or parent company guarantee may be required as a condition for the award for contract having taken due account of the risks, if any, to the Council in entering into a contract for the carrying out of works or provision of services.

9.4.3 In relation to a contract with a value above £50,000 the Executive Director for Resources and Regeneration upon the advice of the Head of Law shall consider whether there is a need to take security against the contractor's performance and the contractor's potential liabilities taking account of the risks associated with the subject matter of the contract. Where, after an assessment and upon the advice of the Head of Law he or she judges the risks of the procurement low, a bond and/or guarantee need not be taken.

9.4.4 All tender documentation for contracts over £50,000 shall make reference to the potential for taking security in the form of a guarantee bond and/or parent company guarantee.

10 Receipt and opening of tenders

10.1 **Submission of Tenders**

In circumstances where the contract specification can be established with precision and with the agreement of the Executive Director for Resources and Regeneration, the Council may conduct an electronic auction prior to the award of the contract in order to achieve the most economic price.

- 10.2 In circumstances approved by the Executive Director for Resources and Regeneration the Council may use electronic requests for quotations and tenders, and dynamic purchasing systems to determine the most economically advantageous contractor for the works, goods or services required as any need is established.
- 10.3 Within the contract notice the Council will specify whether the tender is to be submitted in hard copy and/or via electronic means. Irrespective of the means of tender submission all notices or invitations to tender shall clearly state the closing date and time for their receipt.
- 10.4 The process for the submission and opening of tenders is set out in Table 4 below.

Table4

Category	Electronic		Hard Copy	
	Submission	Opening	Submission	Opening
A	Submitted via the London Tenders portal. All Tenders are held securely on the portal unopened until the time appointed for their opening.	Opened at the same time after the submission deadline by a chosen verifier from the Councils governance team. Where an electronic auction is used, a report must be submitted to Mayor and Cabinet (Contacts) .	Returned in a plain sleeved envelope/ package, with no reference to the tenderer, marked with the word 'Tender', Subject and Date to the Chief Executive . Tenders shall remain in custody of the recipient until opening.	Opened at the same time after submission deadline by the Chief Executive or an officer designated by him/ her in writing in the presence of an officer approved by the Executive Director for Resources and Regeneration or Head of Law.
B	Submitted via the London Tenders portal. All Tenders are held securely on the portal unopened until the time appointed for their opening.	Opened at the same time after the submission deadline by a chosen verifier from the Councils governance team. Where an electronic auction is used, a report must be submitted to Executive Director .	Returned in a plain sleeved envelope/ package, with no reference to the tenderer, marked with the word 'Tender', Subject and Date to the Executive Director . Tenders shall remain in custody of the recipient until opening.	Opened at the same time after submission deadline by the Executive Director or an officer designated by him/ her in writing in the presence of an officer approved by the Executive Director for RRE or Head of Law.
C	Submitted via the London Tenders portal. All Tenders are held securely on the portal unopened until the time appointed for their opening.	Opened at the same time after the submission deadline by a chosen verifier from the Councils governance team.	Returned in a plain sleeved envelope/ package, with no reference to the tenderer, marked with the word 'Tender', Subject and Date to the Head of Service . Tenders shall remain in custody of the recipient until opening.	Quotations shall be opened at the same time after the submission deadline in the presence of a Head of Service , or an officer designated by him/her in writing and an officer approved by the relevant Executive Director.

10.5 Late Submissions, Errors, Discrepancies and Alterations

- 10.5.1 A tender or quotation received after the time and date specified in the invitation shall not be accepted or considered unless exceptionally at the time of receipt, other tenders have not been opened and the relevant Executive Director upon the advice of the Head of Law authorises in writing that it can be accepted.
- 10.5.2 Where there are errors or discrepancies in a tender, the tenderer is to be given details of these and afforded an opportunity of confirming or withdrawing the tender.
- 10.5.3 No alteration shall be made to any tender after the time fixed for the submission of that tender, save in circumstances approved as appropriate by the Executive Director for Resources and Regeneration and the Head of Law.
- 10.5.4 Where the Council uses an electronic auction as a procurement procedure enabling suppliers/providers to adjust their tender price in the light of information from the tender prices submitted by competing suppliers/providers, then alterations will be accepted as permitted by the auction process.

11. Evaluation of Tenders

- 11.1 Authorised Officers must ensure that appropriate directorate or other Council technical and financial officers evaluate all tenders, including those in mini-competitions under Framework Agreements, in accordance with the evaluation criteria specified in the invitation to tender.
- 11.2 The arithmetic in compliant tenders, including those in mini-competitions under Framework Agreements, must be checked. If arithmetical or clerical errors are found they should be notified to the tenderer, which should be requested to confirm the correct figures/wording or withdraw its tender.
- 11.3 Authorised Officers must compare submitted tender prices with any pre-tender estimates. All differentials must be considered. For tender prices exceeding the pre-tender estimate the at Rule 13.7 applies.

12. No Material Changes to Contract Post-Tender

No material changes may be made to the proposed arrangements and terms and conditions post tender. See Rule 17 for requirements when the contract has been entered into.

CHAPTER FOUR: CONTRACT AWARD

13. Authorisation for the Award of Contracts

- 13.1 Contracts may only be awarded by the Council where there has been full compliance with these Rules and the Financial Procedure Rules.
- 13.2 A written report must be drafted in all circumstances setting out the procurement process carried out and the reasons for rejecting or accepting each tender received.
- 13.3 Contracts may be recommended for acceptance and authorised as follows:

Table 5 Goods and Services

Cumulative value of contract	Acceptance by	Category
£500,000 and above (including the use of Rule 18)	Mayor and Cabinet (Contracts) Committee	A
Up to but not exceeding £500,000	Executive Director in accordance with his or her delegated financial limits under the Mayoral Scheme of Delegation set out at XX	B

Table 6 Works

Cumulative value of contract	Acceptance by	Category
£1,000,000 and above (including the use of Rule 18)	Mayor and Cabinet (Contracts) Committee	A
Up to but not exceeding £1,000,000	Executive Director in accordance with their delegated financial limits under the Mayoral Scheme of Delegation set out at XX	B

13.4 Energy Contracts

The privatisation of the energy market has created a volatility in prices which requires an exception to be made to the Contract Procedure Rules for the award of energy and water contracts. The Executive Director for Resources and Regeneration has delegated authority to award energy or water contracts regardless of value subject to the

conditions set out at 13.5 below.

13.5 At the completion of the tender opening, officers shall undertake proper checks and analysis and prepare a report to the Executive Director of Resources and Regeneration on the outcome with a recommendation for the award of contract. The delegated authority of the Executive Director shall not apply and approval must be obtained in accordance with the Mayoral Scheme of Delegation if :

- the additional cost of green electricity over brown exceeds 5%
- the overall cost of the contract exceeds the annual value of the previous contract by 50%
- the contract length exceeds 4 years

13.6 An information report shall be presented to Mayor & Cabinet (Contracts) once each year. The report will summarise the contracts awarded during the previous 12 months and the financial implications for budget holders. The parameters for the delegation will also be reviewed at the same time.

13.7 **Contracts Exceeding the Written Estimate**

Any contract which exceeds the original written estimate of the contract value by more than 10% may only be awarded by an officer to whom the award has been delegated on the approval of the Executive Director for Resources and Regeneration. If the tender exceeds the written estimate of the value of the contract by £100,000 (£250,000 in the case of Works) or more, it shall be referred for approval in accordance with the Mayoral scheme of delegation in relation to executive functions or to the appropriate committee for non-executive functions. In both cases, the decision shall be taken having regard to the advice of the Executive Director for Resources and Regeneration.

13.8 **Where the Exemption to the Contract Procedure Rules (Rule 18)** has been followed and the cumulative value of the contract is below £1,000,000 for Works Contracts and below £500,000 for Goods and Services Contracts, acceptance can only be authorised by the Executive Director for Resources and Regeneration upon the advice of the Head of Law.

14. **Scrutiny and Standstill Period**

14.1 **Scrutiny**

If the award of a contract by the Executive is a Key Decision, for example, where the value of the contract exceeds £200,000, subject to the urgency provisions in the Constitution, the decision must be

included in the Key Decision Plan **before** the decision to award is made. A Key Decision will be subject to scrutiny by the Business Panel of the Council. It is therefore necessary to observe all scrutiny timescales between the award of contract and the execution of the contract.

14.2 Standstill Period and Notification Letter

Notification Letter

14.2.1 For EU tenders, once acceptance has been approved in accordance with Table 5 or Table 6, successful and unsuccessful tenderers (including those that have expressed an interest in the contract, unless they have already been rejected and informed of that rejection and the reasons for it) must be notified of the award of the contract for which they have submitted a tender (“Notification Letter”).

14.2.2 The Notification Letter must include the relative advantages and characteristics of the successful tenderer as well as the name of the successful tenderer.

Standstill Period

14.2.3 There is then a standstill period that will last for 15 days or can be reduced to 10 days where the Notification Letter is issued via electronic means. The standstill period is to enable unsuccessful bidders to challenge the award of a contract. Therefore the Council must not enter into the contract before the end of the standstill period. Once the standstill period has expired without a court challenge the Authorised Officer shall inform the successful tenderer.

14.3 Execution of Contract

All contracts shall be in writing and shall be signed on behalf of the Council or executed as follows:

(i) Table 7 Goods, Services and Works

Cumulative value of contract	Executed by
Above £200,000	sealed by the Head of Law on behalf of the Council
Below £200,000 but above £100,000	Signed by the Executive Director and at least one other officer
Below £100,000	Signed by the Executive Director

(ii) **Table 8 Property Contracts**

In relation to contracts for the acquisition, sale or grant of any interest in land (“Property Contracts”)

Cumulative value of contract	Executed by
Below £200,000	Signed by <ul style="list-style-type: none">- Head of Law; or- Executive Director; or- Director of Regeneration and Asset Management
Above £200,000 Transaction is to be effected by a separate transfer, lease or other form of deed	Signed by <ul style="list-style-type: none">- Head of Law; or- Executive Director (and at least one other officer duly authorised by them).

15. Commencement of Contracts

- 15.1 No supply of goods, services or works must commence until all contract documentation is duly completed (see **Rule 14**), except in cases of emergency falling under Rule 18.3(b), in which case the contract documentation must be completed at the earliest opportunity.
- 15.2 Where there has been a tender for works (but not goods or services) and the contract price only holds good for a limited period or there is some other circumstance beyond the Council’s control delaying completion of formal contract documentation. A contract may be formed by letter which records all the provisions of the contract and is approved and signed by the Executive Director for Resources and Regeneration.

Formal contract documentation must be completed at the earliest opportunity and signed or sealed as appropriate depending on its value. This procedure must not be used if there are any outstanding or unresolved contract provisions unless this is agreed by the Head of Law.

CHAPTER FIVE: POST-AWARD

16. Contract and Risk Management

Risk Register

- 16.1 The Contract Manager must maintain a risk register during the contract period highlighting the risk and mitigation strategy for the contract and,

for identified risks, must ensure contingency or risk mitigation measures are in place

16.2 Records and Reports

16.2.1 Copies of all concluded contracts must be retained for 6 years or if they are under seal for 12 years from the date of the expiry date of the contract.

16.2.2 Authorised Officers must inform the Corporate Procurement Team and their relevant Directorate Contract Leads promptly of all contracts (including Call-off Contracts) awarded (and preferably within 5 working days of the date of the award) so that the:

(i) details of the contract can be added to the Council's contracts register on the London Contracts Register;

(ii) the Corporate Procurement or Relevant Procurement Team can ensure details of the contract award has been published on Contracts Finder; and

(iii) the Corporate Procurement Team has the necessary information to provide, if so required, a report to the European Commission.

16.2.3 For EU tenders, a legally compliant award notice must be published no later than 30 days from the award of the contract or the conclusion of the Framework Agreement.

16.3 Reporting other information required by the Cabinet Office

The Regulations require contracting authorities to send to the Cabinet Office such information as it requires from time to time in respect of procurements to include decisions not to subdivide contracts into Lots, how conflicts of interest are handled, non application of the Regulations in certain circumstances, the use of the negotiated procedure under the Regulations, failure to pay contractors invoices on time. It is therefore a strict requirement that Authorised Officers keep a record of all procurement decisions throughout the whole of the procurement.

17 Extensions and Variations of Contracts and framework agreements

There are six permitted changes to contracts post award as follows:

17.1 Changes which were clearly provided for in the original procurement

and contract documents – e.g. a price revision clause which may take account of changes in inflation.

- The scope and nature of the possible changes must be clear as must the conditions under which the review clauses can be used.
- The changes must not alter the overall nature of the contract.

17.2 Necessary changes to purchase new works, services or supplies from the contractor and not included in the original procurement – e.g. purchasing a new piece of software from the contracted IT provider which is required to interface with an existing system from the same IT provider.

- This can only be relied on where a change of contractor would cause significant inconvenience (or substantial duplication of cost) or, a change of contractor cannot be made for economic or technical reasons.
- In addition, the change must not result in an increase in price of more than 50%. This price limit applies to each separate change however, it must not be used as a means of circumventing the procurement rules.

17.3 Changes to deal with unforeseen circumstances – e.g. the discovery of asbestos means it is necessary to move a service unexpectedly to a different location and pay the contractor to facilitate the move.

Changes must not alter the overall nature of the contract or result in an increase in price of more than 50% of the value of the original contract. Again, this price limit applies to each separate modification.

17.4 Changes which deal with replacing the contractor

A new contractor may replace the original contractor where:

- the change is envisaged in the contract or procurement documents or
- the replacement is as a result of "corporate restructuring" provided the new contractor meets the pre-qualification criteria; and the change in contractor does not result in other substantial amendments to the contract.

17.5 Changes which are "not substantial"

Changes are not substantial if:

- the contract is not materially different in character from the one concluded; or
- they have not altered the outcome of the procurement/ the selected participants; or
- the economic balance of the contract has not shifted in favour of the contractor; or
- the scope of the contract has not been extended 'considerably'; or
- a new contractor has been replaced the original contractor as above.

17.6 Changes with a low value –

The value attributable to the change must:

- fall below the relevant procurement threshold; and
- be less than 10% of the initial contract value for supplies and services contracts or less than 15% of the initial contract value for a works contract

17.6.1 The change must not alter the overall nature of the contract.

17.6.2 It is possible to make more than one change with a low value, however the cumulative value of the changes must not exceed the relevant procurement threshold.

CHAPTER SIX: GENERAL

18. Exemption to the Contract Procedure Rules

18.1 An exemption to the Contract Procedure Rules can only be authorised in exceptional or unforeseen circumstances.

18.2 Any exemption must be approved by the Executive Director for Resources and Regeneration upon the advice of the Head of Law.

18.3 To authorise the exemption, the Executive Director for Resources and Regeneration upon the advice of the Head of Law must be satisfied after considering a written report by the appropriate officer that the exception is justified because:

- a) the nature of the market for the works to be carried out or the goods and/or services to be provided has been investigated and is demonstrated to be such that a departure from the requirements of the Contract Procedure Rules is justifiable; or
- b) the contract is for works, goods or services that are required in circumstances of extreme urgency that could not reasonably have been foreseen; or

- c) there are other circumstances which are genuinely exceptional;
and in all cases:

- it is in the Council's overall interest;
- and the circumstances of the proposed contract are covered by legislative exceptions (whether under EU or UK law).

18.4 An exemption to the Contract Procedure Rules can only be authorised where the application for such exemption is submitted by a written report fully documenting the circumstances and explaining why the exemption is required.

18.5 Where an exemption to the Contract Procedure Rules is sought for a second time in relation to the same contract, then regardless of the value of the contract, that exemption must be considered formally by the appropriate member decision forum.

18.6 Contracts to which the rules on tendering do not apply

18.6.1 The Council does not need to tender contracts where it;

- (i) sets up a separate legal entity and then awards contracts to that legal entity. For this exception to apply a two part test has to be satisfied, relating to control and activity:
- Control: the Council has to exercise sufficient control over the separate legal entity; and
 - Activity: the separate legal entity has to carry out the essential part of its activities for the Council.
- (ii) the Council enters into a co-operative arrangement with participating authorities with the aim of ensuring that public services they have to perform are provided with a view to achieving objectives they have in common.
- For this to apply, the implementation of that co-operation must be governed solely by considerations relating to the public interest; and
 - the participating contracting authorities perform on the open market less than 20% of the activities concerned by the co-operation.

18.7 Reserved Contracts- mutuals

The Council may reserve to qualifying organisations the right to participate in procedures for the award of a reservable public contracts. The contracts that are reservable apply only to certain categories of

services.

18.7.1 A qualifying organisation must meet the following conditions:

- (a) its objective is the pursuit of a public service mission linked to the delivery of services that fall within the reservable category;
- (b) profits are reinvested with a view to achieving the organisation's objective, and any distribution of profits is based on participatory considerations;
- (c) the structures of management or ownership of the organisation are (or will be, if and when it performs the contract) —
 - (i) based on employee ownership or participatory principles, or
 - (ii) require the active participation of employees, users or stakeholders; and
- (d) the organisation has not been awarded a contract for the services concerned by the Council within the past 3 years.

18.7.2 The maximum duration of a contract awarded under this exemption can not be longer than 3 years. Any subsequent contract must be re-tendered in the open market in competition with all interested bidders.

19. Non-compliance with these Rules

- 19.1 Every contract entered into by the Council for the carrying out of works, or for the supply of goods or services shall be for the purpose of achieving the Council's statutory or approved objectives and shall conform to all relevant European and UK legislation and Council policy.
- 19.2 These Contract Procedure Rules are mandatory and shall govern and regulate Council procurement and contract award procedures. Authorised Officers must also refer to the Corporate Procurement Team for more detailed procedures some of which are compulsory.
- 19.3 The primary objective of these Contract Procedure Rules is to ensure that the Council obtains value for money and fulfils its duty of best value as defined in Section 3 of the Local Government Act 1999 in all its procurement activity. They also provide a basis for fair competition by providing transparent and auditable procedures to protect the Council's reputation from any imputation of dishonesty or corruption.
- 19.4 For these reasons it is a disciplinary offence to fail to comply with Contract Procedure Rules when letting contracts and employees have a duty to report breaches of these Contract Procedure Rules to an appropriate senior manager or internal auditor.