

## Chapter 4.9 - Contract Procedure Rules

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## 1. INTRODUCTION

- 1.1 These Contract Procedure Rules (Rules) form part of the Council's Constitution. It is important that the Rules and the processes set out in the [Procurement Manual](#) are applied correctly to ensure value for money, protect the public purse and the Council from challenge.
- 1.2 The Procurement & Commissioning Hub (P&C Hub) must lead on all procurements over the EU Threshold.
- 1.3 The following principles should be followed by Service Departments in all procurements to ensure that contracts are entered in a compliant manner and deliver value for money (VFM) to the Council:
  - (i) To protect the public purse all procurements must deliver VFM. Service Departments should demonstrate VFM by:
    - Carrying out some form of competitive tender and ensuring that the minimum number of quotes (including local Suppliers where appropriate) has been received in accordance with Rule 14.
    - Demonstrating the need for the Goods, Services or Works.
    - Considering alternative methods of delivery and what approach will deliver the best outcomes for the Council Service
    - Exploring opportunities to work collaboratively across the Council and take responsibility for the specification and ensure that it is neither over, or underspecified, meets the Service Department's needs and is clear and concise.
  - (ii) To ensure that the Council remains legally compliant, the procuring officer must ensure that Council governance and policy have been followed and that all procurement activity must follow these Rules and processes set out in the **Procurement Manual** and be compliant with Public Contract Regulations 2015. They should not expose the Council to risk of legal challenge, payment or compensation, fines or reputational risks.
    - Service Departments should not enter into a contract, nor any tender/quotation invited/received, unless provision is made in the annual budget or is otherwise agreed by the officer with appropriate delegated authority and is in accordance with the Financial Regulations; and
    - Savings and efficiencies will be explored both prior to and after letting or renewing the contract
  - (iii) To ensure all procurements have an audit trail all procurement over the EU threshold must be carried out by the P&C Hub. The council's E-Tendering Portal must be used for all procurement projects over £25,000 including all communication with bidder's clarification questions, the

usage of standard templates with all documentation relating to the process maintained and stored within the Portal (including a executed (signed) copy of the contract awarded) to ensure a clear audit trail and contract record.

- 1.4 Recognising that the Corporate Contract Register is within the Portal and the importance of maintaining information and promoting procurement projects to the Contract Register.
- 1.5 In all cases where there is uncertainty regarding the Rules contact the P&C Hub/Legal Services (where required) for clarification.
- 1.6 Additional information is available within the **Procurement Manual** which details the Operational Processes to be followed when procuring or entering into a Contract.

## 2. PURPOSE

- 2.1 These Rules apply to the procurement by the Council of Works, Supplies and Services and the granting of Concessions Contracts (as defined by Public Contract Regulations 2015 and Concessions Contract Regulation 2016). This includes where there may be no, or little monetary value to the contract or there is income or profit sharing. These rules may also apply to contracts that are entered via other mechanisms; such as but not limited to:
  - (i) Partnerships;
  - (ii) Shared working;
  - (iii) Consortiums of Councils;
  - (iv) Section 75 arrangements;
  - (v) Grant agreements;
  - (vi) Joint Ventures; and
  - (vii) Contracts via other councils.

Services should also refer to the Partnership Procedure Rules, when entering into any partnership arrangement.

- 2.2 To achieve these objectives, these Rules and operational procurement processes in the **Procurement Manual** must be followed every time the Council commences a procurement and/or enters into a contract. These Rules are made under section 135 of the Local Government Act 1972. Failure to comply with these Rules may lead to a disciplinary action when letting contracts. Council employees have a duty to report breaches of these Rules to an appropriate senior manager and the Director of Law and Governance under the [Council's Whistle-Blowing Policy](#)

## 3. EXEMPTIONS

- 3.1 The following types of procurement do not fall within the scope of the Rules, but Service Departments must still ensure VFM in these areas:
- (i) Contracts of direct employment;
  - (ii) Contracts solely for the sale or purchase of land, which are subject to the Property Procedure Rules. Although some property transactions may fall within the scope of the EU Procurement regime where works, supplies or services relate to the property transaction. Contact the P&C Hub and Legal Services for advice;
  - (iii) The instruction of barristers
  - (iv) Specialist professional services necessary for legal proceedings (including expert witnesses, experts, mediators, adjudicators, arbitrators and costs draftsmen);
  - (v) Unconditional grants by the Council;
  - (vi) Genuine emergencies beyond the control of the Council. Lack of sufficient planning and/or internal process delays will not constitute special, exceptional or emergency circumstances;
  - (vii) Individual care packages or education placements where it is considered in the Council's interest or the Council is required to meet obligations under the relevant legislation
  - (viii) Adult social care service packages managed by the Council on behalf of a client under the personalisation agenda e.g. managed accounts & direct payments/individual budgets.

#### **4. ROLES AND RESPONSIBILITY**

- 4.1 Executive Directors, Directors, and Heads of Service are responsible for ensuring:
- (i) Procuring officers and service departments prioritise VFM when procuring, and that proper market engagement or market research has been carried out prior to the procurement to support VFM at the time of going to the market.
  - (ii) All relevant staff are familiar with the provisions of the Rules and compliance with any Operational Processes set out in the Procurement Manual and guidelines issued in respect of these Rules;
  - (iii) Immediate action is taken in the event of a breach of these Rules within their department or service area;
  - (iv) Their Departments contracts are recorded on the Corporate Contract Register (Portal), by maintaining proper records of all contractual and procurement documents over £25,000 within the [E-Tendering Portal](#); including minutes of tender evaluation panels and other meetings which may be inspected by a member of the Council at any time during office hours and may need to be disclosed by law;

- (v) Supply to the P&C Hub information and resources to support procurement activity that is managed by the P&C Hub to ensure success of the project;
  - (vi) Effective contract management, contract reviews and monitoring during the lifetime of contracts in their areas ensuring KPIs are met; and carry out reviews where necessary to find savings, efficiencies, or innovation.
  - (vii) Records of waivers/exemptions/exceptions of any provision of these Rules are maintained; and
  - (viii) The standard templates and contracts in the [E-Tendering Portal](#) are used to support a robust procurement process.
- 4.2 No contract may be awarded unless there is sufficient budget available for the Goods, Supplies, Services or Works being procured and appropriate delegated authority to award the contract has been given.
- 4.3 The officer awarding the contract has a duty to ensure and demonstrate that Best Value is obtained, having regard to the appropriate balance between quality and price.
- 4.4 The P&C Hub must be notified of procurement projects over EU Threshold for goods and services and works.
- 4.5 References to officers or posts in these Rules include their authorised deputies or delegates, in accordance with the Council's Constitution and Council's Scheme of Delegation.
- 4.6 The Council recognises the benefits to be gained from e-tendering, e-auctions, e-reverse auctions, purchasing cards and e-purchase-to-pay software. For the purposes of the Rules, the term "contract" refers to both paper/hard copy documents and processes and their replication by electronic media. Only e-tendering systems approved by the P&C Hub may be used.
- 4.7 All contracts are awarded in accordance with these Rules, the Financial Regulations, and other relevant Council policies/governance.

## **5. RISK, INSURANCE AND OTHER FORMS OF SECURITY**

- 5.1 The procuring officer must ensure that the risks associated with any procurement process and/or contract are assessed in line with the Council's Risk Strategy using the [Council's Corporate Risk](#) assessment template and must be documented on file. Appropriate actions should be taken to ensure that the Council's potential and actual exposure is managed or minimised, this includes Supplier's liability within the contract.
- 5.2 The procuring officer must check in the Procurement Manual for guidance on how to manage this. An issues log and estimated costs against any risks as contingency should also be kept. Risks should be set out in any Authority

Report within the risk section where appropriate. Where there is a high risk, financial checks may need to be carried out and appropriate procedures followed.

## 6. INSURANCE

- 6.1 Service Departments should ensure that each contract includes adequate insurance requirements, seeking advice from the Council's Insurance team and undertaking a risk assessment to ensure the levels of insurance are adequate.
- 6.2 All contracts are expected as a minimum to have employer's liability insurance and public liability insurance. Contracts where there is direct advice and/or design services provided by a Supplier, including all consultancy and construction arrangements, must include a requirement for professional indemnity insurance.

## 7. FINANCIAL SECURITY

- 7.1 Where there is doubt as to the supplier's financial viability, or no external report evidencing financial viability is available, then Financial Management Services shall provide expert advice during the procurement process and prior to any contract award.
- 7.2 Contracts over £500,000 must be treated as a Key Decision and the following rule must be applied:

<b>£500,000 - £1,000,000</b>	<b>£1,000,000 and over</b>
Sufficient security from the Supplier should be considered at this value to manage risk.	The Supplier <b>must</b> be required to provide sufficient security.
Evidence of the form of security required, or why no security was required, must be stored and retained on the E-Tendering Portal for audit purposes.	Evidence of the form of security required, or why no security was required, must be stored and retained on the E-Tendering Portal for audit purposes.

- 7.3 Sufficient security shall take one of the following forms:
- (i) Parent company, ultimate holding company or holding company guarantee where their finances prove acceptable;
  - (ii) Director's guarantee or personal guarantee where their finances prove acceptable;
  - (iii) Performance Bond, retained funds or cash deposit; or

- (iv) Any other security as determined by Financial Management Services and/or Legal Services.

7.4 For contracts over £1,000,000 where the Supplier cannot provide Security, but the Council has no acceptable alternative provider or has decided to accept the level of risk, then the Executive Director of Resources must approve the financial risk prior to any award. The relevant Authority Report must set out the reason why it is proposed that the contract should be awarded despite absence of security and what measures are to be taken to manage this risk.

7.5 Security for performance should also be considered when looking at risk.

## **8. BUSINESS CONTINUITY**

8.1 To minimise risk and improve service delivery resilience the Council has committed to implementing the [London Resilience Standards](#). This means that suppliers must meet the Council's Resilience Requirements:

- Commissioning of public services must include a requirement that organisations tendering for contracts meet the council's resilience requirements and that providers share information and data on the impact of disruptions such as severe weather or industrial action; and
- Projects, contracts, initiatives and other organisational changes and developments always account for resilience to ensure that these enhance and do not weaken capability of the supplier.

8.2 In line with the Council's Business Continuity Policy; during the risk assessment, supplier failure or failure to deliver/perform should be assessed. Where delivery of the services is assessed as critical, or there would be major reputational damage in the event of a Supplier failure to supply; then Business Continuity Plans should be requested as part of the contract and services should build in contingency plans. These Suppliers must be identified in the service department's Business Impact Analysis Form and provided to the Emergency Planning Team. This should also be considered where the Supplier supports the Council in the event of an Emergency/Disaster Recovery.

## **9. GENERAL DATA PROTECTION REGULATIONS (GDPR)**

9.1 Potential Suppliers must be assessed to ensure that they meet GDPR requirements. Specifically, regarding data storage and data handling. It is the responsibility of the procuring officer to ensure that any potential supplier is compliant to GDPR at the tendering stage.

## **10 APPROVAL TO PROCURE, AWARD AND VARY OR AMEND CONTRACTS**

10.1 Authority to procure must be obtained for all procurement; and evidence uploaded onto the [E-Tendering Portal](#) for contracts over £500,000. It is the responsibility of the procuring officer to obtain the necessary authority/approval including sign off of any Authority Report where required seeking advice from Governance Services.

Level of Authorisation and Acceptance.	Contract Value*	
	Up to £500,000	£500,000 and Over
Authority to Procure	The procuring officer should seek some form of written approval at the appropriate level within their service area to start the procurement process.	Director/Cabinet Member via Authority Report  Where the Council instructs a 3 <sup>rd</sup> party to manage the procurement process and costs are likely to be over £500,000 the Key Decision Process must be followed prior to starting the procurement process.
Authority to Award	The procuring officer should seek some form of written approval at the appropriate level within their service area to award the contract.	Director/Cabinet Member via Authority Report and <a href="#">Key Decision Process</a>
Authority to Vary or extend contract	The procuring officer should seek some form of written evidence within their department at the necessary level of approval to vary the Contract. If over the EU threshold then Legal advice should be sought.	Director/Cabinet Member via Authority Report and <a href="#">Key Decision Process</a>

\*Net of VAT and refer to Rule 12 – Calculating the Value of a Contract

10.2 The P&C Hub will not support any procurement project that cannot demonstrate approval to procure.

10.3 An Authority Report for award must be produced by the Service Department for all requirements with a contract value above the Key Decision threshold this includes any contract where the costs or the income is equal to or greater than £500,000. The Authority Report must be approved in accordance with the Scheme of Delegation and Council governance.



## **11. SPECIALIST PROCUREMENT**

11.1 Where there is a requirement to undertake procurement and there is expertise and knowledge within a Council Hub/Service or centralised budget procurement should take place in consultation with the specialist department to ensure that existing contracts are maximised and consolidate where possible.

11.2 Specialist procurement in the Council includes but is not limited to:

- CCTV & Monitoring;
- Catering;
- Cleaning;
- Communications and Print Services;
- Corporate Maintenance and Construction Team;
- Financial Management Services & Pensions/Payroll;
- Fleet Services;
- Facilities Management/Corporate Landlord;
- Human Resources & Learning & Development;
- ICT;
- Insurance/Audit Services;
- Legal Services;
- Procurement Services;
- Property Services; and/or
- Temporary Accommodation.

11.3 To maximise value for money for the Council, procurement should be done in collaboration with other Council service areas or use or amend existing contracts where possible.

11.4 No external legal advice is to be instructed or sought without the prior approval of the Legal Services.

## **12. CALCULATING THE VALUE OF A CONTRACT**

12.1 When calculating the value of the contract the following should be considered:

- (i) Values are total lifetime contract values, not annual values;
- (ii) Values exclude VAT;
- (iii) Values are to be aggregated, for example, if there is a recurring need on an annual basis for supplies;

- (iv) An estimate shall be made of the total purchasing requirement/whole life costing/financial implications. For example, including ongoing maintenance and support costs. If there are variables which result in the estimate being a range of figures rather than a single figure, then the highest figure in the range will be the value of the contract for the purposes of these Rules;
- (v) The valuation shall include the value of possible contract extensions and possible additional options;
- (vi) Where a contract is of indeterminate length the value of the contract shall be monthly value multiplied by 48;
- (vii) Where a contract is for several organisations and the Council is the lead authority, then the value of the contract shall be the total value of the contract for all the organisations. If the Council is not the lead authority, then the value of the contract for the purposes of these Rules shall be the value of just this Council's proportion of the contract;
- (viii) if the value of the tender is less than 10% below the EU Thresholds, then officers must consider procuring in accordance with Public Contract Regulations 2015.

12.2 It is a breach of these Rules to deliberately divide up contracts to evade the need to follow a more complex/lengthy procurement procedure or evade the requirements of Public Contract Regulations 2015.

12.3 Where contract value may change, due to uncertainty of the project or slippage, then this must be factored into the costs to ensure sufficient budget is approved for the project. Additional questions in the Tender/Quotation may be necessary to cover the risk of additional costs.

### 13. ADVERTISING AND PUBLICATION

13.1 Where a competitive process is to be undertaken, quotations will, as a minimum be advertised as follows:

#### Advertising

Estimated Contract Value	Advertising of Opportunity
Contracts up to the EU Threshold*	No advertising needed.
Contracts above EU thresholds	<ul style="list-style-type: none"> <li>• Publication in the Official Journal of the European Union (OJEU).</li> <li>• E-Tendering Portal</li> <li>• Contracts Finder</li> </ul> (via the Council's e-tendering portal – <a href="http://www.londontenders.org">www.londontenders.org</a> ), where applicable.

\* Please refer to the Procurement Manual for a full explanation of advertising requirements.

## Publication

- 13.1 Where a competitive process has taken place contracts to be awarded, as a minimum must be published as follows:

Estimated Contract Value	Publication of Award
Contracts over £25,000 up to the EU Threshold	<ul style="list-style-type: none"><li>• E-Tendering Portal</li><li>• Contracts Finders step in the LTP</li></ul>
Contracts above EU thresholds	<ul style="list-style-type: none"><li>• Publication the OJEU.</li><li>• E-Tendering Portal</li><li>• Contracts Finder</li></ul> (via the Council's e-tendering portal – <a href="http://www.londontenders.org">www.londontenders.org</a> ), where applicable.

## 14. PROCUREMENT THRESHOLDS

- 14.1 The procurement requirements in the table overleaf apply according to the estimated total value of the contract. The requirements below are minimum requirements. Services departments should consider market testing prior to inviting suppliers to bid and inviting more than the minimum number to cover for bidders dropping out.
- 14.2 The value of the contract is the total value over the whole contract including any potential extensions.
- 14.3 The P&C Hub reserves the right to bring any procurement into the P&C Hub to manage due to either risk to the Council (including reputational risk) or complexity.
- 14.4 Frameworks and other corporate agreements, where they exist, should be used (provided Best Value can be demonstrated) and managers must retain sufficient evidence to demonstrate compliance.
- 14.5 All quotations over £25,000 must be via the Council's [E-Tendering Portal](#). For quotations under £25,000, written evidence of expenditure must be retained e.g. invoice receipt etc.

Estimated Total Contract Value	Minimum No. of Quotations	Minimum No. of Local Quotations	Additional Requirements (if applicable)	Method of issuing a contract	Advertising or Publication	Responsibility for Procurement Process
Up to £25,000	1	Local in the first instance	Where possible Service Departments should seek out quotations from local Suppliers.	<ul style="list-style-type: none"> <li>• Use of Purchase Order for goods; or</li> <li>• Standard contract for more complex requirements or where the level of risk needs to be addressed.</li> </ul>	Advertising not required.	Self-service in line with Rules and Procurement Manual.
Contracts from £25,001 to £100,000 for supplies and services.  Or £25,001 to £500,000 for works:	3	2 Where possible	If less than three quotes are <b>received</b> the Service must seek the relevant level of approval within their service to award and demonstrate that VFM has been demonstrated/achieved. The decision must be recorded in writing and all documentation supporting the decision retained in the <a href="#">E-Tendering Portal</a> .	<ul style="list-style-type: none"> <li>• Use of Purchase Order for goods; or</li> <li>• Standard contract for more complex requirements or where the level of risk needs to be addressed.</li> </ul> <p>Please also refer to Rule 25 for requirements for sealing.</p> <p>Ensure added to the <a href="#">Key Decision List</a> if contract award is over £500,000 or procurement costs are over £500,000</p>	Refer to Procurement Manual for requirements	Self-service via the <a href="#">E-Tendering Portal</a> and in line with the Rules and Procurement manual. Must be promoted to the contracts Register to create a Corporate Contract Register to meet the Council's transparency obligations. Must publish on Contracts Finder via the E-Tendering Portal for award.
Contracts above £100,000 to EU threshold *	5	2 Where possible	If less than five quotes are <b>received</b> the Service must seek the relevant level of approval within their service to award and demonstrate that	Up to £500,000: <ul style="list-style-type: none"> <li>• Signature on standard contract or sealed by Legal Services if required</li> </ul>	Refer to Procurement Manual for requirements	Self-service via the <a href="#">E-Tendering Portal</a> and in line with the Procurement manual. Must be promoted to

for supplies and services or above £500,000 for works			<p>VFM has been demonstrated/achieved.</p> <p>The decision must be recorded in writing and all documentation supporting the decision retained in the <a href="#">E-Tendering Portal</a>.</p>	<p>Over £500,000:</p> <ul style="list-style-type: none"> <li>Standard contract sealed by Legal Services</li> </ul> <p>Please refer Rule 25 (requirements for sealing)</p> <p>Ensure added to the <a href="#">Key Decision List</a> if contract award is over £500,000 or procurement costs are over £500,000</p>		<p>the contracts Register to create a Corporate Contract Register and meet the council's transparency obligations. Must publish on Contracts Finder via the E-Tendering Portal.</p>
Above EU threshold for goods, services and works (including Light Touch Regime)	Follow EU procurement Process	Consider how to develop local market within the procurement and social value.	<p>A fully compliant process must be carried out in accordance with the <a href="#">Public Contract Regulations 2015</a></p> <p>Possible routes to market:</p> <ul style="list-style-type: none"> <li>Open</li> <li>Restricted</li> <li>Negotiated</li> <li>Competitive dialogue</li> <li>Competitive procedure with Negotiation</li> <li>Frameworks</li> <li>DPS</li> </ul> <p>This must be led by the P&amp;C Hub.</p>	<p>Up to £500,000:</p> <ul style="list-style-type: none"> <li>Signature on standard contract or Sealed by Legal Services if required</li> </ul> <p>Over £500,000:</p> <ul style="list-style-type: none"> <li>Standard contract sealed by Legal Services</li> </ul> <p>Please refer to Rule 25. Ensure added to the <a href="#">Key Decision List</a> if contract award is over £500,000 or procurement costs are over £500,000</p>	Must follow EU directives	<p>Project managed by the P&amp;C Hub with cooperation from Legal Services as appropriate.</p> <p>All procurements over EU Threshold must have followed relevant processes set out in the Procurement Manual.</p> <p>Service departments are responsible for:</p> <ul style="list-style-type: none"> <li>Specification</li> <li>Governance &amp; authority</li> <li>Evaluation</li> </ul>

\*Refer to the Procurement Manual for EU threshold

- 14.6 When seeking quotes on a regular basis officers must ensure that they rotate those Suppliers invited to quote i.e. that different Suppliers are invited for each exercise. It is acceptable to invite a previously successful Supplier for a similar contract, if that Supplier performed well.
- 14.7 It is against the Rules to deliberately disaggregate the value of a contract and split the value up to reduce the number of quotes to be obtained or carry out multiple procurements to avoid the Rules.
- 14.8 The P&C Hub will monitor compliance with this requirement. Officers need to be mindful of aggregation of spend.

## 15. EXCEPTIONS TO COMPETITIVE TENDERING

15.1 Where competitive tendering is impossible then an exception can be used, but the Service Department, must demonstrate why they were unable to demonstrate VFM through a competitive process and that the use of this rule meets Council needs.

15.2 This Rule can be applied only where:

- (i) The procuring officer uses a legally compliant Framework which the Council has procured or has the right to access (subject to complying with the rules applicable to that Framework, including mini competition);
- (ii) A suitable corporate contract is in place for the Services/Supplies/Works being procured;
- (iii) Competition is prevented by government or statutory control;
- (iv) Repairs, services, works, parts, goods or materials are required relating to existing machinery, vehicles, plant or equipment of a proprietary nature, where no suitable alternative Supplier exists;
- (v) Ongoing maintenance, updating, licencing and support is required relating to existing ICT hardware and/or software that is proprietary in nature and no suitable alternative Supplier exists;
- (vi) The contract provides in writing for an extension to the length of the contract's term and the following conditions are met:
  - The extension is for substantially the same works, supplies and/or services provided in the original contract;
  - The financial terms for the extension are as agreed in the original contract;
  - The length of the extension is no longer than that permitted by the original contract;
  - Such extension would not breach the Public Contract Regulations 2015; and
  - The appropriate authority/approval is in place in accordance with the Scheme of Delegation.
- (vii) The contracts being procured are for special education needs or social care services below relevant EU Threshold and, in the opinion of the responsible officer it is considered in the Council's interest or is required to meet obligations under relevant legislation. If above EU Threshold, officers are reminded that the Public Contract Regulations 2015 may apply.

- (viii) Upon evidence of extensive market testing and consultation with P&C Hub/Legal Services, the Goods, Services or Works are only available from a single Supplier and no suitable alternative is available.
- (ix) Contracts below EU Threshold being procured are for specialist professional services necessary to support children's or adult services where service users/clients select the Supplier, but the grant funding is via the Council.
- (x) Contracts are awarded between the Council and a 'Teckal Company'. Advice should be sought from Legal Services as to the application of the Teckal exception, and appropriate Council governance process should be followed.
- (xi) In relation to the exceptions, advice should be sought from the P&C Hub and (where applicable) Legal Services as to whether there is any risk of the Council breaching Public Contract Regulations 2015.
- (xii) Where a contract is entered into via any of the rules above then the contract must be recorded on the E-Tendering Portal.
- (xiii) Over £100,000 where no tenders, no suitable tenders, no requests to participate or no suitable request to participate have been received in response to a tender process, provided that the initial conditions of the contract are not substantially altered, then the Service Department can negotiate with a single Supplier. Refer to the Procurement Manual for the process to follow.
- (xiv) The aim of the procurement is the creation or acquisition of a unique work of art or artistic performance. Refer to the Procurement Manual for the process to use this Rule.

15.2 In relation to the exceptions, the requirement to comply with the Public Contract Regulations 2015 remains. Officers should consider publishing a Voluntary Ex-Ante Transparency (VEAT) Notice for any exception granted that is higher than the EU Threshold and the procedures leading to the award under the Regulations must be followed. A VEAT Notice can only be issued with approval from the P&C Hub.

15.3 Any decision not to seek competitive tenders must fully comply with this Rule 15, be reasonable in all the circumstances and be in the best interests of the Council. The decision must be recorded in writing and all documentation supporting the decision must be retained on the E-Tendering Portal.



15.4 Exceptions will be reported to the Executive Director of Resources on a quarterly basis. Application for an Exception must be made via the Exceptions and Waiver form for recording and ensuring that the Contract is entered onto the Corporate Contract Register.

## **16. EVALUATION CRITERIA AND GOING OUT TO THE MARKET**

16.1 The award of all contracts shall be based on fair and appropriate evaluation criteria in accordance with these Rules and Public Contract Regulations 2015.

16.2 Full and complete written records of the evaluation process must be maintained by the service department and uploaded onto the E-Tendering Portal.

## **17. APPLICATION AND WAIVER OF THE RULES**

17.1 These Rules apply to all contracts for Supplies, Works or Services entered into by the Council, except where a Waiver of all or part of the Rules is approved. Waivers should only be sought in **exceptional circumstances** given the general presumption that competition is the best way to demonstrate VFM.

17.2 It must be noted that where the value of the contract is over the EU threshold the Council must comply with the requirements of Public Contract Regulations 2015 therefore it is not possible to waive these requirements, and contracts let in this way will be in breach of the Regulations.

17.3 All Waivers are reported Council's Audit & Risk Management Committee on an annual basis by the P&C Hub.

17.4 The officer requesting the Waiver **must** keep a written record of any waiver of the Rules. Application of a waiver can be made via the [Exceptions and Waiver form](#) and will be reviewed and approved by the Executive Director of Resources.

17.5 Contracts let via a Waiver must have documentation held on the E-Tendering Portal to create a record on the Corporate Contract Register.

17.6 Waivers will only be issued for a period of 12 months, unless agreed otherwise by the Executive Director of Resources.

## **18. VARIATIONS TO CONTRACTS**

18.1 The contract manager may agree with a Supplier to carry out additional Works or Services that were not included in the original contract but which, through change control or unforeseen circumstances have become necessary.

Variations to existing contracts are generally not permitted except where various conditions are satisfied.

18.2 Please refer to the Procurement Manual for more guidance.

## **19. RECEIPT AND OPENING OF TENDERS AND QUOTES**

19.1 The Council's E-Tendering Portal must be used in all procurements over £25,000, including those scenarios where arrangements are caught by the exceptions and some exemptions.

19.2 Permission from the P&C Hub not to use the E-Tendering Portal must be obtained and all paperwork will be managed by the P&C Hub. This includes submissions by post or where documentation/additional information in relation to the tender is sent via post and not the Portal. E-Tendering Portal is compulsory for EU Procurements.

## **20. ETHICAL AND SUSTAINABLE PROCUREMENT AND COUNCIL POLICY**

20.1 At pre-procurement stage for the supply of Services, authorised officers must consider whether the Public Services (Social Value) Act 2012 applies to those Services. This means that officers must consider how the service they are procuring might improve the economic, social and environment well-being of the area and the procurement process should support Council outcomes to generate community benefits.

20.2 The Council's [Sustainable Procurement Policy](#) recommends the inclusion of up to 10% evaluation weighting for sustainability in all procurements that are tendered through open competition. For procurements over the EU threshold it is expected that this must be considered. Refer to the Procurement Manual to ensure the correct processes are followed for implementation.

20.3 All procurement should be in accordance with the Councils agreed policies including but not limited to:

- (i) Modern Slavery Charter;
- (ii) Construction Charter; and
- (iii) Health in Everything we do.

## **21. CONTRACT AWARD AND EXECUTION**

21.1 All contract awards that are [Key Decisions](#) must be awarded in accordance with the Council's Constitution and must follow the Key Decision approval process, including any call-in periods, and 'stand still' periods.

- 21.2 Contracts can only be awarded by officers that have been delegated the power to do so under the Council's Scheme of Delegation or relevant Authority Report and executed in line with Rule 14.
- 21.3 All contracts must be awarded based on the advertised evaluation criteria included in the advert or invitation to tender documentation and cannot be changed after the receipt of submissions, unless in line with Public Contract Regulations 2015 or from advice from the P&C Hub.
- 21.4 For all Supplier relationships the requirements and specifics of each agreement must be formally documented prior to any work commencing.
- 21.5 All contracts awarded must be promoted through to the contracts register within the [E-Tendering Portal](#), and over £25,000 to Contracts Finder.

## **22. TERMS AND CONDITIONS**

- 22.1 It is Council policy to use where possible the Terms and Conditions of the Council.
- 22.2 The Council has template Contracts available to be used.

## **22. POST-TENDER NEGOTIATIONS**

- 23.1 Post-tender negotiations may only take place if the tender documents allow for negotiation, set out the basis for such negotiations and are permitted under Public Contract Regulations 2015.
- 23.2 In all other circumstances, all permitted bidders should be invited to re-tender on a revised specification.

## **24. PREVENTION OF CORRUPTION**

### **General standards of conduct**

- 24.1 All persons involved in the award of contracts shall comply with the Council's Code of Conduct and shall not invite or accept any gift, reward or inducement which could influence them in any way in relation to the award or monitoring of any Council contract.
- 24.2 High standards of ethical conduct are mandatory. Staff shall take steps to ensure that their behaviour could not lead to accusations of corruption. Corrupt behaviour will lead to dismissal and is a crime under the [Bribery Act 2010](#) and Section 117 of the [Local Government Act 1972](#).
- 24.3 The Council requires Members, employees and Suppliers working on its behalf to act with honesty and integrity always, when dealing with resources owned by the Council or those for which it is responsible. This includes the

responsibility for ensuring that assets are safeguarded and that procedures exist within areas of their responsibility to prevent and detect fraud.

- 24.4 The Council actively encourages the reporting of concerns about fraud and corruption through the [Council's Whistle-Blowing Policy](#).

#### **Declaring an interest**

- 24.5 Any employee who has a pecuniary or other interest in any actual or potential Council contract must declare it in writing to their Manager and where the contract/procurement is over EU threshold then this needs to be sent to the P&C Hub additionally. All hospitality, gifts or other inducements received shall be recorded in the Service Department's hospitality register.
- 24.6 Suppliers taking part in any procurement activity should be asked to declare any interest in writing to the procuring officer and where an interest is declared this should be reported to the Head of P&C Hub immediately. All declarations must be stored on the [E-Tendering Portal](#).

#### **Organised Crime**

- 24.7 The Council needs to protect itself from organised crime. Where it is suspected that there is organised crime within the industry that a Service Department is procuring in, the P&C Hub should be contacted, or the Whistle-Blowing policy used, to inform management. Officers need to be aware of the Council's Money Laundering Policy; and ensure that any procurement/contract award does not have implications for money laundering.

### **25. RECORD KEEPING**

- 25.1 To ensure that there is a full audit trail of procurement activity and that the Council is open and transparent, Service Departments must refer to the Procurement Manual to ensure compliance with Council policy..
- 25.2 Ensure that awarded contracts are registered on to the Corporate Contract register, by 'promoting' within the E-Tendering Portal.
- 25.3 A contract must be sealed where:
- (i) The contract is over £500,000 in value;
  - (ii) The Council wishes to enforce the contract for a period of more than 6 years;
  - (iii) The price paid or received under the contract is a nominal price that does not reflect the value of the supplies or services;
  - (iv) It is required by the parties.
- 25.4 Legal Services are responsible for the process of sealing the contracts. The affixing of the common seal of the London Borough of Enfield is attested by an authorised officer from Legal Services, whose signature will be seen as executing the contract on behalf of the Council. The Supplier must validly

execute the contract, and Legal Services should be consulted as to the appropriate execution clause’.

- 25.5 The Supplier must affix its company seal, which must be attested by two directors or one director AND a company secretary.

## **26. CONTRACT MANAGEMENT**

- 26.1 To ensure VFM throughout the lifetime of the contract, and that the Council receives the goods, services or works as procured, service departments are expected to carry out effective contract management.

- 26.2 Service Departments must ensure, specifically for high value, high-risk contracts and where contracts are registered on their Business Impact Analysis Form, a copy of the contract:

- (i) Is in the E-Tendering Portal;
- (ii) Is on the Corporate Contract Register; and
- (iii) Has performance Key Performance Indicator’s and regular reviews, both for performance and commercial elements.

Evidence of managing these contracts must be taken on an annual basis to the Departmental Procurement Board.

- 26.3 That each year services provide a report on off contract spend to the Overview and Scrutiny Committee.

## **27. IR35 Rules**

- 27.1 The Council has a policy of ensuring that all temporary staff are engaged through the Council’s Vendor Neutral Supplier Matrix unless agreed with Head of HR or Director of HR and OD Human Resources. Staff must be engaged through recruitment or through the Council’s Vendor Neutral Supplier Matrix. Procurement must only be used to procure services and not to provide individual staff members. Officers must refer to the Principles of Managing Agency Workers and [IR35 HR guidance](#) before proceeding to procurement where IR35 may apply.

- 27.2 The intermediaries’ legislation, known as [IR35 Rules](#) is designed to make sure Suppliers pay the required tax and National Insurance on earnings. From 6th April 2017, the responsibility for deciding the employment status of Suppliers to the public sector moved from the Supplier to the client. For provision of services or consultancy the procuring officer must ensure if the provision falls within the IR35 rules. Refer to the [HRMC site](#) to follow the online Employment Status Service test assessment process.

- 27.3 If a Supplier is contracted and later found that IR35 applied but was not considered, then back tax could be recovered from the Council for a period of

up to 6 years. The employment check must be uploaded into the [E-Tendering Portal](#) as evidence where a consultant/individual has been procured. This is particularly important where the Supplier is a Personal Service Company.

## 28. Consultation

- 27.1 For Housing procurement contracts the [Commonhold and Leasehold Reform Act 2002](#) (CLRA) may apply. Where applicable, officers must undertake the required consultation with leaseholders. Leaseholders can nominate Suppliers for inclusion on a tender list for specific, below EU Threshold, procurement projects. Officers must liaise with Home Ownership Services to clarify the requirements under the CLRA before commencing with any procurement likely to affect leaseholders.
- 28.2 For all other procurement's officers shall ensure that where applicable consultation with stakeholders is undertaken within the appropriate period of the procurement process.

## 29. Glossary of Terms

Where these Rules refer to approval required from a person in a specified role (e.g. Head of Procurement & Commissioning Hub) such approval may be delegated to another officer by that person.

Advertising	Where Tenders and Quotations are advertised for bidders
Aggregation	Is the requirement to add together the estimated value of separate contracts for meeting a single requirement. EU procurement expressly prohibits the splitting of requirements into smaller units or orders in an attempt to avoid the application of EU procurement.
Best Value	Means the optimum combination of price and quality identified through the Most Economically Advantageous Tender (MEAT).
Business Impact Analysis Form	Business Continuity Form for emergency Planning.
<a href="#">Bribery Act 2010</a>	Bribery Act 2010
<a href="#">Code of Conduct</a>	The Councils code of Conduct and how officers must carry out their duties in terms of conduct.

Concessions	A type of contractual arrangement under which, rather than paying the Supplier to deliver a work or service, the Council grants the Supplier the right to exploit an opportunity and receive some or all of its income from third parties (e.g. the public), retaining the profit. Defined under the Concessions Regulations 2016
Consultation	A formal process to consult or discuss
Construction Industry Charter	The Construction Charter commits to working with Unite in order to achieve the highest standards in respect of direct employment status, health & safety, standards of work, apprenticeship training and the implementation of nationally agreed terms and conditions of employment
Contract	Means an agreement between the Council and any other organisation, including another public authority, made by formal agreement or by issue of a letter of acceptance or official purchase order for works, supplies or services.
Contract management	The management and monitoring of a contract to ensure delivery and performance; including commercial elements and payments.
Contracts Finder	Government site for advertising contract opportunities and awards.
Contract Templates	Standardised contracts to be used by Service Departments and procuring officers that have been drawn up by Legal Services for the contracting of goods, services and works.
Corporate Contract Register	Corporate Register of Contracts held by the P&C Hub within the London Tenders Portal
Council's Constitution	Documents (s) that sets out how the Council is governed.
DAR/Authority Report	Delegated Authority Report required by governance to record decision making and record approval from delegated authority. (See Other Authority)
Directors	Means Directors and Executive Directors of Enfield Council
E-Auctions/Reverse Auctions	The use of electronic media to conduct a tendering or bidding exercise where suppliers are able to bid, in secure, controlled conditions, for a contract.
E-Procurement	The electronic system used in the Council to electronically raise requisitions, purchase orders, supplies receipts and invoice payments.

E-Tendering	The carrying out of the tendering process using electronic means, such as the internet and specialist e-tendering software applications. It includes undertaking the tasks of advertising the requirements for supplies and services, registering suppliers, and issuing and receiving tender documents via the internet, as well as automating the evaluation of responses to a tender. Systems also incorporate contract management functionality.
E Tendering Portal	The E-procurement portal to be used to meet e procurement regulations.
EU	European Union.
EU Procurement	Procurement conducted in accordance with the relevant EU Directives and the corresponding UK legislation including in particular the Public Contracts Regulations 2015 as amended or replaced from time to time.
EU Threshold	Threshold set by the EU over which procurements must follow EU directives processes.
Exception	A procurement that is excluded from some part of the rules
Exemption	A procurement that is excluded from the <a href="#">Public Contract Regulations 2015</a>
Financial Regulations	Financial regulations forming part of the <a href="#">Council's Constitution</a> ; that set out financial management regulations for the council.
Framework Agreement	An agreement with suppliers which sets out the terms and conditions under which specific purchases can be made throughout the term of the agreement and which where necessary has been tendered in accordance with EU Procurement
Goods	Tangible products that can be consumable or non-consumable.
Health in Everything We do	Council Policy to improve the health and wellbeing of staff and residents of the borough
Hub	Team or group that provide centralised support for the Council
IR35	HRMC regulations regarding working regulations and TAX for agency workers, interims and consultants.
Light Touch Regime	This is the procurement process set out in the Public Contract Regulations 2015 that cover areas in Schedule 3; namely Adult social care and other areas listed in schedule 3.



London Tenders Portal (LTP)	<a href="#">E-Tendering Portal</a> used by the council to manage all procurement activity and contract register.
Modern Slavery Charter	Charter signed by the Council to support the eradication of Modern Slavery; specifically, within the Council supply chain.
OJEU	Means the Official Journal of the European Union or replacement publication system.
Other Authority	Where a DAR or Authority Report is not used within a service, the authority to procurement must be set out clearly in some other report, email or policy etc. (See DAR/Authority Report).
Partnership Procedure Rules	Rules set out to govern Partnership arrangements and form part of the Constitution.
Performance Bond	A bond issued by an insurance company or a bank to guarantee satisfactory completion of a project by a Supplier.
Procurement Manual	Document that support this document and sets out the processes and governance to be followed for all procurements. Provides more detailed information and links to supporting information to ensure compliance these rules.
Property Procedure Rules	Rules set out to manage property procurement and form part of the constitution
Public Contract Regulations Rules Public 2015	Means all relevant external procurement rules and regulations applying in England.
Quotation	<p>A formal statement or promise usually submitted by a potential Supplier in response to a request for a quotation to supply specified Supplies, works or services required by a purchaser at specific prices within a specific time frame. (A quotation should be distinguished from an Estimate, which is not a fixed price).</p> <p>N.B. A contract arises on acceptance of a quotation. Unless otherwise specified a quotation may be subject to the supplier's terms and conditions of business and those terms and conditions become part of the contract. Therefore, a request for quotations should specify that the quotation is subject to the Council's terms and conditions.</p>
Resilience Requirements	Resilience Requirements needed by the Council to mitigate risk in emergencies
Services	Services such as maintenance of equipment, transportation, consultancy, technical services. etc. as defined by the current Public Contract Regulations.

Service Department	Departments within the council.
Social Value Portal	The portal used to manage social value bids.
Supplier	A company that will provide goods, service or works to the Council after a competitive process.
Supplies	Can be tangible object delivered in relation to a contract. See also goods.
Strategic Delivery Board	Board to manage strategic Delivery of transformation and ICT transformation.
Teckal Company	A Council owned company meeting the conditions under Regulation 12 of the Public Contracts Regulations 2015 ('Award of Contracts to Controlled Persons') and thereby deemed to be akin to an in-house department of the Council.
Tender	A sealed bid submitted in response to an invitation to tender, which invitation contains detailed information on requirements including a specification and terms and conditions
Variation	Any alteration, modification, addition to or deletion of any requirement of the Contract terms or specification.
VEAT Notice	Voluntary Ex-Ante Transparency Notice as part of the EU regulations.
Vendor Neutral Supplier	HR supplier used to manage all Agency Workers and temporary recruitment processes.
Works	The outcome of building or civil engineering as defined under Schedule 2 of the Public Contract Regulations 2006, as amended