

PART 4 Rules of Procedure

PART 4I – Contract Rules

CONTENTS

	Section 1 – General Compliance and Scope
1.	Compliance
2.	Scope
	Section 2 – Common Requirements
3.	Calculation of Contract Values
4.	Authorised Officers and their responsibilities
5.	Contract Values
6.	Waivers
	Section 3 – Quotation and Tendering Process
7.	Advertising
8.	Suitability assessment and Pre-Qualification
9.	Electronic Tendering
10.	Dividing into Lots
11.	Submission and Opening of Tenders and Quotes
12.	Arithmetical Errors and Post Tender Clarification
13.	Evaluation
14.	Awarding Contracts
15.	Debriefing
	Section 4 – Contract Formalities
16.	Execution of contracts
17.	Records of Quotes, Tenders and contracts
18.	Bonds and Parent Company Guarantees
19.	Embedded Leases and Embedded Derivatives
	Section 5 – Specific Types of Tendering
20.	Framework Agreements and Dynamic Purchasing Systems
21.	Draw Down Agreements
22.	Collaborations and joint working
23.	Procurement by Consultants
24.	Nominated and Named Sub-Contractors
	Section 6 - Contract management and amendments to contracts during their term
25.	Amendments to Contracts
26.	Contract Management
27.	Definitions

SECTION 1: GENERAL COMPLIANCE AND SCOPE

1. COMPLIANCE

- 1.1 Every contract entered into by the Authority shall be entered into pursuant to or in connection with the Authority's functions and shall comply with:
 - 1.1.1 All relevant legislation, statutory guidance and codes e.g. Local Government Transparency Code;
 - 1.1.2 The relevant European procurement rules when applicable and whilst they have a direct effect in the UK (i.e. the EC Treaty, the general principles of EC law and the EC public procurement directives implemented by the UK Regulations);
 - 1.1.3 The Authority's Constitution including these Contract Rules, the Authority's Financial Rules and Scheme of Delegation.
 - 1.1.4 The Authority's strategic objectives, Procurement Strategy, Procurement Code (which includes template documentation) and relevant policies.
- 1.2 The policy of the Authority, and the objective of these Contract Rules, is to ensure that all works, supplies and services.
 - 1.2.1 Are obtained with probity and propriety to ensure the proper expenditure of public funds.
 - 1.2.2 Are appropriate for the purpose for which they are obtained.
 - 1.2.3 Ensure Best Value for Money.

2. SCOPE

- 2.1 These Contract Rules apply to any arrangement made by, or on behalf of, the Authority for the carrying out of works, the provision of services or the supply of supplies.
- 2.2 These Contract Rules do not apply to:
 - 2.2.1 contracts of employment which make an individual a direct employee of the Authority;
 - 2.2.2 the acquisition, disposal, or transfer of land (which must be carried out by the Executive Director of Finance and Assets or any other officer with delegated authority) except where services or works are required by the Authority as part of the land transaction. E.g. development agreements;

- 2.2.3 contracts relating to the placement of deposits or raising of loans under the treasury management strategy;
- 2.2.4 purchases made at public auction;
- 2.2.5 the giving of grants.

SECTION 2: COMMON REQUIREMENTS

3. CALCULATION OF CONTRACT VALUES

- 3.1 Unless otherwise stated, the calculation of the estimated value of a procurement shall be based on the total amount payable in pounds sterling, net of VAT, as estimated by the Authority over the entire contract period, including any proposed extension to the initial contract period.
- 3.2 The estimated value is to be calculated as at the date the contract is first advertised or the Candidates are contacted, whichever occurs first.
- 3.3 Contracts should be for a fixed term, but where this is not possible (e.g. hire agreements) the contract value should be calculated by multiplying the monthly value by 48.
- 3.4 Contracts must not be artificially under or over-estimated or divided into two or more separate contracts where the effect is to avoid the application of these Contract Rules or the Regulations.

4. AUTHORISED OFFICERS AND THEIR RESPONSIBILITIES

- 4.1 Authorised Officers are persons responsible for carrying out the procurement in question and who have received corporate training on these Contract Rules, the Regulations and the Procurement Code.
- 4.2 The Authorised Officer must proceed with the procurement in a manner commensurate with its complexity and value, by:
 - 4.2.1 appraising the need for the expenditure and its priority;
 - 4.2.2 defining the objectives of the procurement;
 - 4.2.3 assessing the risks associated with the procurement and how to manage them;
 - 4.2.4 considering what procurement method is most likely to achieve the purchasing objectives, including internal or external sourcing, partnering, packaging strategy and collaborative procurement arrangements with another local authority, government department, statutory undertaker or public service purchasing consortium and frameworks;

- 4.2.5 consulting users as appropriate about the proposed procurement method, contract standards and performance and user satisfaction monitoring;
- 4.2.6 Checking to see if a corporate contract already exists. e.g. stationery contract.
- 4.2.7 Where the procurement involves a potential change to services provided by the Authority the Authorised Officer ensuring compliance with
- the Authority's duty to consult under Section 3 Local Government Act 1999
 - the Authority's duties under the Equality Act 2010.
 - The Public Social Value Act 2012 for contracts for services over the Threshold to ensure how the procurement might improve the economic, social and environmental well-being of the geographical area the Authority serves
- 4.2.8 Ensuring the Budget Holder has sufficient budget to sustain the contract for the life of the contract.
- 4.2.9 for Quotes with a value of £25,000 or less, attaching the relevant standard terms and conditions to the purchase order or otherwise draw the attention of the Supplier to these standard terms and conditions;
- 4.2.10 for Tenders with a value above £25,000, instructing the Borough's Solicitor in writing to draft or approve the formal written contract terms and conditions that are to apply to the proposed contract;
- 4.2.11 ensuring that a purchase order is raised for the contract.
- 4.3 Where any procurement may result in any employee either of the Authority or of a service provider being affected by any transfer arrangements, Authorised Officers must ensure that the application of the Transfer of Undertaking Protection of Employment Regulations 2006 (TUPE) is considered and obtain legal advice before proceeding with inviting Tenders or Quotes.
- 4.4 Any procurement that is:
- over the Threshold and TUPE applies or
 - is over budget

shall be referred to the Cabinet for decision, unless otherwise stated elsewhere in the Authority's Constitution.

5. **CONTRACT VALUES**

5.1 Where the total value for a procurement is within the values in the first column below, unless the Budget Holder procures via a compliant Framework Agreement, Draw Down Agreement or Dynamic Purchasing System, the award procedure in the second column must be followed:

Estimated Total Contract Value	Contract Letting Requirements & Forms of Contract
<p>£24,999 £10,000 and below</p>	<p>The Budget Holder can purchase from the source that offers the Best Value for Money to the Authority.</p> <p>This could be demonstrated by obtaining two written Quotes where possible and via the Portal where appropriate.</p> <p>Contracts shall be by purchase order with the relevant standard terms and conditions attached or otherwise drawn to the attention of the Supplier.</p>
<p>Above £10,000 to £25,000</p> <p><u>Above £25,000 to £50,000</u></p>	<p>At least three written Quotes shall be sought through the Portal using the Request for Quote template.</p> <p>Where a procurement opportunity with a value estimated to be £25,000 or above is Advertised, it must also be advertised on Contract Finder using the Portal within 24 hours of any other adverts appearing together with unrestricted and full direct internet access to relevant contract documents.</p> <p>A pre-qualification stage is not permitted but appropriate suitability questions may be asked in the Request for Quote.</p> <p>Contracts shall be by purchase order with the relevant standard terms and conditions attached or otherwise drawn to the attention of the Supplier.</p> <p>If the lowest Quote received exceeds £25,000, the contract shall not be awarded unless the contract is below the relevant Threshold and either</p>

	<ul style="list-style-type: none"> • a waiver is approved in accordance with Rule 6.1 or • approval is given by the Section 151 Officer. <p>Unless a waiver or approval of the Section 151 Officer is given, a new procurement will be required which must be carried out in accordance with the above £25,000 to Threshold procedures</p> <p>At least three formal quotes shall be sought through the Portal using the Request for Quote Template. The opportunity must be advertised on Contracts Finder.</p> <p>The Authorised Officer can also consider whether there is suitable framework agreement, dynamic purchasing system or existing contract to which the Authority is party that provides a mechanism for ordering goods, services and works.</p> <p>The framework or dynamic purchasing system standard terms and conditions must be agreed and approved and will form the basis of the contract.-</p>
<p>Above £50,001<u>£25,000</u> to Threshold</p>	<p>A full competitive procurement shall be undertaken through the Portal using an Invitation to Tender.</p> <p>The opportunity must be advertised on Contract Finder (within 24 hours of any other adverts appearing) (and/or other public advertisement as determined by the Authorised Officer) together with unrestricted and full direct internet access to relevant contract documents.</p> <p>A pre-qualification stage is not permitted except for procurements of works contracts above the Threshold for supplies and services. A PAS91 pre-qualification questionnaire must be used.</p> <p>A formal written contract prepared or approved by the Borough Solicitor must be used.</p> <p>If the lowest Tender received exceeds the relevant Threshold then the contract shall not be awarded. A new procurement will be required which must be carried out in accordance with the Threshold and Above procedure.</p>

Threshold and Above	<p>A full competitive procurement shall be undertaken through the Portal using an Invitation to Tender.</p> <p>Procurement opportunities shall be advertised</p> <ul style="list-style-type: none"> • either in the Official Journal of the European Journal (OJEU) or using the UK e-notification service, as required by law • on Contract Finder within the time limit specified in the Regulations <p>The Procurement Adviser, in consultation with the Borough Solicitor, shall advise on the most appropriate procurement procedure to be used when conducting a procurement. The Regulations set out the permitted procurement procedures; the two most common procedures are:</p> <ul style="list-style-type: none"> • Open Procedure – a one stage process where anyone can submit a tender • Restricted Procedure – a two stage process where a Selection Questionnaire is used to shortlist Candidates who are then invited to submit a tender. <p>The following procedures can only be used in certain circumstances. See the Procurement Code for further detail.</p> <ul style="list-style-type: none"> • Innovation Partnership; This may be used when the Authority is seeking innovative ideas where solutions are not already available on the market and there is also an intention to include both the development of the outcome and its subsequent purchase (subject to meeting agreed performance levels and maximum costs) in the procurement. <p>A structured partnership will be established for the development of an innovative product, service or works and the subsequent purchase of the resulting supplies, services or works, provided that they correspond to the agreed performance levels and costs.</p>

	<ul style="list-style-type: none"> • Competitive dialogue This can be used where either of the following apply: <ul style="list-style-type: none"> (i) the need of the Authority cannot be met without adaptation of readily available solutions; (ii) they include design or innovative solutions; (iii) specific circumstances related to the nature, the complexity or the legal and financial makeup or because of risks attaching to them; (iv) the technical specifications cannot be established with sufficient precision with reference to a standard, European Technical Assessment, common technical specification or technical reference; (v) where, in response to an open or a restricted procedure, only irregular or unacceptable tenders were submitted, provided that the Authority includes in the procedure all of, and only, the Candidates that meet certain criteria and submitted tenders in accordance with the formal requirements of the failed procedure • Competitive Procedure with negotiation. This procedure can be used for the same reasons as competitive dialogue. With this procedure, the Authority can negotiate with Candidates who have submitted tenders to seek improved offers. A formal written contract prepared or approved by the Borough Solicitor must be used.
Light Touch Regime	Contracts involving the following supplies and services are subject to a 'light touch' regime if the value of the contract is below the prescribed Threshold;

	<ul style="list-style-type: none"> • Health, social and related services • Administrative social, educational, healthcare and cultural services • Compulsory social security services • Benefit services • Other community, social and personal services including services furnished by trade unions, political organisations, youth associations and other membership organisation services • Legal services • Other administrative services and government services • Provision of services to the community • Prison related services, public security and rescue services • Investigation and security services • International services • Postal services • Miscellaneous services listed in schedule 3 of the Public Contracts Regulations 2015 <p>Advice must be sought from the Procurement Adviser before undertaking a light touch regime procurement.</p> <p>A formal written contract prepared or approved by the Borough Solicitor must be used.</p>
<p>Concessions</p>	<p>A concession contract is an agreement where Suppliers are given the right to exploit works or services provided for their own gain. Suppliers can either receive consideration for their services solely through third party sources or partly through payment from the contracting authority along with income received from third parties e.g. a services Concession is where a Supplier has a contract to manage an Authority's catering services for its staff. The Authority does not pay the Supplier to run the services and its income is solely through the staff using the facilities. The risk in the Concession making a profit is with the Supplier and not the Authority.</p> <p>A formal written contract prepared or approved by the Borough Solicitor must be used.</p>

Disposal of assets (other than land)	Where the Authority is selling or disposing of assets without the provision of services then the Authority's obligation is to achieve the best value for the items. This could be achieved by obtaining quotes or conducting a full tender depending upon the items being disposed of. Any disposal must be in accordance with the Authority's Finance Rules.
Disposal of Land	These Contract Rules and the Regulations apply where the Authority is disposing of or acquiring land and there is an element of services or works required by the Authority as part of the transfer (e.g. development agreements)

6. WAIVERS

6.1 Subject to the written approvals referred to in Contract Rule 6.2 below, waivers of any of these Contract Rules shall only be given in the following exceptional circumstances:-

6.1.1 Where the supplies, works or services are of a unique or specialised nature or are identical or similar to or compatible with an existing provision so as to render only one or two sources of supply appropriate, including:

- an upgrade or
- where the contract concerns, wholly or mainly, repairs to or the supply of parts for existing proprietary machinery, plant or equipment and the repairs to or the supply of parts cannot be carried out practicably by alternative Suppliers;

or

6.1.2 The supplies to be purchased are proprietary articles or are sold only at fixed prices; or

6.1.3 The price of services or supplies to be purchased is controlled by trade organisations, or if for other reasons there would be no genuine competition; or

6.1.4 Where in the opinion of the Authorised Officer in consultation with the Section 151 Officer and the Borough Solicitor considers that the services to be provided or the work to be executed or the supplies or materials to be purchased are urgent; (subject to the action being reported to the next Cabinet Meeting); or

6.1.5 Specialist consultants, solicitor, barrister, agents, artist or professional advisers are required and:

- There is no satisfactory alternative; or
- Evidence indicates that there is likely to be no genuine competition; or
- It is, in the opinion of the Authorised Officer, in the Authority's best interest to engage a particular consultant, solicitor, barrister, agent, artist or adviser;

or

6.1.6 Where the Authority is purchasing a property, or is taking a service back in-house, which has associated contracts and in the opinion of the Authorised Officer it is in the Authority's best interests to acquire those contracts; or

6.1.7 The works to be executed or the supplies or materials to be purchased can only be carried out or supplied by a statutory body.

6.2 These Contract Rules cannot be waived for the procurements above the relevant Threshold.

Where it is possible to waive these Contract Rules, any such waiver must be agreed by:

6.2.1 Cabinet for contracts above £100,000 or the Head of Paid Service in consultation with the Leader of the Authority, the Section 151 Officer and the Borough Solicitor if the matter requires an urgent decision and a meeting of the Cabinet cannot be called; or

6.2.2 The Budget Holder (if authority to do so has been delegated to them in accordance with the Protocol for sub-delegation contained in Appendix D of the Constitution) or a Director, Executive Director/Chief Executive, in consultation with the Section 151 Officer and the Borough Solicitor if the contract does not exceed £100,000.

6.3 The decision to waive the contract rules and the reasons for it shall be recorded in the waiver form and where made under Rule 6.2.2 or the urgency procedure under Rule 6.2.1, the waiver shall be kept by the Borough Solicitor.

SECTION 3: QUOTATION AND TENDERING PROCESS

7 ADVERTISING (above £25,000.00)

7.1 Adverts shall include as a minimum:

- Date and time response to be received by the Authority
- How and to whom the Supplier must respond
- Any requirements for participating in the procurement

7.2 Where adverts are placed on Contract Finder unrestricted and full direct internet access to relevant contract documents shall be available on the Authority's Portal free of charge when the advert is placed.

7.3 Opportunities with a value over the relevant Threshold must also be advertised either in the Official Journal of the European Union (OJEU) or using the UK e-notification service, as required by law.

8. **SUITABILITY ASSESSMENT (under Threshold) AND PRE-QUALIFICATION (above Threshold only)**

8.1 Authorised Officers are responsible for ensuring that all Candidates for a contract are suitably assessed. Financial and due diligence checks must be undertaken for all contracts where the value of the contract is above £10,000.

Under Threshold

8.2 As part of the tender or quotation process the Authorised Officer shall establish that the potential Candidates meet minimum requirements or minimum standards of :

- Suitability.
- Capability.
- Legal status; and
- Financial standing

8.3 The assessment questions must be

- relevant to the subject matter of the procurement and
- proportionate

8.4 For works and works related contracts above the Threshold for supplies and services, a pre-qualification stage is permitted. Officers must use form PAS91 or such other template required by law or by the Government.

Above Threshold

8.5 Procurements above the Threshold can use a pre-qualification stage. Officers must use the Selection Questionnaire form issued by the Government or form PAS91 for works or works related contracts or such other templates as required by law or by the Government

8.6 As any deviations the standard form must be reported to the Cabinet Office changes to the form are not permitted without the consent of the Procurement Adviser, Section 151 Officer and the Borough Solicitor.

8.7 Any Candidate eliminated from a procurement where a pre-qualification process has been undertaken must be notified following the evaluation of that stage in the process

8.8 As any deviations the standard form must be reported to the Cabinet Office changes to the form are not permitted without the consent of the Procurement Adviser, Section 151 Officer and the Borough Solicitor.

9. **ELECTRONIC TENDERING**

9.1 On 18th October 2018, electronic procurement and electronic communications became compulsory for above Threshold procurements. Except in the limited circumstances contained in the Regulations, all communication and information exchange, including electronic submission of tenders, shall be performed using electronic means of communication in accordance with the requirements of the Regulations.

9.2 Except for procurements with a value of £10,000 or below, the procurement shall be carried out through the Portal unless otherwise permitted by these Contract Rules or by the Procurement Adviser and the Section 151 Officer. For quotes under £10,000 the Portal should be used were appropriate to do so.

9.3 The procurement may, following consultation with the Procurement Adviser and the Borough Solicitor, be carried out through an electronic auction where the Authorised Officer is satisfied that it is in the interests of the Authority to do so.

10 **DIVIDING TENDERS INTO LOTS**

10.1 Authorised Officers may decide to award a contract in the form of separate lots and may determine the size and subject matter of such lots.

10.2 For an above Threshold procurement, if the contract is not split into lots the main reasons for this decision shall be included in the procurement documents and the Regulation 84 Report.

10.3 Authorised Officers shall include in the notice and or tender documents whether:

- tenders can be submitted for one, for several or for all of the lots; or
- if there is a limit on the numbers of lots that can be tendered for.

- 10.4 Where more than one lot may be awarded to the same Candidate, Awarding Officers may award contracts combining several or all lots where they have specified in the contract notice or in the invitation to tender that they reserve the possibility of doing so and indicate the lots or groups of lots that may be combined.
11. **SUBMISSION AND OPENING OF TENDERS AND QUOTES**
- 11.1 Tenders and Quotes shall be submitted in accordance with requirements set out in the Invitation to Tender or Request for Quote.
- Tenders and Quotes (£10,000 and above)**
- 11.2 Tenders and Quotes must be submitted electronically via the Portal and the Authorised Officer shall ensure that the submissions are kept secure and un-opened until the specified date and time. The Authorised Officer shall carry out the opening of the Tenders and Quotes in accordance with instructions given by the Procurement Adviser.
- 11.3 An immediate record shall be made of the Tenders and Quotes received including names, amount of tender and the date and time of opening. Where the Portal is used, this information will be recorded automatically.
- 11.4 No Tenders or Quotes received after the specified date and time for receipt shall be accepted or considered by the Authority unless the Authorised Officer, after consulting with the Procurement Adviser, the Section 151 Officer and the Borough Solicitor, is satisfied that there is sufficient evidence that either;
- the Tender or Quote was despatched in sufficient time for it to have arrived before the closing date and time
 - Technical difficulties with the Portal prevented the Tender or Quote from being submitted before the closing date and time
12. **ARITHMETICAL ERRORS, POST TENDER CLARIFICATION AND ABNORMALLY LOW TENDERS**
- 12.1 Candidates can only alter their Tenders or Quotes after the date specified for their receipt (but before the formal acceptance of the Tender or Quote), where examination by officers reveals arithmetical errors or discrepancies that affect the Tender or Quote figure. The Candidate shall be given details in writing of such errors or discrepancies and afforded an opportunity of confirming, amending or withdrawing their offer in writing.
- 12.2 In an above Threshold procurement, the Authority must require Candidates to explain the price of costs proposed in the tender where the tender appears to be abnormally low in relation to the works, supplies or services.
- 12.3 All other post-tender clarifications shall:

12.2.1 only be undertaken following consultation with the Procurement Adviser and the Borough Solicitor; and

12.2.2 not disclose commercially sensitive information supplied by other Candidates.

13 **EVALUATION**

13.1 Tenders and Quotes shall be evaluated in accordance with the Regulations (where applicable) and the award criteria set out in the Invitation to Tender or Request for Quote.

13.2 All contracts shall be awarded based on the offer that represents the most economically advantageous, taking into account price and/or quality, to the Authority.

13.3 The award criteria shall be predetermined and listed in the Invitation to Tender or Request for Quote documentation. In addition, the criteria shall be strictly observed at all times throughout the contract award procedure by any officer involved in the tender evaluation.

13.4 For all contracts regardless of value, no person with a personal or financial interest in any of the Suppliers submitting a proposal should be involved in any way in influencing the decision as to which Supplier is to be awarded the contract. A declaration of interest form must be completed by each officer involved in the evaluation process and held on file by the Authorised Officer.

13.5 Where Authorised Officers intend to carry out site visits, presentations or interviews as part of the evaluation process, this must be made clear in the invitation to tender and include whether this will be scored separately to the tender submission or used to moderate scores. If scored separately, Candidates must be informed of the evaluation criteria and weighting in the procurement documents.

14. **AWARDING CONTRACTS**

14.1 The Authority shall only accept a tender and award a contract to the Candidate submitting the Most Economically Advantageous Tender/Quote

14.2 Depending on what is being procured and whether or not it is an above Threshold procurement, the Most Economically Advantageous Tender/Quote can be assessed as follows;

- Price (i.e. the lowest bid)
- Cost (where the assessment is based on cost-effectiveness basis such as an asset life-cycle assessment (cost of the asset, maintenance costs, end of life costs))

- Best Price/Quality Ratio. (the award criteria can include quality, including technical merit, aesthetic and functional characteristics, delivery date, delivery process, after-sales service and technical assistance as well as environmental and/or social matters and any other matters relevant to what is being procured.

The award criteria and the scoring methods must be disclosed in the Invitation to Tender or Request for Quote.

- 14.3 A contract may only be awarded by an Awarding Officer with the requisite delegated authority to award contracts. Prior to award, the Authorised Officer should ensure that the Budget Holder responsible for the contract has sufficient funds in place to sustain the contract.
- 14.4 For contracts with a value of £25,000 or above, regardless of whether the contract award opportunity was advertised, a contract award notice containing the name of the Supplier, the date the contract was entered into and the value of the contract must be published on Contract Finder no later than 90 days after contract award. If below Threshold, the award notice must state, whether or not Supplier is a Small and Medium-sized Enterprise (SME) or voluntary, community and social enterprise (VCSE)
- 14.5 For above Threshold Contracts, a Contract Award Notice must be published in OJEU or the UK e-notification service, as required by law or by the Government and the relevant standstill period observed. The contract shall not be completed or a Purchase Order issued unless the standstill period passes with no challenges. The Authorised Officer shall notify the Procurement Adviser and the Borough Solicitor immediately following receipt of a challenge.
- 14.6 For contracts with a value of £25,000 and above, the purchase order shall not be issued until the formal written contract has been completed

15. **DEBRIEFING**

- 15.1 The Authorised Officer shall provide a written debriefing to unsuccessful Candidates as required by the law.

SECTION 4: CONTRACT FORMALITIES

16 **EXECUTION OF CONTRACTS**

- 16.1 All contracts not exceeding £25,000 that require execution shall be signed by any of the Chief Executive, Executive Director, Director, Borough Solicitor or any other officer with delegated authority to do so, unless the Borough Solicitor requires that the contract be sealed.

- 16.2 All contracts exceeding £25,000 but not exceeding £50,000 shall be signed by the Borough Solicitor unless the Borough Solicitor requires that the contract be sealed.
- 16.3 All contracts exceeding £50,000 shall be executed as a deed by the Borough Solicitor and the common seal affixed to the contract unless the Borough Solicitor considers it more expedient to sign the contract.
- 16.4 Electronic signatures may only be permitted as a method of executing contracts with the prior consent of the Section 151 officer having first obtained advice from the Borough Solicitor.

17. **RECORDS OF QUOTES, TENDERS AND CONTRACTS**

- 17.1 The Procurement Adviser shall maintain a list of all Tenders and Quotes over £25,000 received. For procurements not exceeding £25,000, the Authorised Officer is responsible for keeping records of Tenders and Quotes received in such form as required by the Procurement Adviser.
- 17.2 Authorised Officers must ensure that details of contracts awarded over £5,000 are entered on the Contracts Register kept by the Authority and maintained by the Procurement Adviser.
- 17.3 All contracts with a value of £25,000 and above shall be kept by the Borough Solicitor and a copy shall be sent to the Procurement Adviser.
- 17.4 All contracts below that value shall be kept securely by the Budget Holder in accordance with the Authority's retention policy and a copy sent to the Procurement Adviser.

18. **BONDS AND PARENT COMPANY GUARANTEES**

- 18.1 A Bond or Parent Company Guarantee will be required on all works contracts above £1,000,000 unless considered inappropriate by the Section 151 Officer following consultation with the Borough Solicitor.
- 18.2 Bonds or Parent Company Guarantee may be required for any contract if considered appropriate by Section 151 Officer following consultation with the Borough Solicitor.
- 18.3 Bonds shall be a minimum of 10% of the contract value.

19. **EMBEDDED LEASES AND EMBEDDED DERIVATIVES**

- 19.1 Prior to the award of a contract the Authorised Officer must notify the Section 151 officer where under the contract:

- 19.1.1 the Authority will have use or control of or will be paying for the use of a specific asset or group of assets; or
- 19.1.2. contains a clause that caps the price the Authority has to pay for supplies or services or there is floor price on the price the Authority has to pay for supplies or services; or
- 19.1.3 the prices the Authority has to pay under the contract, increase by more than 2 times RPI; or
- 19.1.4 the prices the Authority has to pay, increase by some other form of Indices or commodity price.

SECTION 5: SPECIFIC TYPES OF TENDERING

20 FRAMEWORK AGREEMENTS AND DYNAMIC PURCHASING SYSTEMS

FRAMEWORK AGREEMENTS AND DYNAMIC PURCHASING SYSTEMS SET UP BY OTHER CONTRACTING AUTHORITIES

- 20.1 External Framework Agreements and Dynamic Purchasing Systems (DPS), where the Authority is named or identified as part of a class of permitted users, can be used where the Authority wishes to contract for the sourcing of supplies, services or works without conducting a full procurement exercise.
- 20.2 The Framework Agreement and DPS may include within its terms a requirement for abbreviated competitive exercise (“mini competition”) between some or all of those Suppliers who are parties to the Framework Agreement and can provide the supplies/services/works being tendered. Other Framework Agreements and DPS may allow for a direct award or the choice of either direct award or mini completion. Any purchase from a Framework Agreement or DPS shall be made in accordance with the procedure set out in the Framework Agreement or DPS.
- 20.3 The approval of the Procurement Adviser or Borough Solicitor shall be sought before signing up to a new Framework Agreement or DPS.
- 20.4 A Call-Off contract as set out in the Framework Agreement or DPS will need to be entered into. If no pre agreed contract is provided for in the Framework Agreement or DPS, a contract drafted or approved by the Borough Solicitor, shall be entered into.

FRAMEWORK AGREEMENTS AND DYNAMIC PURCHASING SYSTEMS SET UP BY THE AUTHORITY

- 20.5 The Authority may carry out procurement exercises to set up Framework Agreements or a DPS to allow it to choose Suppliers who meet its pre-qualification requirements. The Authority can then Call-Off Suppliers from the Framework Agreement or the DPS. This could be useful where the Authority has need to call on contracts urgently or often. The Authority could also set up a Framework Agreement or DPS for itself and other local authorities to use in order to make efficiency savings.
- 20.6 Once a Framework Agreement or DPS is established, Quotes and Tenders for contracts may be invited from Suppliers included on the Framework Agreement or DPS up to the financial limit stated in the Framework or DPS.
- 20.7 The Authority will need to carry out a procurement exercise to select the Suppliers to include on and to set up the Framework Agreement or a DPS. This procurement will need to be advertised in accordance with these Contract Rules and the Regulations. The total contract value limit referred to in rule 20.6 above shall be determined by the anticipated level of spend per Framework Agreement or DPS.
- 20.8 The call off from a contract under a Framework Agreement or DPS with a value of £25,000 or above shall be published on Contract Finder.

21. **DRAW DOWN AGREEMENTS**

- 21.1 Authorised Officers may award Draw Down Agreements to individual Suppliers where services, supplies or works are required on an ad hoc basis e.g. JCT measured terms agreements. More than one Draw Down Agreement may be awarded to different Suppliers for the same services supplies or works.
- 21.2 Authorised Officer shall carry a procurement process for the award of the Draw Down Agreement in accordance with these contract rules

22. **COLLABORATIONS AND JOINT PROCUREMENT**

- 22.1 The Authorised Officer may participate in any collaborative or joint procurement arrangements with other Local Authorities or public bodies including membership or use of a Purchasing Consortia subject to the prior approval of the relevant Director and Procurement Adviser.

23. **PROCUREMENT BY CONSULTANTS**

- 23.1 Any consultants used by the Authority shall be appointed in accordance with these Contract Rules and the Regulations. The Authorised Officer shall ensure that the consultant's performance is monitored.
- 23.2 Where the Authority uses consultants to act on its behalf in relation to any procurement, then the Authorised Officer shall ensure that the consultant

carries out any procurement in accordance with these Contract Rules and the Regulations.

23.3

Consultants may advise the Authorised Officer as to the most suitable candidate. The Authorised Officer can use the advice given by the Consultant to make their recommendation to the Awarding Officer.

23.4

No Consultant shall make any decision on whether to award a contract or to whom a contract should be awarded. This decision rests with the Awarding Officer who shall sign the Tender Acceptance Form or waiver.

24

NOMINATED AND NAMED SUB-CONTRACTORS

24.1

Tenders for sub-contracts to be performed or supplies to be provided by nominated Suppliers shall be dealt with in accordance with the provisions of these Contract Rules.

SECTION 6

CONTRACT MANAGEMENT AND AMENDMENTS TO CONTRACTS DURING THEIR TERM

25

AMENDMENTS TO CONTRACTS

Above Threshold Contracts

25.1

An above Threshold Contract, Framework Agreement or DPS can only be changed if permitted by the Regulations. Advice must be sought from the Borough Solicitor before making any changes to an above Threshold Contract or Framework Agreement.

Below Threshold Contracts

25.2

In limited circumstances and having regard to the Regulations and advice from the Borough Solicitor, the Awarding Officer may authorise changes to be made to contracts below Threshold Contracts.

26

CONTRACT MANAGEMENT

26.1

Authorised Officers need to actively monitor and manage a Supplier's performance throughout the contract life to ensure milestones, KPIs, deliverables and outcomes are achieved. Risks and, where appropriate, business continuity shall be managed as detailed in the tender and Contract documentation. Management data needs to be published in accordance with the Government's Transparency Code.

26.2 Plans should be made well in advance to re-procure the contract (if applicable) and an exit strategy included in the tender, procurement documentation and the contract.

27 DEFINITIONS

Advertised	As defined in Regulation 110 of the Public Contracts Regulations 2015. “An opportunity is advertised if the Authority does anything to put the opportunity in the public domain or bring the opportunity to the attention of economic operators generally or to any class or description of economic operators which is potentially open-ended, with a view to receiving responses from economic operators who wish to be considered for the award of the contract”
Authorised Officer	Authorised Officers are persons responsible for carrying out the procurement in question and who have received corporate training on these Contract Rules.
Awarding Officer	The officer with the delegated authority to award the contract
Best Value for Money	The best solution for the Authority taking into account price, quality and deliverability.
Bond	An insurance policy: if the Supplier does not do what it has promised under a contract with the Authority, the Authority can claim from the insurer the sum, of money specified in the bond (often 10% of the contract value). A bond is intended to protect the Authority against a level of cost arising from the Supplier’s failure.
Borough Solicitor	Means the senior legal adviser for the Authority
Budget holder	The officer responsible for the budget for the relevant procurement
Candidate	Any person who may or does submit a Quote or Tender.
Call-Off Contract	Means a contract awarded to a Supplier under a Framework Agreement
Concession Contracts	An agreement where Suppliers are given the right to exploit works or services provided for their own gain.
Consultant	Someone appointed (but not under a contract of employment) for a specific length of time to work to a defined project brief with clear outcomes to be delivered, who brings specialist skills or knowledge to the role.
Contracting Authorities	Bodies that are subject to the Regulations.
Director	Means the chief officers for the Authority, director or the Borough Solicitor
Draw down contract	A contract with a single Supplier where supplies, services or works are requested on an ad hoc basis

Dynamic Purchasing System (DPS)	A DPS is a procedure available to purchase commonly used goods, works or services. It is similar to a Framework Agreement but suppliers can apply to join at any time.
Framework Agreement	An agreement between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.
Head of Paid Service	Means the officer designated as head of paid service for the Authority under section 4 of the Local Government and Housing Act 1989
Invitation to Tender (ITT)	Invitation to tender documents in the form required by these Contract Rules.
Most Economically Advantageous Tender	The most economically advantageous tender will be evaluated on the basis of either <ul style="list-style-type: none"> • Price (i.e. the lowest price) • Cost (on the basis of a cost-effectiveness approach e.g. life-cycle costing) • Best price/quality ratio
OJEU	Official Journal of the European Union – where notices for all above Threshold procurements opportunities and contract awards must be placed.
PAS 91	Means the Publicly Available Specification 91 prequalification questionnaire published by the British Standard Institute for contracts for works and associated services and supplies (or such other document mandated for use by the Government).
Parent Company Guarantee	A contract that binds the parent of a subsidiary company as follows: if the subsidiary company fails to do what it has promised under a contract with the Authority, the Authority can require the company to do so instead.
Portal	Means the portal used by the Authority to conduct procurements electronically.
Procurement Adviser	An officer engaged by or on behalf of the Authority to provide procurement services.
Quote	A quotation of price and any other relevant matter (without the formal issue of an Invitation to Tender).
Regulations	Means the Public Contracts Regulations 2015, Concession Contracts Regulations 2016, Utilities Contracts Regulations 2016 or any other UK legislation regulating procurements by local authorities (as may be amended, modified or replaced from time to time)

Regulation 84 Report	Means the report about the procurement required to be compiled under Regulation 84 of the Public Contracts Regulations 2015
Section 151 Officer	The officer of the Authority who has been designated as such pursuant to Section 151 of the Local Government Act 1972.
Substantial	<p>In relation to a change to an existing contract of framework agreement means where one of the following conditions is met:-</p> <ul style="list-style-type: none"> (a) the change renders the contract or the framework agreement materially different in character from the one initially concluded; (b) the modification introduces conditions which, had they been part of the initial procurement procedure, would have; <ul style="list-style-type: none"> (i) allowed for the admission of other candidates than those initially selected, (ii) allowed for the acceptance of a tender other than that originally accepted, or . (iii) attracted additional participants in the procurement procedure; . (c) the modification changes the economic balance of the contract or the framework agreement in favour of the contractor in a manner which was not provided for in the initial contract or framework agreement; (d) the modification extends the scope of the contract or framework agreement considerably; (e) a new contractor replaces the one to which the contracting authority had initially awarded the contract in cases other than those provided for in Rule 28(1)(d).
Supplier	A person or body of persons providing, or seeking to provide, supplies, services or works to the Authority.
Tender	A Candidate's proposal submitted in response to an Invitation to Tender.
Threshold	Means the values set by the European Commission, or such other Government or Regulatory body, which determine whether a procurement has to be carried out in accordance with the Regulations (except Part 4 of the Public Contracts Regulations which applies for procurements with a value of £25,000 and above).