

London Borough of Enfield



# **CONTRACT PROCEDURE RULES**

**DRAFT V0.8**

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## **SECTION 1 - INTRODUCTION AND PURPOSE**

### **1.1 Primary Objectives**

The Contract Procedure Rules set out the regulations that must be followed by *the Council* when it procures goods, services and works.

The rules have 4 primary objectives:

- (a) To ensure that the Council obtains value for money and fulfils the duty of achieving Best Value as defined in Section 3 of the Local Government Act 2003.
- (b) To ensure that the Council complies with English law and European law in force in England that governs the procurement of goods, services and works.
- (c) To establish procurement procedures which, when followed, should protect Members and officers of the Council from any allegation of acting unfairly or unlawfully which may be made in connection with any procurement by the Council of goods, services, or works.
- (d) To ensure that any risks associated with entering into the contract are assessed as part of the procurement process.

These Contract Procedure Rules form part of the Council's Constitution.

### **1.2 General Principles**

Before any contract is made, there must be:

- (a) The proper authority of the Council in accordance with the processes set out in the Constitution or local scheme of delegation.
- (b) Adequate budgetary provision for the purpose.
- (c) Compliance with the procedure for taking key decisions as provided in the Cabinet Procedure Rules (Chapter 4.3 of Constitution) and the Access to Information Procedure Rules (Chapter 4.6 of Constitution)

### **1.3 Scope of Contract Procedure Rules**

- 1.3.1 These rules apply to all procurement by the Council unless any such procurement is expressly excepted under these Rules, or subject to an exemption. (see 1.4 and Appendix A)

1.3.2 The rules apply to all procurement activity including:

- (a) **Spot/Defined Contracts** that are for a defined requirement for a firm price, normally a single purchase of goods or services.
- (b) **Call off contracts** that cover a list of defined products or services where the price structure is defined.
- (c) **Framework contracts** where the overall terms and conditions are agreed but the cost of each call off will vary dependent upon the requirement.
- (d) **Works Contracts** where contracts are let by public authorities for civil engineering and building works and works concession contracts
- (e) Any **consultants** used by the Council shall be appointed in accordance with these contract procedure rules.
- (f) **Partnering contracts**, which may be developed for specific activities, will also be subject to these rules.

1.3.3 If there is any change to English law or European law in force in England, which affects these rules, then that change must be observed until these rules can be revised. If these rules conflict in any way with English law or European law in force in England then that legislation takes precedence.

1.3.4 All contracts must be managed in accordance with the Financial Regulations relating to contracts, which may be found in the Constitution.

## 1.4 Exemptions and Exceptions

1.4.1 Unless a Contract falls within the list of general exceptions set out in Appendix A it can only be exempted from these Rules by an application for a 'Waiver'

1.4.2 Any individual provision within these Contract Procedure Rules may be waived so long as this will not lead to a breach of EU and UK regulations.

1.4.3 The appropriate Service Director, who may seek advice from Legal, Audit or CPT or consult with the relevant Portfolio Holder, may grant a waiver relating to contracts. Service Directors must ensure that any waiver will not breach EU and UK regulation before granting permission to waive Contract Procedure Rules.

- 1.4.4 Each Service Director will be responsible for maintaining records on all requests for a waiver and the decision made. They shall forward a copy of the waiver form to the Director of Finance & Corporate Resources. A 'Waiver Request Form' can be found on the Procurement Intranet site.
- 1.4.5 The Director of Finance and Corporate Resources will, on a bi-annual basis, provide a detailed report to the audit committee for any waiver, prepared by the Service Director, where the contract value is in excess of £100,000.

## 1.5 Officer Responsibilities

- 1.5.1 Each Director is responsible for purchasing within their service department and has the responsibility for ensuring compliance with these Rules, the *Financial Regulations* and all UK and European Legislation in force in England within that department.
- 1.5.2 Through the scheme of delegation this authority may be passed down to officers within each department. See section 1.6
- 1.5.3 An officer responsible for managing any contract must comply with the Council's *Code of Conduct* and the Council's *Strategy for the Prevention and Detection of Fraud and Corruption* and must not invite or accept any gift or reward in respect of the award or performance of any contract.
- 1.5.4 The officer must have regard to current guidance provided by the CPT and Legal Services and the principles of the *Council's Procurement Strategy*.
- 1.5.5 The Officer must establish if an existing *Approved Contract* exists before seeking to let another contract. This approved contract must be used unless there is an overriding reason not to. Where a non-approved contract is requested, this must be approved by the CPT.
- 1.5.6 The Officer must consult with the CPT prior to commencing any tendering activity where the contract value is anticipated to be greater than the *EU Threshold*. See also Section 2.1.4
- 1.5.7 The officer must ensure that agents, including consultants, acting on their behalf also comply with these rules.
- 1.5.8 The officer must ensure that when any employee or contractor arrangement may be affected by any transfer arrangement, such as Transfer of Undertaking Protection of Employment

(TUPE) that advice is obtained from the CPT and Legal Services before proceeding with inviting tenders or quotations.

## **1.6 Delegated Authority**

1.6.1 Any procurement carried out on behalf of *the Council* may only be undertaken by officers with the appropriate delegated authority to carry out such tasks. This delegation must be included in the current scheme of delegation.

1.6.2 A copy of the scheme of delegation must be kept by each Director and reviewed at least annually.

## **1.7 Review and Amendment of Contract Procedure Rules**

1.7.1 These contract procedure rules shall be reviewed and updated on a regular basis, not less than annually, by CPT in conjunction with Audit and CPR consultation team. Amended contract procedure rules shall be agreed and adopted by the full Council, as recommended by the Audit Committee.

# **SECTION 2 - PROCEDURE BY VALUE OF REQUIREMENT**

## **2.1 General Principles**

2.1.1. Obtaining *best value* is an underlying principle of these CPRs. The complexity of the procurement procedures that must be followed will vary depending on the value and risk.

2.1.2. The *total value* of the procurement is defined as the total anticipated contract/purchase value and this will be calculated as follows:

- (a) Where the contract is a capital or one-off purchase or for a fixed period, by taking the total price to be paid or which might be paid during the whole of the period;
- (b) Where the purchase involves recurrent transactions for the same type of items, by aggregating the value of those transactions over the contract period;
- (c) Where the total contract value over the full duration of the contract (not just the annual value) is uncertain, by multiplying the monthly payment by 48;

- (d) For framework agreements and call off contracts with no guaranteed commitment the contract value will be the estimated value of call off's over the full duration of the contract;
  - (e) Where an in house service provider is involved, by taking into account redundancy and similar / associated costs.
  - (f) Where a partnering arrangement is to be put in place the total value of the likely partnership.
- 2.1.3. The value must be calculated in pounds sterling exclusive of Value Added Tax.
- 2.1.4. 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 Contract Procedure Rules or EU Legislation.
- 2.1.5. The Council should make the best use of its purchasing power by aggregating purchases wherever practical.
- 2.1.6. A summary of the process and responsibilities can be found at Appendix B.

## **2.2 Low Value Transactions**

- 2.2.1. Defined as transactions valued at or below £5,000 for goods or services, (or below £10,000 for works) that cannot be obtained via an existing Approved Contract.
- 2.2.2. Whilst obtaining value for money remains the primary objective multiple quotations need not be obtained provided compliance with this objective can be demonstrated.
- 2.2.3. For requirements under £1,000 a verbal quotation is sufficient.
- 2.2.4. A *written quotation* must be obtained for requirements over £1,000 before any order is processed and this must specify:
- (a) The goods, services or works to be supplied;
  - (b) Where and when they are to be supplied;
  - (c) The value of the transaction;
  - (d) The Terms and Conditions including Payment Terms;
- 2.2.5. In the case of Works Contracts and Consultancy Contracts the use of pre agreed hourly/day rates is acceptable.



## **2.3 Intermediate Value Transactions below Formal Tender Threshold**

- 2.3.1. Defined as transactions for goods or services valued at or over £5,000 (£10,000 for Works) but below £50,000 that cannot be obtained via an existing Approved Contract.
- 2.3.2. The criteria for selecting the most advantageous quotation must be established before the written quotations are invited.
- 2.3.3. At least 3 comparable written quotations must be sought.
- 2.3.4. If less than 3 potential *suppliers* can be identified seek approval to proceed using the Waiver Request Form (Appendix B).

## **2.4 Call Off from existing Approved Contracts**

- 2.4.1. Where the requirement can be satisfied from an existing Approved Contract then the order will be considered an Exception to these rules as long as the call off arrangements defined within the individual contract are followed.

## **2.5 High Value Transactions**

- 2.5.1. Defined as transactions for goods, services or works valued at or over the formal tender threshold of £50,000 but below the relevant current EU Threshold.
- 2.5.2. The formal tender process applies as set out in Section 3.

## **2.6 Requirements over EU Threshold**

- 2.6.1. Defined as intended purchases for goods, services and works that exceeds the current EU Threshold.
- 2.6.2. Where the anticipated value of the contract exceeds the current EU Threshold<sup>1</sup> then the formal advice of the CPT should be sought prior to any tendering activity commencing.
- 2.6.3. All contracts that exceed £250,000 or which have a significant impact on the local community must be included on the Forward Plan.

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<sup>1</sup> Available on the Procurement Intranet site.

- 2.6.4. All planned contracts where the value exceeds the current EU Threshold must be reported to the CPT.
- 2.6.5. All *EU Notices* will be published centrally by the CPT and sufficient time must be built into the planning process for requirements subject to EU Procurement Procedures.
- 2.6.6. Any tender activity following the EU Procurement Procedures must adhere to the award process defined in the notice.

## **SECTION 3 - COMMON TENDERING PRINCIPLES**

### **3.1 Creation of Standing Lists**

- 3.1.1. The use of and process for establishing and maintaining standing (approved) lists must be approved by the CPT prior to the creation of the list.
- 3.1.2. Unless the contract is one that is covered by the EU regulations, or where there is an existing framework agreement, the appropriate standing (approved) list must be used.
- 3.1.3. Standing lists shall be reviewed every two years.
- 3.1.4. Under current Housing Leaseholder Legislation (Leaseholder Reform Bill, 2003) leaseholders can nominate contractors for inclusion on a tender list, if their home is affected by the contract concerned. A tender from that contractor must be sought, if the tenderer agrees to bid.
- 3.1.5. Where works are being undertaken on behalf of schools the contractors invited to tender shall be agreed with the schools.

### **3.2 Tendering via a Standing List**

- 3.2.1. At least 3 suppliers on the standing list must be invited to tender. In the event that fewer than 3 capable providers can be identified then either a full tender process should be undertaken or approval via a waiver must be sought. .
- 3.2.2 The selection of potential tenderers from the standing list must be made using *pre determined objective selection criteria* that must be documented.

### **3.3 Framework Agreements**

- 3.3.1 Where the Council is able to call off from existing Framework agreements procured by central government agencies, other public sector bodies or the Council itself, then the Council may benefit from using those agreements without entering into a separate procurement.
- 3.3.2 The process for establishing and maintaining a Framework Agreement must be approved by the CPT and Legal Services prior to the creation of the Framework.
- 3.3.3 When procuring from (calling-off) a Framework agreement the Authorised officer must adhere to the process set out under the existing Framework agreement terms and should seek advice from CPT and Legal Services if in any doubt.

### **3.4 Joint Procurement**

- 3.4.1 CPT shall approve any joint procurement arrangements with other Local authorities or public bodies including membership or use of Purchasing Consortia prior to the commencement of any procurement on behalf of the Council.
- 3.4.2 All joint procurement arrangements shall be compliant with the legislation relating to public sector procurement and shall be open to participation by LBE.

### **3.5 Advertising**

- 3.5.1 All requirements over £50,000 must be publicly advertised through at least two of the following
- (a) Publication of an OJEU notice, where appropriate;
  - (b) Publication on the LBE website;
  - (c) Publication in a dedicated contracts publication approved by CPT such as Contrax Weekly;
  - (d) Advertisement in the local press
  - (e) Advertisement in a relevant trade journal.

### **3.6 Pre-qualification**

- 3.6.1 Unless the contract is one, which is covered by the EU regulations, or where there is an existing Framework agreement, the appropriate Standing List of approved suppliers must be used.

- 3.6.2 Non *EU notices*, no matter how transacted, must specify a time limit of not less than 10 working days, within which interested parties must express their interest in tendering.
- 3.6.3 Establish and publish the criteria for short listing.
- 3.6.4 After the expiry of the advertised time limit, invitations to tender should be despatched to a shortlist of interested parties assessed to be the most suitable from the expressions of interest measured against the stated criteria.

### **3.7 Pre-Tender Market Research and Consultation**

- 3.7.1 Officers may review the market for a proposed procurement through discussions with suppliers and other research; but may not:
  - (a) Base any specification on one supplier's offering such as to distort competition;
  - (b) Make any indication or commitment to suppliers that their offering may be preferred by the Council;
  - (c) Suggest any procurement route which is not consistent with these rules;
  - (d) Enter into negotiations about price where a competitive procurement process has yet to take place.

### **3.8 The Invitation to Tender**

- 3.8.1 At least 3 suppliers must be invited to tender, unless there is overriding business or legal justification that this is not required and in these circumstances an Exemption must be sought.
- 3.8.2 The specification and evaluation criteria must take into account the Council's priorities regarding Equality, Sustainable Procurement, Health and Safety and Value for Money.
- 3.8.3 The specification for the requirement must be adequate and fair to allow tenders to be sought and fit for purpose.
- 3.8.4 There must be an assessment of the quality of both tenderers and tenders by pre determined non-discriminatory evaluation criteria and weightings, including whole life cycle cost where appropriate.
- 3.8.5 The risks associated with the contract must be assessed.
- 3.8.6 A tender file must be maintained to record all matters associated with the tender.
- 3.8.7 The standard terms and conditions, which apply, must be stipulated. Where it is proposed that a form of contract be used,

which does not adopt the Council's *approved standard terms or industry standard terms such as JCT or ICE*; the use of such form must be approved by the Borough Solicitor.

- 3.8.8 The tender must explain how information provided in the tender will be treated with regard to statutory requirements.
- 3.8.9 Non EU Threshold Tenderers must be given adequate time to respond, consistent with the level of complexity of the requirement and, except where the industry norm is otherwise, this should be a minimum of 15 working days.
- 3.8.10 The Invitation to Tender must request that the tender is submitted in a plain envelope or package bearing a tender label giving only the tender title and opening date. The tender label must not identify the name of the tenderer.
- 3.8.11 Tenderers must be required to hold their tenders open for acceptance for a minimum of 90 days from the date of opening.
- 3.8.12 Invitations to tender must include a statement that the Council does not bind itself to accept the lowest tender or any other tender.
- 3.8.13 Details of expected tenders must be notified to the CPT at least 5 days prior to the tender opening date using the Tender Control Form on the Procurement Intranet site.

### **3.9 Receipt of Tenders**

- 3.9.1 Every reply to an Invitation to Tender must be addressed to the Director of Finance & Corporate Resources using the yellow return address label.
- 3.9.2 Tenders submitted by fax, e-mail or other electronic means will not be considered unless specifically instructed by LBE in the Invitation to Tender. (This embargo may be changed in due course with the deployment of e-commerce.)
- 3.9.3 Tender packets or envelopes received must be date stamped and locked away until the specified time for their opening.

### **3.10 Tender Opening**

- 3.10.1 The CPT or their nominee and at least one other officer must be present during the opening of the tender.
- 3.10.2 The CPT must ensure that all Tenders are opened at the same time when the period for their submission has ended.

- 3.10.3 A record of the tenders must be logged on the Tender Monitoring Form available on the Procurement Intranet site.
- 3.10.4 The opened tenders must be date stamped and signed by the two officers at the time of opening on the page containing the overall contract value, alternatively on the pages containing the price information, where no overall value is quoted.
- 3.10.5 Tenders should be opened within 24 hours of the closing date and time.
- 3.10.6 Tenderers must be informed that tenders received after the closing date or tenders not submitted in accordance with these Rules will be disqualified from consideration.
- 3.10.7 Late tenders received before all the other tenders have been opened may only be considered where the Service Director's permission is given. Advice may be sought from CPT or Legal Services.
- 3.10.8 Tenders which do not meet the requirements of contract procedure rule 3.10.7 may only be considered if:
- a) the failure to comply is the Council's fault.
  
  - b) the tender is late and it is clear without any contact with the tenderer that the tender was sent in such a way that in the normal course of events it would have arrived on time.
  
  - c) the Authorised officer is notified in advance.
- 3.10.9 A record of the tender opening must be signed and retained by CPT and the Authorised Officer responsible for the procurement.
- 3.10.10 An original version of the accepted tender must be retained in accordance with the Corporate Retention Schedule or for a minimum period of six years.

### **3.11 Errors in Tenders**

- 3.11.1 The appropriate Service Director, with the prior approval of the Head of Legal Services, may permit a tenderer to correct an error or omission that, in the opinion of the Service Director, is an obvious one. Any such corrections will be recorded on the tender file.
- 3.11.2 Where financial error is identified in a tender for Works contracts the tenderer is required to standby or withdraw their tender in accordance with the principles of Alternative 1 of JCT Series 2 Practice Note 6 Main Contract Tendering or any re-enactment thereof. This is applicable for single stage tenders or quotes where the evaluation criteria is lowest price.

## 3.12 Tender Evaluation

- 3.12.1 Tenders must be assessed in accordance with the pre-determined evaluation criteria and weightings.
- 3.12.2 The results of the tender evaluation must be retained on the tender file
- 3.12.3 A *financial reference* should be taken up for all contracts with an anticipated value of over £100,000, which are not currently on a Standing List or Framework Agreement.

## 3.13 Negotiation

- 3.13.1 Officers may only carry out negotiations if:
- (a) the tender is to be a single or multiple negotiated tender (and a waiver of these rules has been granted);
  - (b) the tender is above the EU thresholds and is in accordance with the EU requirements for a Negotiated tender (and a waiver of these rules has been granted);
  - (c) they are post tender negotiations in accordance with the rules set out below.
- 3.13.2 Where a competitive tender exercise cannot be carried out in accordance with the Councils Contract Procedure Rules, a single or multiple negotiated tender exercise may only be sought if a waiver of Contract Procedure Rules has been granted first. This negotiated process should only be used in exceptional circumstances.
- 3.13.3 Where procurement is conducted through either the Open or Restricted procedures within the EU Regulations no negotiations are permitted (including post tender negotiations), which may have the effect of distorting competition (for example fundamental changes to aspects of the contract, including prices changes and variations to the authorities requirements).
- 3.13.4 The authority may seek clarification from Supplier on their tender where appropriate.
- 3.13.5 Post-tender negotiations may only be entered into if the tender documents provide advance notice of this intention and the basis upon which the post tender negotiations will take place. This notification must be clear in the tender documents.

- 3.13.6 The Service Director must provide written approval for negotiations to be entered into.
- 3.13.7 Negotiations are to be conducted with all tenderers, unless there are clear reasons for excluding one or more tenderers. The reasons for any exclusions must be clear and, with regards post tender negotiations, the reasons must have been made clear in the tender documentation.
- 3.13.8 Where dialogue with tenderers is permitted, negotiations shall be conducted by a team of at least two officers, at least one of whom shall be from the CPT unless agreed otherwise in advance by the CPT.
- 3.13.9 Written records must be made and retained of all negotiations.
- 3.13.10 If an officer is in doubt on any negotiations, they should contact CPT and Legal Services for guidance.

### **3.14 Award of Contracts**

- 3.14.1 A contract may only be awarded by an *Authorised Officer* with the requisite delegated authority to award contracts.
- 3.14.2 All contracts awarded with a value of over £30,000 must be reported to and recorded on the *CPT Contract Register* by the authorised Officer.
- 3.14.3 Where a contract award represents a Key Decision under the Council's Constitution, then the Council's Key Decision Making process must be used, as described in the Constitution.
- 3.14.4 For contracts subject to the full scope of the EU Directives, Officers must notify all tenderers of the intended award of contract, using the Proposed Award of Contract form found on the Procurement Intranet site, and must allow a minimum standstill of 10 calendar days between notification of a proposed award and entering into a contractually binding agreement. Officers may not make an award of contract, nor a conditional award of contract, until this standstill period has expired.
- 3.14.5 Where a contract exceeding the EU Threshold has been awarded CPT shall be informed with the details so that a Contract Award Notice can be published in OJEU no later than 48 days after the date of award of the contract.



### **3.15 Notification to Unsuccessful Tenderers**

- 3.15.1 Following contract award, unsuccessful tenderers must be notified in writing by the Authorised Officer responsible for the procurement.
- 3.15.2 The Authorised Officer responsible for the procurement shall provide a debriefing to unsuccessful tenderers on written request from the contractor.
- 3.15.3 For EU Threshold contracts the Authorised Officer shall, within 15 days of receipt of a request in writing from the contractor, inform them of the reasons why they were unsuccessful.

### **3.16 Procurement by Consultants**

- 3.16.1 Where the Council uses consultants to act on its behalf in relation to any procurement, then the Authorised Officer shall ensure that the consultants carry out any procurement in accordance with these contract procurement rules.
- 3.16.2 No Consultant shall make any decision on whether to award a contract or whom a contract should be awarded to unless specifically empowered to do so in writing by an an Officer or body authorised to confer that power.
- 3.16.3 The Authorised Officer shall ensure that the consultant's performance is monitored.

### **3.17 Statistical Returns**

- 3.17.1 Each year the CPT shall make a statistical return to ODPM for onward transmission to the European Commission concerning the contracts awarded by the Council during the year under the European rules.

### **3.18 Contract Extension**

- 3.18.1 Any contract which provides for (an) extension(s) may be extended in accordance with its terms subject to any necessary authorisation within the scheme of delegation.
- 3.18.2 The CPT and Legal Services must be advised of any intention to extend a contract
- 3.18.3 Where the terms of the contract do not expressly provide for an extension a waiver is required and are subject to any necessary

authorisation within the scheme of delegation. These should only be extended in exceptional circumstances and advice must be sought from CPT and Legal Services.

### **3.19 Termination of Contract**

3.19.1 Termination of any contract may be carried out by the Authorised officer in accordance with the terms of that contract. However advice must be sought from the Head of Legal Services prior to termination.

## **SECTION 4 - CONTRACT AND OTHER FOMALITIES**

### **4.1 Contract Documents**

4.1.1. All Contracts must be in writing in a form approved by the Borough Solicitor.

4.1.2. Where the contract is for a value of up to £50,000, the use of a Purchase Order is an acceptable form of contract, which must make reference to the quotation and terms agreed.

4.1.3. Every Contract over £50,000 must, as a minimum, state clearly:

(a) description of the goods required or the scope of works or services to be provided;

(b) that the supplier may not assign or sub-contract without prior written consent;

(c) any insurance requirements;

(d) ombudsman requirements;

(e) requirements relating to legislative requirements;

(f) that charter standards are to be met if relevant;

(g) compliance with the law on health and safety at work;

(h) race relations, disability, anti-discrimination and equalities requirements;

(i) a right of access to relevant documentation and records of the contractor for monitoring and audit purposes, if relevant;

(j) pricing mechanism and arrangements for payment;

- (k) rights of termination;
- (l) protection against the contractor's defective performance by default provisions which are appropriate to the contract;
- (m) the contract period.

4.1.4. Acceptance of any contract over £50,000 would be the subject of at least a Delegated Action Report. Any such report must include legal, financial, property, performance and procurement implications.

4.1.5. The formal advice of the CPT (who may refer to Head of Legal Services) must be sought prior to award for the following contracts:

- (a) where the total value exceeds the EU Threshold.
- (b) those involving leasing arrangements.
- (c) those which are complex or involve a recognisable risk.
- (d) where it is an extension or variation to an existing contract that will bring the overall value over the EU Threshold.
- (e) where invoice payments are made to finance or factoring companies

4.1.6. Contract documents must be retained in accordance with the Corporate Retention Schedule or for a minimum period of six years from the contract end date and, if under seal (see para 4.5), for a period of twelve years.

## 4.2 Contract formalities

4.2.1. Agreements must be completed as follows:

TOTAL VALUE	METHOD OF COMPLETION	BY
Up to £50,000 (See 4.1.2)	Signature Use of Purchase Order or Written Contract for complex requirements	Officer with appropriate authority to enter into a contract (paragraph 4.4).

Over £50,000 but under EU Threshold where sealing is not appropriate (See 4.1.3)	Signature on Written Contract	Head of Department or Officer with appropriate authority to enter into a contract (paragraph 4.4).
£250,000 or above and contracts having a significant impact on the local community (see 3.13.3)	Signature on Written Contract	Key decision maker
Over EU Threshold (See 4.1.5)	Signature on Written Contract	Head of Department with appropriate authority, once the appropriate Cabinet Member has been consulted.
Contracts for sealing	Sealing	See paragraph 4.5.

4.2.2. All contracts for the supply of goods and services must be concluded before the supply begins, except in exceptional circumstances, and then only with the written consent of Legal Services.

### 4.3 Letters of Intent

4.3.1 In exceptional circumstances and with the prior approval of the Borough Solicitor a letter of acceptance can be issued to allow work to commence in advance of contract completion.

4.3.2 In the case of Works Contracts a tender acceptance letter in a form approved by the Borough Solicitor is acceptable in order to allow work to commence, although the issue of a formal contract must follow without delay.

### 4.4 Signature

4.4.1 The Officer responsible for signing the contract must have been granted the appropriate authority under the scheme of delegation and ensure that the person signing for the other contracting party has authority to bind it.

4.4.2 In the case of contracts for commissioning of care services, where the total value of the contract is not known, the officer responsible must have been granted authority to enter into commissioning contracts.

### 4.5 Sealing

4.5.1 A contract must be sealed where:

- a) the Council wishes to enforce the contract for more than six years after its end (e.g. for land or construction works); or
- b) the price paid or received under the contract is a nominal price and does not reflect the value of the goods or services; or
- c) a *bond* is established on behalf of the contractor(s) or their guarantors; or
- d) it is required by parties to the agreement; or
- e) the total value exceeds £250,000.

4.5.2 Where contracts are completed by each side adding their common seal, the affixing must be attested by or on behalf of the Head of Legal Services. The Head of Legal Services is responsible for the process of sealing contracts.

## **4.6 Bonds and Parent Company Guarantees**

4.6.1 For every contract over £250,000 a *Parent Company Guarantee* or *Performance Bond* shall be required unless agreed otherwise with the Director of Finance and Corporate Resources.

4.6.2 The Council must never give a bond.

## **4.7 Prevention of Corruption**

4.7.1 The officer responsible for the contract must comply with the *Council Code of Conduct* and the Council's *Strategy for the Prevention and Detection of Fraud and Corruption* and must not invite or accept any gift or reward in respect of the award or performance of any contract.

4.7.2 All contracts must contain an appropriate clause that provides protection and the right to terminate the contract in the event of a supplier offering any inducement, committing fraud or committing an offence under the Prevention of Corruption Acts.

## **4.8 Declaration of Interests**

4.8.1. If it comes to the knowledge of a member or an officer of the Council that a contract in which he or she has a pecuniary interest has been or is proposed to be entered into by the

Council, he or she shall immediately give written notice to the Monitoring Officer and record it on the register of interests.

## **SECTION 5 - CONTRACT MANAGEMENT**

### **5.1 Managing Contracts**

- 5.1.1 Contract management is the process that enables both parties to the contract to meet their obligations in order to deliver the outputs required from the contract. It involves building a good working relationship between the Authority and the Supplier. It continues throughout the life of the contract and involves managing proactively to anticipate future needs as well as reacting to situations that arise.
- 5.1.2 The key objective of contract management is to obtain goods and/or services as agreed in the contract and to achieve value for money. This involves balancing costs against risks and actively managing the customer-provider relationship. It also involves developing the supplier's continuous improvement capability over the life of the contract.
- 5.1.3 All contracts over the value of £50,000 and those of a complex nature below this value must have a designated Contract Manager whose name should be notified to the Supplier. Likewise, the Supplier must have a designated Contract Manager whose name is notified to the Authority. These resources must be identified and agreed before the contract is awarded.

## Glossary of Terms

Approved Contract		A contract that has been created in accordance with the Contract Procedure Rules for call off or use by the Council. A list of contracts can be found on the Contract Register available via the Procurement Intranet site. If in doubt whether a contract is approved or not contact the Corporate Procurement Team
Approved Terms	Standard	Includes industry standard terms and templated terms and conditions set up for use by the Council
Authorised Officer		A person with appropriate delegated authority to act on the Council's behalf
Best Value		Under Best Value, each local authority has a duty to 'make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness' as set out in the Local Government Act 2003. This takes into consideration the 4Cs of Challenge, Compare, Consult and Compete.
Chief Officer		The officers defined as such in the Constitution
Code of Conduct		The code regulating conduct of Officers contained within the Council's Constitution
Competitive Dialogue		A procedure leading to the award of a contract whereby the Council produces a shortlist through a dialogue with those tenderers who are considered to have appropriate capacity. Based on the solutions discussed, sealed bids are sought from the short listed contractors This procedure is most appropriate for complex procurements where significant input is required from the market to inform the drafting of the specification.
Contract Register		A register located on the Procurement Intranet containing details of contracts entered into by the Council above the value of £30,000
Corporate Procurement (CPT)	Team	The CPT is part of the Finance and Corporate Resources Department and is responsible for supporting the Council in its procurement activity
Council		The London Borough of Enfield
Council's Procurement Strategy		Defines the overall approach to procurement related activity for the Council
EU Negotiated tender		A procedure leading to the award of a contract whereby the Council negotiates the terms of the contract with one or more persons selected by it. The procedure is a complex set of rules, and it is extremely difficult for contracting

		authorities to meet the requirements to allow the use of this procedure.
EU Notice		Notice posted in the Official Journal of the European Union (OJEU). Includes a Prior Indicative Notice (PIN), a Tender Notice or an Award Notice
EU Open tender		A procedure leading to the award of a contract whereby all interested persons may tender for the contract, duly advertised by notice, i.e. there is no limit on the number of tenders received nor may the Council consider the suitability of interested tenderers prior to submission of tenders.
EU Regulations		The UK regulations implementing the EC public procurement directives
EU Restricted tender		A procedure leading to the award of a contract whereby only persons selected by the Council may submit tenders for the contract, duly advertised by notice, i.e. the contract is advertised, where prospective tenderers are screened before being invited to tender ("selective tendering").
EU Threshold		The threshold at which EC public procurement directives must be applied if expected to be exceeded by the Total Value
Financial Reference		A financial risk assessment of the finances of a company, parent or group of organisations in order to establish their liquidity, profitability, stability and capability to support a contract of the value required.
Financial Officer		The most senior officer representing the Director of Finance and Corporate Resources designated by him to provide financial advice to the Chief Officer
Financial Regulations		The Financial Regulations contained within the Constitution
Framework Agreement		An agreement with suppliers whose purpose is to establish the terms governing contracts to be awarded during a given period, in particular with regard price and quality. It allows the Council to make specific purchases (call offs) from a supplier to provide goods, services or works in accordance with the terms of that agreement.
Industry Terms	Standard	Specific terms or conditions which are relevant only to the goods or service being purchased, or the industry sector or market within which the contract will operate
Officer		Council employees as defined in the Constitution
OJEU		Official Journal of the European Union
Parent Guarantee	Company	A contract which 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 Council, the Council can require the parent company to do so instead

Performance Bond	An insurance policy: If the contractor does not do what it has promised under a contract with the Council, the Council 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 Council against a level of cost arising from the supplier's failure
Purchasing Cards	A Corporate Purchasing Card has been introduced for the purchase of low value goods and services.
Purchase Order	An order placed through the SAP or local approved procurement system
Standing List	A list of approved suppliers who have satisfied the Council's minimum standards. This encompasses ad-hoc lists.
Suppliers	Any person or body of persons providing, or seeking to provide, supplies, services or works to the Council
Tender Tenderers	A written response to an Invitation to Tender Suppliers who have been invited to submit a tender to the Council
Total Value	The whole of the value or estimated value (in money or equivalent value) for a group of similar commodities or services: <ul style="list-style-type: none"><li>• whether or not it comprises several lots or stages across the Council as a whole</li><li>• whether or not it is to be paid or received by the Council as a whole or separate departments within the Council</li></ul>
Written Quotation	Must be in letter, fax or email and must be addressed personally, containing pricing information and delivery details. Printouts of catalogues are not written quotations

## APPENDIX A

### GENERAL EXCEPTIONS FROM CONTRACT PROCEDURE RULES

These Contract Rules apply to all Goods, Services and Works purchased by the Council, with the following exceptions:

- (a) Procurements of goods, services, or works where the procurement procedure to be followed by the Council is the subject of express legislation.
- (b) Low value purchases made by a *Purchasing Card* that are subject to guidelines issued On the Use of Purchasing Cards.
- (c) Works or services procured in an emergency because of a need to respond to events that were beyond the control of the Council (e.g. natural disasters such as flooding or fires) as long as any expenditure in excess of **£5,000** is reported to the CPT within 1 week using the Waiver Request Form available from the Procurement Intranet site. Any contract entered into by the Council under this Exemption must not be for a term of more than 6 months.
- (d) Contracts for the acquisition and disposal of land or property that are covered the Property Procedure Rules and Financial Regulations.
- (e) Contracts for employment for staff, except where an agency is used to supply the staff.
- (f) Works orders with utility infrastructure providers, e.g. Gas Mains.
- (g) Call off or orders placed against Approved Contracts or Framework Contracts where the procedures defined in the contract for call off are followed.
- (h) Any contract which has had an exemption agreed in accordance with rule 1.3.
- (i) Grants, but only where subject to the requirements of the Council's contract with the voluntary sector as approved by Cabinet.
- (j) The disposal of Council Assets that are covered by the Property Procedure Rules and Financial Regulations.
- (k) Care or Education placements for individual service users/pupils that are not covered by a Council framework contract.

# APPENDIX B

## CONTRACT PROCEDURES RULES SUMMARY

Value of Contract	Quotation/Tender Process	Who	Contract Documentation	Approval
Goods, Services and Works up to £1,000 see 2.2	At least one verbal quote	Service Area	Issue by Purchase Order or use of Purchasing Card	By authorised officer
Goods and services up to £5,000 see 2.2	Obtain quotation prior to issue of Purchase Order	Service Area	Issue by Purchase Order or use of Purchasing Card	By authorised officer
Works orders up to £10,000 see 2.2	Obtain quotation prior to issue of Purchase Order/Contract	Service Area	Issue by Purchase Order	By authorised officer
Goods, services and works below £50,000 see 2.3	Obtain at least 3 comparable written quotations	Service Area	Issue by Purchase Order/Contract	By authorised officer
Goods, services and works that can be satisfied from an existing approved contract see 2.4	Follow call off procedure within contract	Service Area	Follow call off procedure within contract	By authorised officer
Goods, services and works contracts between £50,000 and EU Threshold see 2.5	Follow tender process – Section 3	Service Area	Written form of contract approved by the Borough Solicitor. Completed under seal if appropriate. See 4.4 and 4.5.	By authorised officer
Goods and services over EU Threshold see 2.6	Formal review of requirement with CPT prior to proceeding. All EU notices to be published centrally by CPT. Contracts which have a significant impact on the local community represent a Key Decision and must be published on the Forward Plan	Service Area to review with CPT	Written form of contract approved by the Borough Solicitor. Contracts over £250,000 to be under seal. See 4.4 and 4.5.	By authorised officer. A Key Decision must be made by a Key Decision maker in accordance with the constitution
Works contracts anticipated to be over £250,000 in value see 2.6	Formal review of requirement with CPT prior to proceeding. All EU notices to be published centrally by CPT. Must be included on the forward plan	Service Area to review with CPT	Written contract, complete under seal as appropriate. See 4.4 and 4.5.	- ditto -
Works contracts over EU Threshold	Formal review of requirement with CPT prior to proceeding. All EU notices to be published centrally by CPT. Must be included on the forward plan	Service Area to review with CPT	Written contract, complete under seal as appropriate. See 4.4 and 4.5.	- ditto -