

Contract Procedure Rules

1. Introduction

1.1. These Contract Procedure Rules (the Rules) apply to the procurement by the Council of Works, Supplies and Services (as defined by EU Procurement rules) and Works and Services Concessions. They are intended to ensure that a contract is entered into only in circumstances which can demonstrate:

- Certainty in the terms of the contract
- Consistency in the application of the law and Council policy
- Probity
- Value for money

To achieve these objectives these Rules must be followed every time the Council commences a procurement and/or enters into a contract.

Contract Procedure Rules are made under section 135 of the Local Government Act 1972. The following types of procurement do not fall within the scope of the Rules:

- 1.1.1. contracts of employment;
- 1.1.2. contracts solely for the sale or purchase of land, which are subject to the Property Procedure Rules (NB: Some property transactions may fall within the scope of the EU Procurement regime where works, supplies or services are connected with the property transaction. Legal advice should be taken in this instance);
- 1.1.3. the instruction of barristers

- 1.1.4. specialist professional services necessary for legal proceedings (including expert witnesses, experts, mediators, adjudicators, arbitrators and costs draftsmen);
 - 1.1.5. Unconditional Grants by the Council.
 - 1.1.6. genuine emergencies beyond the control of the Council
 - 1.1.7. Care packages or education placements, it is considered in the Council's interest or is required to meet obligations under the relevant legislation.
 - 1.1.8. Adult social care service packages managed by the Council on behalf of a client under the Personalisation agenda e.g. Managed Accounts & Direct Payments
- 1.2. The Council recognises the benefits to be gained from the introduction of 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 Assistant Director Procurement may be used.
- 1.3. References to officers or posts in these Rules include their authorised deputies or delegates, in accordance with the Councils Constitution and Councils Scheme of Delegation.
- 1.4. No contract shall be entered into, nor any tender invited, unless provision is made in the annual budget or is otherwise agreed for the proposed expenditure by the officer with appropriate delegated authority and such is in accordance with the Financial Procedure Rules.

Officers' Responsibilities: Conduct, Conflicts of Interest & Corruption

- 1.5. These Rules are mandatory for all Council contracts. **All officers must follow these Rules in full, except where a valid waiver under 1.10-1.15 has been obtained or falls outside the scope of these Rules under in accordance with 1.1.1 to 1.1.8.** Failure to do so may constitute misconduct leading to disciplinary action. If any officer witnesses or identifies a failure to comply with these Rules, they should raise it with their manager or report it confidentially under the Council's Whistle Blowing Policy.
- 1.6. The Code of Conduct for employees applies to all procurement activities, in particular, the following parts:
- 1.6.1. Working with People, in particular contractors
 - 1.6.2. Conflict of Interest/Pecuniary Interest
 - 1.6.3. Equality & Diversity Integrity & Honesty
 - 1.6.4. Gifts and Hospitality

It is every officer's responsibility to be aware of and act in accordance with the Code of Conduct. If in any doubt, officers must seek advice from their manager or Human Resources. All officers engaged in a procurement process shall comply with the Code of Conduct and must not invite or accept or offer any gift or reward in respect of the award or performance of a contract. High standards of conduct are obligatory. Corrupt behaviour will lead to dismissal and is a crime under the Bribery Act 2010 and section 117 of the Local Government Act 1972.

- 1.7. If an external consultant is appointed by the Council the officer with responsibility for the appointment must ensure that the consultant, acting on behalf of the Council complies with these Rules in full, without exception. All non-Council Officers must sign an agreement not to use information gained during employment with the Council, to gain any

commercial or pecuniary advantage in relationship to concurrent or future employment/engagement.

- 1.8. No non-Council officer shall award a contract or whom a contract should be awarded to unless specifically empowered to do so in writing by an officer or body authorised to confer that power. The Authorised Officer shall ensure that the non-Council officer's performance is monitored.
- 1.9. The risks associated with any procurement process and/or contract must be assessed using the Council's Corporate Risk assessment template and documented on file. Appropriate actions should be taken to ensure that the Council's potential and actual exposure is minimised. This includes provision of an issues log and estimated costs against any risks as contingency.

Application & Waiver of the Rules

- 1.10. These Rules apply to all contracts for Supplies, Works or Services entered into by or on behalf of the Council, except where waiver of all or part of the Rules is approved. Waivers should only be sought in exceptional circumstances such as where justification can be made that the immediate Council need is so urgent that compliance with these Rules would result in greater risk to the Council. Notwithstanding the general presumption that competition is the best way to demonstrate best value (see Rule 4.1) in accordance with the tendering processes identified against the thresholds set out in Rule 5.2. The Council must comply with the requirements of the EU Procurement regime, in particular Public Contract Regulations 2006 (as amended) ("the Regulations") as it is not possible to waive these requirements.
- 1.11. The Rules will only be waived where it can be shown:

- 1.11.1. the decision does not fall within Rule 7 (exceptions to competitive tendering)
- 1.11.2. the Council's overall interests, including best value, are met by waiving all or part of the Rules
- 1.12. Once section 1.10 to 1.11 have been complied with, waivers may be approved by the relevant Director (or, where unavailable, the Chief Executive) subject to the appropriate authority report. If the decision is a Key Decision then the rules relating to Key Decisions must be followed including placing notice of such Key Decisions on the Council's Key Decision List. In cases of urgency Rule 15 and/or 16 of the Council's Constitution must be adhered to.
- 1.13. All waivers will be reported to the Council's Audit Committee on an annual basis by Assistant Director of Procurement and must be justified by the relevant Director
- 1.14. The Director requesting the waiver **must** keep a written record of any waiver of the Rules and send a copy to the Assistant Director of Procurement using the standard form for waivers of the Rules published from time to time by the Assistant Director Procurement (which must include a unique reference number tracked by the Assistant Director Procurement).
- 1.15. Circumstances where time is lost through inadequate forward planning should not generally constitute a valid reason for a waiver of the Rules.

Guidance and Advice

- 1.16. Guidance on these Rules and procurement is set out in the Council's Procurement Manual.
- 1.17. Advice on the application of these Rules should be obtained from the Assistant Director Procurement and/or the Assistant Director of Legal Services.

2. Interpretation

- 2.1. The Assistant Director of Legal Services shall make all decisions relating to the interpretation of these Rules.
- 2.2. These Rules shall be interpreted subject to current European Union (EU) and domestic law relating to public sector works, supplies or services contracts. Where there is any conflict between these Rules and the law (whether domestic or EU law), the latter shall prevail.

3. Record Keeping

- 3.1. Services must keep a record of compliance with all stages of these Rules, preferably in electronic format. Records should ordinarily be kept by the relevant contracts manager and should be retained in accordance with the periods set out in the Council's Records Retention Schedule. If records are kept in electronic format only, they must be kept in the same electronic folder and scanned copies of hard copy documents must also be retained on the folder. Services must have systems in place to ensure that authorised officers can readily access all files. Where it is necessary to keep original paper documents, such as a signed contract, a hard copy file must also be maintained.
- 3.2. For contracts over £75,000 (Services and Supplies) and £100,000 (Works) the original contract must be sent to, or will be retained by, the Assistant Director of Legal Services for secure storage.

4. Presumption of Competition for Contracts

- 4.1. The Council's presumption is that best value is achieved through competitive tendering. All contracts shall be competitively tendered, except where allowed by these Rules or a waiver is agreed under Rule 1.

5. Tendering Thresholds

- 5.1. The tendering requirements in the table below apply according to the estimated total value of the contract. The tendering requirements below

are minimum requirements. For all contracts of any value, services should consider whether a formal tendering process is appropriate.

- 5.2. For contracts over a term of years, the value of the contract is the total value over the whole contract including any potential extensions and exercisable options, not its annual value.

Estimated Contract Value	Tendering Requirements	Method of completion of contract
Up to £5,000	At least one written quotation must be received. Where practicable an eligible quotation from a local supplier must be sought. Best value must be obtained and framework and other corporate agreements, where they exist, are used. (Managers must retain sufficient evidence to demonstrate compliance).	Use of Purchase Order.
Contracts from £5,001 to £20,000	At least two written quotations must be received. Where practicable an eligible quotation from a local supplier must be sought. Best value must be obtained and framework and other corporate agreements, where they exist, are used (<i>Managers must retain sufficient evidence to demonstrate compliance and best value, e.g. by confirmation of oral quotations in writing</i>).	Use of Purchase Order or Standard Contract for more complex requirements (refer to 13.4 for requirements for sealing)
Contracts from £20,001 to £75,000 (for supplies and services) or £100,000 (for works):	At least three written quotations must be received. Where practicable an eligible quotation from a local supplier must be sought (<i>Managers must retain sufficient evidence to demonstrate compliance and best value, (an oral quotation is not acceptable)</i>). If less than three quotes are received the Director or Assistant Director must approve the award subject to discussion with the Assistant Director of Procurement. The decision must be recorded in writing and all documentation supporting the decision retained.	Use of Purchase Order or Standard Contract for more complex requirements (refer to 13.4 for requirements for sealing)
Contracts above £75,000 (for supplies and services) or £100,000 (for	Competitive tendering by advertising in accordance with Rule 9 and, where applicable, all EU procurement rules apply. At least 5 Contractors should be invited to Tender, unless there is an overriding business or legal justification that this is not required, but notwithstanding a Waiver	<u>Up to £250,000:</u> Signature on Standard Contract or sealed by Legal Services if required

works)	must be sought prior to award if less than 3 tenderers are received. If due to special circumstances less than 3 contractors are invited to Tender then a Waiver must also be sought.	<p><u>Over £250,000:</u></p> <p>Sealed by Legal Services</p> <p>(refer to 13.4 for requirements for sealing)</p>
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- 5.3 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. Due regard should be given to the Rules relating to Aggregation in section 21. Corporate Procurement will monitor compliance with this requirement.
- 5.4 If the value of the tender is less than 10% below the EU thresholds, then officers must consider procuring in accordance with EU rules.

6. Competitive Dialogue, Negotiated and Framework Contracts

- 6.1. When a service considers that the competitive dialogue or negotiated route is the preferred method of procurement, the Assistant Director of Legal Services and the Assistant Director Procurement must be consulted before submission of the business case required in accordance with Rule 8.
- 6.2. Framework agreements may be used to procure supplies, services and works subject to confirmation by the Assistant Director Procurement that a particular framework is acceptable to the Council. These include those framework agreements which the Council tenders and agrees the provision of Supplies, Works or Services with one or more provider and under which subsequent contracts can be entered into (within the limits of the agreement) when particular needs arise e.g. supplies of stationery, computers, office furniture etc. Framework agreements are managed by

Corporate Procurement and must be used by all relevant services where they are in place. Before calling off any other Framework Agreements the Officer responsible must consult the Assistant Director Procurement for due diligence and obtain confirmation that the Council are able to use the Framework Agreement for the intended purpose and will deliver value for money.

- 6.3. Not all frameworks agreements are established in the same way and so when using a framework it is necessary to follow the process applicable to that particular framework. This may include, for example, holding a mini-competition between contractors appointed under the framework. It is the responsibility of the officer letting the contract to ensure that the proper process is followed, taking advice from the Assistant Director Procurement and/or the Assistant Director of Legal Services as necessary.

7. Exceptions to Competitive Tendering

- 7.1. Competitive tendering or the obtaining of quotes is not required where:
- 7.1.1. The service can be provided in-house;
 - 7.1.2. A legally compliant framework agreement is in place which the Council has procured or has the right to access (subject to complying with the rules applicable to that framework (see Rule 6.3 above));
 - 7.1.3. Existing corporate contracts are in place that the Services/Supplies/Works required can be obtained;
 - 7.1.4. Effective competition is prevented by government or statutory control;
 - 7.1.5. Services/Supplies/Works/connections with regards to public utility works

- 7.1.6. The contract provides in writing for an extension to the length of the contract's term and the following conditions are met:
- a. the extension is for substantially the same works, supplies and/or services provided in the original contract;
 - b. the financial terms for the extension are as agreed in the original contract;
 - c. the length of the extension is not longer than that permitted by the original contract;
 - d. the total value of the extension is not more than the total value of the original contract;
 - e. such extension would not breach the Public Contracts Regulations 2006 (as amended);
 - f. such extension does not include material changes; and
 - g. the appropriate authority/approval is in place in accordance with the Council's scheme of delegation.

7.1.11. Special educational needs or social care contracts if, in the opinion of the responsible officer, following consultation with the Assistant Director Procurement, it is considered in the Council's interest or is required to meet obligations under the relevant legislation.

7.1.12. Where a single supplier may be used in accordance with EU procurement law.

7.2. With regards the exceptions, advice should be sought from Assistant Director of Procurement and Assistant Director of Legal Services if there is any risk that such would breach EU rules, where applicable.

7.3. With the exception of procurements using framework agreements under Rule 7.1.2 the Director must be able to demonstrate that any decision not to seek competitive tenders fully complies with this Rule 7, was

reasonable in all the circumstances and was in the best interests of the Council. The decision must be recorded in writing and all documentation supporting the decision must be retained.

8. Approval to Procure

- 8.1. No procurement process shall commence without formal approval as required by Rules 8.2 to 8.4 below. Assistant Director of Procurement must be notified in each instance.
- 8.2. A business case must be produced for all requirements with a contract value above the EU Procurement thresholds. The business case must be submitted to the Strategic Procurement Board for approval.
- 8.3. For all contracts with a contract value of more than £75,000 for Supplies/Services or £1,000,000 for Works the business case will be reported to the Cabinet Portfolio member for approval to commence the procurement process.
- 8.4. For all requirements with a contract value of less than £75,000 for Supplies/Services or £1,000,000 for Works, the business case will be reported to the Director for approval to commence the procurement process
- 8.5. The Assistant Director Procurement must be consulted on, and at the discretion of the Assistant Director Procurement may take lead responsibility for, all procurements above the EU Procurement thresholds for Supplies/Services/Works.

ICT project approval:

- 8.6. No ICT related project or project spend will commence without prior approval from the ICT Work Programme Board. All procurement relating to ICT (e.g. software, hardware, licenses, etc) will be undertaken by the

Corporate IT, with the exception of those items pre-classified by Corporate IT as non-essential items (a list of which is available on the Enfield Eye under the ICT homepage or those items available via the eMarket place or online IT Helpdesk. No ICT expenditure will take place outside of ICT, unless prior approval is sought from the Head of ICT Supplier Management.

9. Invitations to Quote/Tender & Advertising

- 9.1. A formal process must be conducted and documented to establish any tender list including short listing under Pre-Qualification Services. Dependent on the size/risk of the contract an assessment must be undertaken of capability for the requirement including financial standing, equality & diversity policy, and health & safety. The process must be equal, transparent, non-discriminatory, and proportionate.
- 9.2. All procurement exercises will be undertaken using the Council's e-tendering system unless otherwise agreed by the Assistant Director Procurement.
- 9.3. Where a competitive tender process is to be undertaken tenders will as a minimum be advertised as follows:

Estimated Contract Value	Advertising Requirements
Contracts up to the EU Threshold	www.londontenders.org (please note the Council's internet site points suppliers to this link)
Contracts above EU thresholds	Compliance with EU advertising rules including issue of Prior Information Notice (where appropriate) and Contract Notice in the Official Journal of the European Union (OJEU) (via the Council's tendering portal – www.londontenders.org), where applicable.

- 9.4. Services may also consult the Assistant Director Procurement to discuss any additional appropriate forms of advertising for individual contracts.

- 9.5. In exceptional circumstances where e-tendering is not used every invitation or notice to tender shall state that all tenders must be received in a sealed envelope marked "Tender" followed by the subject to which it relates, the deadline date and time (normally 12 Noon) for receipt and shall not identify the sender.

10. Receipt of Tenders

- 10.1. Where tenders have not been carried out electronically, following prior agreement by the Assistant Director Procurement, they must be addressed to the Director of Finance Resources & Customer Services Upon receipt of tender packets or envelopes they must be date stamped, recorded and locked away until the specified time for opening.

11. Opening of Tenders

- 11.1. Where the Council's electronic tendering system has been used only those officers authorised within the system to accept tenders shall do so once the closing date and time has passed.
- 11.2. Where tenders have not been carried out electronically officers must comply with the following process:
- 11.2.1. As a minimum a Corporate Procurement Officer and one other officer of the Council (or other appropriately delegated officer by the Council, such as Enfield Homes) must be present when opening a non-electronic tender. All tenders must be opened at the same time and a record of the tenders must be recorded on a Tender Receipt Form.
 - 11.2.2. The opened Tenders must be date stamped and signed by the two officers at the time of opening on the "Tender Monitoring Form". Tenders should be opened within 5 working days of the

tender closing date. Tenders must be kept securely and strictly confidential before and after opening.

- 11.2.3. 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.
- 11.2.4. Late Tenders received after all the other Tenders have been opened may only be considered where the Director's permission is given. Advice must be sought from Corporate Procurement or Legal Services.
- 11.2.5. Tenders which do not meet the requirements of the 11.2.3 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 that it is impossible for the tender to be delivered on time and the justification for such are reasonable.
- 11.2.6. A record of the Tender opening must be signed and retained by CPT and the Authorised Officer responsible for the procurement.
- 11.2.7. The Form of Tender must be stamped and signed by those present. The officers present must initial every page of a Bill of Quantities or each page of any Schedule to the Form of Tender prepared by the tenderer. Where any alteration is made on such pages (e.g. the use of correction fluid or over-written) a note

must be made and a copy of the page made, initialled by those present and kept by the Assistant Director of Legal Service's representative. A record of all tenders must be made including the name and amount of each tender received. The commencement of the opening and finishing times must be recorded on the form. Those present must then sign this record.

12. Receipt/Opening of Quotes

12.1 The receipt and opening of quotes will be carried out by the service department not Corporate Procurement. The officer concerned must ensure their Director has been informed and ensure that the receipt and opening of quotes is equal, transparent, non-discriminatory and proportionate.

13. Award of Contracts

13.1. All contract awards that are Key Decisions in accordance with the Councils Constitution must be reported as a Directors/Portfolio/Cabinet/Full Council report. Such reports may also be referred by the Assistant Director Procurement to the Strategic Procurement Board for approval before they are progressed for formal approval.

13.2. Subject to 13.1 the Council's Scheme of Delegation, sets out the delegated powers of officers to approve contract awards. If the Council's Scheme of Delegation does not delegate this power then the authority report for approval of the procurement and/or contract must state who the authority to award the contract will be delegated to.

13.3. Where a contract has been tendered in accordance with EU Procurement Rules the contract cannot come into force until;

13.3.1. firstly the appropriate authority report has been signed off and the call in period in accordance with the Councils Constitution has expired and;

13.3.2. secondly, once the call in period has expired, a further mandatory “standstill” period of at least ten calendar days has elapsed from the date of notification to all tenderers in writing by electronic means (or facsimilie) of the contract award decision or a period of at least fifteen calendar days has elapsed from date of dispatch to all tenderers by other means of the contract award decision (note: this date may be reduced to ten calendar days from the date of receipt of the notice sent by other means by the final tenderer where the Council is tracking receipt). Where a mixture of communication method is used, advice should be sought from Legal Services regarding the expiry of the standstill period.

Sealing contracts:

13.4. A contract must be sealed where:

13.4.1. the Council wishes to enforce the contract for a period of more than 6 years;

13.4.2. the price paid or received under the contract is a nominal price that does not reflect the value of the supplies or services;

13.4.3. the contract is over £250,000 in value;

13.4.4. it is required by the parties.

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

Letter of Acceptance:

13.6. In exceptional circumstances and with the prior approval of the Assistant Director of Legal Services, a letter of acceptance may be issued to allow works/services/supply of goods to commence in advance of contract execution.

- 13.7. The letter must set out the key contract terms - price, duration, etc., and authorises the contractor to carry out Works, Services or Supplies up to a specified value before the formal agreement is signed.
- 13.8. Subject to 12.6, in the case of works contracts a letter of acceptance in a form already approved by the Assistant Director of Legal Services is acceptable in order to allow work to commence, although the issue of a formal contract must follow without delay.
- 13.9. Letters of acceptance are only binding on the Council and the contracting party where the letter expressly states that their Tender has been accepted and the Council agrees to pay them the tender sum. The letter of acceptance should normally seek to incorporate the terms and conditions of the relevant Council standard contract or relevant industry standard contract (e.g. JCT, ICE, NEC) indicating the Council's intention to enter into a formal, written contract with the contracting party, to carry out the works/services or supplies described in the letter, such work/services or supply of goods to commence on a date specified or at any rate before the parties execute the formal, written contract, until then the contracting parties obligations to the Council shall be governed by the Invitation to Tender documentation.
- 13.10. The wording of the letter of acceptance must be reviewed by Legal Services (unless a previously approved template is used) prior to issue, to ensure the letter is fit for its intended purpose.
- 13.11. A letter of acceptance is not a substitute for execution of the formal agreement, especially if under Seal.
- 13.12. Limited Liability Letters may only be used where there is a requirement for urgent works mobilisation (not simply to allow site access) and only if such has been approved by the Assistant Director of Legal Services (unless a previously approved template is used) and the appropriate authority report in accordance with the Councils Constitution has been signed off.

14. Post-Tender Negotiations

- 14.1. Post-tender negotiations may only take place if the tender documents allow for negotiation and set out the basis for such negotiation or such negotiations otherwise comply with the EU and domestic law.
- 14.2. In all other circumstances, all valid tenderers should be invited to re-tender on a revised specification.

15. Award of Contracts – Notification

- 15.1. When a contract is awarded, all services must
 - 15.1.1. update the Council's Contract Register on the electronic tendering system.
 - 15.1.2. Where applicable, publish the Contract Award Notice in OJEU via the electronic tendering system.
- 15.2. If the procurement has been carried out outside of the e-tendering system (only with the prior approval of the Assistant Director Procurement), then services must notify Corporate Procurement who will update the Contract Register.

16. Form of Contracts and Standard Terms

- 16.1. All contracts must be in writing or an official order in lieu and a copy kept by the relevant service or held electronically. All contracts over £75,000 (Services/Supplies) or £100,000 (Works) in value shall be in a form approved by the Assistant Director of Legal Services and the original shall be held by the Assistant Director of Legal Services in accordance with Rule 3.2.
- 16.2. Contract documents must be retained in accordance with the Corporate Retention Policy or for a minimum period of six years from the contract end date and, if under seal for a period of twelve years from the contract end date.

Terms and Conditions

- 16.3. Every written contract or official order in lieu thereof shall specify:
- 16.3.1. the works, supplies, services or materials to be supplied or performed;
 - 16.3.2. the price to be paid with a statement of discounts or other deductions;
 - 16.3.3. the time or times within which the contract is to be performed; and
 - 16.3.4. the place or places for delivery or performance.
 - 16.3.5. the terms and conditions that apply to the contract.
- 16.4 Every written contract shall include a clause which gives the Council the right to immediately terminate the contract if the contractor, or any of its employees or agents, commits an offence under the Bribery Act 2010. Appropriate clauses are included in the Council's standard terms and conditions of contract.
- 16.5 Every written contract shall include a clause requiring any sub-contractor permitted to be employed by the contractor to be paid by the contractor within 30 days of the issuing of a valid invoice.
- 16.6 There may be occasions where it is necessary to use a supplier's terms and conditions of contracts. The use of such terms must be approved by the Assistant Director Procurement and the Assistant Director of Legal Services
- Insurance**
- 16.7 All contracts must require the Contractor to maintain the Council's minimum acceptable levels of public liability, employers liability and professional indemnity insurance unless otherwise agreed with the Council's Finance/Insurance Team.
- 16.8 Officers of the Council shall ensure that any consultant working for the Council has appropriate indemnity insurance in place before the

consultant commences any work for the Council, this includes agency staff, where appropriate.

17. Variations to Contracts

Contracts for Supplies and Services

17.1. Variations may be provided for in contracts. Where a service proposes to vary the terms of a contract and the value of the variation exceeds the lowest of either 10% of the total contract price or £75,000 (subject to the value of the variation being more than £10,000) the service must:

17.1.1. ensure that there is sufficient budget to fund the variation

17.1.2. consult with the Assistant Director Procurement

17.1.3. obtain the prior approval of the Director of Finance Resources and Customer Services and

17.1.4. in consultation with the Assistant Director of Legal Services ensure that the variation is not a material variation and that it is recorded in writing and signed by all contracting parties.

Contracts for Works

17.2 Variations may be provided for in contracts, where contracts for Works have been awarded, that contain Provisional Sums or contain the ability for the scope of Works to be subsequently varied with a different scope to that tendered, these shall not be subject to the variation procedure at 17.1 as long as:

17.2.1 the scheme has sufficient funding approved as part of the Council's Capital Programme.

17.2.2 The value of such variations do not exceed a net increase of 10% of the original contract price, or the authority decision or £250,000 (subject to the net increase being more than £100,000).

17.2.3 Such variations will be valued in accordance with the terms of the form of contract being used for the particular scheme and a full audit trail retained by the service. Where appropriate, the Rules relating to competition shall apply in the absence of tendered rates.

General

17.3 The delegated authority for the agreement of variations on behalf of the Council is as set out in the Councils Constitution and Scheme of Delegation.

17.4. Rule 16.1 will also apply to a variation that does not meet the thresholds in Rule 16.1 but the cumulative value of all previous variations to a contract together with the value of the proposed variation will exceed the thresholds in Rule 16.1.

17.5. Cabinet must agree variations that are Key decisions.

17.6. Notwithstanding the above, officers responsible for contract administration of Works contracts are able to meet contractual obligations to make payments and issue instructions in accordance with the contract terms to mitigate risks of costs arising from delay on site.

17. Disputes with Contractors

18.1. Disputes with contractors shall be referred to the Assistant Director of Legal Services for consideration of the Council's legal liability and, where necessary to the Director of Finance Resources and Customer Services for consideration, before a settlement is reached. No payment will be made in relation to a dispute to a contractor without the appropriate decision made by an authorised officer under the Council's Scheme of Delegation in accordance with the Councils Constitution.

19. Bonds and Other Security

- 19.1. Every contract exceeding £250,000 in value (or contracts of lower value where the Director of Finance Resources and Customer Services considers it necessary) for works, services, supplies or materials to be provided, shall require the contractor to provide sufficient security for the due performance thereof, except where the relevant Director and the Director of Finance Resources and Customer Services consider this to be unnecessary.
- 19.2. Sufficient security shall be one of:
- 19.2.1. a Performance Bond in a form approved by the Assistant Director of Services for 10% of the contract sum or, for contracts for a term of years, 10% of the annual contract value;
 - 19.2.2. in exceptional circumstances and as agreed by the Director of Finance Resources and Customer Services a performance bond for more than 10% of the contract sum;
 - 19.2.3. a parent company guarantee in a form approved by the Assistant Director Legal .

20. Partnerships

- 20.1. In normal circumstances, only the Council's Cabinet or committees and/or officers with delegated powers may make procurement decisions including decisions to enter into a contract on the Council's behalf.
- 20.2. Unless a partnership or other body has a separate legal identity from the Council and has delegated, contractual or statutory authority to act on the Council's behalf;
- 20.2.1. the partnership or body can only make recommendations to the Council in respect of the procurement of supplies, services and/or works;
 - 20.2.2. the Council will then decide whether to procure those services and will comply with these Rules; *and*

20.2.3. the Council and the contracting service and manager remain legally and financially accountable for the contract.

21. Review and Amendment of the Rules

- 21.1. The rules shall be reviewed and updated on a regular basis, not less than annually by Assistant Director of Procurement in conjunction with Audit and a working group of officers within the Council.
- 21.2. Any amendments to the Rules must be agreed and adopted at full Council, as recommended by the Audit Committee.

22. Calculation of values of a contract

- 22.1. The procurement procedures that must be followed will vary depending on the value and risk.
- 22.2. The Total Value of the procurement is defined as the total anticipated contract/purchase value and this will be calculated as follows:
- 22.2.1. 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;
- 22.2.2. Where the purchase involves recurrent transactions for the same type of items, by aggregating the value of those transactions over the contract period, including any allowable extension periods;
- 22.2.3. 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;
- 22.2.4. For Framework Agreements with no guaranteed commitment the contract value will be the estimated value of orders

placed/commissions let under the Framework Agreement over the full duration of the contract;

22.2.5. Where an in house service provider is involved, by taking into account TUPE workforce matters, redundancy and similar/associated costs;

22.2.6. For income generation contracts the Total Value will be the estimated revenue stream payable to the Council over the period of the contract.

22.3. The value must be calculated in pounds sterling exclusive of Value Added Tax.

22.4. Contracts must not be artificially under estimated or divided into two or more separate contracts where the effect is to avoid the application of these Contract Procedure Rules or UK/EU Legislation by dis-aggregation.

22.5. Orders and payments for supplies, services and works shall be undertaken in accordance with the Councils Financial Procedure Rules subject to any exclusions agreed with Director of Finance Resources and Customer Services.

23. Pre-Tender Market Research and Consultation

- 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 Contractor's offering such as to distort competition;
 - b) Make any indication or commitment to Contractors 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.

- 2) Any pre-market research undertaken, including discussions with Contractors and others must be fully documented on file.
- 3) Any market research must then be proceeded by a compliant procurement process where there is a business case to proceed.

24. Consultation

- 1) For Housing procurement contracts the Commonhold and Leasehold Reform Act (CLRA) may apply. Where applicable, officers must undertake the required consultation with leaseholders. Leaseholders can nominate contractors 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.
- 2) For all other procurements officers shall ensure that where applicable consultation with stakeholders is undertaken within the appropriate period of the procurement process.

25. Pre-Qualification Services for Works

Pre-Qualification Services i.e. 'Exor' and 'Construction line', describes the assessment, by a third party organisation of potential suppliers' generic suitability to contract with a Contracting Authority across a range of requirements (effectively an outsourced pre-qualification process although not specific to any one contract requirement). The carrying out of pre-qualification will result in the formal accreditation of those potential suppliers, which successfully complete the process.

- 1) Pre-qualification services can be commissioned for vetting of potential suppliers where internal resources are unable to undertake such assessments to assist in the expression of interest process.
- 2) Pre-qualification involves suppliers submitting information specified by the Council to facilitate its assessment of suppliers' suitability to tender, for below EU thresholds, for tenders relating to Works capital projects.

26. The Invitation to Tender

- 1) The Council's standard Invitation to Tender documentation must be used for all tender exercises. Corporate Procurement **must** be notified of all tenders, in advance of the date of issue (no later than one month).
- 2) For those procurement exercises involving the procurement of works and works related requirements, the appropriate industry standard Invitation to Tender documentation must be used (e.g. JCT, ICE, NEC). Any amendments to the industry standard terms must be included in the tender pack and drawn to the attention of all bidders. Legal Services must be consulted on the correct form of contract.
- 3) For EU Procurements under the Restricted Procedure at least 5 Contractors should be invited to Tender, unless there is an overriding business or legal justification that this is not required, but notwithstanding a Waiver must be sought prior to award if less than 3 tenderers are received. If due to special circumstances less than 3 tenderers are invited to Tender then a Waiver must also be sought.
- 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. The pre-

determined evaluation criteria and weightings must be included in the appropriate section of the standard Invitation to Tender document.

- 5) The Council's standard Invitation to Tender documentation should include a copy of the relevant Standard Contract. For works related contracts the Council's approved standard industry form of contract must be used but can be referenced within the tender documentation and not attached. Legal Services must be instructed on the form of contract and agree any amendments. It is important for the Officer to consider the form of contract to be used to ensure that it is fit for purpose. Where the Officer considers that it is not they must liaise with Legal Services with regards to any amendments required to make it so.
- 6) Tenderers must be required to hold their Tenders open for acceptance for a minimum of 90 calendar days from the date of opening.
- 7) Invitations to Tender must include a statement that the Council does not bind itself to accept the lowest Tender or any other Tender.

27. Tender Evaluation

- 27.1. Tenders must be assessed in accordance with the pre-determined evaluation criteria and weightings. All criteria and sub criteria, weightings and scoring system to be used in the evaluation process **MUST** be set out in the Invitation to Tender documentation.
- 27.2. A team of officers, including finance, must undertake the evaluation process. If the contract involves TUPE then HR and Payroll must be involved too. If a consultant leads on the team then an Authorised Officer must sign off their findings.

- 27.3. The results of the Tender evaluation must be retained on the tender file.
- 27.4. A Financial Reference should be taken up for all contracts with an anticipated Total Value of over £100,000, which are not currently on a Framework Agreement, or are sourced under a joint procurement arrangement or have not been pre-accredited under rule 25.
- 27.5. The Director of Finance, Resources and Customer Services must be consulted on the commercial evaluation of all tenders above £50,000, unless the evaluation is based on lump sum fixed price. A finance representative should be on the procurement evaluation panel.

28. Equalities

- 28.1. Before starting any procurement, Council Officers must make sure that they consider equality issues by completing an equalities impact assessment. The Equalities Impact Assessment will inform the detail of the contract specification. Companies must adhere to current legislation.

Glossary of Terms:

Aggregation	Is the requirement to add together the estimated value of separate contracts for meeting a single
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	<p>requirement. EU procurement expressly prohibits the splitting of requirements into smaller units or orders in an attempt to avoid the application of EU procurement.</p>
<p>Concessions</p>	<p>A type of contractual arrangement under which, rather than paying the contractor to deliver a work or service, the Council grants the contractor the right to exploit an opportunity and receive some or all of its income from third parties (e.g. the public), retaining the profit.</p>
<p>Directors</p>	<p>Means Directors of Enfield Council</p>
<p>Disputes</p>	<p>Are defined as contract matters that may be referred to a third party for mediation, however if in doubt as to how to deal with a dispute please contact Legal Services for advice/assistance</p>
<p>E-Auctions/Reverse Auctions</p>	<p>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.</p>
<p>E-Procurement</p>	<p>The electronic system used in the Council to electronically raise requisitions, purchase orders, supplies receipts and invoice payments.</p>
<p>E-Tendering</p>	<p>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</p>

	internet, as well as automating the evaluation of responses to a tender. Systems also incorporate contract management functionality.
“EU” or EU Procurement	A procurement conducted in accordance with the relevant EU Directives and the corresponding UK legislation including in particular the Public Contracts Regulations 2006 as amended or replaced from time to time.
Forward Plan	Is the list of Key Decisions published by the Council
Framework Agreement	An agreement with one or more economic operators which establishes the terms (in particular the terms as to price and, where appropriate, quantity) under which one or more call off contracts can be made with the economic operators in the period during which the framework agreement applies
Key Decision(s)	A proposal: <ol style="list-style-type: none"> 1. Which involves expenditure / savings of £250,000 or above - this includes proposals phased over more than one year and match / grant aided funding, with a total of £250,000 or above, or; 2. Which has significant impact on the local community in one or more wards.
Performance Bond	Is a bond issued by an insurance company or a bank to guarantee satisfactory completion of a project by a contractor .

Provisional Sum	A price for work that may not be required, or whose scope is undefined at the time of contract award
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>
Scheme of Delegation	As set out in the Councils Constitution
Services	Includes, for example, services such as maintenance of equipment, transportation, consultancy, technical services etc as defined under Schedule 3 of the Public Contract Regulations 2006, as amended.
Supplies	The supply (and installation where appropriate) or hire of products.
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
TUPE	Transfer of Undertakings (Protection of Employment) Regulations 2006
Unconditional Grants	A grant where the primary remedy for breach of the grant conditions is repayment of the grant payment(s).
Variation	A change to the scope or value of a contract
Whole Life Cycle Costs	The total cost of owning an asset over its entire life. Whole life cost includes all costs such as design and building costs, operating costs, associated financing costs, depreciation, and disposal costs. Whole-life cost also takes certain costs that are usually overlooked into account, such as environmental impact and social costs.
Works	The outcome of building or civil engineering as defined under Schedule 2 of the Public Contract Regulations 2006, as amended