

## **Part Eight - Procedures**

### **Section Five – Contract Regulations**

#### **PURPOSE AND SCOPE OF CONTRACT REGULATIONS**

##### **1 Legislation Governing these Contract Regulations**

- 1.01 The Royal Borough of Kensington and Chelsea (RBKC, the Council) is legally obliged to have Contract Regulations, which guide processes for ensuring transparency, best value, accountability and suitable competition in the award of contracts using public funds.
- 1.02 These Contract Regulations must be read in conjunction with the Council's Procurement Code, Guidance for Shared Services and Finance Procedure Rules, which together form the framework for ensuring compliance with the Constitution.
- 1.03 These Contract Regulations form part of the Constitution of the Council.
- 1.04 It may be a disciplinary offence for officers not to follow the Contract Regulations. Officers have a duty to report breaches appropriately.

##### **2. Scope of Contract Regulations**

- 2.01 These Contract Regulations apply to all contracts awarded by the Council for services, works or supplies, procured or commissioned activity regardless of the source of funding.
- 2.02 These Contracts Regulations apply to any person, firm or body acting on the Council's behalf.
- 2.03 These Contract Regulations apply to concession contracts.
- 2.04 These Contract Regulations do not apply to –
  - (a) Grants (guidance provided in the Procurement Code)
  - (b) Contracts of employment
  - (c) Land Transactions (where interest solely relates to the land)
  - (d) Contracts with agencies or suppliers for the provision of staff, where it is agreed that the use of vendor managed service is not appropriate
  - (e) Contracts with Barristers where required to be commissioned outside existing contractual arrangements
  - (f) Contracts entered into for and by school governing bodies which are covered by separate regulations
  - (g) Professional subscriptions such as professional fees for the registration of qualifications or professions.

### **3. Recording of Decisions**

- 3.01 Any decision relating to the planning for a procurement or commissioning activity, or award of a procured contract, or extension of or substantive variation of an existing contract taken by the Council must be recorded and approved in line with Governance Requirements detailed in the Procurement Code and Constitution.
- 3.02 A decision may be either delegated to an officer, an executive decision or a key decision.
- 3.03 The procedures for key decisions and executive decisions as set out in Part 4 Section 1 must be followed.
- 3.04 Any decision taken must be in compliance with the Governance Requirements as detailed in the Procurement Code and Constitution.

### **4. Roles and Responsibilities**

- 4.01 Executive Directors have responsibility for all contracts let by their Directorate, with the Council's Section 151 Officer having oversight of all contracting activity across the Council.
- 4.02 Executive Directors are responsible for ensuring that:
- (i) legal processes and Council Policy are adhered to;
  - (ii) good practice is followed; and
  - (iii) immediate action is taken in the event of a breach of the Contract Regulations within their area.
- 4.03 The Director of Audit, Fraud, Risk and Insurance is responsible for ensuring that relevant processes and procedures are in place in relation to endorsement and approval of any procurement or commissioning related decision as defined in tables One, Two and the Procurement Code and for reporting on compliance as required. Waivers should be sought and approved in line with section 14.
- 4.04 Officers are required to:
- (i) Follow the processes set out in the Contract Regulations and associated guidance as detailed in the Procurement Code. Plan sufficient time and resource to procure the requirement;
  - (ii) Record all contracts in the Council's Contracts Register.
  - (iii) Maintain an effective audit trail for all procurement actions and decisions;
  - (iv) All quotations and tenders must be published through the Council's e-tendering system unless otherwise agreed with the Strategic Procurement team;

- (v) Ensure the correct application of relevant regulations and Council policies, including but not limited to: Equality, Diversity and Inclusion, London Living Wage, Modern Slavery, Social Value, Data Protection and the Green Plan.

## **REQUIREMENTS FOR ALL PROCUREMENTS AND CONTRACTS**

### **5. Estimating Value**

- 5.01 When planning for a procurement or before entering any contract an estimate of contract value must be calculated. Contracts must not be artificially split to avoid the application of the key Tendering Thresholds contained within Table One of these Regulations. The estimated value is to be based on the total amount payable to the supplier over the whole contract period, inclusive of any VAT payable. This contract value shall include any option(s) to extend the contract as set out in the procurement documents.
- 5.02 In the case of contracts without a fixed term the estimated value shall be the monthly value multiplied by 48 inclusive of any VAT payable.
- 5.03 Contracts for Service shall be estimated using the contract value over the contract period.
- 5.04 The value of concession contracts shall be the estimated total turnover of the concession generated over the duration of the contract, inclusive of any VAT.

### **6. Procurement and Contract Evaluation Criteria**

- 6.01 The Council has a statutory duty to achieve best value and it is in the Council's best interests to spend public money in this way. Therefore, every contract for the procurement of goods, works and services by the Council must be for the purpose of achieving the Council's statutory or approved objectives.
- 6.02 Contracts must be awarded on the basis of the most economically advantageous tender (MEAT), quotation or proposal, as determined by such criteria as are relevant to the type of goods, works or services. This will generally cover the optimum combination of whole life costs and benefits, including such factors as quality, initial price, running costs and disposal costs.
- 6.03 It will also include criteria for social value, as detailed in the Social Value Strategy.

### **7. Approval of Procurement and Commissioning Decisions**

- 7.01 Before any procurement and/ or commissioning activity begins, endorsement by Commercial Assurance Panel (CAP) or an equivalent internal governance board must be sought and demonstrated in line with Governance Requirements (including the relevant provision in Part 4 of the Constitution) and as detailed in the Procurement Code.
- 7.02 Before award of any contract, endorsement by CAP or an equivalent internal governance board and relevant Director, Executive Director or Member

approval must be sought and demonstrated in line with Governance Requirements as detailed in the Procurement Code.

## **8. Contract Conditions**

- 8.01 For all contracts less than £25,000 in value, Purchase Order terms and conditions will be used unless it is deemed to be a High Risk requirement and/or is going to be sourced via an agreed procurement framework.
- 8.02 Regardless of value, if the contract is sourced through a procurement framework and/or is classed as High-Risk contract, before starting the procurement process officers must consult with and follow advice from Procurement and Legal and ensure that a written contract is put in place.
- 8.03 All contracts of £25,000 and over in value must be in writing except for contracts made in extreme urgency which must be subsequently confirmed in writing.
- 8.04 Contracts of £25,000 and over in value must be signed by one officer authorised by the Financial Procedure Rules.
- 8.05 The Council's standard terms and conditions must be used for all contracts over the value of £25,000. Any variation or deviation from this must be agreed by the Director of Law. Further legal advice must be sought where necessary.
- 8.06 Contracts in excess of £100,000 must be forwarded to Legal Services for execution as a deed unless the Director of Law agrees otherwise. The Director of Law, or another lawyer authorised by him or her, may decide by what means and in what form (including but not limited to an electronic seal) the common seal is to be used.
- 8.07 All contracts must be signed (and sealed) through the Council's electronic signing system which is managed by Legal Services.
- 8.08 Where the contract is externally funded any contingent liabilities and/ or grant conditions must be considered.

## **9. Modification, Variation and Extension of Conditions of Contracts**

- 9.01 Contracts may be modified/varied or extended, if permitted within the Public Contracts Regulations 2015 (PCR 2015)/ Contracts Concession Regulations 2016 (CCR 2016). Legal advice should be sought before any changes are agreed between the parties.
- 9.02 Prior to the variation of a contract a report should be prepared and subject to endorsement and approval as outlined in the Procurement Code which:
  - (i) Sets out the reasons for the variation and how value for money is demonstrated
  - (ii) Confirms that there is a budget to cover the increased expenditure;
- 9.03 Officers must consult Procurement Services and Legal Services where appropriate, on all contract extensions or variations to ensure compliance with the PCR 2015 or the CCR 2016. It should be noted that the extent of

permitted variations is limited by law and require specific conditions to be fulfilled.

- 9.04 Each modification should be assessed on a case-by-case basis. Where a significant modification or variation is identified, permission to change the contract must be approved and endorsed in line with Table Two (see below) as a Waiver.
- 9.05 Where a modification or variation is sought that is not permitted within a contract a waiver must be sought.
- 9.06 All modification/variations/extensions must be formally agreed with the provider in writing and appropriate record keeping should be maintained as outlined in the Procurement Code.

## **10. Contract Novation, Termination and Document Retention**

- 10.01 An Executive Director may agree the novation (transfer) of any contract subject to compliance with the PCR 2015 and financial due diligence on the incoming contractor having been satisfactorily completed.
- 10.02 Legal and procurement advice should be sought where necessary for any proposed novation.
- 10.03 Where a contract needs to be terminated prematurely or for poor performance Procurement must be consulted. The final decision will reflect the implications such as but not limited to financial and legal matters arising from the termination.
- 10.04 All contract records must be retained for six years after contract expiry and under any seal for twelve years from the expiry of the contract. Relevant insurance must be maintained by the provider for the duration of the contract.
- 10.05 Unsuccessful tenders must be electronically retained for one year from the award of contract.

## **PROCUREMENT PROCEDURES**

### **11. Tendering Requirements**

- 11.01 Officers shall procure all goods, services and works in accordance with the Tendering Requirements and Approval Requirements as set out in Table One - Procurement Requirements.
- 11.02 Approval and Endorsement through the Governance gateway process is outlined in the Governance Requirements detailed in the Procurement Code.

### **12. Procurement Approach Hierarchy**

- 12.01 Where a procurement is required, officers should consider the following options before undertaking an open tender:
  - (i) Existing Corporate Contracts;
  - (ii) Use of an agreed framework already in use within the Council;
  - (iii) Use of an external procured framework.

### **13. Shared Services**

- 13.01 Where the requirement is part of a Bi-Borough or other shared service, approvals should be sought in line with Contract Regulations where:
- (i) the value contributed by RBKC is more than £100,000; or
  - (ii) the level of interest is determined as significant or material by the relevant Executive Director.

### **14. Waiver Limits**

- 14.01 Waivers relating to contracts with a total value between £25,000 and £100,000 may be granted by the relevant Executive Director, subject to approval by the Director of Audit, Fraud, Risk and Insurance, with endorsement from Head of Strategic Procurement.
- 14.02 Waivers relating to contracts with a total value over £100,000 may be granted by the relevant Executive Director or subject to the approval of the Executive Director of Resources, with endorsement from the Director of Audit, Fraud, Risk and Insurance.
- 14.03 If the waiver is requested by the Executive Director of Resources another Executive Director must approve the Waiver.
- 14.04 For waivers relating to contracts with a total value that exceeds £500,000 additional agreement must be sought.
- (i) If it is between £500,000 and £1.5million the relevant Lead Member must agree.
  - (ii) If it is over £1.5 million then the Lead Member or the Leadership Team must agree via a key decision.
  - (iii) If the aggregate value of the original contract (including all extensions and variations) and the proposed waiver exceed £1.5m approval may be required from the lead member, or leadership team, as appropriate

### **15. Grounds for Waivers**

- 15.01 No exception to these Contract Regulations may be permitted unless the authoriser (in line with section 14 above) is satisfied that:
- (i) there are exceptional circumstances that have led to a need to depart from the Contract Regulations and evidence has been provided which demonstrates the waiver is necessary to achieve the Council's objectives; and
  - (ii) the nature of the market for the works to be carried out, or the services or supplies to be provided, has been investigated and it has been demonstrated that due to a lack of competition in the market, a departure from the requirements of Contract Regulations is justifiable; or

- (iii) the contract is for works, services or supplies that are required in circumstances of an emergency and as such could not reasonably have been foreseen.

## **STANDARDS OF CONDUCT**

### **16. Conduct**

- 16.01 All Council Officers must comply with the Council's Officer's Code of Conduct, Conflicts of Interest Policy and Confidentiality Policy.

### **17. Registering Interests and Conflicts**

- 17.01 Any officer of the Council, who find themselves in a situation of potential, perceived or actual conflict of interest in respect of a contract the Council has entered into, or proposes to enter into shall declare their interest in writing to the project lead/manager, who will ensure this is entered on the Council's electronic tendering system. This requirement includes external parties acting on behalf of the Council in a procurement process;
- 17.02 The Council will require interests, employment or relationships so declared to be entered in a register of interests of staff and for declarations of interest to be made by those designing the invitation to tender at the commencement of the tender exercise and the members of the evaluation panel prior to the evaluation process commencing.

**Table One – Procurement Requirements**

Table One outlines expectations of the process and audit trail by expenditure level and type of expenditure.

Further information is set out in the Procurement Code and any queries, or clarity should be sought from Strategic Procurement.

<b>Level 1: Anticipated Spend - below £25,000</b>
<b>3 suppliers including one SME or local supplier contacted where possible via the designated e-Sourcing system.</b>
<b>Approval to Award</b> Sign off by Head of Service, or budget holder or delegated officer, in consultation with Strategic Procurement, where appropriate.

<b>Level 2: QUOTE (Price/ Quality Split as appropriate)</b> where not identified as a High Risk requirement (where Level 3 should be followed)		
<b>Services</b>	<b>Works</b>	<b>Light Touch Regime (Services)</b>
<b>£25k – £250k</b> Self Service e-Sourcing Advertised on Contracts Finder Minimum 3 quotes requested * or competition on established framework Minimum one quote received	<b>£25k – £250k</b> Self Service e-Sourcing Advertised on Contracts Finder Minimum 3 quotes requested * or competition on established framework Minimum one quote received	<b>£25k – £250k</b> Self Service e-Sourcing Advertised on Contracts Finder Minimum 3 quotes * requested or competition on established framework Minimum one quote received
<b>Approval to Award</b> Service Director, or delegated officer sign off in consultation with Senior Commercial Manager. An award notice to be published on Contracts Finder.		

*\* including one quote from an SME/local company where possible*



<b>Level 3: TENDER (Price / Quality Split in line with Procurement Code)</b>		
<b>Approval to Proceed</b>		
<b>Services</b>	<b>Works</b>	<b>Light Touch Regime (Services)</b>
<b>£250k – PPT*</b> Commercial Assurance Panel (CAP) endorsement and Executive Director approval Advertised on Contracts Finder Minimum 5 tenders ** requested or competition on framework At least two tenders received Social Value Review	<b>£250k – £500k</b> CAP endorsement and Executive Director approval Advertised on Contracts Finder Minimum 5 tenders requested ** or competition on framework At least two tenders received Social Value Review	<b>£250k – PPT</b> CAP endorsement and Executive Director approval Advertised on Contracts Finder Minimum 5 tenders ** requested or competition on framework At least two tenders received Social Value Review
<b>PPT – up to £1.5m</b> As £250k+ above plus: Published on Find a Tender Service (FTS) and Contracts Finder Endorsed by CAP and approved by Executive Director in consultation with Lead Member	<b>£500k – up to £1.5m</b> As £250k+ above plus: Published on Find a Tender Service (FTS) and Contracts Finder Endorsed by CAP and approved by Executive Director in consultation with Lead Member	<b>PPT – up to £1.5m</b> As £250k+ above plus: Published on Find a Tender Service (FTS) and Contracts Finder Endorsed by CAP and approved by Executive Director in consultation with Lead Member
<b>£1.5m and above</b> As £250k+ above plus: Endorsed by CAP and Executive Director and Key Decision approved by Lead Member or Leadership Team	<b>£1.5m – PPT (-5%)</b> As £250k+ above plus: Endorsed by CAP and Executive Director and Key Decision approved by Lead Member or Leadership Team	<b>£1.5m and above</b> As £250k+ above plus: Endorsed by CAP and Executive Director and Key Decision approved by Lead Member or Leadership Team
<p><i>* PPT means the public procurement thresholds (as amended from time to time) as detailed in the Public Contracts Regulations 2015, Concession Contracts Regulations 2016, Utilities Contracts Regulations 2016, Defence and Security Public Contracts Regulations 2011</i></p> <p><i>** including one quote from an SME/local company where possible</i></p>		
<b>Endorsement and Approval to Award a Contract</b> <b>Executive/Key Decision Report required for Approval of Award</b> <b>Entry on forward plan at least 28 days before award decision and preferably 2-3 months in advance in draft for internal consideration</b>		
<b>Services</b>	<b>Works</b>	<b>Light Touch Regime (Services)</b>
<b>£250k – PPT</b>	<b>£250k – £500k</b>	<b>£250k – PPT</b>

*Constitution Part Eight, Section Five – Contract Regulations*

<p>Technical, Social Value and Financial Evaluation Contract award endorsed by CAP and approved by Executive Director</p>	<p>Technical, Social Value and Financial Evaluation Contract award endorsed by CAP and approved by Executive Director</p>	<p>Technical, Social Value and Financial Evaluation Contract award endorsed by CAP and approved by Executive Director</p>
<p><b>PPT – up to £1.5m</b> As £250k+ above plus: Contract Award endorsed by CAP and approved by Executive Director in consultation with Lead Member</p>	<p><b>£500k – up to £1.5m</b> As £250k+ above plus: Contract Award endorsed by CAP and approved by Executive Director in consultation with Lead Member</p>	<p><b>PPT – up to £1.5m</b> As £250k+ above plus: Contract Award endorsed by CAP and approved by Executive Director in consultation with Lead Member</p>
<p><b>£1.5m and above</b> As £250k+ above plus: Contract Award endorsed by CAP and Executive Director and Key Decision approved by Lead Member or Leadership Team</p>	<p><b>£1.5m – PPT (-5%)</b> As £250k+ above plus: Contract Award endorsed by CAP and Executive Director and Key Decision approved by Lead Member or Leadership Team</p>	<p><b>£1.5m and above</b> As £250k+ above plus: Contract Award endorsed by CAP and Executive Director and Key Decision approved by Lead Member or Leadership Team</p>
<p><i>Award notice to be published on Contracts Finder/Find a Tender Service as appropriate</i></p>		

**Table Two – Waiver Requirements**

**(Note: A waiver must accompany an award report which must follow the decision-making requirements set out above and in Part 4 of the constitution)**

	<b>Waivers</b>	
<b>Services and Works</b>	<b>Services and Works</b>	<b>Services and Works</b>
<p><b>£25k – £250k</b>                      Justification for direct award/waiver                      Approved by the Director of Audit, Fraud, Risk and Insurance and Executive Director                      Short term agreement supported by action plan to re-procure</p>	<p><b>£250k – £500k</b>                      Justification for direct award/waiver                      Endorsed by Director of Audit, Fraud, Risk and Insurance/CAP and approved by Executive Director                      Short term agreement supported by action plan to re-procure</p>	<p><b>£500k - £1.5M</b>                      Justification for direct award/waiver                      Endorsed by Director of Audit, Fraud, Risk and Insurance/CAP and approved by Executive Director in consultation with Lead Member                      Short term agreement supported by action plan to re-procure</p>
<p><b>Services and Works above £1.5M</b>                      The Waiver must be endorsed by the Director of Audit, Fraud, Risk and Insurance/CAP and Executive Director and approved as a Key Decision by the Leadership Team or the relevant Lead Member in accordance with the process set out in Part 4 of the constitution.</p> <p><i>(Valuation may be based on total contract, extension, waiver requested, as per section 14)</i></p>		