

## **F. CONTRACT REGULATIONS**

### **1. Introduction**

- 1.01 The Council's procurement framework consists of a number of controls, as follows:
- (a) Contract Regulations
  - (b) Advice from legal, financial and other appropriate technical officers
  - (c) The Procurement Code of Practice (KC Net Procurement Guide)
  - (d) The Corporate Procurement Strategy
  - (e) The Council's Corporate Policies.
- 1.02 The procurement framework is designed to ensure that Council contracts are let lawfully and achieve the best value-for-money available.
- 1.03 The Council and its officers must follow the rules contained in these Contract Regulations. Reference should be made to the Procurement Code of Practice for more detailed procurement procedures.

### **2. Purpose of and Compliance with Contract Regulations**

- 2.01 These Contract Regulations ('the Regulations') contain the Council's minimum requirements for purchasing works, supplies and or services (including the appointment of consultants) and must be complied with at all times. All officers responsible for letting contracts of this type are required by the Council to work within these Regulations.
- 2.02 These Regulations are not a substitute for an individual's common sense and judgement. All employees must employ the highest standards of integrity when they deal with the Council's affairs.
- 2.03 Oral contracts are generally not acceptable - all contracts must conform to any minimum standards laid down by the Director of Legal Services.

#### **2.04 Compliance**

- (a) Every contract made by, or on behalf of, the Council must also comply with the EU Public Contract Regulations (2006) as amended by the Remedies Directive (2009); the Treaty on the Functioning of Europe (TFEU 2009); all other relevant EU and domestic primary and delegated legislation or legally binding guidance; the Council's Constitution and these Regulations. Failure in this area could render a competitive tendering process invalid and possibly open the Council to legal challenge and a contract to be declared ineffective.
- (b) Contracts must be let on the basis of acceptable service delivery standards, continuous improvement clauses and incentives, and, where relevant, promote the Council's Corporate Policies and best practice principles, in particular those relating to sustainability and the

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environment; health and safety; equalities and diversity; business continuity and collaboration and partnership including shared services.

- (c) Contracts may be let on the basis of lowest price or the most economically advantageous offer to the Council. More detailed guidance on the contract award criteria can be found in the Procurement Code of Practice.

### **2.05 Employee Conduct and Corruption**

- (a) The Council regards any corrupt practices as completely incompatible with its public service role. All staff must comply with the rules within the 'Code of Conduct for Employees' dealing with the declaration of personal interests and the prevention of bribery.
- (b) If an allegation is made it is for the employee to demonstrate that any rewards have not been corruptly obtained. The Council may cancel any contract, which it finds has been corruptly let, and may seek to recover losses arising from that cancellation from the contractor.
- (c) Every person associated with the Council, including employees, consultants, agents and contractors performing functions on behalf of the Council, is required to ensure that no inducement or reward is offered, promised or provided to gain personal, commercial, regulatory or contractual advantage in the performance of those functions.
- (d) Every person who lets, manages or supervises a contract shall act in accordance with the highest standards of propriety and proper practice and ensure that proportionate measures are taken in respect of persons connected with the contract to mitigate identified bribery risks. Such measures shall include keeping adequate records, monitoring and reviewing contracts, facilitating the reporting, investigation and prosecution of criminal offences.

### **2.06 Environment**

- (a) When purchasing or procuring works, supplies and or services officers shall have regard and where relevant adhere to the Council's Sustainable Procurement Guidelines as well as the Environmental Strategy, whatever the value of the purchase.
- (b) The Cabinet Member for Civil Society shall be authorised to make directions regarding the mandatory use of green criteria for specific types of purchase. A direction given under this Regulation shall be in the form of a key decision report and shall identify the green criteria to be applied and the type/s of purchase to which the direction applies.
- (c) A direction given under this Regulation shall be followed unless an exemption is granted by the relevant Cabinet Member or the Cabinet Member for Civil Society withdraws the direction.
- (d) Whilst the Cabinet Member for Civil Society shall be authorised under this Regulation to make directions regarding the mandatory use of green criteria for specific types of purchase, that does not absolve

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officers from considering environmental impacts throughout the procurement cycle

### **2.07 Exemptions/Waivers of Contract Regulations**

Neither tenders nor quotations need be obtained:

- (a) for dealing with an unforeseen emergency and where immediate action is necessary to comply with the statutory obligations of the Council;
- (b) for the purchase or supply of goods, services or works of a unique character or where there is evidence that there is only one provider due to the nature of the market;
- (c) for the purchase or supply of goods, services or works and following advertisement where it is not possible to secure competition;
- (d) for hiring of performance artists;
- (e) for engagement of legal Counsel;
- (f) for engagement of external legal advisers and experts where urgent advice and assistance or representation is required and the requirement for appointment is unforeseen; and
- (g) where the circumstances of the proposed contract are covered by legislative exemptions.

2.08 In other cases exemptions from tendering or any other rule in these Regulations can only be made in the following circumstances:

- (a) where a specific exemption is authorised by the relevant Cabinet Member;
- (b) where a specific exemption has been authorised by an Officer of the Council under delegated powers;
- (c) a block exemption is authorised in accordance with these Regulations.

2.09 Requests for an exemption under regulations 2.8(a) and 2.8(b) must provide sufficient evidence to allow the decision to be made.

2.10 No exemption under paragraphs 2.7 and 2.8 can override the Council's obligations under Regulation 2.04(a).

### **2.11 Corporate Contracts, Framework Agreements or other Consortium Agreements**

Public sector consortia-led framework agreements, Council corporate contracts and contracts let by other public sector bodies, for the undertaking of works and for the purchase of supplies and services may offer best value to the Council and should be used where practicable. Where such opportunities exist, the relevant Cabinet Member or Director (exercising delegated powers under paragraph 2.19) should be satisfied that the requirements of paragraph 2.04(a) of the Regulations have been met and that the particular contract advertisement and contract terms contain adequate provision for participation

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by the Council and, in the case of Council corporate contracts, allow participation by the Business Group or department of the Council. Regard should be had to any guidance on purchasing through consortia published by the Council's Head of Strategic Procurement.

When utilising a public sector framework set up under the Public Contracts Regulations 2006 with more than one supplier, a director may obtain either:

- (a) a quotation from one supplier appearing on such list by applying the terms laid down in the framework; or
- (b) where not all the terms of the proposed contract are laid down in the framework agreement by re-opening the competition between all of the operators which are parties to the framework agreement who are capable of performing the proposed contract

When utilising a multi-party public sector framework set up prior to the coming into force of or not regulated by the Public Contracts Regulations 2006 a director must where practicable follow the rules contained in paragraph 2.19 when obtaining quotations

### 2.12 **Social Care Contracts and Children's Services**

- (a) Contracts, which are related to 'social care' and fall within European Union (EU) Services (Part B), can be let under slightly different, but no less rigorous, rules where the structure of the supply market for these services and value-for-money considerations favour negotiation without advertisement or competitive negotiation following advertisement rather than traditional tendering. These types of contract have been given a block exemption from tendering. Specific rules and guidelines for these contracts may be issued by the Executive Directors for Housing, Health and Adult Social Care and Family and Children's Services in consultation with the relevant Cabinet Member.
- (b) The Executive Directors for Housing, Health and Adult Social Care and Family and Children's Services are responsible for ensuring that any specific rules and guidelines are adhered to.
- (c) For the purposes of these Regulations, social care contracts may be defined as those contracts (including supporting people services contracts) under which the Council provides, or arranges to provide, practical help or care services to individuals within the community or in a residential setting.

### 2.13 **ICT Contracts**

The Council must ensure that it obtains best value from its ICT investment. It also needs to ensure that relevant ICT standards are applied and followed and that existing and new applications are fully utilised by all relevant departments to enable tri-Borough working. For this to occur all ICT procurement must be authorised by the

Council's Head of Information Services before a tender process is initiated. This applies to the purchase of all software and non-standard hardware. Standard hardware will continue to be purchased centrally.

#### **2.14 Schools Contracts**

The Council delegates funds to schools. The Council's scheme for financing schools contains the rules for procurement, tendering and contracts for schools. Contracts over £100,000 let by schools spending budgets delegated to them under the scheme for financing schools shall also be sealed by the Council or contain rights in favour of the Council under the Contracts (Rights of Third Parties) Act 1999. Where practicable, third party rights clauses shall be included in other school contracts in which the Council has a legal interest.

#### **2.15 The Borough-Wide Tenant Management Organisation Ltd (BWTMO)**

- (a) Contracts let by the BWTMO will not normally be key decisions. Under the terms of a statutory delegation by the Council under Section 27 of the Housing Act 1985 the procurement decisions affecting these contracts are the sole responsibility of the BWTMO.
- (b) All BWTMO agency contracts shall contain rights in favour of the Council under the Contracts (Rights of Third Parties) Act 1999.

#### **2.16 For Contracts of £100,000 or More**

- (a) Unless specific executive approval has already been obtained these Contracts shall only proceed to advertisement (or other method of letting the contract authorised by these Regulations) with the prior written authorisation of a Director. The Director will need to receive a report containing an officer's 'recommendation to proceed to competition' before that written authorisation can be given. In all cases the Director shall have consulted with the Cabinet Member/full Cabinet prior to giving such authorisation. When preparing that report the lead officer should refer to the checklist for *Procurement Review Stage 1*.
- (b) These contracts shall require a key decision of the relevant Cabinet Member/Full Cabinet before the contract can be awarded. The Cabinet Member/Full Cabinet will need to receive a report containing an officer's 'recommendation to award the contract' before that written authorisation can be given. When preparing that report the lead officer should refer to the checklist for *Procurement Review Stage 2*.
- (c) After these contracts are let, an annual review of performance may be undertaken and reported to the relevant director responsible for the Council function or service. When preparing that report the lead officer should refer to the checklist for *Procurement Review Stage 3*.
- (d) Checklists for *Procurement Reviews Stages 1-3* are contained in paragraphs 3-6 of these Regulations (pages 229-232). These checklists and the Procurement Code of Practice may be updated from time to time by the Head of Strategic Procurement in consultation with the

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Director of Legal Services and the Executive Director for Finance, Information Systems and Property.

- (e) The letting of contracts by the Council on behalf of partnerships are key decisions except where such expenditure is wholly or substantially funded from a source other than the Council's General Fund and prior permission has been given by a key decision of the Cabinet Member/Cabinet to such arrangements and provided it can be demonstrated that:
  - (i) an appropriate partnership structure is established and sufficient evidence is provided that purchasing will be undertaken in accordance with best Council practice, the law and the competition rules contained in these Regulations;
  - (ii) those persons charged with making decisions and or recommendations on behalf of the partnership have clear roles and responsibilities within the partnership structure.
- (f) Contracts over £100,000 shall normally be sealed by the Council in the Legal Services Directorate.

### 2.17 **For over £500,000**

- (a) All procurement projects should conform to PRINCE2 project management principles including the completion and upkeep of risk logs and project highlight reports.
- (b) A Project Board should be established for all major projects:
  - (i) Terms of reference, membership, roles and responsibilities should be clearly stated;
  - (ii) Meetings should be attended by key officers who have a direct responsibility for delivering the project;
  - (iii) All meetings should include a detailed budget forecast for the duration of the project;
  - (iv) Project slippage should be escalated to the Project Board at an early stage and include detail of the risks involved, mitigation thereof and overall impact on the timeline;
  - (v) Minutes of meetings should be formally recorded and actions allocated to specific project team members along with target completion dates;
  - (vi) The decision-making responsibilities and accountabilities

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should be clearly stated and reviewed on a regular basis;

- (c) All projects should ensure effective risk management arrangements are in place (financial and technical).
- (d) The Council's Standing orders and Financial Procedures should be complied with and full disclosure made to members and Executive Directors on recommendations for appointment of consultants and contractors;
- (e) Financial and technical vetting of main contractors should be undertaken prior to making a decision to award a contract;
- (f) A contract management regime should be agreed prior to award of contract and involve frequent quality audits throughout the life of the contract;
- (g) Authorisation of expenditure should not be the responsibility of a temporary member of staff;
- (h) Director approval must be obtained before appointing contractors or consultants outside the main appointed contractors.

### **2.18 Packaging Contracts**

- (a) The Council's contract procedures are designed to be fair, open and transparent. All Council officers responsible for or involved in letting contracts are expected to seek best value-for-money and to behave in a demonstrably fair and even-handed manner, whatever the contract value.
- (b) Contracts must be packaged appropriately, in accordance with EU procurement rules and follow all standard procedures contained in the Procurement Code of Practice taking into account the principles contained in the Corporate Procurement Strategy. They should never be packaged in order to avoid particular contract limits or to reduce the potential for fair and open competition. Officers shall explore alternative contract packaging options to existing arrangements, as this may be a means of delivering best value for money.
- (c) The financial threshold applies to the estimated contract sum or contract value (net of VAT) over the lifetime of the contract.  
The estimated contract sum or contract value for contracts which do not indicate a total price is as follows:
  - (a) For fixed term service and supply contracts of up to 48 months, the aggregate value of the payments.

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- (b) In the case of service or supply contracts, of over 48 months or of uncertain duration, it is the amounts payable in respect of each month multiplied by 48.
- (d) Directors or their nominees are responsible for estimating and recording the total value of the proposed contract.

2.19 **Financial Thresholds and Best Practice**

(see following table)



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<b>Total Value</b>	<b>Award Procedure</b>	<b>Advertising</b>	<b>Shortlistng</b>	<b>Documentation/Audit Requirement</b>	<b>Member Involvement</b>
Up to £5,000	One written quotation	No advertisement	n/a	Retain evidence of quote	Award decision delegated to relevant director. Directors should compile and maintain a scheme of delegation specific to their area of responsibility identifying staff who may approve orders or contracts up to specific values
£5,000 to £99,999	Three written quotations	No advertisement but for contracts over £10,000 place the opportunity on the Councils Buyer Profile, supply2.gov.uk and any other reasonable publicity	n/a	<p>Invitations to quote and quotations received. Keep a written record:</p> <ul style="list-style-type: none"> <li>• of any exemptions and reasons for it</li> <li>• of the reason if the lowest price is not accepted</li> <li>• of award criteria other than price</li> <li>• of communications with the successful contractor.</li> </ul>	Award decision delegated to relevant director. Directors should compile and maintain a scheme of delegation specific to their area of responsibility identifying staff who may approve orders or contracts up to specific values
£100,000 to £156,442	Four written quotations received	Public Advertisement and publication of a notice on the Council's Buyer Profile or invitation from a select list where so authorised under these Regulations	Director	<p>Follow audit guidance on retention and destruction of documents</p> <p>Spot checks will be undertaken to validate documentation and compliance.</p>	Contract award is a Key Decision

*table continued overleaf . . .*

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Total Value	Award Procedure	Advertising	Shortlisting	Documentation/Audit Requirement	Member Involvement
£156,442 – 499,999	<p>Invitation to tender by advertisement to at least 5 organisations</p> <p>EU Procedures must be followed where EU Rules apply. Consult the Procurement Code of Practice.</p>	<p>Public advertisement and publication of a notice on the Council’s Buyer Profile or invitation from select list where so authorized under these Regulations</p>	<p>Director in consultation with Cabinet Member</p>	<p>Follow pre-purchase/advertising checklists (Paragraph 3 page 229). Keep written record including:</p> <ul style="list-style-type: none"> <li>• the method for obtaining bids</li> <li>• any contract award decision and the reasons for it;</li> <li>• any exemption together with the reasons for it;</li> <li>• the award criteria (including those other than price) and the evaluation of tenders against these criteria;</li> <li>• tender documents sent to and received from candidates;</li> <li>• pre-tender market research;</li> <li>• clarification and post-tender negotiation (to include minutes of meetings);</li> <li>• the contract documents;</li> <li>• post-contract evaluation and monitoring;</li> <li>• communications with candidates and with the successful contractor throughout the period of the contract.</li> </ul> <p>Follow Council policy on retention and destruction of documents. Spot checks will be undertaken to validate documentation and compliance.</p>	<p>Contract award is a Key Decision</p>
Above £500,000	<p>EU procedures must be followed. Consult the Procurement Code of Practice/ Head of Strategic Procurement /</p>	<p>See above for contracts above £156,442</p> <p>Major contracts may require Cabinet Member/Cabinet approval to advertise</p>	<p>Major contracts may require Cabinet Member involvement in shortlisting process.</p>	<p>As per contracts of £156,442 and above</p>	<p>Contract Award is a Key Decision. Major and sensitive contracts may require substantial Member involvement from the earliest stages and a Cabinet decision.</p>

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	Legal Services/ Group Finance Manager				
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EU limits: Works contracts £3,927,260  
Supplies contracts £156,442  
Service contracts £156,442

Contracts of £100,000 and above will normally require a key decision and be sealed by Legal Services.

**Publication of electronic notices including OJEU, must be completed using the templates published on the Council's Buyer Profile.**

## 2.20 Council Approved Lists

- (a) Contractors may be selected from approved lists for works, and the supply of goods and services. For building and construction contracts, the Council has approved Construction line as a method of sourcing suitable organisations to be invited to tender but it should not be relied upon as the main source of such information. Construction line contains the names and addresses of all contractors who meet Construction Line's approved list criteria and includes the nature and value of contracts for which contractors listed may be used and is publicly advertised periodically.
- (b) The criteria for admission to and suspension from an approved list shall be specified in writing by the relevant Director in conjunction with the Executive Director for Finance, Information Systems and Property and the Director of Legal Services. The criteria shall relate to economic and financial standing, technical ability and capacity, insurance arrangements, quality systems, health and safety record (where relevant) and environmental record.
- (c) Approved lists may not be compiled without public advertisement inviting applications for inclusion on the list.
- (d) The existence of an approved list still requires the need for a formal competition (tender).
- (e) Contractors on approved lists must be chosen to tender in strict rotation except for particular contracts where another method is justifiable on legal, financial and value-for-money grounds and the reasons recorded.
- (f) Approved lists must normally be re-advertised at least every four years (copies of the advertisement being sent to each person on the list) and be available for public inspection.
- (g) Where EU Regulations require contracts of a value above a specified threshold to be advertised in OJEU, contractors on Construction line or other approved list may be targeted by their attention being drawn to the notice.
- (h) Contracts in this category which are above the EU threshold will normally be let as framework agreements in accordance with EU rules.

## 2.21 Financial Appraisals

- (a) Directors are responsible for ensuring a contractor's financial viability. Directors letting contracts with an estimated value exceeding the key decision threshold (£100,000) or setting up an approved list must undertake a financial appraisal in accordance with any recommendations of the Executive Director for Finance Information Systems and Property. Directors shall keep a written record of the tenderer's financial viability.
- (b) A more detailed appraisal of a prospective tenderers financial position may be necessary, subject to the complexity, value and risk of a

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contract and the amount of time that has elapsed since the tenderer submitted its most recent audited accounts to Companies House .

- (c) When Cabinet Member approval is required in order to accept a contractual offer, directors must report the results of the financial viability assessment to the Cabinet Member
- (d) Where financial appraisal results recommend a particular contract financial limit, this may not be exceeded without prior approval of the relevant Group Finance Manager.

### **2.22 Delivery of Tenders**

- (a) Tenders must be returned in a plain envelope and clearly identify the title or name of the contract as stated in the Council's Invitation to Tender, along with contract number/s issued and the final date and time for submission.

- (b) The envelope should bear no distinguishing marks, including the identity of the tenderer and/or its agents and must be delivered to:

The Chief Executive and Town Clerks Department  
Main Reception Desk  
The Royal Borough of Kensington and Chelsea  
Civic Centre,  
Hornton Street,  
London  
W8 7NX

- (c) Tenders for return to the Transport, Environment and Leisure Services Business Group should be returned to either the Civic Centre at 2.22 (b) above or:

The Executive Director of Transport Environment & Leisure Services  
The Council Offices  
37 Pembroke Road  
London  
W8 6PW

- (d) Tenders submitted bearing the identity of the tenderer and/or its agents should not be accepted.

- (e) Tenders, which are received after the specified time and date, will not normally be considered. The only exception is where a tender is received after the specified time but prior to opening of the other tenders. These tenders may be considered if, the tenderer can prove they posted it at least two days before the deadline or where there are other exceptional circumstances.

- (f) On collection Directors are responsible for the security and safekeeping of tenders until opening.

### 2.23 Opening of Tenders

- (a) Except where the estimated value of the contract is below £1,000,000, tenders can only be opened and initialled by:
1. A Cabinet Member and
  2. An Executive Director or a designated deputy
- in the presence of the Executive Director for Finance, Information Systems and Property (or nominated representative) or the Director of Strategy and Service Improvement (or nominated representative) who has not been involved in the tender invitation.
- (b) Where the estimated value of the contract is below £1,000,000, tenders may be opened by a director (or nominee) accompanied by the Executive Director for Finance, Information Systems and Property (or nominated representative) who has not been involved in the tender invitation.
- (c) At the discretion of the relevant Director, requests for quotations and invitations to tender may be either issued and/or received by electronic means. In circumstances where the Director elects to either issue and/or receive tenders by electronic means the following conditions shall apply:
1. each tender to contain all the information necessary for its evaluation;
  2. the confidentiality of tenders to be maintained pending their evaluation; and
  3. tenders to be opened only after the time limit for their submission has expired.

The Director shall ensure that evidence that the transmission was successfully completed is obtained and recorded.

Electronic tenders shall be kept in a secure folder under the control of the relevant Director or with prior agreement and facilities being made available by the Head of Information Systems and the Executive Director of Finance Information Systems and Property.

### 2.24 Award and Sealing of Contracts

- (a) The invitation to tender shall indicate the procedures that must be followed if any errors, omissions or mistakes are identified in a tender during the tender evaluation process and the procedure for late tenders (see 2.22(e) above). The procedures outlined in the tender documentation must be followed in all cases.
- (b) All tenders of £100,000 and above in value, and [framework agreements from which the aggregate spend on call-offs over the lifetime of the framework is likely to exceed £100,000](#), must be submitted to the relevant Cabinet Member for approval (Regulation 2.15(b)) together with a written report and recommendation from the relevant director.

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- (c) Where the Cabinet Forward Plan prevents an urgent decision from being made by the Council to participate in a contract awarded on behalf of more than one public sector partner (consortia/shared service), or the outcome of a public sector e-Auction; the decision to award the contract should be delegated to the relevant Executive Director by prior agreement with the Cabinet Member.
- (d) Contracts of £100,000 and above, and [framework agreements from which the aggregate spend on call-offs over the lifetime of the framework is likely to exceed £100,000](#), shall be sealed or alternatively, with the prior approval of the Director of Legal Services, signed by a Director and another officer of the Council. Contracts under this amount may be sealed if the Director of Legal Services considers it necessary due to the complexity of the contract. Payments cannot be made until the contract is sealed (or otherwise properly executed) unless, in exceptional circumstances, Executive Director for Finance, Information Systems and Property agrees.
- (e) All contracts of £100,000 and above shall be archived by the Director of Legal Services.
- (f) For the purposes of this Regulation the word tender includes in its meaning quotations for contracts where the estimated value of the contract is £100,000 or more

2.25 Tenders shall be accepted in writing except where an electronic means of acceptance of tenders is appropriate to the procurement in question and it can be reasonably demonstrated that contract acceptance by this method is the most effective means of seeking best value for money for the Council

### **2.26 Sub-Contractors**

- (a) Directors can approve the appointment of sub-contractors provided that:
  1. arrangements are in hand for properly letting the main contract;
  2. competitive quotations or tenders have been obtained for the sub-contract, in line with Contract Regulations; and
  3. sub-contractors or suppliers shall send with the tender an undertaking to work for the main contractor and indemnify them for the sub-contracted works or materials.
  4. For contracts that fall within the provisions of the Construction Industry Scheme operated by HM Revenues and Customs, evidence of a valid Construction Industry Scheme Registration Card or Document must be verified where applicable prior to letting the contract

### **2.27 Variations and Extensions of Contract**

- (a) Directors are responsible for making sure, where practicable, that all variations on contracts are costed and authorised in writing within 14

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days of the issue of instructions. Where a consultant manages a contract, they must do likewise and must copy their analysis to the Director within a further seven days. Directors should inform consultants of this requirement in their contract of appointment.

- (b) No variation may be made until approved by the relevant Cabinet Member if the effect of that variation taken on its own, or taken cumulatively with any preceding variations would:
  - (i) extend the contract period by 50 per cent or more than three months whichever is the greater;
  - (ii) add more than 20 per cent to the estimated value of the contract for contracts between £100,000 and £275,000; or
  - (iii) add more than 5 per cent to the estimated value of the contract for contracts exceeding £275,000; or
  - (iv) increase the estimated value from below £100,000 to £125,000 or more; or
  - (v) mean that the works, services or goods to be added to or deleted from the contract are substantially different in scope, save that in a case of urgency or unforeseen circumstances any such variations can be approved by a director subject to him or her reporting his or her actions to the relevant Cabinet Member.
- (c) No variation may be authorised that contravenes Regulation 2.04(a).
- (d) Where contractors claim for extra amounts, which were not clearly within the terms of the original contract as varied, and the estimated claim exceeds £25,000 payment must not be made until:
  - 1. the matter has been referred to the group finance manager and the Director of Legal Services for approval; and
  - 2. a recommendation has been made and agreed by the relevant Cabinet Member, where practicable.

Directors may settle such claims up to £25,000 in consultation their finance manager

- (e) Subject to any statutory restrictions and satisfactory performance, a Director may (in consultation with a Cabinet Member) authorise an extension for a particular period of an existing contract provided for within the terms of the contract.

2.28 Where a contract has previously been varied or extended, any reference to "the contract period" or "estimated value" in this regulation is a reference to the contract period or estimated value found in the original contract before any variation occurred.

### 3. Pre-Purchase Review



### **3.01 Purpose**

- (a) To provide a general framework for officer recommendations and member decisions in respect of Council functions currently being discharged either under contract, in house or by a combination of those two arrangements.
- (b) The review will be applied where the value of the services or goods provided is likely to exceed the tendering limit as defined in contract regulations

### **3.02 Checklist for Review**

- (a) Undertake performance review of service and, if service is provided under specification, consider if the specification can be improved.
- (b) Does the Council have the skills, expertise and/or means to deliver the service cost-effectively?
- (c) Is market analysis required and if not why not?
- (d) Are these specialist services and/or goods that can only be provided externally?
- (e) Will an in-house bid or public sector comparator be needed to demonstrate value-for-money?
- (f) Is external partnering necessary to obtain new skills?
- (g) Are there any other service options, joint arrangements, pooled budgets, and/or lead commissioning?
- (h) Risk analysis and TUPE/workforce matters.
- (i) Sustainable development analysis.
- (j) Rationale for contract extension:
  - 1. Will costs of procurement be met through efficiency savings of new arrangement?
  - 2. Check authority to proceed to competition checklist and/or take back in-house without competition.
  - 3. Is outcome of review likely to result in a request for a key decision?

### **3.03 Legal**

All Council functions are derived from domestic law and are additionally subject to all relevant EU law. As the above checklist may give rise to legal issues that go beyond the law relating to contracts e.g. they may encompass the way in which powers are exercised, specialist legal and other technical advice should be sought in appropriate cases.

## **4 Procurement Review Stage 1 (Minimum Requirements To Proceed)**

#### **4.01 Purpose**

To ensure:

- (a) the robustness of procurement planning and adequacy of reasons for proceeding to competition; and
- (b) that contractual arrangements are under control and/or lawful.

#### **4.02 Checklist**

- (a) Rationale for preferred procurement solution or Pre-purchase Review results.
- (b) Funding (affordability and value-for-money) and estimated contract value.
- (c) Risk evaluation and/or identification of main risks (such as an assessment of whether a performance bond or parent company guarantee is required).
- (d) Meeting Council corporate goals e.g. sustainability, health and safety, equalities and diversity, business continuity and electronic service delivery.
- (e) Type of supplier (approved list, knowledge of existing and potential suppliers).
- (f) Procurement method i.e. EU, open, restricted, competitive dialogue or negotiated. Identify potential exemptions if any and regulation under which procurement will proceed.
- (g) Procurement timetable.
- (h) Results of Consultation of Stakeholders.
- (i) Project Team expertise, resources etc.
- (j) Service Review, specified outcomes, performance incentives, defaults, possible contract structure, continuous improvement.
- (k) Value-for-money and likely selection and award (evaluation) criteria.
- (l) Arrangements for public disclosure of information.
- (m) Anticipated transaction costs.
- (n) Director authority to proceed.
- (o) Contingency arrangements.
- (p) TUPE and workforce matters.
- (q) Consultation/Officer comment on robustness of any pre-tender estimate.

### **5 Procurement Review Stage 2 (Award Requirements)**

#### **5.01 Purpose:**

To ensure:

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- (a) statutory and procedural legal compliance throughout tender process;
- (b) competition exercise meets objectives outlined (Procurement Review 1);
- (c) Council's contracts contain acceptable service delivery standards, continuous improvement clauses and achieve best value-for-money available.

### **5.02 Checklist**

- (a) Authority to proceed. Has this been obtained?
- (b) Results of bid evaluation and recommendations.
- (c) Final points on risk issues, risk transfer (including adequacy of contractors' insurances), risk share.
- (d) Contractors' undertakings have been obtained e.g. performance bond, parent company guarantee.
- (e) Stakeholder approvals.
- (f) Plans and procedures in place to deal with service change, performance and improvement.
- (g) Date of first review.
- (h) Implementation or acceptance strategy and/or draft exit plan.
- (i) Arrangements for public disclosure of information.
- (j) Completion requirements.
- (k) Final transaction costs (including comparison with pre-tender analysis in costs).
- (l) Key decision.
- (m) Information for contract award recommendation (EU report requirements).
- (n) TUPE and workforce matters.

## **6 Procurement Review Stage 3 (Review of operating phase)**

### **6.01 Purpose:**

**6.02** To ensure contract development to maintain value-for-money and so forth.**Checklist**

- (a) Have needs of users changed; is service operating to defined parameters?
- (b) Has contract documentation been delivered and kept up to date?
- (c) Are contractual relationships satisfactory?
- (d) Have the benefits described in stages 1 and 2 been realised?

#### Part Four - F. The Contract Regulations

- (e) Have all stakeholder issues been addressed?
- (f) Identify plans for continued contract management.
- (g) Monitoring costs.
- (h) Monitoring Best Value/workforce matters.
- (i) Annual monitoring of adequacy of contractors' insurances.