

CONTRACT PROCEDURE RULES

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Ealing Council



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Part 1

Introduction and Definitions

The Local Government Act 1972 requires the Council to have standing orders for how it enters into Contracts. These Contract Procedure Rules are the standing orders required by the 1972 Act. They form part of the Council's Constitution and are, in effect, the instructions of the Council to officers and members for entering into Contracts on behalf of the Council.

The purpose of these Contract Procedure Rules is to set clear rules for the purchase of works, goods and services for the Council and to ensure a system of openness, integrity and accountability, within which the probity and transparency of the Council's procurement process will be beyond reproach or challenge. Accordingly, these Contract Procedure Rules must be followed for **all** Contracts for:

- the supply of goods to the Council
- the supply of services to the Council and
- the carrying out of works for the Council.

The Council is also subject to the Public Contract Regulations (2015) as amended, with regard to public procurement, which require all Contract procedures, of whatever value, to be open, fair and transparent. These Contract Procedure Rules provide a basis for true and fair competition for Contracts by providing clear and auditable procedures, which, if followed, will give confidence that the Council has a procurement regime that is fully accountable and compliant with procurement law.

Following the Contract Procedure Rules will also help to ensure that the Council obtains value for money when it buys works, goods or services.

These Contract Procedure Rules are to protect the interests of the Council, its officers and members and the communities of Ealing.

These Contract Procedure Rules will reflect the requirements of the Local Government Act 1972 and the Public Contract Regulations (2015) and other procurement legislation as amended. They will not recite them. In any apparent conflict of meaning or intent, the legislated definition shall take precedence.

These Contract Procedure Rules do not steer procurement technique or recite the Public Contract Regulations 2015, and other sources should be sought for these purposes.

DEFINITIONS

Advertisement	The Council advertises an opportunity if it does anything to put the opportunity in the public domain or bring the opportunity to the attention of economic operators generally or to any class or description of economic operators which is potentially open ended, with a view to receiving responses from economic operators who wish to be considered for the award of the Contract; and
Award a Contract	means to formally accept an offer by a supplier;
Budget Manager	Means an officer with budget responsibilities for a stated budget who may authorise spend against that budget up to their level of delegated authority.
Cabinet	means the Leader of the Council and the other members of the Council's Executive, who are all portfolio holders;
Chief Finance Officer	means the officer designated under section 151 of the Local Government Act 1972. The Executive Director of Corporate Resources is the Chief Finance Officer;
Concession Contract	Means a Contract as defined in Part 1, Section 3 of The Concession Contracts Regulations 2016. A Concession Contract agrees for a Supplier to provide services on behalf of the Council and their income depends in whole or in part on the provision of that service and the key commercial risk is theirs.
Contract or contract	means the bargain or agreement between the Council and a supplier for the supply of works, goods or services including Concession Contracts;
Contract Document	means the document setting out the terms and conditions of the Contract. A purchase order is a Contract document. Although at law a verbal agreement may be a Contract, Contracts for Ealing Council must always be supported by appropriate written Contract documents;
Contract Number	Means the Commercial Hub (CH) Number allocated to the contract on the Commercial Hub's New Project Plan and reflected on the PID.
Contractor	see Supplier ;
Contracts Finder	means the web-based portal provided by or on behalf of the Cabinet Office for the publication of information about tendering opportunities and Contracts awarded (https://www.Contractsfinder.service.gov.uk)
Corporate Contract	means a Contract for the supply of works, goods or services to the Council as a whole rather than for an individual service area e.g. stationery. Corporate Contracts are generally procured and managed by Commercial and Procurement.
Council Plan	means the Council's corporate plan which sets out its priorities as amended from time to time
Council's Code of Conduct	means the Council's employee code of conduct which sets out the standards of behaviour that the Council expects of its employees as amended from time to time
Council's Financial Regulations	means the Council's financial regulations which contain all financial accountabilities in relation to the running of the Council, including the Council budget and Council policy framework

Dynamic Purchasing System or DPS	means the system referred to and defined in regulation 34 of the Public Contracts Regulations 2015.
E-Procurement System	means Due North or successor system approved by the Commercial Hub.
Equalities Analysis Assessment (EAA)	means the assessment process used for identifying the potential impact of a policy (existing, revised or new), procedure, project or practice on any disadvantaged or vulnerable people).
FTS Regulations	means the Public Contracts Regulations 2006, the Public Contracts Regulations 2015 (as amended) or the Concession Contracts Regulations 2016 (as applicable) as amended from time to time;
FTS Threshold	means the value in pounds sterling above which the Public Contract Regulations apply to a proposed procurement, as set out at this link: Procurement Threshold Values and Inclusion of VAT in Contract Estimates
FTS	means the Find a Tender Service, which replaced OJEU under Brexit.
Full Regime	means the rules and procedures under the relevant Public Contract Regulations.
JCB	means the Joint Contracts Board that approves the tender strategy and recommends award for specific-value Contracts.
Light Touch Regime	means the rules and procedures for the Light Touch Regime Services set out in Chapter 3 of the Public Contracts Regulations 2015 (as amended)
Light Touch Regime Services	means those services listed in Annex 1 of the CPRs
Local Supplier	means a Supplier based in the London Borough of Ealing. It can also mean the Ealing branch of a larger supplier.
Members of staff	means individuals who carry out the day-to-day work of the Council, either on a permanent or a temporary basis, and includes officers, interim post-holders and agency staff but not consultants or suppliers;
Monitoring Officer	means the officer designated under section 5 of the Local Government and Housing Act 1989 to monitor the Council's compliance with the law and rules of administration. The Director of Legal and Democratic Services is the Monitoring Officer;
Officer	means an individual who holds a post on the Council's establishment;
PAS 91 PQQ	means the PAS 91:2013 Construction prequalification questionnaires or its successor in a format approved by the Commercial Hub.
PID	Procurement (or Project) Initiation Document: a strategy document laying out the business case for and proposed approach towards a procurement exercise. It also: secures the project number, commissions The Commercial Hub and commissions Legal Services to support the exercise.

Public Procurement Legislation	includes the Public Contracts Regulations 2015 (as amended), Concession Contracts Regulations 2016, UK legislation affecting public sector Contracts and any amendment, re-enactment or replacement of any of them;
Purchase order	means the Council's official order form for the purchase of Works, Goods or Services; this can be a Purchase Order.
Quotation	means an offer by a Supplier to undertake a Contract of £25,000 or more but less than £75,000 in value.
Real Living Wage	The Real Living Wage is an independently calculated hourly rate based on the cost of living and must be paid by all Council suppliers. The rate is calculated annually by Living Wage Foundation .
Service	In the case of these CPRs, a Service can be any service provided to the Council in terms of supplies, works or services as defined in the Public Contracts Regulations 2015. Where Services as defined in the Public Contracts Regulations 2015 are intended, the context shall steer the meaning.
Service Director or service director	means an Executive Director, a Director or an Assistant Director;
Services Contract	means a Contract for the provision of services to the Council;
Service Provider	Any company or individual providing a Service to the Council.
SME	means an enterprise falling within the category of micro, small and medium-sized enterprises
Social Value (SV)	means activities, approaches and services that help to deliver corporate objectives, in particular measurable benefits to local communities' safety, health, prosperity and quality of life, including: <ul style="list-style-type: none"> • Climatic and Environmental improvements • Local economic benefits • Beneficial impacts on local communities – including furthering equalities and community cohesion.
Suitability Assessment Questionnaire (SAQ)	means a suitability assessment questionnaire in a format approved by the Commercial Hub which suppliers must complete for below FTS tender threshold procurements as an alternative to the SQ and PAS 91 PQQ.
SQ	means a standard selection questionnaire, which suppliers have to complete to provide evidence of or self-declare their legal, financial and technical capacity (including their health and safety and equal opportunities policies) to undertake a contract for the Council in a format approved by the Commercial Hub.
Supplier	means a supplier of works, goods or services to the Council;
Supplies Contract	means a Contract for the sale or hire of goods to the Council and includes, where appropriate, installation of goods;
T&Cs	(Contract or Agreement) Terms and Conditions

Tender	means an offer by a supplier to undertake a Contract of £75,000 or more in value;
TUPE Regulations	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 and any amendment, re-enactment or replacement of them.
VCSE	means a non-governmental organisation that is value-driven, and which principally reinvests its surpluses to further social, environmental or cultural objectives.
Works Contract	means a Contract for the construction, repair or maintenance of a physical asset e.g. a building or a road;
Writing	Includes information transmitted by electronic means where the context requires it

Part 2

General CPR Requirements

1. APPLICATION AND SCOPE

1.1 These CPRs apply to:

- All Contracts for the supply of works, goods or services **to** the Council, regardless of value, including Concession Contracts and Requests for Quotation (RFQ).
- Contracts for the engagement of consultants to provide services to the Council that are part of a discrete project e.g. carrying out research, giving advice or managing a project or not part of the day-to-day work of the Council.
- The nomination of a sub-Contractor to a main Contractor.

1.2 These CPRs do **not** apply to:

- Contracts for the purchase or sale of any interest in land including leasehold interests).
- Contracts for the appointment of individual members of staff, including members of staff sourced through employment agencies under a corporate Contract.
- Grant agreements, either where the Council is giving or receiving a grant (Where the Council carries out a procurement using grant monies received the CPRs will apply).
- Contracts for the supply of works, goods or services to schools procuring for themselves **with their own budgets**. Schools are, however, subject to the PCR's and it is recommended that schools adopt these Contract Procedure Rules as best practice.
- Supply of works, goods and services **by** the Council.

- 1.3 If a Contract is being procured in collaboration with other local authorities, the Contract Procedure Rules of the lead authority shall apply. Assurance should be sought that the lead authority is in compliance with its own Contract procedure rules. Where Public Contract Regulations apply, the Council is jointly responsible with the other local authorities for compliance with legislation

2. COMPLIANCE AND GOVERNANCE

- 2.1 Every Contract entered into on behalf of the Council must comply with
- these Contract Procedure Rules
 - the Council's Financial Regulations and
 - all relevant UK legislation.
- 2.2 Each service director is responsible for ensuring that their department complies with these Contract Procedure Rules
- 2.3 All members of staff and consultants engaged in any capacity to manage or supervise the procurement of any works, goods or services for the Council must comply with these Contract Procedure Rules and failure to comply with these Rules may result in disciplinary action and legal proceedings against the members of staff and consultants concerned.
- 2.4 The attention of officers is drawn to the Council's Code of Conduct and Disciplinary Rules and Procedures. Non-compliance with these Contract Procedure Rules constitutes grounds for disciplinary action and may be considered gross misconduct.
- 2.5 No procurement process of any value may be undertaken without an initial assessment of:
- Need
 - Assured funding
 - A check for conflict with existing Contracts
 - An assessment of savings
- 2.6 All Contracts with a value of £75,000 or more must be initiated with a Project Initiation Document (PID)
- 2.7 All Contracts with a value of £500,000 or more (including contract extensions and variations) must have JCB approval for the Commercial (Procurement) Strategy and the recommendation to award. Such approvals must be sought via reports providing all the information necessary for the JCB to make a fully informed decision.
- 2.8 In the instance of a procurement having multiple stages (e.g. a works PCSA), JCB Approval must be obtained at each stage.
- 2.9 Any Contracts decision having an annual value of £500,000 or more (including any extension period) are key decisions to which the Forward Plan and Access to Information Procedure Rules will apply and Cabinet-level approvals must be sought accordingly.
- 2.10 No Cabinet decisions or Individual Cabinet Member Decisions may be sought until the proposal has been approved by JCB.

- 2.11 The Chief Finance Officer may grant an Exception to Paragraph 2.10 on advice from Legal Services and the Commercial Hub.

3. CONFLICTS OF INTEREST

- 3.1 All members of staff must avoid any conflict between their own interests and the interests of the Council. This is a requirement of the Council's Code of Conduct, which all employees of the Council have signed and agreed to be bound by and includes:
- 1) Not accepting gifts or hospitality from organisations or suppliers that the Council has dealings with
Not working for organisations or suppliers that the Council has dealings with
 - 2) Notifying the Chief Executive and relevant service director of any links with an organisation or supplier who is tendering or quoting for a Contract with the Council or already has a Contract with the Council.
- 3.2 All consultants engaged to act on behalf of the Council must sign a Consultant's Undertaking and declare that:
- They will avoid any conflict between their own interests or those of any of their other clients and the interests of the Council; and
 - They will notify the relevant service director if they have any links with an organisation or supplier who is tendering or quoting for a Contract with the Council or already has a Contract with the Council.
- 3.3 If an elected member of the Council or a member of staff has an interest, financial or otherwise, in a Contract or proposed Contract, he/she must declare it in writing to the service director as soon as he/she becomes aware of the interest. An elected member or member of staff who has an interest in a Contract must not take part in the procurement or management of that Contract.

4. PREVENTION OF CORRUPT ACTIVITY

- 4.1 A Contract may be terminated immediately, and any losses to the Council arising from the termination recovered from the Supplier, if the Supplier, or anyone acting on their behalf (with or without the Supplier's knowledge):
- offers or promises or gives a financial or other advantage to any elected member of the Council, any member of staff or any consultant in connection with the Contract; or
 - requests, agrees to receive or accepts a financial or other advantage so that some action in relation to the Contract is performed improperly.
- A statement to this effect must be included in all invitations to tender or quote.
- 4.2 Any elected member of the Council, member of staff or consultant who becomes aware or has reason to believe that a supplier or potential supplier has committed one of the corrupt acts referred to in CPR 4.1 must report it to the Monitoring Officer and/or the Head of Audit and Investigation immediately.
- 4.3 The attention of officers is drawn to the Council's Code of Conduct and Disciplinary Rules and Procedures. **Non-compliance with these Contract Procedure Rules constitutes grounds for disciplinary action and may be**

considered gross misconduct.

5. DUTIES OF SERVICE DIRECTORS

A Service Director must:

- 5.1 Ensure that all Contracts within his/her department comply with Contract Procedure Rules, Financial Regulations and all applicable Public Procurement Legislation.
- 5.2 Plan the procurement of and manage Contracts within his/her department to ensure that Contracts:
 - Deliver value for money
 - Are operated effectively, efficiently and economically and
 - Are operated within the terms of the Contracts themselves, so that the Council is not at risk of being in breach of Contract.
- 5.3 Maintain a register of Contracts entered into by his/her department and ensure these are added to the Council's overall Contracts Register. Contracts for less than £25,000 need not be recorded in the register.
- 5.4 Award Contracts between £500,000 and £5m per annum in value when the Portfolio holder has delegated authority to them to do so. The decision must be recorded on an Individual Cabinet Member's Decision form
- 5.5 Authorise as necessary another service director or member of staff within their own department as back-up or support to carry out their duties in respect of a particular Contract or Contracts generally.
- 5.6 Keep adequate records and maintain audit trails to evidence compliance with Contract Procedure Rules, Financial Regulations and all relevant legislation in their department.
- 5.7 Ensure that there is adequate budget available to finance all purchasing decisions and irrespective of the value a Purchase Order is raised on the Council's finance system following relevant spend approval decision.

6. VALUATION OF CONTRACTS

- 6.1 The service director responsible for each Contract must record an estimated value for the Contract before any offers are sought.
- 6.2 The value of a Contract is the total amount that the Council expects to pay for the whole Contract term, including any possible Contract extension period, and is:
 - a. Exclusive of VAT for the purposes of Council budget and approval purposes but
 - b. Inclusive of any applicable VAT for the purposes of considering FTS Thresholds and thereby compliance with FTS Regulations.
- 6.3 The value of a Concession Contract shall be the total turnover generated through the provision of the service over the duration of the Contract, as estimated by the Contracting authority.

- 6.4 Legal Services must be consulted to confirm the calculation of the value of a Concession Contract.
- 6.5 The Service Director must not try to avoid compliance with these Contract Procedure Rules or the Procurement Regulations by splitting a procurement for the same or similar works, goods or services into smaller, separate Contracts, except where permitted by the Regulations to divide Contracts into Lots.
- 6.6 If it will achieve better value for money, Contracts for the same or similar works, goods or services must, where reasonably practicable, be aggregated into a single procurement with Lots where necessary.

7. PURCHASING THROUGH CORPORATE CONTRACTS OR FRAMEWORKS AND COLLABORATIVE PROCUREMENT

- 7.1 If there is an existing corporate (Ealing) Contract or Framework or Dynamic Purchasing System for the supply of any works, goods or services, the service director must buy through that Contract unless agreed otherwise with the Commercial Hub at time of drafting the PID. A list of current corporate Contracts can be found in the Commercial Hub section of the Council's intranet.
- 7.2 Where appropriate external Framework Agreements or Dynamic Purchasing Systems are available these may be used but must be assessed before deciding to conduct a tender exercise through them.
- 7.3 Legal Services must be consulted on the acceptability of a Purchasing Body's T&Cs before joining or buying from an external Framework Agreement or a Dynamic Purchasing System.
- 7.4 Cabinet authority has been delegated to the Assistant Director of Commercial Hub to join consortia, buying groups, Dynamic Purchasing Systems or Framework Agreements set up by another body, and this Assistant Director must be consulted before joining or buying from any of these bodies.
- 7.5 The cost of using any external Frameworks or DPSs should always be included in the strategic assessment of this route to market and form part of the business case for using them – or not.
- 7.6 Any procurement exercised through a Framework Agreement or Dynamic Purchasing System must follow the procedures set out by that purchasing body. This may mean overriding some requirements of these CPRs by seeking an Exception from these Rules (see Paragraph 20). The advice of the Assistance Director should be sought in these instances.
- 7.7 A decision at the appropriate level will be required to award a Contract procured through consortia, buying groups, Dynamic Purchasing Systems or Framework Agreements, whether set up by the Council or set up by another public authority.
- 7.8 Commercial Hub must be consulted before setting up a Framework Agreement

or a Dynamic Purchasing System.

- 7.9 Wherever possible and practicable, collaboration with other public authorities or other service areas within the Council should be considered.
- 7.10 For Contracts where the Council is the lead authority Contract award will be subject to the Council's CPRs and governance process, including the use of the Council's e-tendering system.
- 7.11 For Contracts where the Council is *not* the lead authority but the Council is participating in the procurement, the procurement process and Contract award will be subject to the lead Authority's CPRs and governance procedures.
- 7.12 Contracts procured by the Council for Local Authority Trading Companies (LATCO) will be subject to the Council's CPRs and governance procedures.

8 CONTRACT AWARD

- 8.1 Written Contracts are required for all commissions, regardless of the value of the Contract.
- 8.2 For RFQ purchases, the Purchase Order with the initial Request for Quotation will constitute the agreement.
- 8.3 Contract T&Cs must be approved by Legal Services. Non-standard form Contracts must be drafted by or approved by Legal Services.
- 8.4 A Purchase Order must be issued for every Contract with the Contract number referenced.
- 8.5 Work must not begin under a Contract until the Contract document has been signed by both parties or, if the only Contract document is a purchase order, until the purchase order has been issued.
- 8.6 Contracts which are not required to be sealed must be signed for and on behalf of the Council by the Service Director responsible for the Contract.
- 8.7 The Service Director may delegate authority to approve and sign low value contracts (i.e. those commissioned via an RFQ process) to another officer with the appropriate level of authority.
- 8.8 The minimum levels of cover required under Contract must be:
- £10 million for employer's liability insurance
 - £10m for public liability and products liability insurance
 - £2 million for professional indemnity insurance.

Any lower level of insurance cover agreed must be adequate to cover the value and risks involved, following a risk assessment and approval from the Service Director following consultation with Insurance Manager

- 8.9 All Contracts, bonds, guarantees, agreements or transactions
- (i) in respect of which there is no consideration; or

- (ii) which exceed £500,000 in value over the life of the Contract must be executed as a deed under seal in accordance with these Contract Procedure Rules unless otherwise agreed with Legal Services.
- 8.10 Paragraph 8.9 will *not* apply to Contracts for insurance where the Contract is brought into effect by the issue of a schedule of insurance and policy documents to the Council by the insurer.
- 8.11 Legal Services may direct that other Contracts must be executed as deeds.
- 8.12 All Contracts executed as deeds must have the Council's Common Seal (electronically or otherwise) inserted or impressed on them and witnessed by an officer of the Council authorised by the Director of Legal and Democratic Services
- 8.13 For every Contract of £5m or more in value, the service director must decide, upon taking appropriate advice, whether the circumstances justify the Council requiring the supplier to provide a parent company guarantee. If the supplier does not have a parent company or the parent company is not approved, the supplier may in those circumstances be required to provide a bond.
- 8.14 If a bond is required, the amount of the bond must be not less than ten per cent of the total Contract value or the whole of the annual Contract value, unless otherwise agreed by the Chief Finance Officer
- 8.15 The parent company or the surety for a bond must be approved by the Chief Finance Officer
- 8.16 All parent company guarantees and bonds must be in a form approved by Legal Services. A specimen of the parent company guarantee and bond must be included in the invitation to tender documentation.

9. AUTHORITY TO INVITE AND EVALUATE TENDERS AND AWARD CONTRACTS

- 9.1 The decision to invite and evaluate tenders for a Contract and the decision to delegate the award of the Contract to an officer or a portfolio holder can be contained in one report.
- 9.2 Service Directors have delegated authority under the Council's Constitution to invite and evaluate tenders and award a Contract of up to £500,000 per annum in value, provided a budget has been allocated for that expenditure. The decision to invite and evaluate tenders and the decision to award a Contract must be recorded on two separate Officer's Decision forms. Any officer decision with a value of £500k and above in total (including options to extend) will be a key decision and must be placed on the Forward Plan.
- 9.3 Notwithstanding paragraph 9.2, where the call off is from a single supplier Framework Agreement and provided that use of the Framework Agreement has been appropriately agreed. then it is only necessary to have one decision made to award the Contract.
- 9.4 A portfolio holder may authorise the invitation and evaluation of tenders and/or the award of a Contract between £500,001 and £5m per annum in value, within the scope of his/her portfolio, provided a budget has been allocated for that expenditure.

- 9.5 Only Cabinet may authorise the invitation and evaluation of tenders and/or the award of a Contract above £5m per annum in value. Cabinet may delegate authority to a portfolio holder or service director to award a Contract of £1m or more per annum in value, provided that a budget has been allocated for that expenditure.

Part 3

Procurements below £25,000

10. COMPETITION

- 10.1 Competitive quotations need not be sought for Contracts of less than £25,000 in value. The quotation can be sought on a price-only basis but must be able to demonstrate that the Council is receiving value for money. An audit trail must be maintained of the procurement. Where appropriate, relevant consultation must be carried out.
- 10.2 The process must be undertaken using the Council's approved RFQ process.
- 10.3 The repeated use of the same Supplier must be avoided and the process must not be used for the purposes of disaggregation.
- 10.4 For works contracts, unless there are grounds to proceed otherwise, the quoting supplier should be selected from the *Construction Line* list of vetted suppliers.
- 10.5 Wherever possible, a local Supplier must be invited to quote.

11. PURCHASE ORDERS

- 11.1 All purchasing agreements must be in writing. A purchase order (PO) may serve as a purchasing agreement and a PO must be issued for any and every purchase made under such purchasing agreement.

12. AUTHORITY TO ENTER INTO A CONTRACT

- 12.1 The award of any contract or agreement arising from the process must be approved by the Service Director.
- 12.2 The Service Director may authorise the Budget Manager to approve the award of a contract arising from the RFQ process but a written record of such authorisation must be maintained and provided to Legal Services on request.
- 12.3 The Contract shall be based on the standard Terms and Conditions attached to the RFQ documentation. If deemed necessary, these T&Cs may be amended in consultation with Legal Services or Commercial Hub.

Part 4
Procurements from £25,000 to £74,999

13. COMPETITION

- 13.1 Competitive quotations must be sought for Contracts from £25,000 to £74,999 in value through the Council's approved RFQ process.
- 13.2 At least three suppliers must be invited to quote and at least two offers must be received for evaluation.
- 13.3 Suppliers must be selected to quote based on a sound business case. For works contracts, unless there are reasons to proceed otherwise, the quoting suppliers should be selected from the *Construction Line* list of vetted suppliers.
- 13.4 The repeated use of the same supplier/s must be avoided and at least one local supplier must be included in the list wherever possible.
- 13.5 All quotations in this category must be sought on the basis of most economically advantageous tender.
- 13.6 The approval of any award arising from the process must be made by the Service Director.
- 13.7 The Service Director may authorise the Budget Manager to approve the award of a contract arising from the RFQ process but a written record of this delegation must be maintained and produced to Legal Services on request.
- 13.8 As soon as practicable after the decision to award the Contract has been made, the Service Director must write to inform the successful and unsuccessful Suppliers of that decision.
- 13.9 The Contract shall be based on the standard Terms and Conditions attached to the RFQ documentation. If deemed necessary, these T&Cs may be amended in consultation with Legal Services or Commercial Hub.
- 13.10 The Service Director must within a reasonable period of the award of a Contract publish notice of the award in Contracts Finder.

Part 5
Procurements from £75,000 up to the FTS Threshold

14. COMPETITION

- 14.1 The Commercial Hub must be made aware of all tenders in this value range and must review and approve the PID.
- 14.2 Competitive tenders must be sought for Contracts £75,000 or more in value (up to the FTS Threshold) and must be exercised entirely through the Council's e-procurement system.

- 14.3 An Initial Equalities Analysis Assessment screening must be carried out and, if required, a full Equalities Analysis Assessment must be undertaken.
- 14.4 A single-stage tender process should always be undertaken unless there is strategic justification for an alternative procurement procedure to be followed.
- 14.5 The SAQ should be included as part of the supplier assessment and selection process.
- 14.6 The SQ and PAS 91 should not be used as part of the supplier assessment process unless there is a strong business case supporting the proposal to do so.
- 14.7 Opportunities in this range of values may be advertised solely through the Council's e-tendering portal or may be more widely advertised. If advertising outside the portal is adopted as a strategy, Contracts Finder must be used as one of the conduits to the market.
- 14.8 If the decision is taken to select the suppliers invited to bid, unless there are reasons to proceed otherwise, the bidding suppliers may be selected from the *Construction Line* list of vetted suppliers.
- 14.9 A minimum of five bidders must be selected for tender and this is in addition to any in-house bidder.
- 14.10 In instances where less than five bidders have been secured at ITT stage, the number of tenderers must still provide an adequate level of competition. The reasons for the shortage of bidders and the grounds for proceeding with the tender exercise must be noted for audit purposes.
- 14.11 All tenders must be assessed on the basis of Most Economically Advantageous Tender (MEAT). PCR 2015 provides that *MEAT* includes lowest-price assessment where this is the better option for the authority.
- 14.12 All tenders must include the requirement that all persons employed on London Borough of Ealing Contracts are paid, as a minimum, the applicable [Real Living Wage](#) based on locality.
- 14.13 All tenders must include the London Borough of Ealing ethical trading policy note and signed undertaking (for return with the bid).
- 14.14 All Contracts with a value of £100,000 or more must include Social Value in its evaluation model:
- Social Value must have a minimum weighting of at least 5% and where appropriate seek to include a higher weighting
 - This weighting should come from the quality element of the evaluation model
 - Corporate Guidance on seeking and evaluating the SV element of bids must be followed

- 14.15 For Contracts with a value of £500,000 or more, the tender award may only be made once the evaluation panel's recommendation has been approved by JCB on the basis of a full tender report submitted and presented to the Board by the Service Director or their delegated representative.
- 14.16 For Contracts with an annual value of less than £500,000 the award may be approved by the Service Director. For Contracts with an annual value of £500,000 or above, this is a Key Decision and the award proposal must be progressed via the Forward plan.
- 14.17 Tender outcome letters must be issued to all bidders as soon as possible after the decision to award the Contract has been approved.
- 14.18 Whilst a standstill period is not a regulatory requirement, a voluntary standstill period may be observed and bidders should be advised accordingly. If a voluntary standstill period has been proposed within the tender documentation, then it has to be observed. 10 days is an advisory period for a voluntary standstill period.
- 14.19 Contracts up to the FTS Threshold and which are not required to be sealed must be signed for and on behalf of the Council by the Service Director responsible for the Contract personally.

Part 6

Procurements over the FTS Threshold

15. COMPETITION

- 15.1 The full requirements of the relevant procurement regulations must be observed for all tenders that exceed the FTS Thresholds.
- 15.2 The support of the Commercial Hub must be sought for all tenders exceeding the FTS threshold and the Commercial Hub must review the PID.
- 15.3 Legal Services must be consulted on services/supplies Contracts above the FTS Threshold and on works Contracts over £1m in total value.
- 15.4 The procurement must be exercised through the Council's e-tendering system.
- 15.5 The service director must carry out an Initial Equalities Analysis Assessment Screening and, if required, a full Equalities Analysis Assessment.

- 15.6 A commercial strategy must be agreed with the Commercial Hub before seeking authority to invite and evaluate tenders.
- 15.7 The procurement strategy must be approved by JCB before proceeding to market.
- 15.8 The FTS Contract notice or other advertisement inviting tenders must not be published until the service director, portfolio holder or Cabinet (as appropriate) has made the decision to invite and evaluate tenders and the decision has been recorded in writing on the appropriate decision form.
- 15.9 For all tenders, an SQ or PAS 91, as appropriate, must be used as part of the bidder assessment and selection process.
- 15.10 A minimum of five bidders must be selected for tender and this is in addition to any in-house bidder.
- 15.11 In instances where less than five bidders have been secured at ITT stage, the number of tenderers must still provide an adequate level of competition. The reasons for the shortage of bidders and the grounds for proceeding with the tender exercise must be noted for audit purposes.
- 15.12 All tenders must be assessed on the basis of Most Economically Advantageous Tender. PCR 2015 provides that *MEAT* includes lowest-price evaluations where this is the better option for the authority.
- 15.13 All tenders must include the requirement that all persons employed on London Borough of Ealing Contracts are paid, as a minimum, the Real Living Wage.
- 15.14 All tenders must include the London Borough of Ealing ethical trading policy note and signed undertaking (for return with the bid).
- 15.15 Subject to agreement with the Head of Procurement, all Contracts above the FTS Threshold must include Social Value in its evaluation model:
- Social Value must have a weighting of at least 5% and up to 10%
 - This weighting should come from the quality element of the evaluation model
 - Corporate Guidance on seeking and evaluating the SV element of bids must be followed
- 15.16 For Contracts with a total value of £500,000 or more, the Contract award may only be made once the evaluation panel's recommendation has been approved by JCB on the basis of a full tender report submitted and presented to the Board by the Service Director or their delegated representative.
- 15.17 For contracts with a total value of £500,000 or above, the decision to award a Contract is a Key Decision and the award proposal must be progressed via the Forward plan.

Part 7

Tender Award

16 TENDER AWARD

- 16.1 These requirements apply to full tenders set out in Parts 5 and 6. They do not apply to quotation procedures.
- 16.2 For all Contracts with a total value of £75,000 and above, a full, confidential tender (award) report proposing the evaluation panel's recommendation must be produced in a format approved by the Commercial Hub, signed by the Service Director and presented to JCB by the Service Director or their delegated representative.
- 16.3 The decision to award the Contract must be made in accordance with CPRs 9.2 to 9.5.
- 16.4 Tender (award) reports must be sent to the Commercial Hub and the decision-maker before the decision to award the Contract is made. The tender report must be marked "NOT FOR PUBLICATION".
- 16.5 For Contracts with a total value of £500,001 or over (including options to extend) a Contract award may only be made once the evaluation panel's recommendation has been approved by JCB.
- 16.6 Notwithstanding Paragraphs 16.4 and 16.5, a report is not required for call-off Contracts from a Framework Agreement or Dynamic Purchasing System unless specifically requested by the Commercial Hub.
- 16.7 The recommendation to the decision-maker to award the Contract must include the name of the successful tenderer, the length of the Contract and any options for extension and the price or estimated price of the Contract.
- 16.8 Tender outcome letters must be issued to all bidders as soon as possible after the decision to award the Contract has been made, taking call-in procedures and standstill requirements into account. A Notice must also be published in Contracts Finder, in accordance with FTS Regulations.

Supplier Registration

- 16.9 A copy of the approved Award Report must be attached to the supplier registration request.
- 16.10 The Contract Reference Number assigned with the PID must be quoted with the supplier registration request.

Signature of the Contract

- 16.11 All Contracts, bonds, guarantees, agreements or transactions
- (i) in respect of which there is no consideration; or
 - (ii) that exceed £500,000 in value over the life of the Contract must be executed

as a deed under seal in accordance with these Contract Procedure Rules unless otherwise agreed with Legal Services.

- 16.12 Paragraph 16.11 does *not* apply to Contracts for insurance where the Contract is brought into effect by the issue of a schedule of insurance and policy documents to the Council by the insurer.
- 16.13 Legal Services may direct that other Contracts must be executed as deeds.
- 16.14 All Contracts executed as deeds must have the Council's Common Seal (electronically or otherwise) inserted or impressed on them and witnessed by an officer of the Council authorised by the Director of Legal and Democratic Services
- 16.15 Contracts of more than the Services FTS Threshold in value that are not deeds must be signed for and on behalf of the Council by the Service Director.

Part 8

Contract Management

17 CONTRACT MANAGEMENT

- 17.1 Within ten days of the date of the Contract, if the Contract is worth £25,000 or more, the or Budget Manager or Service Director (depending on the contract value) must add the details of the Contract onto the Council's Contracts register.
- 17.2 When the Contract commences the Council's Insurance Manager must be notified of this information.
- 17.3 The details in the Contract Register must be maintained and updated according to Council policies to ensure the Council meets the requirements of the transparency agenda,
- 17.4 The service director shall be the Contract manager for the Contracts for which they are responsible up to the FTS Threshold, but they may authorise another officer to have day-to-day responsibility for managing the Contract.
- 17.5 For Contracts over the FTS Threshold, the service director must appoint a dedicated Contract manager with appropriate skills and experience.
- 17.6 The Contract manager is responsible for all aspects of managing the Contract on a day-to-day basis.
- 17.7 The service director must consult Legal Services for consideration of the Council's legal position:
- Before any Contract is to be terminated or suspended
 - In the event of a claim for payment not clearly within the terms and conditions of Contract
 - Before making any deduction from payments due to a Supplier or withholding payment from a Supplier

- Subject to CPRs 18 and 19, before making any extension to a Contract or variation of the scope of a Contract.

17.7 If the final expenditure under a Contract exceeds the budgeted sum by 10% or more, the service director following consultation with the Chief Finance Officer, must prepare and submit a report to Joint Contracts Board.

17.8 To ensure value for money and competition, Contracts for an indefinite period or a rolling term must be terminated at the end of ten years and a new Contract procured.

18 CONTRACT EXTENSIONS

18.1 Subject to conditions stated herein, these CPRs will permit an extension to an existing Contract where the extension is permissible under Public Procurement Legislation.

18.2 If the Contract is above the relevant FTS Threshold and an extension is permitted within the contract terms, then the extension must be approved by the Service Director by way of an Officer Decision Form. These requirements apply to full tenders set out in Parts 5 and 6. They do not apply to quotation procedures.

18.3 All extensions must be evidenced in writing in accordance with the Contract, in consultation with Legal Services.

18.4 Notwithstanding Paragraph 18.2, the Service Director may make a decision to authorise an extension to a Contract provided the action does not breach Public Procurement Legislation and the value of the extension is below £500,000 per annum. A decision for an extension where the annual value is £500k or above will be a Key Decision and must be placed on the Forward Plan.

18.5 If the value of a Contract extension is between £500,001 per annum and £5m per annum and provided the action does not breach Public Procurement Legislation, the decision to authorise the Contract extension may be made by the portfolio holder.

18.6 If the value of a Contract extension is £5million plus per annum, and provided the action does not breach Public Procurement Legislation, the decision to authorise the Contract extension may be made by Cabinet.

18.7 In all instances where an extension is not permitted within the contract terms but is considered to be permitted by Public Procurement Legislation, the advice of Legal Services must be sought prior to seeking approval for the extension

18.8 If a Contract extension is sought where the circumstances are or appear to be in breach of these CPRs, then an Exception must be sought.

19 MODIFICATION OF CONTRACTS DURING THEIR TERM

- 19.1 Provided that a budget has been allocated for the expenditure, value for money has been demonstrated and authority has been obtained from the appropriate decision maker, Contracts and Framework Agreements may be modified or varied without a new procurement procedure provided approval at the correct level is obtained in any of the following cases:
- a. where the change in value is relatively small - under 10% of the Contract value for services & supplies or under 15% of the Contract value for works and is also under the applicable EU Threshold and does not alter the overall nature of the Contract (NB the Contract value to be used is the updated value if the Contract contains an indexation clause. Where several successive modifications are made the change value shall be cumulative); or
 - b. where the modifications, irrespective of their monetary value, have been provided for in the initial procurement documents in clear, precise and unequivocal review clauses, which may include price revision clauses or options, provided that such clauses
 - (i) state the scope and nature of possible modifications or options as well as the conditions under which they may be used, and
 - (ii) do not provide for modifications or options that would alter the overall nature of the Contract or the Framework Agreement; or
 - (iii) where additional works, services or supplies are necessary from the existing Contractor (and the Contract does not provide a mechanism for this) and a change in Contractor cannot be made for economic or technical reasons such as interchangeability or interoperability with existing equipment, services or installations procured under the initial procurement and where changing the Contractor would cause significant inconvenience or duplication of costs, provided that the price increase does not exceed 50% and an FTS notice about the modification is published once the modification has taken place; or
 - (iv) where there is a need for a modification (and the Contract does not provide a mechanism) due to unforeseen circumstances, the change does not alter the overall nature of Contract, the price increase is not greater than 50% and
 - (v) an FTS notice about the modification is published once the modification has taken place or
 - (vi) where a new Contractor replaces the one to which the Council had initially awarded the Contract as a consequence of an unequivocal review clause or option or following a corporate restructuring, insolvency or merger, and the new Contractor still meets the original selection criteria. This exemption is only available where there is no other substantial modification to the Contract; or

- (vii) otherwise where the modification is not substantial and is only made following consultation with Legal.

19.2 All modifications must be evidenced in writing in accordance with the Contract in consultation with Legal Services.

Part 9

Exceptions to Contract Procedure Rules

20 EXCEPTIONS

- 20.1 An exception to Contract Procedure Rules is a permission to let a Contract without complying with one or more of those Rules.
- 20.2 An exception to Contract Procedure Rules may be granted subject to the prevailing conditions.
- 20.3 Only the Chief Finance Officer or authorised deputy, in consultation with the Commercial Hub, are delegated by Cabinet to grant an exception to these Contract Procedure Rules. Exception requests will be monitored by JCB on quarterly basis.
- 20.4 Applications for exceptions must follow the process set out by the Commercial Hub, be made in writing and be signed by the service director. Applications must include the exception that is requested and the justification for the exception.
- 20.5 If an application to let a Contract without genuine competition is granted, the service director responsible for the Contract must demonstrate that the price obtained is not in excess of the market price and that the Contract represents best value for money.
- 20.6 Exceptions to Contract Procedure Rules must never be requested retrospectively.
- 20.7 Exceptions for extensions cannot be requested if there is less than a term of six months before the Contract expires.
- 20.8 The Commercial Hub must keep a register of all exceptions to Contract Procedure Rules, which shall be available by appointment for inspection by members of the Council and the public.
- 20.9 An exception to Contract Procedure Rules is *not* required in the following circumstances:
- Placing an order under an existing corporate Contract or single supplier Framework Agreement

- As part of a partnering Contract that contemplates a series of Contracts with a single supplier, provided the entire series has been duly authorised as appropriate for its value
 - Where legislation requires the Council to let a Contract in a manner that deviates from these Contract Procedure Rules
 - Placing an order under an arrangement, of which the Council is an affiliate, which has gone through an FTS-compliant competitive process; or
 - Following completion of a quotation procedure where quotations exceed £75,000, provided all quotations are below £100,000.
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APPENDIX 1

SUMMARY OF KEY CONTRACT PROCEDURE THRESHOLDS

Total Value	Competition	Advertising	Authority to tender or award	Signature of Contract	CPR
<p>Up to £25,000</p>	<ul style="list-style-type: none"> No competitive quotations required, but must demonstrate value for money Price-only quotes may be received. Quotation must be invited using approved Request for Quotation (“RFQ”) documents Audit trail to be kept 	<p>None required.</p> <p>Bidders can be selected via Constructionline or on the basis of a sound business case. Can be prompted by suppliers listed on a Framework or DPS, etc</p>	<p>Service Director or the Budget Manager where authorised by the Service Director (Officer Decision).</p>	<p>Service Director or their Deputy</p>	<p>Part 2 Part 3</p>
<p><u>QUOTATIONS</u></p> <p>£25,000 to £74,999</p>	<ul style="list-style-type: none"> Three competitive quotes through Request for Quote (RFQ) system Quality assessment required. Should use local suppliers (insert post codes) if a good reason exists for not using local suppliers this should be documented and kept on file Must be evaluated by minimum of two officers Quotations must be invited using approved Request for Quotation (“RFQ”) documents 	<p>Select bidders via Constructionline or on the basis of a sound business case. Can be prompted by suppliers listed on a Framework or DPS, etc.</p>	<p>Service Director or the Budget Manager where authorised by the Service Director</p>	<p>Service Director or their Deputy</p>	<p>Part 2 Part 4</p>

<p><u>TENDERS</u></p> <p>£75,000 to FTS Thresholds</p>	<ul style="list-style-type: none"> • PID must be completed • Five suppliers invited to tender (plus any in-house bidder) • Tender must be invited and processed through the central e-tendering system • When using a framework, all mini-competitions must be processed through the e-tendering system • Must be evaluated by a minimum of three officers 	<ul style="list-style-type: none"> • Advert in journal, internet, Council's website, portal alert. • Can be advertised via FTS and/or Contracts Finder • Or select from DPS or Framework Agreement 	<ul style="list-style-type: none"> • Up to £500,000 per annum - Service Director's delegated authority (Officer Decision) • £500,001 to £5m per annum – Portfolio Holder decision (ICMD) • £5m+ per annum - Cabinet decision. <p>NB: Any decision where total value is £500K or more is a Key Decision</p>	<p>Service Director or Sealed by the Council (as appropriate)</p>	<p>Part 2 Part 5</p>
<p><u>FTS TENDERS</u></p> <p>Over FTS Thresholds</p>	<ul style="list-style-type: none"> • PID must be completed • Tender process to follow the requirements of the Public Contracts Regulations 2015 as Amended or Concession Contracts Regulations 2016 • Tender process managed by Commercial Hub through the central e-tendering system • Use Restricted/Open procedure (unless agreed otherwise by Legal) 	<p>Advert in FTS and Contracts Finder</p>	<ul style="list-style-type: none"> • Up to £500,000 per annum - Service Director's delegated authority (Officer Decision) • £500,001 to £5m per annum – Portfolio Holder decision (ICMD) • £5m+ per annum - Cabinet decision <p>NB: Any decision where total value is £500K or more is a Key Decision</p>	<p>Service Director or Sealed by the Council (as appropriate)</p>	<p>Part 2 Part 6</p>