

CONTRACTS PROCEDURE RULES

Contents	Section	Page No
Introduction	1	3
Contract procedure	2	4
Calculating the value of a contract	3	4
European procurement requirements	4	6
Legal, procurement & technical support	5	6
Requirements in relation to TUPE	6	7
Pre-tender report	7	7
Tender process	8	8
Procedure for submission and opening of tenders	9	10
Conduct of negotiations	10	10
Award in-house	11	11
Post Tender reports	12	11
Council standard terms of contract	13	12
British or other applicable European standards	14	14
Early authorisation approval	15	14
Execution of contracts	16	14
Records to be kept	17	16
Prevention of corruption	18	17
Best Value requirements	19	18
Council corporate contracts & framework agreements	20	18
Contract extensions and variations	21	19
Non-commercial considerations	22	20
Appointment of consultants	23	21

Contents	Section	Page No
Framework /Consortium contracts	24	22
Electronic Business	25	23
Exceptions	26	23
Contracts under £25,000	Schedule A	27
Contracts between £25,000 and £99,999	Schedule B	27
Contracts between £100,000 and £174,000	Schedule C	28
Contracts between £174,000 and £5,000,000 for Part B services or works less than £4,348,350	Schedule D	29
Contracts between £174,000 and £5,000,000 for Part A services	Schedule E	31
Contracts between £5,000,000 and £10,000,000 for Part B services	Schedule F	33
Contracts between £5,000,000 and £10,000,000 for Part A services and works	Schedule G	35
Contracts above £10,000,000 for Part B services	Schedule H	37
Contracts above £10,000,000 for Part A services and works	Schedule I	39
Framework contracts	Schedule J	40
Consortia arrangements (where the London Borough of Havering is not a member)	Schedule K	41

1 Introduction

Purpose

The purpose of these rules is to ensure that all Council contracts involving the Council are awarded:

- (a) in compliance with all relevant United Kingdom and European legislation including best value and EC procurement legislation
- (b) to ensure probity
- (c) to ensure value for money is obtained
- (d) *to ensure efficient processes are in place*
- (e) to maximise competition wherever possible
- (f) in accordance with best practice
- (g) to ensure a fair and transparent process
- (h) in a way which demonstrates an audit trail with evidence that there was a fair process and value for money was obtained.

Status

The Contract Procedure Rules (CPR's) provide the framework for the procuring of goods and services for the Council.

The CPR's ensure there are rules to govern how we procure goods and services to make the most effective and efficient use of resources to deliver best value for the Council and the local community.

The Rules identify what route to take when ordering goods and services for the Council and compliance with these rules is a requirement for all Council employees.

Requirements

All contracts will be awarded in accordance with these rules and the Financial Procedure Rules which are compulsory and with the relevant provisions of the Council's Procurement Framework. A contract is any order or purchase of goods, supplies, services or works.

All contracts will be awarded in accordance with all relevant United Kingdom and European legislation including best value and European procurement legislation.

No contract may be awarded unless there is sufficient budget available for the goods, supplies, services or works being procured and appropriate delegated authority to award the contract.

The person awarding the contract shall have a duty to ensure and demonstrate that the best value is obtained, having regard to the appropriate balance between quality and price.

Members of CMT, Assistant Chief Executive, Assistant Director and Heads of Service are responsible for ensuring that all:

- (a) contracts are awarded in accordance with these Rules
- (b) persons responsible for awarding contracts are familiar with the Council's Procurement Framework, familiarise themselves with its contents and attend relevant Council training as appropriate.
- (c) contracts over £100,000 are recorded on the Contracts Register maintained by the Operational Procurement Team using a Form L
- (d) contracts over £100,000 shall have a nominated Contract Monitoring Officer
- (e) contracts over £100,000 shall be signed and sealed by the Mayor via Legal and Democratic Services.

2 Contract Procedure

The relevant procedures set out in the Schedules to these Rules and in the Procurement Framework shall be followed for all contracts subject to European Procurement Rules. **All** contracts **will** be let in accordance with the relevant procedure as set out in Schedules A to K based on the value of the contract.

3 Calculating the value of a contract

In calculating the value of the contract for the purposes of the competition requirement:

- (a) values are total lifetime contract values not annual values
- (b) values exclude VAT
- (c) values are to be aggregated – for example, if there is a recurring need on an annual basis for supplies
- (d) An estimate shall be made of the total purchasing requirement/whole life costing/financial implications – for example,

including ongoing maintenance and support costs. If there are variables which result in the estimate being a range of figures rather than a single figure, then the highest figure in the range will be the value of the contract for the purposes of these Rules.

- (e) The valuation shall include the value of possible contract extensions and possible additional options.
- (f) Where a contract is of indeterminate length the value of the contract shall be assessed on the basis of the maximum anticipated length of the contract.
- (g) Where a contract is for a number of organisations and the Council is the lead authority, then the value of the contract shall be the total value of the contract for all the organisations. If the Council is not the lead authority then the value of the contract for the purposes of these Rules shall be the value of just this Council's proportion of the contract. It is a breach of these Rules to deliberately divide up contracts to evade the need to follow a more complex/lengthy procurement procedure or evade the requirements of European or UK legislative requirements.

4 European procurement requirements

Thresholds

European procurement legislation shall be complied with for all contracts above the following thresholds:

Type of contract	Threshold
Services	£ 173,934
Supplies	£ 173,934
Works	£ 4,348,350

These thresholds will be revised every two years. The next revision will be January 2014.

5 Legal, procurement and technical support

Self Service

Staff should use the intranet self service in the first instance when a procurement is required. Once staff has obtained information on “How to procure” they **MUST** place their order through the oracle i-procurement system in conjunction with these rules.

Shared Services

Staff should contact the Shared Services for procurement related advice, support and guidance on matters that they are unable to find using the intranet self service.

Consulting Operational Procurement Team

The Operational Procurement Team **MUST** be advised at the outset via shared services on all contracts for a value of more than £100,000 and the advice of the Team must be sought to confirm that there are not existing contracts for similar goods or services in order to ensure that the European thresholds are not inadvertently breached.

Notifying Assistant Chief Executive Legal & Democratic Services

The Assistant Chief Executive Legal & Democratic Services shall be notified at the outset of all proposed contracts with a value of more than £174,000 in order to advise on applicability of EU rules, TUPE, best value and any other legislative requirements and to nominate a legal representative to the project team.

Notifying Technical Services

Technical Services should be notified of all proposed works contracts.

6 Requirements in relation to TUPE

Where a contract award for services may result in Council or contractor staff being affected – for example, by possible redundancy, relocation or transfer to the successful tenderer – the advice of the Head of Shared Services (re pensions), Head of People & Change and the Assistant Chief Executive Legal & Democratic Services must be obtained before commencement of the tender process. Details must be included in the pre-tender report to members referred to in rule 7.

7 Pre-tender report

All contracts with a value of more than £174,000 and less than £500,000 must be reported to the appropriate Head of Service, and over £500,000 to the Member of CMT for approval to commence the tendering process unless an exception set out in 7(c) applies. The report must set out:

- (a) the likely total cost and budget provision
- (b) the appropriate European procurement route
- (c) the proposed tendering strategy and timetable
- (d) the project team
- (e) a summary of best value issues and any service improvement requirements
- (f) application of TUPE
- (g) project risk assessment.

Contracts within the terms of reference of the Pension Committee may be dealt with by that Committee.

Contracts for the procurement of gas, electricity and water supplies for Council buildings including schools may proceed without a formal pre-

tender report with the approval of the Group Director, Finance & Commerce.

8 Tender process

General

All tender processes shall be conducted in accordance with the requirements of these Rules (including the procedure set out in the relevant Schedule), the Financial Procedure Rules, European procurement rules (if applicable), the Procurement Framework.

All tenders that come under the EU rules must be advertised via the European Journal electronically. This will be done by the Operational Procurement team on the Councils behalf.

Where there is the need to initially assess the capability of tenderers to undertake a proposed contract or the list of potential tenderers exceeds 8, the relevant Head of Service may issue a Pre-Qualification Questionnaire (PQQ) to assess which potential tenderers should be included/ excluded provided that such PQQs are assessed using fair, appropriate and consistent evaluation criteria and that the process is fully documented. Guidance is available on the intranet.

The Invitation to Tender (ITT) for all contracts over £100,000 shall include the following information:

- (a) a description of the services, supplies or works sought
- (b) the procurement timetable
- (c) rules for submitting tenders
- (d) pricing mechanism
- (e) the relevant terms and conditions of contract
- (f) the evaluation criteria including weightings
- (g) the Council's view on the applicability of TUPE
- (h) Any other information necessary to prepare tenders

The lists of contractors maintained by Constructionline shall be preferred for the formation of shortlists of potential tenderers for all construction contracts with a value of less than £4,340,000 for buildings and roads maintained by the Council unless otherwise agreed by the relevant Group Director and the Assistant Chief Executive, Legal & Democratic Services

Evaluation criteria

The award of all contracts shall be based on fair and appropriate evaluation criteria in accordance with the Procurement Framework and the European procurement rules (if applicable). Full and complete written records of the evaluation process must be maintained by the service

Weightings (price/quality) and detailed criteria and scoring mechanisms must be set out in the Invitation to Tender

Number of Tenders/Quotes

The minimum number of tenders or quotes to be sought shall be as set out in the relevant Schedule unless these Rules or the Assistant Chief Executive Legal & Democratic Services approves otherwise.

Award

The tender or quotation accepted shall be the one which represents the best value for money for the Council overall, taking account of price, quality of service, risk to the Council and other benefits, as set out in the evaluation criteria chosen for the tender and as described in the Procurement Framework .

For all contracts to which EU procurement rules apply all tenderers must be notified of:

- (a) The evaluation criteria
- (b) Their score using the criteria
- (c) The winning score
- (d) An explanation why the winning tender scored more highly than the tenderers one
- (e) The identity of the winner of the contract.

For all other contracts with a value in excess of £100,000 all bidders must be notified of:

- (a) Their score in the evaluation
- (b) The winning score.

9 Procedure for submission and opening of tenders

Submitting tenders

Every invitation to tender shall state that no tender will be considered unless it is returned in plain, sealed packaging which bears the word “tender” followed by the contract name, reference number, if applicable, and closing date and time. The instructions shall clearly indicate that there must be no name or mark indicating the tenderers identity.

Returning tenders

All tenders with a likely value of more than £100,000 must be returned to Internal Shared Services Town Hall Main Road Romford Essex RM1 3RX.

Late tenders shall not be considered without the written approval of the Assistant Chief Executive Legal & Democratic Services which must set out the justification for the decision.

Opening tenders

Tenders shall be kept secure and unopened until formal opening.

All tenders for a particular contract shall be opened together at one time, in the presence of at least two members of staff not previously involved in the tender process. Where tenders are likely to have a value of more than £100,000, the two members of staff must consist of one representative of the Transactional Team Shared Services and one representative of the relevant Service and/or a representative of the operational procurement team.

The details of the tenders and the tenderers shall be recorded by the staff opening the tenders on the pro forma in the Procurement Framework at Appendix A. Copies shall be sent to (or retained by)

- (a) the relevant department
- (b) the Assistant Chief Executive Legal & Democratic Services
- (c) Internal Audit
- (d) Technical Services (construction contracts only)

10 Conduct of negotiations

All negotiations shall be conducted in accordance with European procurement rules, if applicable.

The Assistant Chief Executive Legal & Democratic Services and the Group Director, Finance & Commerce shall be advised of all contracts in excess of £174,000 that require negotiation before negotiations commence.

Negotiations shall be conducted by at least two senior members of staff, at least one of whom shall be either a Head of Service or a more senior

officer. The relevant Member of CMT is responsible for the negotiations. If the value of the contract exceeds £1,000,000 then a senior member of the Assistant Chief Executive Legal & Democratic Services' staff should also be present at the negotiations.

Negotiations must be conducted, and full and proper records shall be kept, in accordance with the relevant section of the Procurement Framework

11 Awards in-house

Where there is an in-house team capable of performing the required services, the team may be invited to bid if such a bid is in accordance with the Procurement Strategy.

An award may be made to an in-house team after competition, provided that:

- (a) the in-house team has been evaluated as the most economically advantageous tender in accordance with the requirements set out in the Procurement Framework
- (b) the person making the award can demonstrate that the in-house team represents the best value in terms of quality and price.

12 Post Tender Reports

Pre-award report

The results of the evaluation process for all contracts with a value of more than £174,000 and up to £500,000 except for contracts falling within the category set out in 12(b) below, must be reported to the appropriate Head of Service and over £500, 000 and up to £5,000,000 to a Member of CMT for approval and award of the contract.

Contracts with a value of more than £5,000,000 and up to £10,000,000 except for contracts falling within the category set out in the paragraph below (Post-award notification), must be reported to an individual Cabinet Member for approval and award of the contract

Contracts with a value of more than £10,000,000 must be reported to the Leader or Cabinet for approval and award of contract, depending upon the powers delegated.

The report shall set out the details of all stages of the evaluation process and criteria, risk assessment and risk allocation, the results, and a recommendation as to the proposed award of the contract.

(b) Post-award notification

An EU notice must be placed if the contract was subject to EU advertising requirement.

Works contracts in respect of the Council's buildings and assets where the total contract value is between £174,000 and £4,340,000 are awarded by Heads of Service or more senior staff (as provided for in the constitution Part 3, Section 3)

Pension Committee

Contracts within the terms of reference of the Pension Committee may be dealt with by that Committee.

13 Council standard terms of contract

General

All Council contracts with a value in excess of £100,000 shall be on the Council approved standard terms and conditions for that type of contract unless:

- (a) the contract is let under an existing framework agreement which specifies the terms & conditions under which an individual contract can be let.
- (b) The Council's standard terms and conditions are not appropriate for the particular contract.
- (c) the Assistant Chief Executive Legal & Democratic Services approves otherwise.
- (d) All Council contracts where the Council approved standard terms and conditions are not appropriate **must** be awarded on the basis of a written specification of the Council's requirements on contract terms and conditions approved by the Assistant Chief Executive Legal & Democratic Services in advance.

Written requirements

Contracts above £100,000 shall include details of:

- (a) what is to be provided (description, quality and quantity where relevant) and when
- (b) payment provisions (amount and timing)
- (c) the Council's standard conditions in relation to the following matters:
 - (i) the time scale within which the contract is to be performed
 - (ii) the contract review period

- (iii) no sub-contracting or assignment without prior consent
- (iv) sub-contractors to be appointed in accordance with these rules
- (v) sub-contractors to be paid within 30 days
- (vi) the Council's insurance requirements
- (vii) the Council's health and safety requirements
- (viii) the Council's data protection and Freedom of Information requirements
- (ix) the Council's equalities requirements
- (x) a right of access to relevant documentation, data and records of the contractor for monitoring and audit purposes
- (xi) a right of termination for the Council
- (xii) a requirement at the discretion of the Council for security for performance – for example, a bond, guarantee or retention sum
- (xiii) quality assurance requirements and consequences
- (xiv) implementation
- (xv) performance monitoring requirements.
- (xvi) best value requirements
- (xvii) the Council's standard prevention of corruption clause
- (xviii) TUPE requirements.

Contracts for construction works

All Council contracts for construction works with a total value of more than £100,000 shall be awarded on the basis of a written specification of the Council's requirements and the current conditions of:

- (a) the relevant standard form of Joint Contracts Tribunal (JCT), or
- (b) the standard form of Institute of Civil Engineering (ICE) , or
- (c) the standard form of Project Partnering Contracts (PPC) 2000, OR

(d) the relevant form of New Engineering Contracts (NEC), OR

(e) the relevant framework agreement

whichever is appropriate or another standard form of contract approved by the Assistant Chief Executive, Legal & Democratic Services.

14 British or other applicable European standards

All contract specifications shall include reference to appropriate British or European standards where such standards are current and appropriate.

15 Early Authorisation Approval

In the event that there is a need for a contract to commence prior to the completion of the formal contract documentation then a Member of CMT after consultation with the Assistant Chief Executive Legal & Democratic Services may authorise the issuing of an Early Authorisation Approval to the contractor. The Early Authorisation Approval shall include the following information:

(a) Work to be undertaken

(b) Terms & conditions (this can be by reference to other documents)

(c) Subject to completion of formal contract

16 Execution of contracts

Contracts over £100,000 to be sealed

Contracts with a total value of more than £100,000 will be executed under seal in accordance with Article 10.04 of the Constitution unless the Assistant Chief Executive Legal & Democratic Services approves otherwise. The Legal Document Execution Form must be duly completed by or on behalf of the relevant Head of Service or more senior staff prior to the contract being submitted for sealing.

Contracts under £100,000

Unless the Assistant Chief Executive Legal & Democratic Services approves otherwise, contracts with a total value of less than £100,000 will be executed by the signature of the duly authorised Head of Service or more senior staff as appropriate, in accordance with the functions delegated to staff under section 3 of Part 3 of this constitution.

Contracts with a total value of less than £100,000 may be executed under seal where the Head of Service or Member of CMT and the Assistant Chief Executive Legal & Democratic Services deems this appropriate: for

example, where the Council may wish to enforce the contract for more than six years after its end.

Care & Consultancy Contracts

Contracts for the provision of personal social services to an individual (eg residential care) and educational placements may be signed by the relevant approved officer (as formally designated by the Head of Service or more senior staff and lodged with the Assistant Chief Executive Legal & Democratic Services) provided that the annual value of the contract does not exceed £200,000. If it will exceed £200,000 then the contract must be signed by the Assistant Chief Executive Legal & Democratic Services

Contracts for consultancy services and specialist advice (other than those that form part of a larger contract or project) may be signed by the relevant Head of Service or more senior staff provided that the total value of the contract does not exceed £200,000. If it will exceed £200,000 then the contract must be signed by the Assistant Chief Executive Legal & Democratic Services

17 **Records to be kept**

Retaining relevant documents

The Member of CMT shall be responsible for ensuring that there is a secure system of filing and storing all tender process documentation.

All written records in relation to the award of contracts and the tender process, including supporting documentation, should be scanned as a PDF and saved to the relevant folder within the directorates area. Only the completed contract needs to be kept in hard copy. All other documents once scanned can be disposed of.

All written records shall be maintained as follows:

all sealed contracts and contracts with a value over £100,000	twelve years after the end of the contract
---	--

The sealed original contract documents shall be retained by the Assistant Chief Executive Legal & Democratic Services in the Council's deeds' room for twelve years after end of the contract.

Retaining copies of contracts

Once executed the Council shall retain one original of the complete contract documents, and one copy of the complete contract document shall be provided to the contractor. Where the contract is under seal, one original copy of the contract documents shall be sent to/retained by the Assistant Chief Executive Legal & Democratic Services for storage in the Council's deeds room and one copy shall be retained by the person awarding the contract, as well as one copy being provided to the contractor.

Documents to be retained

The complete original set of the contract documents shall be retained including the:

- (a) contract conditions
- (b) specification
- (c) evaluation criteria
- (d) invitation to tender
- (e) pricing schedule
- (f) contractor's tender submission

- (g) pre-tender correspondence which affects the specification, pricing schedule or contract conditions
- (h) post tender correspondence
- (i) award letter, and
- (j) documentation of all variations and extensions of the contract
- (k) Where an exception to the competition financial thresholds applies, the following documents shall also be retained:
 - (i) the Competition Financial Thresholds Exceptions Approval Form signed by a Member of CMT
 - (ii) the contract and correspondence with the contractor
 - (iii) any evidence of how value for money was obtained – for example, alternative written or oral quotes.
 - (iv) A complete check list of documents to be retained is included in the Procurement Framework at section E20. It is mandatory to retain all the documents listed if they formed part of the process.

18 **Prevention of corruption**

General standards of conduct

All persons involved in the award of contracts shall comply with Council guidance on conduct of staff [and with the Staff Code of Conduct when issued by the Secretary of State] and shall not invite or accept any gift or reward or inducement which could influence them in any way in relation to the award or monitoring of any Council contract. High standards of ethical conduct are mandatory. Staff shall take steps to ensure that their behaviour could not lead to accusations of corruption. Corrupt behaviour is a criminal offence and will lead to criminal investigation and if proven, dismissal and a criminal record.

This Council requires Members, employees and contractors working on its behalf to act with honesty and integrity at all times, when dealing with resources owned by the Council or those for which it is responsible. This includes the responsibility for ensuring that assets are safeguarded and that procedures exist within areas of their responsibility to prevent and detect fraud.

Fraud is an ever-present threat to resources and hence must be of concern to everyone. The Council will rigorously enforce sanctions laid down in its "Disciplinary Procedures" and will seek prosecutions where necessary in order to deter fraudulent activity. The Council is unequivocal in its support of the Police and other external agencies fighting fraud and corruption within the public sector. We have already established arrangements for co-operation and joint working with outside bodies. In addition we actively foster relationships with external organisations for the purpose of introducing new initiatives to help combat fraud.

We recognise the important part our employees play in countering the damage that fraud can do if unchecked. We actively encourage the reporting of concerns about fraud and corruption and a "Confidential Reporting (Whistle Blowing) Policy" is available to address this.

All Council employees must comply with the anti-fraud and corruption policy.

Declaring an interest

Any employee who has a pecuniary or other interest in any actual or potential Council contract must declare it in writing to the relevant Member of CMT. All hospitality, gifts or other inducements received shall be recorded in the hospitality register held by the relevant Member of CMT.

19 Best value requirements

All persons awarding contracts for services shall ensure that they can demonstrate that they have complied with the legislative requirements for best value. In addition to the requirements for the report to Members set out in rule 12, the contract award report shall set out:

- (a) how the legal duty to challenge, consult, compare and compete has been met
- (b) how the contract award will meet the Council's statutory duty of economy, efficiency and effectiveness (i.e. best value)
- (c) how continuous improvements in service provision will be maintained and monitored and ongoing efficiencies will be achieved.

20 Council corporate contracts and framework contracts

Setting up corporate contracts

Members of CMT, with the agreement of the Group Director, Finance & Commerce and the Assistant Chief Executive Legal & Democratic Services may set up corporate and/or framework contracts for goods services, supplies or works across the Council and other public sector bodies, eg stationery supplies. These shall be advertised and competitively tendered in accordance with the Council's competition and selection procedures set out in these rules and the Procurement Framework.

Where an appropriate corporate contract is in place this shall be used wherever appropriate. The Member of CMT responsible for the corporate contract shall issue guidance as to its use, after consultation with the Assistant Chief Executive Legal & Democratic Services and the Operational Procurement Team.

Reviewing corporate contracts (which are framework contracts)

Any corporate/framework contracts shall be reviewed regularly by the Operational Procurement Team and shall be re-advertised re-tendered at least once every four years.

21 Contract extensions and variations (All Contracts over £100K)

Variations (non-construction work)

Contract variations (i.e. alteration to the terms of the contract which do not alter the length of it) must comply with the following points:

- (a) The nature of the variation has been approved by the Operational Procurement Team.
- (b) The variation must be in writing and the document will be completed (ie signed or sealed) in the same manner as the original contract unless otherwise provided for within the original contract.
- (c) It must clearly set out which provisions in the original contract are being varied, the replacement provision and the date that the variation takes effect.
- (d) Variations which are to be met from existing budget provisions must be agreed by Heads of Service or more senior staff.
- (e) Variations which exceed existing budget provisions must have appropriate funding secured in conjunction with the financial framework.

Variations (construction work)

Contract variations to construction contracts which alter the detailed design, method of construction, materials used, extent of the works or the timing of the works are permissible provided that:

- (a) The variation is in writing and authorised in accordance with the variation provisions set out in the contract
- (b) It can either be met from existing budget provisions or, if additional funding is required, that authority for the increased budget is obtained first.

Extensions

Extensions to the duration of existing contracts are generally not permitted except where all of the conditions set out in column A below are met AND at least one of the conditions set out in column B is met:

Column A ALL of these conditions must be met	Column B AT LEAST one of these conditions must be met
Value for money can be demonstrated	One of the exceptions set out in rule 27 below applies
The extension is for the same or a lesser value and period than the original contract	The possibility of an extension was included in the invitation to tender documents
For an extension with a value in excess of £5,000,000, there is a report to Cabinet For an extension with a value in excess of £174,000 and under - £5,000,000 approval of an individual Cabinet member is required	Where applicable, the Assistant Chief Executive Legal & Democratic Services confirms in writing that one of the permissible grounds for extension under European procurement rules applies

The extension document will be completed (ie signed or sealed) in the same manner as the original contract except in the case of construction contracts where the extension will be authorised in accordance with the relevant provisions set out in the contract

22 Non-commercial considerations

Considerations to be excluded

Subject to the paragraph below (considerations which may be included), no part of the tender process, evaluation, contract award or contract or specification documents shall be based on:

- (a) the terms and conditions and composition of the contractor's workforce
- (b) whether subcontractors are self-employed
- (c) the contractor's involvement in irrelevant areas of government policy
- (d) the contractor or contractor's employees' involvement in industrial disputes
- (e) the contractor's business locations – for example, to buy local or buy British
- (f) any political, industrial or sectarian links or interest of the contractors, its directors or owners, or employees
- (g) the contractor's financial support (or lack of it) to any organisation which the Council does or does not support.

Considerations which may be included for contracts for services subject to best value legislation

Contracts for services which are subject to best value legislation may base any part of the tender process, evaluation, contract award or contract or specification documents on the:

- (a) terms and conditions and composition of the contractor's workforce, and/or
- (b) conduct of contractors or their workers in industrial disputes between them

provided that such matters are included either because:

- (a) TUPE applies, or
- (b) it is reasonably necessary or expedient to permit or facilitate compliance with the best value requirements of the Local Government Act 1999

23 Appointment of consultants

The appointment of consultants is a contract for services and is therefore covered by these Rules as well as subject to the Financial Procedure Rules and the Procurement Framework.

Consultants may be appointed only if the appropriate Member of CMT is satisfied that the tasks required cannot be carried out adequately in-house – for example, due to lack of internal resources or expertise, specialist knowledge, independence and urgency.

Staff must use the Council's terms and conditions for consultants contract which is available from Operational Procurement ISS before appointing the consultant. The Consultant's contract must include provisions identifying who (normally it should be the Council) owns the intellectual property rights to any documentation, report, design or other work produced by the consultant and, if the Council is not to be the owner of those rights, the licensing terms for the use of the rights.

A consultant who provides advice or expertise to the Council on the nature, scope, extent or terms of a project /another contract shall not be permitted to bid, either alone or with others, for that project/other contract and the consultant's contract shall include provisions to ensure compliance with this Rule.

24 Framework Contracts

A framework contract is an 'umbrella' agreement for the supply of goods or services. It sets out the overall duration of the arrangement and the terms and conditions on which the goods or services will be purchased, but does not actually place any orders. A framework contract should not ordinarily last for more than four years, unless there are exceptional reasons why the four-year duration must be exceeded. A framework can have one or more buyers and one or more suppliers. All potential buyers must be clearly identified in the framework documents.

Once the framework contract is operative all subsequent purchases under the framework shall either not require further competition (if a single supplier) or, if there are two or more suppliers for those goods or services on the framework, follow the express framework provisions for choosing a supplier. If there are no such express provisions a mini-competition should be held amongst the relevant suppliers.

If the Council is setting up the framework, the framework contract shall be let in accordance with the requirements of these Rules using the procedure set out in Schedules D, E, F or G as appropriate.

Government Framework Contracts (eg Government Procurement Services GPS) and other public sector framework contracts.

Where the proposed contract

(1) is one for which GPS or another public sector body on behalf of the public sector has undertaken a competitive tendering exercise which fulfils EU procurement requirements and

(2) sets out the terms and conditions on which such a contract is to be let and where

(3) the Council is seeking tenders only from those suppliers accredited to that framework tender and

(4) is to use the agreed terms and conditions, and

(5) the value of the goods or services to be procured exceeds £174,000 (or if works are being procured, the value of those works is likely to exceed £4,340,000) then the tender process shall be as set out in Schedule J.

Frameworks set up by bodies other than the Council or GPS the tender process shall be as set out in Schedule K.

25 **Electronic Business**

Purchases made using the Council's I-procurement system are effectively individual contracts entered into under the provisions of a framework agreement previously agreed between the Council and the supplier. Such purchases shall either not require further competition or, if there are 2 or more suppliers for those goods or services on the i-procurement system, the competition shall be by simple quotations by those suppliers on the price payable for the goods or services.

In the event of a Service wanting to use some other form of electronic business, eg e-auction, the procedure to be adopted must be agreed by the Operational Procurement Team ISS

No Purchase Order No Pay

All purchases made by staff **MUST** include an order number which will be generated through the i-procurement system so that payment can be made. If there is no Purchase Order, then the supplier will not be paid. All orders for goods or services, unless there are special reasons which must be agreed by the Operational Procurement Team, must go through the Council's i-procurement system.

26 **Exceptions**

General Exceptions to Rules

No exception to these Rules shall be permitted except upon approval by an individual Cabinet member using an Executive Decision or by some

other provision in this Rule. The report shall set out the background, the rule being waived, the reasons the waiver is required, how value for money will be demonstrated, any legal or financial risks or implications and shall be approved by the Assistant Chief Executive Legal & Democratic Services and the Group Director, Finance & Commerce

Exceptions to competitive requirements

Exceptions to the competition requirements set out in Schedules A to K may be made only if all relevant law is complied with e.g. European procurement and best value legislation and one of the following circumstances applies:

- (a) the contract falls within one of the exceptions listed in this Rule, and

the Competition Financial Thresholds Exceptions Form (set out in the Procurement Framework at section C2), is fully and properly completed and signed by the relevant Member of CMT, and

the person awarding the contract can demonstrate that the contract represents the best value that can be obtained in the circumstances.
- (b) an individual Cabinet member has approved the waiving of the application of these rules, as permitted by Rule (a) above.
- (c) the contract is solely for the employment of agency staff or interim managers (but not consultants)
- (d) joint purchasing with or through another public body provided that the public body awarding the contract can demonstrate that the arrangements comply with European procurement, best value and other applicable legislation.
- (e) The instructing of counsel by the Assistant Chief Executive, Legal & Democratic Services
- (f) they are allowed by some other specific provision in these Rules

The exceptions are:

(a) Genuine emergency

Unforeseen events likely to cause immediate danger to people or property such as bombing or flooding.

(b) Specialist services/supplies

Available only from one supplier in the European Union – for example, specialist niche consultants or supplies.

(c) For reasons of compatibility

With existing services/products – for example, equipment that needs parts from its own manufacturer.

(d) Urgency NOT of the Council's own making

The urgency must be unforeseen – for example, a current supplier ceases to operate, or a contract is terminated for poor performance. Urgency caused by previous delay by the Council or a requirement to implement a strategy or project urgently will not justify an exception under this exception.

(e) Exceptions permitted under European procurement rules

Where the contract is subject to the full application of the European procurement rules and there are specific exceptions which shall be complied with.

(f) Best Interests of the Council

Where it is in the best interests of the Council or the Borough for a provision in these Rules to be waived to enable a contract procurement to be rapidly progressed while still complying with European procurement rules.

Emergency Action

A Member of CMT personally may authorise a waiver of any of these Rules if they consider that the circumstances are such that such a waiver is necessary and desirable to further the aims of the Council or for the benefit of the residents of the borough. Such a waiver and the reasons for it shall be fully documented and, if reasonably possible, before giving the authorisation the Member of CMT shall consult with the Group Director, Finance & Commerce and the Assistant Chief Executive, Legal & Democratic Services and may consult with the relevant Cabinet Member.

Grant Funded Expenditure

Where the Council receives grant funding and is named as the accountable body for the expenditure of monies. It should be noted that this expenditure should be conducted in line with these Contract Procedure Rules..

Small & Medium Sized Enterprises/Local Companies

Tendering opportunities thought especially suitable for SME's, Local companies or consortia of both should be flagged by staff during the advertising process. SME's and local companies are more likely to be used for quotations and these should be sought where possible through the P4London portal via the Operational Procurement Team.

Purchasing Cards

Purchasing cards are a method of payment for goods and services. This method should only be used when there is no other option available to the staff. Procurements should be going through the i-procurement system with the exception of travel, subsistence where staff are out on site and it is impractical to use the i-procurement system.

SCHEDULES

Schedule A - Procurement *under £ 25,000*

1. Advertising – none required
2. Quotes & Procurement award

<u>Value</u>	<u>Number of quotes</u>	<u>Procurement awarded by</u>
Less than £5000	One quote	Council staff member authorised by Cost Centre Manager
£5000 to £24,999	Two quotes	Council staff member authorised by Cost Centre Manager

3. Award criteria – normally solely price once quality threshold achieved
4. Purchase order to be placed via the i-procurement system
5. Retain documents – all documentation to be retained for 3 years or the life of the contract whichever is the longer
6. Also check compliance with Rules 19, 20 & 23

Schedule B - Procurement between £ 25,000 and £ 99,999

1. Advertising – none required
2. Quotes & Procurement award – 3 written quotes sought, procurement awarded by 3rd or 4th tier manager or staff member authorised by Head of Service (see Appendix A for the 7 i-procurement levels)
3. Award criteria – compliance with specification and price
4. Purchase order to be placed via the i-procurement system.
5. Invoice must be via i-supplier
6. Retain documents – all documentation to be retained for 3 years after the end of the contract
7. Also check compliance with Rules 19, 20 & 23

Schedule C - Contracts between £ 100,000 and £174,000

1. Advertising – none required. Selection from existing approved list/existing contractors/Constructionline/
2. Process & contract award – Mini tender – one stage
 - (a) competitive tender against written specification of requirements
 - (b) minimum of three written tenders sought
 - (c) contract awarded by 3rd or 4th tier manager or staff member authorised by Head of Service and financial representative of Group Director, Finance & Commerce
3. Award criteria – compliance with the specification and price
4. Documentation - all such contracts (except construction works contracts and those covered by specific exceptions) shall have a written specification of the Council's requirements and the standard terms and conditions listed below:
 - (a) For supplies: the Council's Standard Terms AND CONDITIONS of Purchase for Goods
 - (b) For services: the Council's Standard Terms and Conditions for Services
 - (c) Purchase order to be placed via the i-procurement system
 - (d) Invoice must be via i-supplier

Contract to be signed by the duly authorised Head of Service or Member of CMT as appropriate or staff member authorised by the Head of Service
5. Retain documents – all documentation to be retained for 6 years after the end of the contract
6. Also check compliance with Rules 3, 5, 8, 9, 10, 14, 18, 19, 20 & 23

Schedule D - Contract between £174,000 and £5,000,000 which is not subject to European procurement legislation advertising requirements (i.e. Part B services, or works less than £4,340,000)

1. Pre tender Report – report to the appropriate Head of Service for up to £500,000 anything over this amount to be reported to CMT for approval unless an exception applies – see Rule 27
2. Advertising – it shall be advertised in either the local press, specialist trade press, or national press as appropriate to the contract. A minimum of 10 working days shall be allowed for interested providers to express interest in tendering for the contract
3. Process – Full tender – 2 stages
 - (a) Selection of potential tenderers from those who express interest as a result of the initial advert
 - (b) competitive tender against written specification of requirements
 - (c) a minimum of 10 working days shall be allowed for tenders
 - (d) minimum of three written tenders sought
 - (e) contract assessed by a project team reporting to Head of Service and including appropriate specialists e.g. legal, finance, procurement, health and safety
5. Pre – award Report – there must be a report to an individual Member of CMT for approval and award after the final evaluation of tenders by the evaluation team unless an exception applies – see Rule 27
6. Contract award - contract awarded by Member of CMT
7. Award criteria – compliance with the evaluation criteria (primarily specification & price) agreed prior to the dispatch of tender documentation
8. Documentation - all such contracts (except construction works contracts and those covered by specific exceptions) shall have a written specification of the Council's requirements and the standard terms and conditions listed below:
 - (a) For supplies: the Council's Standard Terms and Conditions for Supplies
 - (b) For services: the Council's Standard Terms and Conditions for Services
 - (c) Purchase order to be placed via the i-procurement system

Contract to be executed under seal in accordance with Article 10.04 of this constitution. The Legal Document Execution Form must be duly completed.

9. Retain documents – all documentation to be retained in accordance with Rule 17
10. Also check compliance with Rules 3, 5, 8, 9, 10, 14, 18, 19, 20 & 23

Schedule E - Contract between £174,000 and £5,000,000 which is subject to European procurement legislation advertising requirements (i.e. contracts for supplies, EU Part A services and works above £4,348,350)

1. Pre tender Report – report to the appropriate individual Member of CMT for approval unless an exception applies – see Rule 27
2. Advertising – it shall be advertised in the Official Journal of the European Community. A minimum of 37 calendar days shall be provided for expressions of interest in accordance with EU procurement legislation, except where the legislative requirements permit a shorter time scale. In addition there shall be at least 1 advertisement in either the specialist trade, local or national press, if appropriate to the contract.
3. Process– Full EU advertised competitive tender process
 - (a) competitive tender against written specification of requirements
 - (b) a minimum of 40 calendar days shall be allowed for tenders
 - (c) minimum of three written tenders sought
 - (d) contract assessed by a project team reporting to Head of Service and including appropriate specialists e.g. legal, finance, procurement, health and safety
4. Pre – award Report – there must be a report to an individual Member of CMT for approval and award after the final evaluation of tenders by the evaluation team unless an exception applies – see Rule 27.
5. Contract award - contract awarded by Member of CMT
6. Award criteria – compliance with the evaluation criteria (primarily specification & price) agreed prior to the dispatch of tender documentation
7. Documentation - all such contracts (except construction works contracts and those covered by specific exceptions) shall have a written specification of the Council's requirements and the standard terms and conditions listed below:
 - (a) For supplies: the Council's Standard Terms and Conditions for Supplies
 - (b) For services: the Council's Standard Terms and Conditions for Services
 - (c) Purchase order to be placed via the i-procurement system
 - (d) Invoice must be via i-supplier

Contract to be executed under seal in accordance with Article 10.04 of this constitution. The Legal Document Execution Form must be duly completed.

8. Retain documents – all documentation to be retained in accordance with Rule 17
9. Also check compliance with Rules 3, 5, 8, 9, 10, 14, 18, 19, 20 & 23

Schedule F - Contract between £5,000,000 and £10,000,000 which is not subject to European procurement legislation advertising requirements (i.e. Part B services)

1. Pre tender Report – report to the appropriate individual Member of CMT for approval unless an exception applies – see Rule 27
2. Advertising – it shall be advertised in either the local press, specialist trade press, or national press as appropriate to the contract. A minimum of 10 working days shall be allowed for interested providers to express interest in tendering for the contract
3. Process – Full tender – 2 stages
 - (a) Selection of potential tenderers from those who express interest as a result of the initial advert
 - (b) competitive tender against written specification of requirements
 - (c) a minimum of 10 working days shall be allowed for tenders
 - (d) minimum of three written tenders sought
 - (e) contract assessed by a project team reporting to Head of Service and including appropriate specialists e.g. legal, finance, procurement, health and safety
4. Pre – award Report – there must be a report to an individual Cabinet Member for approval and award after the final evaluation of tenders by the evaluation team unless an exception applies – see Rule 27
5. Contract award - contract awarded by Cabinet Member approval
6. Award criteria – compliance with the evaluation criteria (primarily specification & price) agreed prior to the dispatch of tender documentation
7. Documentation - all such contracts (except construction works contracts and those covered by specific exceptions) shall have a written specification of the Council's requirements and the standard terms and conditions listed below:
 - (a) For supplies: the Council's Standard Terms and Conditions for Supplies
 - (b) For services: the Council's Standard Terms and Conditions for Services
 - (c) Purchase order to be placed via the i-procurement system
 - (d) Invoice must be via i-supplier

Contract to be executed under seal in accordance with Article 10.04 of this constitution. The Legal Document Execution Form must be duly completed.

8. Retain documents – all documentation to be retained in accordance with Rule 17
9. Also check compliance with Rules 3, 5, 8, 9, 10, 14, 18, 19, 20 & 23

Schedule G - Contract between £5,000,000 and £10,000,000 which is subject to European procurement legislation advertising requirements (i.e. contracts for supplies, EU Part A services and works)

1. Pre tender Report – report to the appropriate individual Member of CMT for approval unless an exception applies – see Rule 27
2. Advertising – it shall be advertised in the Official Journal of the European Community. A minimum of 37 calendar days shall be provided for expressions of interest in accordance with EU procurement legislation, except where the legislative requirements permit a shorter time scale. In addition there shall be at least 1 advertisement in either the specialist trade, local or national press, if appropriate to the contract.
3. Process – Full EU advertised competitive tender process
 - (a) competitive tender against written specification of requirements
 - (b) a minimum of 40 calendar days shall be allowed for tenders
 - (c) minimum of three written tenders sought
 - (d) contract assessed by a project team reporting to Head of Service and including appropriate specialists e.g. legal, finance, procurement, health and safety
4. Pre – award Report – there must be a report to an individual Cabinet Member for approval and award after the final evaluation of tenders by the evaluation team unless an exception applies – see Rule 27.
5. Contract award - contract awarded by Cabinet Member approval
6. Award criteria – compliance with the evaluation criteria (primarily specification & price) agreed prior to the dispatch of tender documentation
7. Documentation - all such contracts (except construction works contracts and those covered by specific exceptions) shall have a written specification of the Council's requirements and the standard terms and conditions listed below:
 - (a) For supplies: the Council's Standard Terms and Conditions for Supplies
 - (b) For services: the Council's Standard Terms and Conditions for Services
 - (c) Purchase order to be placed via the i-procurement system
 - (d) Invoice must be via i-supplier

Contract to be executed under seal in accordance with Article 10.04 of this constitution. The Legal Document Execution Form must be duly completed.

8. Retain documents – all documentation to be retained in accordance with Rule 17
9. Also check compliance with Rules 3, 5, 8, 9, 10, 14, 18, 19, 20 & 23

Schedule H - Contract above £10,000,000 which is not subject to European procurement legislation advertising requirements (i.e. Part B services)

1. Pre tender Report – report to individual Member of CMT for approval unless an exception applies
2. Advertising – it shall be advertised in either the local press, specialist trade press, or national press as appropriate to the contract. A minimum of 10 working days shall be allowed for interested providers to express interest in tendering for the contract
3. Process – Full tender – 2 stages
 - (a) competitive tender against written specification of requirements
 - (b) a minimum of 15 working days shall be allowed for tenders
 - (c) a minimum of 3 tenders should be sought
 - (d) contract assessed by a project team reporting to Head of Service and including appropriate specialists e.g. legal, finance, procurement, health and safety
4. Pre – award Report – there must be a report to Cabinet for approval and award after the final evaluation of tenders by the evaluation team unless an exception applies.
5. Contract award - contract awarded by the Leader or Cabinet.
6. Award criteria – compliance with the evaluation criteria (primarily specification & price) agreed prior to the dispatch of tender documentation
7. Documentation - all such contracts (except construction works contracts and those covered by specific exceptions) shall have a written specification of the Council's requirements and the standard terms and conditions listed below:
 - (a) For supplies: the Council's Standard Terms and Conditions for Supplies
 - (b) For services: the Council's Standard Terms and Conditions for Services
 - (c) Purchase order to be placed via the i-procurement system
 - (d) Invoice must be via i-supplier

Contract to be executed under seal in accordance with Article 10.04 of this constitution. The Legal Document Execution Form must be duly completed.

8. Retain documents – all documentation to be retained in accordance with Rule 17

9. Also check compliance with Rules 3, 5, 8, 9, 10, 14, 18, 19, 20 & 23

Schedule I - Contract above £10,000,000 which is subject to European procurement legislation advertising requirements (i.e. contracts for supplies, EU Part A services and works)

1. Pre tender Report – report to individual Member of CMT
2. Advertising – it shall be advertised in the Official Journal of the European Community. A minimum of 37 calendar days shall be provided for expressions of interest in accordance with EU procurement legislation, except where the legislative requirements permit a shorter time scale. In addition there shall be at least 1 advertisement in either the specialist trade, local or national press, if appropriate to the contract.
3. Process– Full EU advertised competitive tender process
 - (a) competitive tender against written specification of requirements
 - (b) a minimum of 40 calendar days shall be allowed for tenders
 - (c) three tenders sought
 - (d) contract assessed by a project team reporting to Head of Service and including appropriate specialists e.g. legal, finance, procurement, health and safety
4. Pre – award Report – there must be a report to Cabinet for approval pre-award after the final evaluation of tenders by the evaluation team unless an exception applies.
5. Contract award - contract awarded by the Leader or Cabinet
6. Award criteria – compliance with the evaluation criteria (primarily specification & price) agreed prior to the dispatch of tender documentation
7. Documentation - all such contracts (except construction works contracts and those covered by specific exceptions) shall have a written specification of the Council's requirements and the standard terms and conditions listed below:
 - (a) For supplies: the Council's Standard Terms and Conditions for Supplies
 - (b) For services: the Council's Standard Terms and Conditions for Services
 - (c) Purchase order to be placed via the i-procurement system
 - (d) Invoice must be via i-supplier

Contract to be executed under seal in accordance with Article 10.04 of this constitution. The Legal Document Execution Form must be duly completed.

8. Retain documents – all documentation to be retained in accordance with Rule 17
9. Also check compliance with Rules 3, 5, 8, 9, 10, 14, 18, 19, 20 & 23

Schedule J – Government Procurement Service Framework Contracts

1. Pre tender Report– report to the appropriate individual Member of CMT. If above the EU threshold
2. Advertising –it shall be notified to those suppliers accredited by the Government Procurement Service (GPS) as having been accepted as part of the GPS tender process. A minimum of 10 working days shall be allowed for interested providers to express interest in tendering for the contract
3. Process & contract award – Full tender – two stages
 - (a) competitive tender against written specification of requirements
 - (b) a minimum of 10 working days shall be allowed for tenders
 - (c) three tenders sought
 - (d) if below £173,934 contract awarded by Head of Service on report from 3rd or 4th tier manager or staff member authorised by Head of Service and financial representative of Member of CMT Finance & Commerce
 - (e) if between £174,000 and £5,000,000 contract awarded by an individual Member of CMT, if between £5,000,000 and £10,000,000 awarded by individual Cabinet member on a report from the relevant Head of Service
 - (f) if above £10,000,000 contract awarded by the Leader or Cabinet via a Pre-award Report
4. Award criteria – compliance with the evaluation criteria (usually set out in the framework documents) agreed prior to the dispatch of tender documentation
5. Documentation - all such contracts shall have a written specification of the Council's requirements and the standard terms and conditions approved by the GPS for that particular contract
6. Contracts over £100,000 to be executed under seal in accordance with Article 10.04 of this constitution. The Legal Document Execution Form must be duly completed.
7. Retain documents – all documentation to be retained for in accordance with Rule 17

8. Also check compliance with Rules 3, 5, 8, 9, 10, 14, 18, 19, 20 & 23

Schedule K - Consortium Arrangements (where LBH is not a member)

1. Pre-tender Report – report to individual Member of CMT for approval to use a consortium if above the EU threshold. Report to include details of the procurement process used by the consortium and confirmation that Havering's involvement will be within the terms of the consortium and will not breach European procurement requirements in addition to the standard requirements for such reports.
2. There should be a minimum of three suppliers to the consortium who can be invited to provide quotations for the goods or services
3. Award criteria - compliance with the evaluation criteria (primarily specification & price) either as set out in the consortium documentation or if none agreed prior to the dispatch of tender documentation
4. Pre-award Report – there must be a report to an individual Member of CMT if below £5,000,000, to an individual Cabinet Member (if £5,000,000 or more but below £10,000,000) or to the Leader or Cabinet (£10,000,000 or more) for approval after the final evaluation of tenders by the evaluation team unless an exception applies – see Rule 27.
5. Documentation - all such contracts shall have a written specification of the Council's requirements and the standard terms and conditions of the Consortium for that particular contract
6. Contracts over £100,000 to be executed under seal in accordance with Article 10.04 of this constitution. The Legal Document Execution Form must be duly completed.
7. Retain documents – all documentation to be retained for in accordance with Rule 17
8. Also check compliance with Rules 3, 5, 8, 9, 10, 14, 18, 19, 20 & 23