



**ISLINGTON**

# Procurement code

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## Procurement code

### 1 Introduction

- 1.1 This procurement code is governed by section 135 of the Local Government Act 1972 and sets out our standing orders (rules) for contracts.
- 1.2 This code provides a framework for procuring (buying in) works, goods and services across the council. Following it will make sure that we get value for money and spend public money properly.
- 1.3 We are committed to One Islington (please see our intranet site for more details) and to building the four main priorities of:
- being focused on customers;
  - improved services;
  - regeneration (redevelopment); and
  - sustainability (providing services in a way which does not harm the environment).
- 1.4 Procurement decisions are among the most important decisions a manager will have to make, and procurement allows us to achieve our vision with our partners by awarding contracts. The contracts we award should support sustainability, be ethical and support equal opportunities. This code includes the green procurement code.
- 1.5 It is a disciplinary offence not to follow the compulsory procurement rules when letting contracts. You have a duty to tell an appropriate senior manager or the chief internal auditor (or both) about the cases when the rules are not being followed.

### 2 The role and responsibilities of directors

- 2.1 Each director has a responsibility for all contracts awarded by their department. They must answer to the executive for the performance of their duties in relation to letting and managing contracts. These duties include:
- a making sure they follow European Union legislation, English legislation and council policy;
  - b making sure they achieve value for money;
  - c making sure they follow the compulsory procurement rules;
  - d making sure that all relevant staff follow this code and receive adequate training on it;
  - e making sure they follow any guidelines and codes of practice issued on this code;
  - f taking immediate action if someone breaks the compulsory procurement rules within their area;



- g making sure they keep proper records of all contracts, including minutes of tender evaluation panels and other meetings, and records of when we decided that these compulsory procurement rules did not have to be followed;
- h making appropriate arrangements for opening tenders and keeping them safe;
- l making sure that our seal is placed on any document needed to be sealed and carried out as a deed and that, where a document does not need to be under seal, it is signed by an authorised officer;
- j keeping a register of all contracts with a value of £50,000 and above, and of cases when we decided that these rules did not have to be followed; and
- k making sure that all contracts are monitored effectively.

2.2 The deputy chief executive is responsible for maintaining the approved list of works contractors.

2.3 The chief executive is responsible for making sure that directors carry out their responsibilities under the code and for acting where a director is not able to carry out these responsibilities.

### **3 The role of the executive**

3.1 The executive is responsible for a variety of decisions under this code. The executive will also hold directors responsible for any decisions other members of staff have made under the directors' authority.



## **Compulsory procurement rules**

### **1 The procurement rules**

- 1.1 These rules apply to all contracts we award for supplying works, goods and services, unless we decide otherwise in line with paragraph 23.
- 1.2 We must award all contracts following a competitive tendering process in line with the procedures set out in these rules and any guidelines we issue from time to time. The full tendering requirements do not apply to contracts with an estimated value of £49,999 or less (see paragraph 4.1 of these rules).
- 1.3 You must not let a contract unless we have approved the spending and identified the money in the relevant budget.
- 1.4 All contracts must be in writing.
- 1.5 These rules do not apply to:
- contracts of employment;
  - contracts relating to any interest in land;
  - contracts for legal advice; or
  - contracts for providing social and welfare services to individual clients or groups of clients.
- 1.6 These rules apply to awarding contracts to the voluntary sector.
- 1.7 If there is any disagreement between European Union (EU) law, English law and council policy, the requirements of European Union law will come first, English law will come second and council policy will come last.

### **2 Working out contract values**

- 2.1 Directors must make sure that they prepare an estimate of expected costs before the tender is sent and record it in writing. Where appropriate, directors also need to work out the value of a contract in line with the relevant EU public procurement regulations.
- 2.2 Where we give a value or an estimated value in these rules, it means the total value of the contract (not including VAT).
- 2.3 You should work out the total value of any contract based on the total value of the contract that would be paid over the entire contract period. For example, if a contract is to be awarded for three years plus an extension of two years, you would work out the contract value as the five-year value.



- 2.4 You must not underestimate contracts or divide them into two or more separate contracts in order to avoid following these rules.

### **3 Honesty**

- 3.1 All officers and members involved in awarding and managing council contracts must act honestly and to high moral standards.

#### **Gifts and hospitality**

- 3.2 As a general rule, officers must not accept from contractors or potential contractors:
- a any gift (other than an inexpensive seasonal gift such as a calendar or diary for use in the office); or
  - b any hospitality without the written authorisation of a director (or the chief executive in the case of directors).
- 3.3 The chief executive and directors must enter in a register (kept for this purpose by the chief executive) details of:
- a any gift (including how it has been returned to the person who gave it or otherwise disposed of – for example, donated to the Mayor for charitable purposes); and
  - b any hospitality.
- 3.4 Directors and the chief executive must not accept (or authorise anyone else to accept) hospitality unless accepting it is in our interests. However, as a general rule, we do not consider taking part in activities paid for by firms outside office hours or while on leave to be compatible with employment by the council. This means that authorising or accepting hospitality will normally be restricted to working lunches only.
- 3.5 Hospitality includes drinks, meals, entertainment, overnight accommodation, travel and holidays, but does not include a lift in a private car, company car or taxi, or light refreshments while on council duty.
- 3.6 All staff must enter in their own departmental register:
- a any gift (including how it has been returned to the person who gave it or otherwise disposed of – for example, donated to the Mayor for charitable purposes); and
  - b any hospitality.
- 3.7 Directors are responsible for maintaining the hospitality register for their service area.



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## 4 Inviting quotations and tenders

4.1 You must invite quotations and tenders as follows.

### Estimated or actual contract value

Up to £9,999	you should get at least one written quotation
£10,000 to £49,999	you should get at least three competitive written quotations
£50,000 plus	you should get at least four competitive written tenders

These limits do not include VAT, which may change from time to time.

- 4.2 The number of tenders you invite must be appropriate to the nature and size of the contract. You must work out the number with a view to securing competition and getting the best value for money for us.
- 4.3 Under these rules, the estimated value of a contract is the total estimated spending for the length of the contract, including any possible extension period of the contract.
- 4.4 You cannot divide a contract into two or more contracts in order to avoid following EU public procurement regulations or these rules.
- 4.5 All tender documents for inviting tenders must show the criteria (conditions) for awarding them.

## 5 European Union public procurement regulations

5.1 EU public procurement regulations may apply to some contracts for works, goods and services. It depends on what the contract is for and its estimated value. It also involves advertising in the Official Journal of the European Union and following set time limits for the different stages of the procurement process.

### 5.2 What the EU public procurement regulations apply to

- a The EU public procurement regulations apply to the following.
- Supplying and installing goods and equipment.
  - Supplying gas, electricity, oil and so on.
  - Providing the services set out in annex A (known as **Part A services** under the EU public procurement regulations), **including consultancy services**.
  - Carrying out building and civil engineering work.
- b The EU public procurement regulations only apply if the estimated or actual value of the contract is more than the thresholds (financial limits) set out below.

Supplies	£153,376
Services	£153,376
Works	£3,834,411



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**Important note:** These values apply from 1 January 2004 and will change every two years. You should check the limits with the contracts administration unit.

- c If you award a contract for **Part B services** (see annex A), you must then publish a contract award notice. However, you don't need to advertise the contract in the Official Journal of the European Union.

- 5.3 If you are not sure whether the EU public procurement regulations apply, you can get guidance from the director of law and public services.
- 5.4 You should treat a 'mixed contract' for goods and services as a contract for goods or a contract for services, depending on which part has the highest value. You should always treat a mixed contract involving works and services as a works contract if the services are needed only because of the work.
- 5.5 There are certain exceptions to the European rules so you should get advice on these from the director of law and public services.

## 6 Selective tendering procedures for non-European contracts

- 6.1 You must award contracts to which European Union public procurement regulations do not apply and which have a value of £50,000 and above by using a selective tendering procedure (as described in these rules).
- 6.2 If there is an appropriate approved list (one which includes at least four contractors who are qualified to carry out the contract), you can invite tenders from contractors on that list. (An approved list is a list of contractors who have been awarded a contract to be included on the list, following a competitive tendering exercise.)
- 6.3 You must use the following procedure when using the approved list.
  - a The contract administration unit, in consultation with the client (or another approved list manager) will draw up a temporary tender list choosing contractors from the list of approved and qualified contractors who have a high enough financial limit.
  - b The contract administration unit will then check the temporary list against the past performance records that the client or their consultants (or both) holds.
- 6.4 The director or their nominated officer must approve the final tender list in writing. The approved list manager must keep a record of this decision and hold a copy on the contract file.
- 6.5 If there is no appropriate approved list, or if there are not enough suitable contractors on the list, you should invite tenders from a list drawn up using a notice placed in an appropriate trade or professional publication. You should at least place this notice in 'Government Opportunities', which is a free publication advertising public-sector contracts.
- 6.6 In special cases, a director may agree that advertising is not appropriate. In these cases, you must invite tenders from reputable contractors (for example, those listed in registers published by trade or professional organisations). Directors must always justify the use of this procedure,



and their decision to use it must be recorded in the form shown in Annex J and held on the contract file.

6.7 Whether you choose contractors through advertising or other methods, they must meet our pre-qualification requirements (as described in this code). If a tenderer is not already included on an approved list, they may have to fill in a standard pre-qualification questionnaire. The contract administration unit will let you know and supply a template.

## 6.8 Pre-qualification requirements for contractors

For every contractor we award a contract to or who is recommended or named in a contract, directors must be satisfied about their:

- a professional, technical and managerial ability;
- b references and track record;
- c financial position;
- d health and safety policy and arrangements;
- e environmental policy and arrangements; and
- f equalities policies.

6.9 You must assess contractors' financial positions in line with guidelines issued by the director of finance and property services.

6.10 The contracts administration unit will carry out pre-qualification procedures on behalf of directors.

6.11 For works contracts, all contractors must be pre-qualified by the contracts administration unit.

## 7 Negotiated procedures (European and non-European contracts)

### Competitive negotiation

7.1 A director can decide that, for any of the following reasons, a contract will be awarded by competitive negotiation in line with procedures set out in this code.

- a **Tenders which do not meet the criteria** – If a tendering exercise ends because contractors failed to meet the pre-qualification criteria, or if we didn't receive any tenders that met the tender criteria.
- b **The requirements cannot be set out beforehand** – If it is not possible to produce a specification that is exact enough for competitive tendering.
- c **Risk** – If it is impossible to identify a basis on which tenders can be priced due to the commercial risks involved or the nature of the services needed. (This is limited to contracts for works and services if the EU public procurement regulations apply.)
- d **Early contractor involvement** – If a large and complicated scheme needs a team that includes a contractor from the beginning. (This is limited to public housing schemes if the EU public procurement regulations apply to the contract.)



- 7.2 If the EU public procurement regulations apply, you must choose contractors for competitive negotiation in line with these rules and after a notice has been published in the Official Journal of the European Union. If the EU public procurement regulations do not apply, you must choose from contractors included in an approved list, if we maintain an appropriate list.
- 7.3 Competitive negotiation means “negotiation of the terms of a contract with at least three pre-qualified contractors who have been invited to submit competitive tenders”. If the EU public procurement regulations apply, you must choose the contractors from among those responding to a notice in the Official Journal of the European Union.
- 7.4 The main feature of this procedure for awarding contracts is that it combines competition between contractors (which is characteristic of tendering) with the flexibility needed to negotiate particularly complicated parts of a contract (for example, who will be responsible for risk). As a result, it is particularly suitable for complicated and original procurements. For example, it is the procedure normally used for Private Finance Initiative and Public-Private Partnering contracts.
- 7.5 Where the European Union public procurement regulations apply, there are limits on using competitive negotiation.
- 7.6 Apart from in exceptional circumstances, you must not use competitive negotiation for single-project construction work. You must consult the head of strategic procurement and the director of law and public services before you use competitive negotiation for single-project construction work.
- 7.7 If we maintain an approved list of relevant contractors, you must choose contractors for competitive negotiation in the same way as for selective tendering.
- 7.8 Directors must always justify the use of this procedure, and their decision to use it must be recorded in the form shown in annex D and held on the contract file. If you are not sure whether any of the reasons set out in these rules apply in a particular case, you should get advice from the director of law and public services before continuing.

### **Direct negotiation (European and non-European contracts)**

- 7.9 This allows for situations where it is not practical to invite tenders in competition, and where direct negotiation with one or more contractors is the only way of awarding a contract.

A director can decide that, for any of the following reasons, a contract should be awarded by direct negotiation in line with procedures set out in these rules.

- a **No tenders** – If a competitive tendering exercise results in no tenders (or only inappropriate tenders) being received, as long as the terms of the contract are not substantially altered.
- b **Tenders which do not meet the criteria** – If a competitive tendering exercise ends because no-one meets the pre-qualification criteria, or if we didn't receive any tenders that met the criteria, as long as we invited all pre-qualified tenderers who put forward a tender to negotiate.



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- c **Emergency** – If there is an emergency caused by events we couldn't predict, and life, property or serious financial loss is threatened.
- d **Sole contractor** – If for technical reasons or because of exclusive rights (for example, a patent) only one contractor is able to carry out the contract.
- e **Technical compatibility** – If buying equipment from a different manufacturer would result in incompatibility with existing equipment or technical difficulties.
- f **Experiment** – If goods are to be manufactured purely for research, experiment, study or development (but not to identify cost or other customers).
- g **Continuation contracts** – If further works or services (not more than 50% of the value of the initial contract) are needed on a project and these cannot be carried out by a different contractor without financial or technical difficulties, or are strictly necessary to the later stages of the project.
- h **Serial contracts** – If, at the time of awarding a contract for works or services by competitive tendering, we gave notice that a further contract involving a repeat of the works or services might be awarded to the winning contractor by negotiation. We can award only one contract on this basis, and the procedure must begin within three years of the original contract award.
- i **Design competition** – If the rules of a design competition (including built environment and IT competitions) mean that a contract is awarded to the person who put the winning design forward (or to one of those putting forward an acceptable design) as long as we invite all those putting forward an acceptable design to negotiate.
- j **Care and support contracts** – Contracts for providing personal social services to individuals or groups.
- k **Similar requirements** – On the basis of a previous contract (including yearly and other period contracts, and work by way of an extension to an existing contractor or based on a schedule of rates), as long as:
- the previous contract resulted from a competitive tender received within the two-year period before negotiation; and
  - no more than two contracts have already been negotiated on the basis of the original contract.

**(This is not allowed if the European Union public procurement regulations apply.)**

- l **Appointment of experts** – Appointing experts, including lawyers, expert witnesses, arbitrators or adjudicators.
- m **Bargain** – If we can take advantage of a bargain that is available for a very short time and at a price considerably lower than normal market prices, as long as you have the permission, in writing, of the director of finance and property services and the director of law and public services before a contract is signed. (This reason for using direct negotiation does not apply if the contract is covered by the European regulations.)



- n **European regulations** – Any other circumstances in which direct negotiation is allowed under the European regulations.
- o When using direct negotiation, you must choose contractors from those included in an approved list (if we maintain an appropriate list) or a reputable contractors (for example, those listed in registers published by trade or professional organisations).
- p You must record the director's decision to use direct negotiation (together with the reason under these standing orders) in the form shown in annex D and keep it on the contract file. If the contract value is more than £1 million for capital contracts and more than £500,000 for revenue contracts, the executive must also approve the director's decision.
- q When circumstances allow, you must do everything you reasonably can to make sure that contractors appointed through direct negotiation meet our pre-qualification requirements. They already meet this requirement if they are included in an approved list.

#### 7.10 Carrying out negotiations

- a This rule applies whenever a contract is awarded by negotiation (direct or competitive) or extended by negotiation, and whenever there is negotiation after the tenders have been received.
- b Negotiations must be carried out by at least two senior officers, at least one of whom is a director or the director's nominee. Directors remain directly responsible for the actions of their nominees.
- c You must keep proper records of all stages of the negotiations.

## 8 Instructions to tenderers

8.1 Every non-electronic invitation to tender or invitation to negotiate (competitive negotiation) must say that we will not consider a tender unless it is enclosed in a plain, sealed envelope which has the word 'tender' followed by the contract title, contract reference number, closing date and time written on the front. There must be no name or mark on the envelope showing the tenderer's identity.

8.2 Also, every invitation to tender must:

- a carry the contract number;
- b carry the Official Journal of the European Union notice reference (if this applies);
- c include the form in which tenders are to be put forward;
- d say that tenders are to be returned in the envelopes provided, unless we are tendering electronically;
- e give the latest date and time for us receiving tenders;
- f give the place they should be sent to;
- g give the language in which they should be put forward;
- h give the period for which tenders must be held open for acceptance;
- i contain the award criteria for assessing the tender;
- j give details of any supporting information needed for pre-qualification purposes;
- k say whether we will accept an alternative tender; and



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- I say whether the tender must provide an undertaking to provide a performance bond, parent company guarantee or other type of guarantee.

8.3 We cannot accept a tender with a value of £500,000 or more unless the tenderer sends us an undertaking to provide security as a performance bond, a cash deposit in an amount equivalent to the performance bond, or a parent company guarantee. This security should be:

- a for works contracts at least 10% of the contract value;
- b for services contracts up to 15% of the yearly contract value;
- c for goods contracts at least 10% of the yearly value of the goods; and
- d for any other increased amount as the director of the client department may demand.

A director can decide, in writing, that a contract can be awarded up to £1 million total contract value, without the need for an undertaking to provide a performance bond, parent company guarantee or other type of security of performance.

8.4 All documents inviting tenders must contain a statement of the requirement for the contractor to provide security and the level of security needed.

8.5 Before we award a contract, the executive must approve, if necessary, exceptions to the requirement for the contractor to provide security.

8.6 Directors must decide the type and amount of insurance cover in consultation with the director of finance and property services and the director of law and public services.

8.7 The following applies to tenders for works contracts.

a The first envelope (envelope A) must have the word 'tender' written on the front, followed by the subject it relates to, the contract reference number, and the latest date and time for receiving it. It must be addressed to the chief executive or the director inviting tenders (as appropriate) and must also give the room and address it must be delivered to.

b The second envelope (envelope B) must also have the word 'tender' written on the front, followed by the subject it relates to, the contract reference number, and the name and full address of the tenderer.

c If you need to send bills of quantities or schedules of rates to tenderers, the envelope you send them in for them to be returned (envelope C) must have the name of the tenderer and the contract reference number on it.

d You must tell tenderers that:

- they must seal the tender in envelope B, which they should put into envelope A, in which it is to be delivered to the specified address;
- they must not mark envelope A in any way to reveal the name of the tenderer;
- they must seal bills of quantities in envelope C; and
- they must put envelope C in envelope A. If envelope C is too big, they should attach it to envelope A.



## 9 Putting tenders forward

9.1 Tenders for contracts with an estimated value of £150,000 or more must be addressed to:

Contract Administration Manager  
Town Hall  
Upper Street  
London N1 2UD.

You must get tender envelopes from the contract administration manager by phoning 020 7527 3139.

- 9.2 You must keep tenders safe and not open them until the time and date shown for opening them. We will not consider a tender we receive after the time and date shown in the invitation unless the chief executive or director is satisfied that there is evidence of it having been sent in sufficient time for it to have arrived before the closing date and time.
- 9.3 Directors must make proper arrangements for returning of tenders and quotations for contracts valued less than £150,000. These arrangements should be set out in departmental operating procedures.
- 9.4 You must use standard types of envelopes for receiving tenders and for bills of quantities.
- 9.5 You must stamp tenders delivered to the right place by the time shown with the date and time you receive them and immediately put them in a locked tender box. You must keep them unopened in the locked tender box until they are due to be opened. Only authorised people will have a key for the tender box.
- 9.6 You must clearly mark tenders you receive after the given time clearly with:
- the date and time you receive them;
  - any known reasons for their late arrival; and
  - the signature of the officer receiving them.
- 9.7 A messenger must send any tenders delivered to the wrong address to the right place as soon as possible, and clearly mark the date, time and place they were received on the tender envelope.

## 10 Opening tenders

- 10.1 All tenders we receive, other than late tenders, must be opened in the presence of a tender opening panel (TOP) that is made up of at least two officers, one of whom should be a client officer.
- 10.2 If the estimated value of the contract is more than £150,000, the panel must include the contracts administration unit. In all other cases, it must include the director or their nominee.



- 10.3 Tenders must be opened and marked with the date and time they were opened. This should be done as soon as possible after the time appointed for receiving them. All tenders must be opened at the same tender opening meeting. Each member of the TOP must initial and date each tender on the page or pages which contain the tender sum amount (if any) and the signature of the tenderer.
- 10.4 If a tender is based mainly on schedules of rates or prices inserted by the tenderer, the TOP members must initial and date the signature of the tenderer (if there is one) or each page of the schedule if there is no signature. They must also initial any letter that comes with a tender.
- 10.5 If an envelope claiming to contain a tender for a contract for building work or work of civil engineering construction is found, when opened, not to contain a tender, any envelope claiming to contain the tenderer's bills of quantities must be opened. If it contains a tender, that tender must be initialled and dealt with in the same way as other tenders received by the specified date. You must explain this to the tenderer if and when the bills of quantities are later returned.
- 10.6 Tenders received after the specified time for receiving them but before the TOP has begun opening tenders may be opened and then considered only if all members of the TOP agree that it is proper to do so in all circumstances. Tenders received after the TOP has begun to open tenders must be quickly returned to the tenderer by the director inviting tenders.
- 10.7 We will not consider any tender put forward in competition if:
- a the tender is not properly signed, unless all TOP members agree that it is an oversight (in which case, we may ask the tenderer to confirm that the tender is genuine);
  - b the tender price is not evident from the tender documents;
  - c we do not receive the bills of quantities (if needed) with the tender or within three working days of opening the tender;
  - d the bills of quantities (if needed) are not priced; or
  - e any document we have issued with the tender has been altered without the permission of the director concerned.
- 10.8 When receiving tenders electronically, you must use our electronic tendering package, which only releases the tenders for viewing after the closing time and date. When opening electronic tenders, all tenders must be opened at the same time following the guidelines set out in 10.1, 10.2, 10.6, 10.7 and 10.9.
- 10.9 You must properly record all tenders you receive. This is an essential part of the audit trail. **Annex C** shows the minimum information that you must record in the tender register.

## 11 Evaluating tenders

- 11.1 After you have opened and recorded tenders, the director or their nominee who invited the tenders must examine them. The director of law and public services must be consulted in all



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cases where there is any doubt about whether the tenderer has put forward a tender that meets the tender criteria (conditions).

- 11.2 Directors, their nominees or appointed consultants are authorised to communicate with tenderers in order to get more details on technical and contractual matters that we need to consider. You must not give tenderers any prices.
- 11.3 If a tenderer puts forward a tender that contains alternative specifications or alternative contract conditions, the director or their nominee must carry out any necessary discussions with the tenderer in order to find common criteria between tenders and to find out which offer represents the best value for money.
- 11.4 The director or their nominee must set the award criteria that they will use to choose the successful tenderer. Award criteria must be designed to make sure we get the best value for money. The director or their nominee must prepare award criteria before the tenders are opened. You can get more advice on award criteria from the contracts administration unit.
- 11.5 Award criteria may include:
- price;
  - service;
  - quality of goods;
  - running costs;
  - technical merit;
  - previous experience;
  - delivery date;
  - cost-effectiveness;
  - quality;
  - relevant environmental considerations;
  - characteristics such as security and control features;
  - safety;
  - after-sales services;
  - technical support; and
  - any other relevant matters.

Sub-criteria and how they are related to the award criteria must be reflected in an evaluation model. The director or their nominee must prepare this model before the tenders are opened.

## 12 Construction contracts

- 12.1 You must use the following procedures for construction contracts **where the award criteria is the lowest price**.
- 12.2 If a tenderer sends bills of quantities with their tender, you must send a covering letter and a copy of the entry in the tender register to the officer responsible for detailed examination. The officer responsible for keeping tenders safe must keep the other tenders and the unopened bills of quantities relating to the two next lowest tenders. You must return bills of quantities, other than the three lowest, to their tenderers as soon as possible.



- 12.3 If when you examine the lowest tender you are not sure whether we could accept it, you must also examine the next lowest tender, related bills of quantities and covering letter. In exceptional cases, the director responsible for the direction of work may authorise other bills of quantities to be opened.
- 12.4 As soon as possible after a tender has been accepted, you must return any bills of quantities (other than those relating to the accepted tender) to the tenderers.
- 12.5 If you find a mistake, discover that something is missing, or if a tenderer asks you to amend a tender after they have sent it to us, you must tell the tenderer about the mistake and tell them that they must stand by the original offer or withdraw it. If the tenderer withdraws it, you must not invite them to send another tender for the contract.
- 12.6 If a tenderer decides to stand by the original offer, all mistakes must be dealt with as follows.
- a If any item has not been priced, we will agree a reasonable price with the tenderer. We expect them to put the price on the bills of quantities or specification.
  - b Mathematical mistakes (that is, mistakes in totalling, transferring, extensions or calculations) in the tender must be dealt with as follows for every certificate, and for the final account.
    - You must make a valuation based on the prices in the bills of quantities or priced specification. You must not use preliminary items (project information and a description of the rights and responsibilities of the people who have signed the contract), provisional sums (sums provided for unplanned works or services), and prime cost sums (sums for works to be provided by a nominated subcontractor or statutory authority) for this calculation.
    - You must multiply the amount you arrive at in a above by the fraction, whose numerator is the tender sum less preliminary items, provisional and prime cost sums, and whose denominator is the sum which would have been the tender sum, less preliminary items, provisional and prime cost sums, if those mathematical mistakes had not been made.
    - You must add the preliminary items, provisional and prime cost sums to the amount you arrive at in b above.
    - The amount you arrive at in c below must be the final amount shown on the temporary certificate and the final account.
  - c You must deal with any mistakes in line with the procedure described above and then record them and refer to them in the contract award report.
  - d The appropriate director or the executive (depending on the value of the contract) must decide what action to take over any mistakes that do not fall within the procedure described above. They must do so in order to get the best value for money for us.

## 13 Negotiations after receiving tenders



- 13.1 If there is a realistic possibility of getting better value for money for us, or if there is a need to negotiate reductions in or changes to the specification because a tender is more than the estimate or available budget, directors can decide to enter into negotiations after we have received a tender. However, we must invite all tenderers to negotiate on equal terms, except in the case of any Private Finance Initiative or Public Private Partnerships contracts, where the negotiations can be with a single supplier. These negotiations must be carried out in line with the EU public procurement regulations. You can get advice from the contracts administration unit. If there is a significant change in the specification or contract terms, we must tell all tenderers and invite them to put their proposals forward again.
- 13.2 Negotiations for works contracts to which the EU public procurement regulations do not apply can be carried out in line with the relevant National Joint Consultative Council (NJCC) code of procedure. If there is a significant change in the specification or contract terms, we must tell all tenderers and invite them to put proposals forward again.

## **14 Quotations**

- 14.1 You must get at least one written quotation for contracts or orders for goods, services or works with a value up to £9,999.
- 14.2 You must get at least three competitive written quotations for contracts or orders for goods, services or works with a value between £10,000 and £49,999.
- 14.3 All quotations should be in writing and to a written specification.
- 14.4 Directors may ask their staff to get more than one written quotation for contracts or individual orders with a value of less than £10,000.

## **15 Accepting tenders and quotations**

- 15.1 Capital schemes
- a Directors can award capital contracts with a value up to £1 million, as long as:
- enough funds are available within approved budgets;
  - they prepare a contract award report in line with this code for any contract, and keep that report on the contract file;
  - for contracts worth more than £1 million, the executive has already approved them; and
  - they follow the EU public procurement regulations.

(Paragraph 15.3 also applies.)



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- b The executive awards all other capital contracts.

## 15.2 Revenue contracts

- a Directors can award revenue contracts with a value up to £500,000, as long as:
- enough funds are available within approved budgets;
  - they prepare a contract award report in line with this code for any contract, and keep that report on the contract file;
  - for contracts worth more than £500,000, the executive has already approved them; and
  - they follow the EU public procurement regulations.

(Paragraph 15.3 also applies.)

- b The executive awards all other revenue contracts.

15.3 Directors may award contracts that are worth more than the amounts set out in 15.1 and 15.2 in the circumstances set out in paragraphs B4.2 (revenue) and C4.6 (capital) of the financial regulations.

## 15.4 Best value

- a For all contracts, you must accept the tender or quotation that represents the best value to us. When considering which offer represents the best value for money to us, directors must take account of:
- the initial estimate prepared for the project, including any estimate prepared for the purpose of identifying which contract award procedure should be followed under this code;
  - whole-life costs (please see section 6.1 of the green procurement code), including maintenance and running costs;
  - whole-life benefits (please see section 6.1 of the green procurement code); and
  - the economy, efficiency and effectiveness of the offer.
- b A director must decide whether to accept, or recommend to the executive to accept (as the case may be), a tender which is not the lowest in value, as long as it represents the best value. However, they must record their responses in terms of whole-life costs and benefits in the contract award report.



- c If the lowest-priced tender is more than the relevant budget or initial estimate, a director can carry out negotiations after we have received the tender in line with paragraph 13.1 to reduce the cost to us.

15.5 If we do not receive any tenders, or tenders that do not meet the tender criteria, a director may decide to:

- negotiate with the tenderers the award of the contract;
- ask for further tenders for the contract; or
- postpone the exercise.

**Note:** For tenders that do not meet the tender award criteria, you can only use direct negotiation to award the contract if you invite all pre-qualified tenderers who originally put forward a tender to negotiate. Otherwise, you must start a new exercise.

15.6 We cannot accept a tender or quotation for works or services unless we also receive evidence of:

- a employer's liability insurance for a minimum level of £10 million;
- b public liability insurance for a minimum level of £10 million;
- c product liability insurance (supply of goods) for a minimum level of £5 million;
- d professional indemnity insurance (professional services) for a minimum level of £5 million; and
- e other types of insurance specified that the director of law and public services or the director of finance and property services (or both) may ask for.

A director can decide, in writing, to accept a contract with a professional indemnity insurance level of between £2 million and £5 million.

#### 15.7 Contract award report

For all tenders, you must prepare a contract award report for the director or the executive to approve, in line with annex E.

#### 15.8 Letter of acceptance

You must accept tenders and quotations by a letter of acceptance signed by the relevant director or their nominee. Contracts valued at £500,000 or more must be carried out under seal by the director of law and public services.

#### 15.9 Letter of intent to award a contract

Directors must not issue letters of intent without the written approval of the director of law and public services and the deputy chief executive.

#### 15.10 Notices and explanations

- a After you have accepted a tender, the director or their nominee must tell each tenderer the result of the tender exercise.



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- b If unsuccessful tenderers ask for an explanation of why they were not successful, you must provide one.

## 16 Approved lists

- 16.1 The executive has overall responsibility for the approved lists, including adding, suspending and removing contractors from the list.
- 16.2 Approved lists may be subdivided into categories representing different types of activity in line with our requirements.
- 16.3 The contracts administration unit is responsible for maintaining the approved list of works contractors. If they agree, the contract administration unit will provide advice on or maintain other approved lists.
- 16.4 We will advertise and issue invitations to tender (for contractors to be included on the approved list), which we will award for a defined period. To be added to an approved list, a contractor must meet our pre-qualification requirements by filling in a standard pre-qualification questionnaire. We will then check the information they supply and take at least three technical references.
- 16.5 The contracts administration unit will give a financial limit to each contractor we add to the approved list. The limit will represent the maximum value of work that the contractor may carry out for us at any one time. Each year, the contracts administration unit will review the financial limit of each contractor in line with the guidelines issued by the director of finance and planning.
- 16.6 When using the approved list, you must get quotations or tenders from each supplier on the list as long as the total value of all contracts carried out for us does not go over their financial limit.
- 16.7 The executive may remove a contractor from an approved list if:
  - a we receive or confirm a poor report on the work, financial position, safety practices, environmental management, equal opportunities practices or other circumstances of a contractor;
  - b a contractor breaks our main contract conditions in a serious way;
  - c a contractor has not tendered successfully for a contract in three years (as long as we have invited them to tender during that period); or
  - d in any 12-month period, a contractor has said (in writing) that they are willing to tender for contracts and they have not put forward a tender for those contracts more than twice.
- 16.8 The executive may remove a contractor from one or more categories or remove them altogether from the approved list, as appropriate.
- 16.9 The executive may suspend a contractor from an approved list while they are considering whether or not to remove them permanently.



- 16.10 You must tell contractors immediately that they have been suspended from an approved list and give them the reasons for it. You should also give them the opportunity to put forward their case for staying on the approved list. Contractors have a right to appeal if the executive decides to permanently remove them from an approved list.
- 16.11 If you need to consider adding a contractor to any category, you must put an advertisement in appropriate trade or professional publications.
- 16.12 Annex F contains details of the procedure for removing contractors from approved lists.

## **17 Contract formalities**

### **17.1 All council contracts must include:**

- a the relevant, standard type of contract in use in the trade, business, profession or industry (amended, replaced or supported, as appropriate, by b below);
- b general contract conditions and any special contract conditions we have agreed;
- c a specification of the works, goods or services we need;
- d details of the price to be paid; and
- e any other conditions the director of law and public services may set.

### **17.2 Contract documents**

The director of law and public services will issue the conditions of contract for all council contractors.

### **17.3 Ending contracts**

- a Directors should do everything possible before the start of the contract to ensure that all contract documents are signed. However, when this is not possible (for example, if there is a serious threat to life or property) a contract may be carried out issuing a letter of acceptance followed as soon as possible by the issuing of the signed contract.
- b Letters of acceptance must be in a format approved by the director of law and public services.

### **17.4 Putting our seal on contracts**

- a The chief executive or director of law and public services (or any other person they have authorised) may seal contracts as deeds. The following contracts must be sealed as a deed by putting our seal on them.
  - All contracts worth £500,000 or more.
  - Any other works contract or contract for goods or services which the director (in consultation with the chief executive or director of law and public services, or any other person they have authorised) decides should be sealed as a deed in our interests.



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- b The chief executive or director of law and public services (or any other person they have authorised) is also responsible for issuing letters of acceptance for contracts in these two categories.

## 17.5 Signing Contracts

All contracts with a contract value of less than £500,000 should have two signatures, the director and their nominee.

## 17.6 Purchasing agents

A director can appoint an agent to enter into contracts on our behalf for providing goods, works or services. The agent must agree in writing that they will follow our procurement code.

## 17.7 Nominated and named subcontractors

If a subcontractor, supplier or consultant is to be nominated or named to a main contractor, you must invite quotations or tenders in line with these standing orders. The terms of the invitation must be the same as the main contract.

The supplier whose quotation or tender represents the best value for money must be nominated or named to the main contractor.

## 17.8 Payment

- a Before authorising a payment on our behalf, you must be satisfied that you have checked the contractor's invoice for quantities, measurements, prices and accuracy, and it is ready for payment.
- b The director of finance and property services has the power to ask for more information if this is necessary to protect our interests.
- c In every case we are due to pay a contractor we are in dispute with, the director must consult the director of law and public services before making the payment.

# 18 Variations and claims

- 18.1 Directors can agree claims and amendments to contracts. Directors must keep a record of all contract amendments and claims on the contract file. You must issue variation orders (orders to amend contracts) in writing, and then must confirm to them in writing within seven days of issuing them. Variation orders must be issued on consecutively numbered official forms.
- 18.2 The contract administrator or clerk of works must issue amendments to works contracts to contractors. Contract amendments must be issued to the contractor by directors or their nominees.
- 18.3 You must report an amendment or a claim (or the total amendments or claims) that is likely to be more than (or is likely to result in the final cost to this being more than) the initial contract



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value by 10% or more, for contracts worth more than £500,000, to the executive for approval. You must get the client's approval for all other amendments or claims.

18.4 You must send a copy of every variation order, issued with a summary of the total financial effect of all variation orders issued up to that point (agreed or estimated), to the director of finance and property services.

18.5 The only exceptions to the rules are:

- a an emergency where life, property or serious financial loss is threatened; and
- b claims which are the subject of court actions or arbitration awards and which need to be paid within a set time to avoid having to pay interest.

**In these circumstances, a director can agree an amendment using direct negotiation, but this must be reported to the next executive meeting together with the reason.**

## **19 Provisional and prime cost sums**

19.1 A director or nominee must issue written instructions to the contractor on the spending of all prime cost and provisional sums included in a contract.

19.2 You must immediately send the client a copy of any instruction, showing the agreed or estimated prices of the instruction, and keep a copy on the contract file.

## **20 Keeping records**

20.1 The contracts administration unit must give all council contracts with a value of £50,000 and above a unique contract reference number.

20.2 This number must be included on all contract documents, on the contract file and on all records relating to the contract.

20.3 You should open a contract file on every council contract and hold all records relating to the contract on that file. Directors are responsible for maintaining the contract files. The format for the contract file for contracts valued at £50,000 and above is shown in **annex B**.

20.4 Tender registers and contract registers

- a We intend to move to a system where all information on tender invitations is entered straight onto an electronic register.
- b The contracts administration unit will maintain a single register of all contracts that have a value of £50,000 and above, and all subcontracts that we award. The format for the register is shown in **annex G**.
- c The contracts administration unit will make the necessary arrangements to collect information on contracts resulting from tenders returned to directors (that is, those valued between £50,000 and £150,000). Directors must follow these arrangements.



- d Directors must maintain proper records of quotations we have received, including the name and address of the supplier we asked to give us quotations, and the written quotation. The person who received the quotation must sign and date it.
- e Directors may decide to treat written quotations with the same level of formality as tenders. In this case, the relevant procedures will be included in departmental operating procedures.

## 20.5 Contract files

- a We must keep successful contract files for twelve years after the end of the contract for all contracts under seal.
- b We must keep successful contract files for six years after the end of the contract for all other contracts.
- c We must keep all unsuccessful contract files for two years.

## 21 Contract award report

The format for a contract award report is shown in **annex H**.

## 22 Statistical returns

- 22.1 Each year, we must make a statistical return on the contracts we have awarded during the year following the EU public procurement regulations. We must then send the return to the European Commission.
- 22.2 The contracts administration unit is responsible for this statistical return and will make the necessary arrangements for information to be collected each year. Directors must follow these arrangements.

## 23 Waiver

- 23.1 When considering a report that includes financial and legal implications, the executive can decide that these standing orders can be amended or changed for any particular contract. However, the executive must be satisfied that special circumstances justify their decision and as long as:
  - a the executive gives its reasons and these are recorded in the minutes of the meeting; and
  - b all decisions, including those taken urgently, and the reasons for them are reported to us for information at our next ordinary meeting.
- 23.2 You should get advice from the director of law and public services before you ask the executive to ignore or amend these standing orders.



23.2 This clause cannot apply to contracts that have already been carried out.

23.4 The EU public procurement regulations cannot be ignored or amended.

## **24 Procurement tools**

24.1 The procurement code recognises the need to use the latest procurement tools to help us get value for money. You can use the following tools.

- Corporate purchase cards (company credit card)
- E-tendering (electronic tendering software)
- E-auctions (electronic auctions)

24.2 You must use these purchasing tools in line with the procurement code and any other policies we have agreed.

24.3 When using e-auctions, you should follow the quotation or tendering procedure within the procurement code (apart from when you need to ask for a price from the supplier). For contracts that need the executive's approval, you must get the approval on behalf of the executive beforehand.

24.4 When using electronic tendering, we can accept an electronic signature. An electronic signature will still make the contract legally binding.

## **25 Joint contracting**

25.1 When we are entering into a joint contract with another organisation (for example, the local primary care trust) the agency leading the contracting process must contract in line with their procurement code. If there are significant differences between the codes (for example, in the financial limits for getting quotations or tenders), you must get approval to continue from the director of law and public services beforehand.

## **26 Transfer of Undertakings (Protection of Employment Regulations) (TUPE)**

26.1 All contracts for providing services must follow the regulations set out in the TUPE Act. You can get more advice from the director of law and public services or the contracts administration unit.

## **27 Using Office of Government Commerce contracts**

27.1 All contracts to be awarded to an Office of Government Commerce contract supplier need to follow the procedure set out in annex H. All contracts awarded must be in line with the rules set out in this code.

## **28 Corporate contracts**



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- 28.1 Directors must make sure that corporate contracts are used within their departments.

## **29 Prior indicative notices**

- 29.1 The contracts administration unit will place prior indicative notices (on behalf of departments) in the Official Journal of the European Union.

## **30 Accountable bodies**

- 30.1 Companies and partnerships we have given responsibility to for buying in services (using funding we are responsible for) must follow this procurement code. This requirement needs to be included in any form of contract or agreement between us and the company or partnership. You should make a copy of the code available for them to follow, and they should have access to training and advice so they can do so effectively.

## **31 Green procurement code**

- 31.1 Our green procurement code is included in annex I and forms part of this procurement code.

## **32 Freedom of Information Act 2005**

- 33.1 The Freedom of Information Act came into force on the 1<sup>st</sup> January 2005. The Act gives people the right of access to information which is held by the council. It is intended to promote greater openness and accountability in public authorities. The Act recognises that there are some valid reasons for withholding information. When asking for quotations and tenders we should ask tenderers to complete annex k. Further guidance can be obtained from the director of law and public services.