

# **London Borough of Richmond Upon Thames**

## **Shared Procurement Service Procurement Regulations**

Effective from:

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List contents and page numbers once agreed

	<b>Topic</b>	<b>Page</b>
<b>1</b>	<b>Introduction</b>	<b>3</b>
<b>2</b>	<b>Statement of Principles</b>	<b>4</b>
<b>3</b>	<b>The Role and Responsibility of Directors</b>	<b>5</b>
<b>4</b>	<b>Ethics and Interest</b>	<b>6</b>
<b>5</b>	<b>Committee Approval Process</b>	<b>7</b>
<b>6</b>	<b>Contract Authorisation Levels</b>	<b>7</b>
<b>7</b>	<b>Role and Responsibility of the Procurement Board</b>	<b>7</b>
<b>8</b>	<b>Tendering Thresholds</b>	<b>8</b>
<b>9</b>	<b>Waivers of these Procurement Regulations including Direct Awards</b>	<b>9</b>
<b>10</b>	<b>Variations, Extensions, Novation's, Sub Letting and Additional Services</b>	<b>10</b>
<b>11</b>	<b>Definitions and Interpretation</b>	<b>12</b>

## **1. INTRODUCTION**

- 1.1 The Local Government Act 1972 (Section 135) requires that Local Authorities make Standing Orders in respect of contracts for the supply of goods, services and materials or the execution of works to ensure competition and regulate the manner in which tenders are invited.
- 1.2 These Procurement Regulations supersede the Council's previous Code of Practice for the Procurement of Goods, Works or Services.
- 1.3 These Regulations define the procurement policies and rules regarding procurement across the Council for achieving the Council's overall procurement objectives of obtaining the required quality/standard of Goods, Works and/or Services, at the best value that the Council can achieve to ensure the Council:
  - 1.3.1 secures value for money and offer best value for services to the public;
  - 1.3.2 generates and stimulates market competition through transparent, fair and consistent ways of working, and;
  - 1.3.3 support supplier diversity, sustainability objectives and an appropriate approach to equality.
- 1.4 Procurement decisions are among the most important decisions a local authority will make in order to ensure that public money is appropriately directed and that the goods, works and services are procured effectively and in accordance with Procurement Legislation and represent best value. The Council's reputation is equally important and should be safeguarded from any imputation of dishonesty or corruption.
- 1.5 Officers have a duty to report breaches of these Regulations or the Office Guide to Procurement to an appropriate Director, Assistant Director of Resources (Financial Services) and Head of Procurement. If any officer is in any doubt about the appropriate action required, he/she should consult their senior manager in the first instance. Advice should also be sought from the Head of Procurement (who may be required to speak to the Council's Legal Advisor) before proceeding in order to ensure compliance.
- 1.6 Procurement best practice guidance is contained within the Officer Guide to Procurement which should be read in conjunction with these Procurement Regulations and The Council's Procurement Strategy 2016.
- 1.7 When collaborating on procurement with Wandsworth Borough Council, Directors and Officers may be required to follow separate approval routes in recognition of each Council's own internal governance arrangements as detailed within the Council's Scheme of Delegation.
- 1.8 Richmond's Council must approve any changes or amendments to these Procurement Regulations.

## 2. STATEMENT OF PRINCIPLES

- 2.1 In all matters relating directly or indirectly to any contract to be entered into by or on behalf of the Council, those concerned must at all times, act in the best interests of the Council and in accordance with these Regulations, the Procurement Strategy, the Officer Guide to Procurement, relevant national law, and statutory guidance. This requirement applies to Members and employees of the Council and to consultants and agents (including their employees) appointed by the Council.
- 2.2 The Public Contracts Regulations 2015 (UKPCR) and any subsequent amendments shall be strictly applied to all the Council's procurements above the UKPCR tendering thresholds unless otherwise agreed as detailed within these Regulations.
- 2.3 The general principles of equality, non-discrimination, transparency and proportionality shall be applied to all the Council's procurement activity including those below the UKPCR thresholds.
- 2.4 The Officers Guide to Procurement provides more detail and shall govern the Council's tendering and contract procedures.
- 2.5 The evaluation criteria of tenders and quotations by the Council will depend on the goods, works or services being procured. The Council will endeavour to use the lowest priced compliant tender approach wherever possible; however, where it can be demonstrated that added value can be achieved through the introduction of non-priced elements this method will be used subject to approval by the Assistant Director of Resources (Financial Services) or the Procurement Board dependent on the value and proposals for non-priced elements, see Officer Guide to Procurement for detailed instructions.
- 2.6 Contracts must not be artificially split to avoid the application of the key Tendering Thresholds contained within section 8 of these Regulations. For the purposes of calculating the Tendering Threshold, the financial value must be calculated as per the definition of Contract Value which is the total length of the contract including any extension provisions proposed. The value must be calculated in pounds sterling and exclusive of Value Added Tax.
- 2.7 Officers must seek to avoid, where practicable, using products, substances and services that are known to be, or where there is strong evidence to believe they could be, harmful to the environment or a danger to health (employee, contractors and members of the public). Whenever possible and economically practical, only material from sustainable sources must be used and in accordance with any Council approved policy. Likewise, any Council policy regarding the Public Services (Social Value) Act 2012 or any other such relevant regulation(s) shall be applied.
- 2.9 Directors and designated Heads of Service shall maintain effective systems of internal control including the separation of main functions, the application of operational controls and effective monitoring and management review of all Contracts. These systems shall include provision for the maintenance of proper records throughout the procurement process and for the retention and safe custody of documents and records. All service contracts must have provisions setting out a designated contract manager, their reporting duties and clear KPIs to measure the effectiveness of the Contract as set out in the Officer Guide to Procurement.

- 2.10 There are a number of sections within the Procurement Regulations, Financial Regulations and Officer Guide to Procurement which apply only to property and construction contracts. Where this is the case this will be explicitly stated. Apart from these elements, all the Regulations shall apply to all contracts.

### **3. THE ROLE AND RESPONSIBILITY OF DIRECTORS**

- 3.1 The Director has responsibility for all contracts tendered and let by their Directorate. They are accountable for the performance of their duties in relation to contract letting and management and they will:
- 3.1.1 ensure that the provisions of these Regulations, the Officer Guide to Procurement and the Procurement Strategy, and their spirit and intent, are brought to the attention of staff and other persons responsible for procurement / contracts;
  - 3.1.2 ensure that the relevant provisions of UK procurement law, statutory guidance and locally approved procedures are brought to the attention of Officers and other persons responsible for Contracts;
  - 3.1.3 take immediate action, which must include informing the Chair of the Procurement Board, the Assistant Director (Financial Services) and Head of Procurement, in the event of a breach of these Regulations or Officer Guide to Procurement or the Procurement Strategy within the Directors area of responsibility;
- 3.2 These Regulations shall apply in conjunction with the Council's;
- Delegation of powers by the Council to its Service Committees in accordance with the Scheme of Delegation and any application internal regulations.
  - Delegation of powers by Council/Service Committees in accordance with the Scheme of Delegation
  - Delegation of functions to Officers in accordance with the Scheme of Delegation to Officers;
  - Risk Management Strategy;
  - Financial Regulations, and;
  - Environmental and Sustainability Policies.
- 3.3 These Regulations do not apply to the following activities which are managed by separate policies and guidelines:
- Contracts for the acquisition or lease of land and/or real estate;
  - Contracts of employment for permanent or fixed term positions;
  - Grant funded agreements for services provided or performed by the voluntary / not for profit sector and awarded in accordance with The Councils' Financial Regulations;
  - Services delivered to or from another public body under a shared service arrangement;
  - Direct payments or individual budgets to service users following a care assessment;
  - Non-trade payments to third parties such as insurance claims, pension payments or payments to public bodies, and;

- A declared emergency as defined by the Civil Contingencies Act 2004 and authorised by the Emergency Planning Officer.

## **4. ETHICS AND INTEREST**

### **Roles and Responsibilities of Members**

- 4.1 Members of the Council (and any other person who may be appointed a non-elected member of any committee or sub-committee), shall comply with any Statutory and/or local codes of conduct for Members adopted by the Council. This includes code of conduct on gifts and hospitality for Members, making a declaration to the Council of any pecuniary interest they personally have in any contract(s) to be let and any other potential conflict of interests.
- 4.2 Members of the Council (and any other person who may be appointed a non-elected member of any committee or sub-committee) should not knowingly have, or permit, an interview or communication with any contractor or tenderer who is involved with any proposed contract or tender unless specifically authorised to do so by the Council.

Members must comply with any other terms contained within the Members' Code of Conduct and Member/Officer protocol which relate to contracts.

### **Conduct of employees of The Council's**

- 4.3 Non-school based staff must at all times comply strictly with the Council's Code of Conduct for Employees.
- 4.4 No person, except for the Chief Executive, Directors and designated Heads of Services, shall concurrently undertake any of the following client functions and have responsibility for an in-house tender submitted by a staff group or work on that bid;
- 4.4.1 participating in the arrangements for advertisements and notices;
  - 4.4.2 selecting tenderers and dispatching tender documents;
  - 4.4.3 calculating "prospective costs";
  - 4.4.4 receiving, opening or evaluating tenders, and;
  - 4.4.5 participating in decisions on the award of contracts.

### **Conduct of consultants and advisers**

- 4.5 Consultants and advisers appointed by the Council shall at all times conduct themselves in accordance with standards equivalent to those expected of Members of the Council and its employees. All such consultants and advisers shall, prior to appointment, produce to the satisfaction of the appropriate Director, reasonable evidence that they and their employees are furnished with appropriate codes of conduct and that they are required to follow published standards of conduct appropriate to their trade or profession.

## **5. SERVICE COMMITTEE APPROVAL PROCESS**

- 5.1 Service Committee approval for the procurement of goods, works and services, shall be sought as defined within the Council's Scheme of Delegation and/or Financial Regulations.
- 5.2 The Chief Executive and all Directors' delegated spending limit for procurement is defined within the Council's Scheme of Delegation. The thresholds for seeking quotations or tenders are set out in paragraph 7 of these Regulations. Directors will not be required to seek approval for items within their delegated procurement spending limits provided that such procurement is consistent with the Scheme of Delegation.
- 5.3 Directors of the Council shall submit reports to relevant Service Committee's as defined within the Scheme of Delegation.

## **6. CONTRACT AUTHORISATION LEVELS**

- 6.1 Subject to complying with these Regulations, Directors have delegated authority to enter into contracts as defined within the Council's Scheme of Delegation.

## **7. ROLE AND RESPONSIBILITIES OF THE PROCUREMENT BOARD**

- 7.1 The Council recognise that, in order to achieve consistency and compliance with these Regulations, the Officer Guide to Procurement and the Procurement Strategy, there is a need for the involvement of key corporate advisers in all significant procurement processes. All procurement of goods, works or services in excess of UKPCR Services threshold and where there is an evaluation method incorporating more than a 20% non-priced element, must be referred to the Procurement Board. The Procurement Board will decide which contracts for works need to be considered by it and inform the relevant officers accordingly.
- 7.2 The Procurement Board will consist of the following Officers:
- Chief Executive
  - Director of Resources
  - Assistant Director (Financial Services)
  - Head of Procurement
  - Legal Services representative
- Category Managers shall routinely attend Procurement Board to present proposals and updates and Commissioners as required for some highly complex procurements.
  - Assistant Director representatives from each directorate to represent their departments in Tollgate/Category/Procurement reviews and decision making.
  - Deputies must attend if the primary representative is not available.
- 7.3 The Procurement Board aims to ensure that the Council's Procurement Regulations, Scheme of Delegation and Procurement Strategy is implemented in all cases and at all stages.

- 7.4 The Councils Legal Advisor will, as appropriate, instruct the Council’s legal contractor to advise/draft documentation. Contract documentation shall be referred to him/her as appropriate, and in any event where the total value of the procurement exceeds UKPCR thresholds.
- 7.4 The Procurement Board shall operate a Tollgate process as follows, further details are provided within the Officer Guide to Procurement:
- Tollgate One Commissioning and Procurement Strategy
  - Tollgate Two Where appropriate a Shortlisting Report
  - Tollgate Three Tender Evaluation and Contract Award
  - Tollgate Four Contract Management Review
- 7.5 Any failure to consult the Procurement Board at the appropriate time shall be deemed to be a breach of these Regulations and shall be specifically included as a failure in the Corporate Risk Specialist’s annual report
- 7.6 As well as consultation with the Procurement Board, the Assistant Director of Resources (Financial Services) and the Head of IT must be consulted on any plans to procure IT software, hardware and / or systems. Any such planned procurement will need to include a specific business case which must also address how and who will host any system and its compatibility both with the Council’s infrastructure architecture and any other Council software, hardware and / or systems.

## 8. TENDERING THRESHOLDS

- 8.1 The following minimum number of invitations to tender or quote shall apply to all contracts including those let to the Voluntary / Not for Profit Sector, subject to UKPCR procurement regulations (including aggregation).

Type of procurement and total cost threshold	Minimum number of invitations to tender or quote
Goods, Works and Services estimated to cost no more than <b>£1,500</b>	No requirement to seek any number of quotes
Goods, Works and Services estimated to cost between <b>£1,500</b> and <b>£50,000</b>	<b>3 written quotations</b>
Goods, Works and Services estimated to cost between <b>£50,000</b> and the UKPCR Services limit (currently <b>£213,477</b> )	<b>5 written quotations OR tenders</b> or the maximum number available from the market if the market is small or specialised and approval obtained from the Head of Procurement
Goods, Works and Services estimated to cost above the relevant UKPCR tendering threshold within the Procurement Strategy.	<b>In accordance with the Public Contract Regulations 2015 as a minimum.</b> 6 in most cases but more may be invited if it is considered best value will be achieved from a wider pool of bidders. Approval at Tollgate One/Two.



## Exemptions

- 8.2 The Director may place orders of up to the UKPCR Services threshold (currently £213,477) without obtaining competitive quotations or tenders where the Goods, Works or Services are urgent and necessary:
- 8.2.1 for the protection of life or property; or
  - 8.2.2 to maintain the functioning of a service for which the Council is responsible;
  - 8.2.3 to deal with serious and immediate risks to health or safety or statutory nuisances and in any other cases where delegations to chief officers give them direct authority so to do; or
  - 8.2.4 certified as such by the Chief Executive.
- 8.3 The Director may place orders of up to UKPCR threshold for Services (currently £213,477) for Goods, Works or Services including those let to the Voluntary Sector without obtaining competitive quotations or tenders where:
- 8.3.1 the works, goods or services must normally be entrusted to a utility undertaking, statutory undertaking, local authority or similar public body; or
  - 8.3.2 the works, goods or services are demonstrated by the chief officer to be most appropriately available from only one organisation and the chief officer concerned has secured the concurrence of the Procurement Board; or
  - 8.3.3 the Council or Service Committee have decided to extend the scope of an existing contract to include further works, goods or services or to extend the duration of a term contract; or
  - 8.3.4 the Council or Service Committee have decided that special circumstances make it appropriate and desirable that a contract should be negotiated with a single organisation.
- 8.4 Directors may place orders for Goods, Works or Services for which the Council have term contracts up to any value provided that expenditure does not exceed any limit per order, either stated in the contract documentation or set by the relevant committee, any ceiling that has been placed on the contract sum, or the provision in the budget, whichever is the lowest.
- 8.5 Where Directors wish to procure the services of a consultant the required processes and required approvals are detailed in the Officers Guide to Procurement.
- 8.6 The exemptions above are subject to:
- 8.6.1 the directions of the appropriate Service Committee being sought in any case which presents unusual features; and
  - 8.6.2 an estimate of the cost being obtained (where tenders or quotations have not been invited), unless it is impractical to do so, from the organisation concerned before any written or oral order is issued.

## 9. WAIVERS TO THESE PROCUREMENT REGULATIONS, INCLUDING DIRECT AWARDS

- 9.1 Any waiver to these Regulations must be submitted in writing and approved by the relevant Director and by the Procurement Board provided they meet one or more of the following:

- (a) the nature of the market for the Goods, Works or Services has been investigated and it is demonstrated that a departure from the Regulations is justified;
- (b) the circumstances of the proposed contract are covered by legislative exemptions under English Law;
- (c) there are circumstances which are genuinely urgent, and/or;
- (d) it is in the overall best interest of the Council.

9.2 Where such circumstances exist, an emergency convening of the Procurement Board may be required, this is deemed as being approved by exception.

9.3 A record of the decision approving a Waiver by the Procurement Board the reasons for it must be kept and an entry made in The Council's Waiver, Variation and Extension register held by the Quality Assurance section of the Corporate Procurement Team.

## **10. VARIATIONS, MODIFICATIONS, EXTENSIONS, NOVATIONS, SUB LETTING AND ADDITIONAL SPENDING**

10.1 Variations to existing contracts can only be made where this was properly provided for within the original contract documentation or a need for additional supplies or services where a change of supplier is impossible or would cause significant inconvenience, or a need for additional deliveries due to unforeseen circumstances (both subject to 50% maximum increase in contract value); or where a new supplier replaces the existing supplier because of insolvency or genuine restructuring. Approval is required by the Procurement Board for variations above £100,000.

10.2 Contract Extensions. Extensions of existing contracts can only be made where this was properly provided for in the original contract documentation otherwise it is a direct award waiver, refer to Section 9 above.

10.3 All proposed extensions to existing contracts must be submitted to the Procurement Board who will determine if there are any other approvals required.

10.4 All Variations, Modifications and Extensions must be executed by the Corporate Procurement Team in consultation with Legal Services as necessary.

10.5 Novation. All requests for novation must be submitted to the Councils Legal Advisor and the Assistant Director of Resources (Financial Services) for advice. The Corporate Procurement Team will undertake appropriate due diligence checks to ensure that the organisation to whom novation of the contract is requested has both the financial stability and technical competence to carry out the contract. The approval of the Director of Resources is required to any novation.

10.6 Sub-letting. Directors are authorised to approve the sub-letting of a contract or any part thereof by a Council contractor in accordance with the contract conditions and provided that such arrangements have been reviewed by the Director concerned, are

not contrary to The Council's interests, and Legal Services and the Director of Resources have been consulted on all significant sub-letting.

- 10.7 Procedures on requesting and/or reporting additional spending are detailed in the Budget Policy Framework for the Council.

## 11 Definitions and Interpretation

<b>Abnormally Low</b>	In the light of the Council's estimate and of all the tenders submitted, it appears to be abnormally low by not providing a margin for normal levels of profit, and / or, the low tender cannot be explained by economy of the selected construction method, the technical solution chosen, exceptionally favourable conditions available to the tenderer, or the originality of the work proposed.
<b>Councils Legal Advisor</b>	The Head of the Council's legal service who advises on the contract documentation for all procurement. Where appropriate, "Councils Legal Advisor" shall be deemed to include a reference to any relevant external legal contractor or lawyer or legal firm instructed by the Councils Legal Advisor or the Council.
<b>Service Committee</b>	a committee of the Council authorised to carry out any of the Council's functions.
<b>Contract Standing Orders</b>	The specific rules governing the proceedings and rules governing procurement as part of the Council's Constitution.
<b>Contract</b>	A legally enforceable agreement in writing made by or on behalf of the Council for Goods, Works or Services on specified terms and conditions.
<b>Contractor</b>	a company or individual with whom the Council has entered into a legally enforceable contract.
<b>Contract Value</b>	The total estimated cost of the Goods, Works and/or Services which are the subject of a specific tender or quotation and shall include any fixed and extension term proposed.
<b>Council</b>	Richmond Upon Thames
<b>Goods</b>	parts, machinery, materials, equipment, provisions which the supplier is required to provide to the Council.
<b>MEAT</b>	The <b>M</b> ost <b>E</b> conomically <b>A</b> dvantageous <b>T</b> ender approach to evaluation of tenders. This contract award methodology may be based on price or cost (using the cost-effective approach) or a combination of best price and quality ratio
<b>Member</b>	Any duly elected Member of the Council
<b>Officer</b>	Any employee of the Council
<b>Organisation</b>	includes a person or persons and anybody corporate or incorporate (and may include a charity, company limited by guarantee or shares, consortium, co-operative, industrial and provident society, joint venture, partnership, private company, public company, trust, or voluntary body).
<b>Pre-Qualification Questionnaire or PQQ</b>	a questionnaire used to require information from organisations expressing an interest in submitting a tender or quotation in order to determine their technical and financial competence to undertake the requirements of a contract.
<b>Procurement Board</b>	The Council's core corporate procurement advisors comprising of the Chief Executive, Director of Resources, The Councils Legal Advisor, the Assistant Director (Financial Services), the Head of Procurement and any other officers as may be nominated from time to time.
<b>Quote or Quotation</b>	Is where a number of organisations have been approved directly and invited to submit a tender or quote. The requirement is not publicly advertised.

<b>Services</b>	includes activities and functions performed by providers but excludes works and goods.
<b>Tender</b>	is a response to a publicly advertised call for competition.
<b>Tenderer</b>	includes any organisation submitting a quotation or a tender.
<b>Term contract</b>	a contract for the procurement of Goods, Works or Services for a fixed term, normally based on a schedule of prices and awarded as a result of the invitation of competitive tenders in accordance with these Regulations.
<b>UKPCR</b>	Means the Public Contract Regulations 2015
<b>Works</b>	building and civil engineering construction works. Cyclical and routine maintenance would not normally be classified as Works but Services for the sake of the UKPCR thresholds.

End