**APPENDIX 6 to the Financial Regulations**



**PROCUREMENT**

**TOOLKIT**

 **Final March 2019**

**CONTENTS PAGE**

**PART 1 INTRODUCTION TO PROCUREMENT**  4

1. Introduction 5

2. What is Procurement? 5

3. Do we need to procure? 5

4. Do we have a budget to procure? 5

5. Can we articulate our requirements? 6

6. Do the products or services we need exist and, who provides them? 7

7. How do we make sure we procure within the Regulations? 7

7. Figure1: Procurement thresholds and Procedures 8

8. Public Procurement Principles 8

8.1 Ethics in Procurement 8

8.2 Procurement must provide Value for Money 9

8.3 Procurement must provide competition 9

8.4 Procurement Must be accessible to SMEs 10

9. The role of Contracts in procurement 10

9.1 Data and the General Data Protection Regulation 11

9.2 Intention to create Legal Relations 11

9.3 Capacity 12

9.4. Offer 12

9.5. Acceptance 12

9.6. Consideration 13

9.7. Modern Slavery Act 13

**PART 2 Procurement up to £10,000 – Invitation to Quote** 14

**PART 3 Procurement between £10,000 and £75,000 – Invitation to Quote** 15

**PART 4 Procurement between £25,000 and £181,302 – Invitation to Tender** 18

**PART 5 Procurement Above OJEU £181,302** 22

**PART 6 Framework Agreements** 25

**APPENDICES**

**ANNEXE 1 Project Brief and Procurement Initiation**

**ANNEXE 2 ITQ Template between £10,000 and £75,000**

**ANNEXE 3 ITT Template between £25,000 and £181,302**

**ANNEXE 4 Evaluation of Tenders Procedure Note / guidance**

**ANNEXE 5 Procurement Approval Forms**

5.1 Acceptance of Quotation between £10,000 and £75,000

5.2 Acceptance of Tender between £25,000 and £75,000

5.3 Acceptance of Tender between £75,000 and £181,302

5.4 Acceptance of Tender between £181,302 and £249,999

**ANNEXE 6 LC Standard Form of Contract Guidance Note**

 6.1 LC Conditions “A” – Service Contracts

 6.2 LC Conditions “E” – Professional Services Contracts

 6.3 LC Conditions B-Supplies

 6.4 LC Conditions C-Small Works

**ANNEXE 7 Post Tender Template Letters**

 7.1 (A to C) Below OJEU Template Letters

 7.2 (A to C) OJEU Template Letters

**ANNEXE 8 Procurement Threshold Process Summary**

**ANNEXE 9 FOI Schedule**

**ANNEXE 10 Equal Opps Questionnaire**

**ANNEXE 11 OJEU Procurement Timescale Tracker**

**ANNEXE 12 OJEU Procedure Decision Tool**

**ANNEXE 13 TUPE Questionnaire**

**ANNEXE 14 Framework Due Diligence Template**

**ANNEXE 15 Public Contract Regulations 2015**

**ANNEXE 16 Procurement Policy Notes**

**ANNEXE 17 Protocol for obtaining legal advice**

**ANNEXE 18 GDPR Mandatory Obligations and Security of data considerations**

**ANNEXE 19 Glossary of Procurement Terms**

**Part 1 Introduction to Procurement**

1. **Introduction**

The aim of this toolkit is to provide accurate and clear instructions on procurement within London Councils. It has been written with reference to the types of procurement that London Councils undertakes. Therefore, it is not an exhaustive guide to public sector procurement, but has been designed to ensure that London Councils officers involved in purchasing have sufficient information to deliver the following strategic procurement objectives:

* To create value for London Councils and its members.
* To ensure fairness, probity and compliance with legislation in all its transactions.
* To meet the requirements of London Councils’ financial regulations and standing orders.
* To stimulate competitive and sustainable supply chains.

It provides instructions through the various stages of undertaking procurement activity and the templates to be used when procuring goods and services.

All staff are reminded that any procurement activity carried out must comply with [***London Councils Financial Regulations***](file:///%5C%5Calgdata.alg.gov.uk%5CCorporateFinance%24%5CContracts%20%26%20Procurement%5C1.%20Toolkit%20working%20copies%20for%20updates%20August%202018%5CFull%20update%20incl%20GDPR%5CArchive%5CMASTER%20Procurement%20toolkit%20%20Intranet%20version%20AP%20Final%20November%202017.doc)***, the*** [***PCR 2015***](file:///%5C%5Calgdata.alg.gov.uk%5CCorporateFinance%24%5CContracts%20%26%20Procurement%5C1.%20Toolkit%20working%20copies%20for%20updates%20August%202018%5CFull%20update%20incl%20GDPR%5CArchive%5CAPPENDIX%2015%20Public%20Contract%20Regulations%202015%5CAPPENDIX%2015%20Public%20Contract%20Regulations%202015.pdf) ***Regulations and EU Procurement Directives,*** regardless of who the funder is.

If you are using the toolkit for the first time, it is suggested you read the part(s) you intend to use thoroughly, so that you become familiar with the procedures, forms, thresholds and methods of authorisation. The templates **include sections highlighted in blue**; it is these parts which the project manager should edit to meet the needs of their procurement exercise.

If your project involves personal data you may need to complete a [Data Protection Impact Assessments](https://iris.londoncouncils.gov.uk/how/information-governance/data-protection/data-protection-impact-assessments) (DPIA). If you have any questions about meeting data protection requirements, please contact the Corporate Governance Manager as early as possible prior to commissioning.

The toolkit has been reviewed by the primary divisional officers with responsibility for procurement and the Corporate Governance Group.

The primary divisional officers are:

**Procurement Practitioners**

**JOB TITLE TELEPHONE**

Chief Contracts Officer X 9951

Research Manager X 9771

**General Data Protection Regulation (GDPR)**

Corporate Governance Manager X 9836

**City of London Legal Liaison**

Director of Corporate Governance X 9540

The documents enclosed will be reviewed periodically; therefore feedback is welcome. If you have any comments, questions or require further information, please contact the Management Accountant.

**JOB TITLE TELEPHONE**

Management Accountant X 9722

1. **What is Procurement?**

The Chartered Institute of Procurement and Supply (CIPS) defines procurement as:

* “[…] the business management function that ensures identification, sourcing, access and management of the external resources that an organisation needs or may need to fulfil its strategic objectives.”

In the context of London Councils, the primary focus is on goods and services, from small consumables such as pens and paper, to medium-sized research or consultancy projects, to large services such as back-office functions for the Freedom Pass scheme.

If you are reading this toolkit, you have probably come to the decision that you have a business requirement that cannot be met with internal resources and that you have to look externally. However, there are several questions to ask before considering procurement.

* Do we need to procure?
* Do we have a budget to procure?
* Can we clearly articulate our requirements?
	+ Do we know when we need them?
	+ Do we have an idea of how much they will cost?
	+ Do we know how we will evaluate the procurement?
	+ Do we know what internal resources are needed to buy them and manage any subsequent relationships, and are these resources available?
* Do the products or services we need exist and if so, who provides them?
* How do we procure within London Councils’ own and other regulations?

The first part of this toolkit looks at these questions at a high level before providing some additional information on public procurement principles and the role of contracts in procurement. Parts 2, 3 and 4 provide more detailed guidance relevant to the size, scale and risk of procurement projects.

1. **Do We Need to Procure?**

You should only consider a procurement route where it is necessary to source goods or services externally. Therefore, before deciding that procurement is necessary, it is important to consider whether the outcomes you want to achieve could be obtained using internal resources.

If they cannot, you should then consider whether the outcomes you wish to achieve could be obtained free of charge, or without procurement. For example, if you are considering procuring a piece of research or evaluation, ask whether similar pieces of research or evaluation already exist and are freely available, or available at a lower price than starting from scratch. If they are, then procurement may not be necessary. You can use the IDOX journal service that London Councils has a subscription for to carry out a thorough literature review to help you ascertain the work already carried out in the relevant policy area. Contact the Research manager for further information.

However, if there are compelling reasons why goods or services must be procured externally, it is very important to be aware of a number of key principles of procurement that must underpin the way in which you operate and inform how you interact with suppliers.

1. **Do We Have a Budget to Procure?**

Once a procurement need has been identified, the next step is to confirm that the business unit has sufficient provision within the budget to procure. This may sound obvious, but if your business area has a budget of £100,000 for the year and this budget is already fully committed, unless additional resources can be found, or efficiencies generated, the procurement cannot proceed. The procurement thresholds cover the ***aggregate whole life of the contract (which may be several years) and the cumulative value of the pieces of work within the contract.***

* It is a breach of the financial regulations and EU rules to artificially divide contracts in a way which would enable the financial thresholds limits to be circumvented.
* It is also a breach of the financial regulations to make a contract, or invite to tender, unless provision has been made in the annual budget for the proposed expenditure.
* The officer who authorises the tender (within the delegated procurement thresholds) must have delegated authority to do so.

It is possible to use external finance for the procuring and resourcing of some contracts. In such cases the same procurement processes apply as for London Councils funded procurement. In addition, written confirmation must be received from the funder, in advance of the procurement action, to prove that they will fund the project. Therefore, ***before considering procurement, always check with the relevant budget holder for your area that resources are available.*** If a Borough is leading on the procurement activity the Boroughs individual procurement process will be followed.

1. **Can we articulate our Requirements?**

All individual procurement exercises should start with a project brief. For small procurement activities below £10,000, the project brief may serve as the basis on which to invite organisations to quote. For larger procurements, it may serve as the first draft of what will become a more detailed procurement strategy.

A template project brief can be found at Annexe 1 and can be used to answer some of the questions listed in Section 2 (above), particularly related to requirements and timescales. It should cover:

* Introduction.
* Background.
* Procurement Timescales. NB these should include sufficient time to prepare documentation including requirements, assessment frameworks, and contracts and to meet any statutory minimum timescales.
* Objectives:
	+ Scope of the services.
	+ Outputs and milestones.
	+ Fees and costs – how much are the services likely to cost and how will they be paid for.
* Selection process and criteria i.e. how you will source bidders for the work and how you will decide which ones to invite to quote/tender.
* Award process and criteria (including reference to any internal governance processes).
* Additional information – such as the resources London Councils will make available to support the management and delivery of the project.
* Sustainability. and CSR [corporate social responsibility].
* Information and data protection and security.

The brief should contain sufficient information to communicate what is to be bought (the requirements relating to the goods or services); how long the process will take (see sections below for indicative timescales for different types of procurement); how bidders will be selected and assessed; and the nature of the contractual relationship that will be established.

An important point to note here is that paragraph 9 summarises the role of contracts in procurement. It is certainly the case that where one of the template contracts cannot be used then a **“*bespoke”*** contract will need to be drafted. The extent to which the requirements of the procurement are clearly articulated, will be one of the key factors for the City of London Legal Team (CoLLT) in drafting the contract. It is also essential that sufficient time has been allowed in the planning of the procurement, which will require abiding to LC protocol of seeking support from CoLLT by alerting the Director of Corporate Governance who will liaise with CoLLT in the first instance.

At the start of the exercise it is essential that the Management Accountant is informed of the nature and timescale of the procurement in order to ensure adequate monitoring arrangements are introduced. The relevant commissioning officer is required to complete a **Procurement Initiation Form**, with much of the information being directly transferable from the project brief. This must be sent electronically to the Management Accountant, who will log the relevant information. The template form can be found at Annexe 1.1.

1. **Do the Products or Services We Need Exist and if so, Who Provides Them?**

Once you have completed a project brief, you should consider whether the products and services that are required are available and who might be able to provide them. For smaller procurement exercises, less than £10,000, it’s generally acceptable to approach a small number of providers (minimum of three).[[1]](#footnote-1) For larger and higher value procurements, it is advisable to engage a larger number. Please consider obtaining a quote from an SME – Small and medium-sized enterprises (SMEs) are non-subsidiary, independent firms which employ fewer than 250 employees. This can easily be done by advertising on Contracts Finders which is the Government procurement portal for SMEs and larger organisations. Please liaise with the Management Accountant or Research Manager.

Whatever the size of the procurement, it is always best to engage the most relevant providers. You may know from your professional experience who these providers are. However, you may need to ask colleagues, contacts from other organisations, or even trade/industry bodies to suggest suitable candidates.

For larger procurements, perhaps over £25,000 for example it is advisable to undertake structured market warming and engagement activities in advance of the procurement exercise to help generate interest in the opportunity and ensure the widest pool of candidates from which to choose. This process can also be useful in shaping the way in which requirements are specified and understanding exactly what is available in the market. It certainly helps to ensure that London Councils supports competition (see 8 **Public Procurement Principles**)

1. **How Do We Make Sure We Procure within the Regulations**

If handled poorly, procurement can lead to contractual relationships that increase financial, reputational and delivery risk. Therefore, it is very important that procurement is conducted within London Councils’ own financial regulations and the relevant legislative frameworks. Doing so will help to ensure (but not guarantee) that legal relationships are clear and that both parties have the capacity to enter into and fulfil contractual obligations. Not knowing the rules and regulation is not an acceptable reason, as individual officers may be held accountable.

London Councils’ financial regulations set out the rules that must be observed by staff when undertaking financial relationships, including those with suppliers. They detail the responsibilities, procedures and working practices in relation to day to day financial administration.

The current version of the financial regulations can be found at the following location:

[K:\Corporate Finance\Financial Regulations](file:///K%3A%5CCorporate%20Finance%5CFinancial%20Regulations)

Before starting on procurement activity, it is important that you have read and understood the financial regulations, including section 8, which deals explicitly with procurement and contracts. **Please note specifically the arrangements and threshold values regarding advertising and the implications for quotations or tenders.**

In addition to the financial regulations, all procurement undertaken by London Councils relating to contracts with a whole life value[[2]](#footnote-2) >£25,000 where the decision has been made to advertise the opportunity, is governed by the EU Procurement Directives enshrined in UK domestic legislation, namely the Public Contracts Regulations (PCR) 2015.[[3]](#footnote-3)

The relevant regulations can be found via the following link: [The Public Contracts Regulations 2015](http://www.legislation.gov.uk/uksi/2015/102/contents/made)

Using a combination of London Councils financial regulations and the PCR 2015, the following table sets out relevant financial thresholds, procedures, and required levels of sign-off.

**Figure 1 Procurement Thresholds and Procedures**

| **Threshold (whole life value)** | **Procedure** | **Level of sign off required** | **Toolkit Section** |
| --- | --- | --- | --- |
| Up to £10,000 | Formal tender process is not required. At least one written quotation obtained, duty is on project lead to secure value for money.  | Chief Executive or appropriate service related Director (ref FRs Appendix 5 – Part C) | Part 2 |
| **Where a decision has been made NOT to advertise**. |
| £10,001 - £75,000 | Formal tender process is not required. Request at least 3 written quotations or a mini-tender exercise to establish value for money. | Chief Executive or appropriate service related Director (ref FRs Appendix 5 – Part B). | Part 3 |
| **Where a decision has been made to advertise** |
| Below EU Threshold £25,001 and EU Limit - £**181,302** | If it is decided that the Opportunity is advertised, the use of a formal tender process is mandatory by Publishing on Contracts Finder and London Councils Website (FRs 8.8.2). | Chief Executive or appropriate service related Director (ref FRs Appendix 5 – Part A).FRs 8.11.2 (£10-£75k);**FRs 8.11.3 (£75-£181k**) | Part 4 |
| Above EU Threshold **£181,302** - **£249,999** | The use of a formal EU tender process is mandatory and subject to full compliance with EU procedures. | Chief Executive or appropriate service related Director (ref FRs Appendix 5 – Part A), Chair, Deputy/Vice Chair and Other Elected Officer (FRs clause 8.11.4) | Part 5 |
| £250,000 and over | Committee approval required before tendering, Full compliance with EU procedures  | London Councils Leaders Committee or any Sectoral joint or associated committee as appropriate. (ref FRs clause 8.11.5) | Part 5 |

1. **Public Procurement Principles**

As well as ensuring your procurement complies with relevant London Councils, national and European regulations, it is important that it is conducted in line with public procurement principles. These are considered in more detail below.

* 1. **Ethics in Procurement**

There is a duty for all members of staff involved in procurement to behave in a professional, legal and honest manner. By following the guidelines in this toolkit, you can minimise the opportunities for the perception, or the actual occurrence, of fraudulent and corrupt activities.

No elected members of relevant committees may interview or have communications with any person or organisation proposing to tender for a contract, except with the authority of that committee.

Officers should not accept any corporate hospitality or gifts from prospective suppliers. It is not permissible to accept a lunch meeting in which the tenderer wishes to discuss details of a bid, or to accept anything else during any stage of the procurement process.

If a London Councils officer is acting as a referee for a supplier bidding for a contract, then that officer may not take part in any part of the evaluation process which involves the assessment of the reference.

From the outset officers should declare if there is a conflict of interest.

London Councils has a detailed policy to combat fraud, bribery and corruption which is available at the link below:

[K:\Corporate Finance\Financial Regulations\APPENDIX 11 AntiFraudBriberyandCorruptionPolicyMarch2014FI (3).pdf](file:///%5C%5Calgdata.alg.gov.uk%5CCorporateFinance%24%5CContracts%20%26%20Procurement%5C1.%20Toolkit%20working%20copies%20for%20updates%20August%202018%5CFull%20update%20incl%20GDPR%5CFinancial%20Regulations%5CAPPENDIX%2011%20AntiFraudBriberyandCorruptionPolicyMarch2014FI%20%283%29.pdf)

All gifts and hospitality should be entered on the hospitality register which can be found at the link below.

[K:\Corporate Finance\Financial Regulations\APPENDIX 9 GiftsandHospitality[1] 2015.doc](file:///K%3A%5CCorporate%20Finance%5CFinancial%20Regulations%5CAPPENDIX%209%20GiftsandHospitality%5B1%5D%202015.doc)

* 1. **Procurement Must Provide Value for Money**

The overriding principle of public procurement is value for money, which the Cabinet Office defines as:

“The best mix of quality and effectiveness for the least outlay [expenditure] over the period of use of the goods or services bought.”

In times of limited public sector resources, the price paid for goods and services is clearly important. However, it should not be the sole criteria on which procurement decisions are made. Quality is also an important factor and when thinking about this aspect you should consider the extent to which proposals:

* Are fit for purpose;
* Allow you to manage risk;
* Provide innovation;
* Are sustainable (economically, environmentally, and socially).

All procurement activity undertaken by London Councils should allow decision makers to select the ‘most economically advantageous quote or tender’ [MEAT] based on clearly and pre-defined, cost and quality criteria.

* 1. **Procurement Must Promote Competition**

In order to obtain value for money for taxpayers, procurement must promote competition amongst market participants. By fostering genuine competition, public authorities have the best opportunity to compare suppliers against cost and quality criteria.

However, proper competition does not happen without public authorities creating the right conditions. There are some general principles that can help you create these.[[4]](#footnote-4)

* **Equality of treatment and non-discrimination** – procurement practice must treat participants equally and fairly and not artificially discriminate against certain suppliers.
* **Transparency** – procurement practice must be open and transparent and the same standards used and communicated to all participants.
* **Proportionality** – only those processes and factors relevant to the procurement at hand should be used e.g. the selection process should not be rigged to favour larger companies, or only companies you’ve worked with in the past.
	1. **Procurement Must Be Accessible to Small and Medium Sized Enterprises (SMEs)**

A focus for government in recent years has been how to open up procurement to a wide range of suppliers including SMEs. The purpose of this approach has been to facilitate greater competition and improve value for money and also to create more economic opportunities for SMEs to deliver business to the public sector.

Contracting with SMEs can have several advantages for public sector purchasers such as London Councils. These include:

* SMEs often have lower administrative overheads and management costs than larger firms. Depending on the nature of the services/goods being procured this can result in lower prices
* SMEs have shorter management chains and approval routes, so they can respond more quickly and more flexibly to changing environments.
* Better quality of service. A valuable customer is important to a SME and this can result in better levels of service.
* A SME may be more willing and able to tailor a product or service to meet our specific requirements than a large firm that sells an established offering.
* SMEs can often bring innovation through the early exploitation of new technology.
1. **The role of contracts in procurement**

The supplier relationships that result from procurement activity are always underpinned by a contract, either one of the “template contracts – see Annexe 6 – or a “bespoke” contract drafted in consultation with the City of London Legal Team. All requests for legal advice must initially go through the Director of Corporate Governance – whether tacit, or explicit (if you are reading this guide, there is an expectation that you will put in place an explicit contract).

A contract is formed where the following conditions are present:

**Figure 2**: **The Elements of a Contract**

Although the contract is an output of the procurement process, it is the document that will define the relationship between you and the contractor. Therefore, it is important that you have a clear idea about the contract you wish to use and are aware of some basic elements of contract law before you invite quotes or tenders. The following sub-sections consider each of the elements of a contract in turn.

* 1. **Data Protection Act 2018 and the General Data Protection Regulation.**

Notwithstanding the importance of the terms and conditions of the contract generally, one of the key considerations on supplier relationships is if this involves personal data, it will require the obligations of data protection legislation; the General Data Protection Regulation and the Data Protection Act 2018 to be fully complied with.

Procuring managers will need to make a full assessment of GDPR obligations and that the roles of Data Controller and Data Processor are clearly understood and defined.

The assessment should include:

1. A summary of the key aspects of the procurement, highlighting what data is involved and what London Councils role is.
2. An assessment of the GDPR obligations as defined between the Data Controller and the Data Processor. Please refer to **Annexe 18** which identifies the mandatory obligations for data processor contracts.
3. To consider the proposed Contract Terms and Conditions, in consultation with the City of London Legal Team (noting the protocol above) with the provider and clearly define the obligations between London Councils and the provider such that it satisfies GDPR. (see below for more details)
4. If your project involves personal data you may need to complete a [Data Protection Impact Assessment (DPIA)](https://iris.londoncouncils.gov.uk/how/information-governance/data-protection/data-protection-impact-assessments)
5. Whether there is a requirement to assess the supplier/contractors’ security arrangements surrounding the use of personal data. If the contract involves personal data there is always this requirement. Please refer to **Annexe 18** for guidance in line with the published Procurement Policy Note 02/18.

If you have any questions about meeting data protection requirements (re General data Protection Regulation) please contact the Corporate Governance Manager in the first instance.

As discussed at point 3 above, where a contract includes personal data, relevant terms and conditions need to be included within the contract. Template contracts which include the relevant clauses can be found at Annexe 6. Where applicable a schedule of *Processing, Personal Data and Data Subjects* must be completed and included within the contract. This helps to identify the data controller and processor along with the nature of the personal data being processed. The template schedule along with associated guidance can be found at Annexe 6.2.

In some instances it may be appropriate that the contract be let on a Joint Controller basis. In these cases the commissioning officers and contractors are required to complete a Joint Control Protocol schedule, a template of which can be found in Annexe 6.2a.

* 1. **Intention to Create Legal Relations**

As soon as you have communicated your intention to procure goods or services to the market, you have expressed an intention to create legal relations. This would normally be done by way of a project brief for small projects or an invitation to tender for larger projects.

It is very important to be as clear as possible about your requirements and the way in which you will run your procurement process, as any deviation from these, and any departure from the procurement principles described above could be used as the basis of a legal challenge and call into question the ‘effectiveness’ of the contract. There can be many reasons for a legal challenge to a contract award, some are listed below:

* A party (or parties) was given preferential access or information that gave them an unfair advantage.
* The assessment method used was not that which was advertised.
* The relevant national or European regulations were not followed.
* The price of the winning tender was abnormally low.
* The contract award was made as the result of corrupt practices.

Legal challenges are costly both reputationally and financially. Most public procurement is not subject to legal challenge. However, the higher profile the contract, the greater its value and the extent to which market participants are litigious do play a role. Following the guidance in this toolkit should help you manage your risk in this regard.

* 1. **Capacity**

Capacity in this context refers to the ability of a contracting party to enter into binding relations. If you are going out to the market, you should always check that you have the appropriate approvals in place (see 7 **How Do We Make Sure We Procure within the Regulations**) because in the case of dispute, it should be assumed that a court will always consider that a public authority such as London Councils has the capacity to enter a contract regardless of whether the correct internal procedures were followed.

On the flip side, you should ensure that there is a mechanism to check that the party/parties that you will engage have the capacity to enter into a contract with London Councils. Checks can include searching on the Companies House website to see that a company is registered. The level of checks will vary depending on the scale of the procurement exercise. This is covered in more detail below.

* 1. **Offer**

The offer in the context of public procurement is the tender that a bidding party submits. It will be based on the requirements you have set. Therefore, it is vitally important for both the bidder and London Councils to be clear about what is on offer and how this meets what is required.

To help assess the relative merits of an offer, or offers, thought should be given in advance to the assessment framework to be used. The assessment framework should be related and relevant to the objectives of the procurement and associated requirements. It should not take into account extraneous or non-relevant factors. For example (albeit, an absurd one), an assessment framework for a cleaning contract should not include scores for how well employees can use Microsoft Office software, as these are qualities which are in no way pertinent to the procurement at hand. The offer should always include the bidder’s price (see 9.5 consideration below). Generally, the more information that can be provided to ensure you understand the constituent elements of the bidder’s price, the better. Include a pricing template, this allows comparison of bids on a like for like basis.

Bidders’ offers should be assessed and ranked, with the most economically advantageous (MEAT) being selected. The most economically advantageous tender is not always the cheapest, but it is the one that provides the best balance between cost and quality criteria against the assessment framework. More detail information on this can be found in Parts 2-4 below.

* 1. **Acceptance**

The fourth element of the contract is acceptance, which comes when you notify the bidders of which one has been successful. For small procurements beneath the EU threshold, this process is generally straightforward. However, for above threshold procurements this can be more complicated. Please see advice from the Management Accountant.

For all procurements it is essential to provide fair feedback to bidders that help them understand the choice that has been made, including information about the relative merits of the winning tender. For above threshold procurements, this is an absolute requirement. The template letters at Annex 7 provide examples of the level of detail which would suffice.

* 1. **Consideration**

Consideration in the context of contract law is concerned with the deal that is struck between the parties. In the context of procurement it is the price paid in exchange for the services, goods, or works delivered and is linked back to the offer and acceptance. The implications for procurement are that you should only pay for what has been offered, but by the same measure, you should only expect to receive what has been agreed to be paid for.

Consideration in the context of contract law according to CIPS is the ‘unconditional agreement to an offer made by another party, which may lead to a legally enforceable agreement, provided other prerequisites for contract formation are met. Also, the acceptance of completion or performance of work, or delivery of a good.

Therefore, not only is it vital that both parties agree on precisely what is to be delivered, within the context of the contract but that procurement’s should not be used to pay for more than is allowed within the context of the contract. **For example, if a supplier has been engaged to conduct a piece of research that costs £50,000 and does so, the original procurement cannot be used to procure an additional piece of research for a further £50,000 unless this was explicitly provided for within the original procurement documentation.**

* 1. **Modern Slavery Act 2015**

The [Modern Slavery Act 2015](http://www.legislation.gov.uk/ukpga/2015/30/contents/enacted) (MSA) has been introduced and consolidates and clarifies modern slavery offences; toughens penalties and prosecution; and introduces greater support and protection for victims.

The Act itself had a direct impact on public procurement insofar as it amended the Public Contracts Regulations 2015 to make certain modern slavery offences grounds for exclusion in public procurements.

Procuring Managers must therefore consider whether it is required or appropriate to include Modern Slavery clauses within the contract.

**Part 2. Procurement up to £10,000 (ref FRs para 8.4.1 (a))**

1. For procurements where the lifetime value is up to £10,000 no formal tendering process is required, but at least one written quotation must be obtained with the duty to secure reasonable value for money. However, best practice is that the project manager should ask for three written quotations in order to do this. This particularly applies when goods or services are being procured for the first time. The onus is on the project manager to keep all relevant email and written correspondence in a separate file which, if requested, can be viewed by the auditors.
2. Best practice suggests that the general processes used for larger pieces of work are employed here, planning, clear document preparation, notably the brief/specification, record keeping etc.
3. Auditors can require London Councils to submit files and papers for up to a maximum of seven years after the procurement action has occurred, therefore when there is a change in personnel it is important that responsibility for the management of contracts (current or completed) is transferred together with all paper work.
4. As regards the acceptance of the quotation London Councils Financial Regulations (paragraph 8.11.1) states:

“Where the value is under £10,000, one of the designated authorised signatories (as outlined in Part C of Appendix 5 to the FRs), shall be authorised to accept the quotation by signing off the purchase order to place the order with the supplier.”

1. It is not compulsory to issue a contract for goods and services within this threshold, though it is best practice to do so. This may particularly be the case, if there are any concerns about Intellectual Property Rights not being retained by London Councils. If a formal contract is not issued, it will suffice to attach to the Purchase Order and the Brief (issued by London Councils) and the successful contractor’s bid/quote.
2. However, if the procurement involves personal data, this will require the full obligations of GDPR to be complied with and a contract must be issued.
3. Under no circumstances should an officer of London Councils agree to a contractor’s terms and conditions without first discussing with the Management Accountant. In many cases a Contractor’s terms will favour them and not London Councils.

**Part 3. Procurements between £10,000 and £75,000 where the decision has been made NOT to advertise (ref FRs 8.4.1 (b))**

1. If the lifetime value of the planned procurement is between £10,000 and £75,000 **providing a decision has been made NOT to advertise the opportunit**y then there is not a requirement to undertake a formal tendering exercise. **Not Advertising** in this context means that nothing must be posted on the London Councils website.

**The decision NOT to advertise.**

1. The PCR 2015 are clear that if a contracting authority does not choose to advertise an opportunity then there is no obligation to advertise on Contracts Finder. LC FRs now reflect this option following clarification around this point.
2. Contracting Managers, in making their decision to advertise or not will need to consider this carefully perhaps asking:
	1. Is the service required widely commercially available, such that no additional benefit in value for money would be achieved by going out to formal tender?
	2. If so, what evidence do you have to support this?
3. There may also be instances whereby an urgent response is required, but it should not be used because of poor planning/timetabling. Procuring Managers need to remember that everything we do can be subject to challenge e.g. through FOI, internal/external auditors and **we have to publish all payments over £500 on our website.**
4. Subject to the above, the requirement then is to either request at **least three written quotations** **or undertake a mini-tender exercise to establish value for money**. However, where possible best practice recommends seeking five quotes, certainly where the value of the opportunity is over £25,000.

**Preparation and Planning**

1. In preparing / planning for this type of procurement managers should consider the following key stages that they will need to carry out in their timetabling especially as other colleagues across the organisation or externally may be involved:
* Invitation to Quote (ITQ) (Annexe 2)
* Evaluation of quotes received (Annexe 4)
* Procurement Approval Form (Annexe 5)
* Issue of Contract (Annexe 6)
* Issue of Purchase Order
1. Managers will better appreciate what is involved by reviewing the indicated templates for each of the stages first and then liaising with the procurement contact within your division with any initial queries, failing which please contact the Management Accountant.
2. The templates and associated documentation is provided so that the use of public money by London Councils can be demonstrated to have achieved value for money and that it was also in accordance with PCR 2015 and/or our Financial Regulations.

**The Invitation to Quote (ITQ) Process**

1. The purpose of the ITQ is to invite bidders to provide a written quote for the services/works/support as described in the accompanying documentation. The response to these requirements will form the basis of any contract that London Councils may place. For this purpose, the following documents are enclosed:
* The specification / requirements and instructions to bidders.
* London Councils Terms and Conditions (Contract).
* Freedom of Information Schedule.
* Equal Opportunities questionnaire.
1. Bidders’ written quotes, the completed freedom of information schedule, the equal opportunities statement and agreement to accept London Councils Terms and Conditions must be returned to London Councils by the deadline as per the Instructions To Bidders.
2. This template should only be used in all procurement exercises where the decision has been made NOT to advertise the opportunity and the estimated value of the project is between £10,000 and £75,000. Using the guidance and format of this template will ensure that the best possible quotes are received from contractors.
3. This template cannot be used for projects where the estimated value is above £75,000 as in accordance with the FRs you must **advertise any opportunity above this limit.** These require a formal UK tendering process in accordance with the Public Contract Regulations 2015, please see Part 4 starting on page 16. Further to which, competitive tendering will be required where the opportunity is advertised and the estimated lifetime value is expected to exceed £25,000.
4. The template (from page 2 onwards) should be modified to suit the individual projects. In particular, text in purple is either illustrative or instructive and should be revised or deleted before distributing the final document – please change back to black text before sending out and run it past a procurement contact before sending out for any final sense checks.
5. Please remember if your procurement involves personal data you may need to complete a [Data Protection Impact Assessment (DPIA)](https://iris.londoncouncils.gov.uk/how/information-governance/data-protection/data-protection-impact-assessments). Procuring managers will need to make a full assessment of GDPR obligations and that these are clearly defined between the Data Controller and the Data Processor.
6. The “invitation to quote template” (Annexe 2) is the primary document which contains a letter informing prospective participants what documents will be enclosed. These are shown below together with the relevant page / annexe in the toolkit thus:
* The specification / requirements and instructions to bidders (see Annexe 2).
* London Councils Terms and Conditions (Contract) (see Annexe 6).
* To note that:
	1. London Councils terms and conditions i.e. Contracts are available as separate template contracts for different types of contract. These have been approved by our legal advisers at the City of London and should be used as appropriate. These now include / will include some new standard clauses for GDPR, however depending on the type of procurement they will need to be discussed and revised further where personal data is involved.
	2. Under no circumstances should an officer of London Councils agree to a contractor’s terms and conditions without first discussing with the Management Accountant. In many cases a contractor’s terms will favour them and not London Councils. Officers should contact the Management Accountant for assistance with reviewing and editing these and other contracts.
1. Bidders must complete, sign and return both the FOI and EOQ and acceptance of London Councils Terms and Conditions with their bid. Where these are not received, officers should contact the bidders to provide the missing documentation.
* Freedom of Information Schedule (Annexe 9)
* Equal Opportunities questionnaire (Annexe 10)
* London Councils Terms and Conditions (Annexe 6)

**Evaluation**

1. On receipt of the quotations procuring managers will need to undertake an evaluation of responses in accordance with the ITQ instructions. Managers should note that this is done using the most economically advantageous quote (MEAT) and reserve the right to accept or reject all or any part of any quote. London Councils does not bind itself to accept the lowest charged quote.
2. Please note that where the ITQ is related to the provision of a service contract for more than 1 year then a Financial Evaluation will need to be carried out initially using a third party assessment – London Councils uses the on-line Equifax Commercial assessment portal. London Councils may require further information from the prospective contractors to ensure financial viability. Please liaise with the Management Accountant to carry out the assessment.

**Economic and financial standing**

1. A measure by which the contracting authority can ascertain whether the prospective bidder is capable of handling the commercial and financial risks of the proposed contract.
2. The ITQ clearly states the methodology of how the bids received will be evaluated i.e. MEAT and the balance of scoring between price and quality. An evaluation spreadsheet is provided at Annexe 4.

**Approval Process**

1. Once the procurement and selection process has been completed, then the necessary governance process must be followed.
2. As regards the acceptance of the quotation London Councils Financial Regulations (paragraph 8.11.2) states:

“Where the value is between £10,001 and £75,000, one of the designated authorised signatories (as outlined in the FRs Part B of Annexe 5) shall be authorised to evaluate and accept the quotation or tender by signing off the procurement approval form (see Annexe 5) for submission to the Director of Corporate Resources for approval”.

**Contract Award**

1. Subject to the approval form being signed then the winning bidder can be notified and the contract issued to be signed by both parties followed by the issuing of a purchase order.
2. The contract can only be signed by those officers as listed in Part A Appendix 5 of the FRs. Once the contract has been signed by both parties the procuring manager/and/or the contract manager should keep the hard copy locally for the purposes of contract management. The divisional Contract Register must be updated with the relevant information.
	1. A pdf copy must be emailed to the Management Accountant in Corporate Resources.
3. As the procurement process is completed, the project manager should add to their file all the reports, subsequent approvals or rejections, and the contract. This file, in line with the procurement process in section 2, should be retained by the organisation for seven years.

**Publication of Contract Award**

1. The Procurement Policy Note 07/16 reminds public bodies of the legal requirement to publish on Contracts Finder. Details of all contracts awarded above the relevant threshold should be published. This includes those awarded following call-offs from framework agreements and contracts that may not have been openly advertised.

**Part 4. Below EU Threshold Procurement – between £25,000 and EU threshold (currently £181,302) – where a decision has been made to advertise the opportunity.**

The use of the formal tender process is mandatory once a decision has been made to advertise the procurement opportunity, by advertising on both Contracts Finder and the London Councils website. Part 4 deals with this as stated in the FRs thus:

8.7.2 Below Threshold (£25,000 to less than the EU limit £181,302[[5]](#footnote-5))

8.7.2.1 It is a requirement of the PCR 2015 that for any contracts estimated to be between £25,000 and the EU limit in force at the time (currently £181,302), if the contracting authority advertises it must do so via Contracts Finder.

**Assessing Value of Procurement**

In order to ensure compliance Managers are reminded that the threshold value refers to the “total lifetime value” of the procurement, which is a key consideration. Whilst in most cases the proposed procurement is a “one off” piece of work, there are others where another phase or another year of services, maintenance etc., is required, which will impact the lifetime value.

The methods for calculating the estimated value of a procurement opportunity are covered by the General rules set out in the PCR 2015 regulations paras 6(1) to (5), (7) to (10) and (16) to (19) of the PCR 2015. Managers should note specifically the following key clauses to ensure compliance:

6.-(1) The calculation of the estimated value of a procurement shall be based on the total amount payable, net of VAT, as estimated by the contracting authority, i**ncluding any form of option and any renewals of the contracts** as explicitly set out in the procurement documents.

6.-(5) The choice of the method used to calculate the estimated value of procurement **shall not be made with the intention of excluding** **it** from the scope of this Part.

6.-(6) procurement **shall not be subdivided with the effect of preventing it from falling within the scope of this Part**, unless justified by objective reasons.

In essence the procurement processes and documentation is not entirely dissimilar to those in part 3. However the significant difference being that the opportunity is advertised and the documents “published”. All of the documents have to be finalised prior to publication.

**Contracts Finder Contacts**

Key staff have been registered as “Contracts Finder Publishers” to manage the below threshold procurement activity within their divisions/sections. Initially this will be

Chief Executives Management Accountant

Services Chief Contracts Officer

PAPA Research Manager

All requests to become a “Contracts Finder Publisher” are referred automatically to Management Accountant as “User Manager” to enable access and publishing rights to Contracts Finder.

**Overview of the Contracts Finder Process**

The Contracts Finder process is effectively a “one stage process” i.e. an open tendering process. There is no “pre-qualification stage”, however as part of the tendering process contracting authorities may ask candidates to answer suitability assessment questions only if each such question is:

* Relevant to the subject matter of the procurement; and
* Proportionate.

A suitability assessment question (SAQ) means a question which relates to information or evidence which the contracting authority requires for the purpose of assessing whether candidates met requirements or minimum standards of:

* Suitability.
* Capability.
* Legal status.
* Financial standing.

The SAQ is included within the Tender Submission Pack (Annexe 3).

**Advertising on Contracts Finder**

The information to be published on Contracts Finder shall include at least the following:

(a) the time by which any interested economic operator must respond if it wishes to be

considered;

(b) how and to whom such an economic operator is to respond; and

(c) any other requirements for participating in the procurement.

For the purposes of point (a) above, the time shall be such as to allow the economic operators a sufficient but not disproportionate period of time within which to respond.

Whilst there is not a legal minimum period of time for prospective bidders to submit a Tender, the nature and complexities of the procurement must be taken into account. Allowing 10 working days for receipt of tenders may be sufficient in some **very limited** cases. However, best practice suggests that allowing bidders a period of three to four weeks (15 to 20 working days) for completion of documentation will produce a better outcome. The length of the deadline may well need to be longer if the project is complex or high risk.

**Queries from Bidders**

Project managers may respond to enquiries from potential bidders on matters of clarification, but may not provide any additional information to any one bidder. It is considered best practice to request queries in writing, then anonymise and post all questions and answers on Contracts Finder and on the London Councils website if the latter is used – this provides clarity to all suppliers and may reduce the quantity of questions. A query log should be created by the procuring officer or procurement contact and updated/uploaded accordingly. It is helpful to ensure there is deadline for receipt of queries included in the procurement timetable to avoid last minute queries having to be answered.

**Receipt of Tenders**

As per the Instructions To Tenderers, all tenders must in the first instance be sent to the Director of Corporate Resources and not the procuring officer, electronically via email to the “Tenders Inbox” i.e. tenders@londoncouncils.gov.uk. The FRs now states that the acceptance of electronic tenders (para 8.9.2) is the method of tender receipt in compliance with PCR 2015 from 18 October 2018. Currently the Financial Regulation 8.9.1 states that hard copy tender are acceptable. This will be removed and updated during the next review to be approved by Member.

The Finance Officer will log all tenders received in the Tenders Inbox and forward the completed tenders to the procuring manager and panel after the deadline.

**Evaluation**

The tenders are then passed to the project manager who, with the evaluation panel, should assess the tenders and identify a supplier to be recommended for the contract. This must be carried out in accordance with the methodology contained within the ITT which must be on the basis of Most Economically Advantageous Tender (MEAT). A MEAT evaluation template based on a 60%/40% price quality ratio is attached (Annexe 4). This ratio is a guide and should be carefully considered based on the type of works/project being commissioned. Budget implications should be discussed with the Management Accountant.

**Approval Process**

Once the evaluation is finalised you must first complete the appropriate Approval Form:

* Annexe 5.2 – Approval Form for tenders between £25,000 and £75,000 and;
* Annexe 5.3 – Approval Form for Tenders from £75,000 to £181,302

In accordance with the Financial Regulations (Annexe 5 Section B) this is to be completed and signed by the authorised signatories) before being sent to the Director of Corporate Resources for authorisation. To note: this must be done prior to announcing the outcome and the award of the contract. Procuring officers should check before the process commences that the signatories will be available during this part of the process.

**Outcome of Procurement Letters**

Once the approval form has been signed the award of the contract to the successful bidder may proceed and the project manager must issue notifications to all bidders, both successful and unsuccessful. These must contain certain information (See Annexe 7 for template letters).

**Contract Award**

The project manager should complete the outstanding details of the draft contract and issue to the winning bidder, potentially after the initial inception meeting. Once two copies are signed they must be submitted for signature (through the Management Accountant) by both the Director of Corporate Resources and the Chief Executive (or his nominated officer). After the contract is signed a PDF copy should be sent to the Management Accountant for retention on the contract file. A purchase order should then be raised in line with standard procedures.

If a London Councils officer is acting as a referee for a supplier bidding for a contract or if a London Councils officer has worked with a supplier bidding, then that officer may not take part in any part of the evaluation process which involves the assessment of the reference.

The project manager should supply the Management Accountant with copies of the Tender Pack documents following documents for the procurement file that is held in Corporate Finance: initial advert, Suitability Assessment Questionnaire specification, ITT, cost schedule, Instructions To Tenders, any tender circulars issued, fully completed evaluation matrix of all tenders, approval report, any additional approval reports and a signed copy of the contract. Please note that it is not acceptable to use any form of two stage pre-qualification exercises for under threshold procurements.

The overview of the process clearly demonstrates once again that allowing sufficient time for **preparation and planning** is a key element in this whole process. Reviewing the following documentation will inform this process.

A **“Below EU Threshold Tender Pack”** has been prepared for managers to use which is hoped will greatly assist and ensure compliance. Managers will need to create “bespoke” versions of certain elements, notably the specification and timetable, but any queries should be taken up with your divisional representative in the first instance or with the Management Accountant. The “Tender Pack” includes the following

* **Instructions to Tenderers** (see Annexe 3) which outlines the opportunity thus:
	+ Introduction
	+ Specification including timetable
	+ Evaluation of Tenders methodology
	+ Rules of Tender
	+ Preparation and Submission Instructions
* Appendix **A – Contract Terms and Conditions** **(see Annexe 6)**
* Appendix **B – Tender Submission Pack included with Annexe 3**
	+ Contact Details
	+ Form Of Tender
	+ Suitability Assessment Questionnaire
	+ Method Statements
	+ Pricing Schedule
	+ Qualification of Offer
	+ FOI Questionnaire
	+ Equal Opportunities Questionnaire

The project manager should complete and edit the parts of the Tender Pack Instructions To Tenders templates that are highlighted in purple. It is important that the ITT which the tenderers receive includes the above listed documents as these will form the basis of the subsequent contract. Prior to the opportunity being advertised on Contracts Finder the Manager must submit the final “Tender Pack” to their divisional representative and the Management Accountant for approval.

**Part 5 Above EU Threshold Procurement[[6]](#footnote-6) – i.e. £181,302**

**Introduction**

**If a manager is required to procure goods or services that are indicated to be above the EU threshold, this should be discussed at the earliest opportunity with the Management Accountant in the first instance to fully explore the options and the complexities of an EU procurement exercise**. Subsequent more detailed support/ discussions can then be held with the Chief Contracts Officer. As there are many choices of the type of OJEU procedure to follow it is not the intention to provide templates as these will need to be created on a case by case basis. **On no account may an OJEU procurement be conducted without advice and support.** However, the general background/guidance to OJEU are provided below.

**Background**

As above EU threshold contracts are deemed to be high value and high risk, an in-depth consultation with affected stakeholders, the Management Accountant, managers and authorising officers is essential in order to properly plan and timetable the procurement. The table below details these timelines including the additional time reduction benefits that can be applied when using electronic means in the procurement process.

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| ***Procedure*** | ***Selection stage¹*** | ***Tender stage*** | ***If electronic ITT accepted²*** | ***Tender following PIN³*** | ***Tender by arrangement***⁴ | ***Urgency⁵*** |
| *Open*  | *N/A*  | *35 days*  | *30 days*  | *15 days*  | *N/A*  | *15 days*  |
| *Restricted*  | *30 days*  | *30 days*  | *25 days*  | *10 days*  | *Minimum 10 days*  | *15 days / 10 days*  |
| *Competitive with Negotiation*  | *30 days*  | *30 days*  | *25 days*  | *10 days*  | *Minimum 10 days*  | *15 days / 10 days*  |
| *Competitive Dialogue*  | *30 days*  | *N/A*  | *N/A*  | *N/A*  | *N/A*  | *N/A*  |
| *Innovation Partnership*  | *30 days*  | *N/A*  | *N/A*  | *N/A*  | *N/A*  | *N/A*  |

Notes:

1. Where a Prior Information Notice has been used as a Call for Competition in the Restricted Procedure and the Competitive Procedure with Negotiation, the 30 day timescale commences from when the invitation to confirm interest is sent.

2. Where the Contracting Authority accepts that tenders may be submitted by electronic means, the time limit for receipt of tenders may be reduced by 5 days.

3. Where a Prior Information Notice was sent for publication between 35 days and 12 months before the contract notice was sent.

4. In the Restricted Procedure and Competitive Procedure with Negotiation, the Contracting Authority may set the time limit for receipt of tenders by mutual agreement with all candidates. Evidence of any such agreement must be retained for audit purposes. In the absence of such an agreement, the time limit must be at least 10 days

5. In matters of urgency, duly substantiated by the Contracting Authority (and evidence retained for audit), the time limit for tenders shall be no less than 15 days in the Open Procedure. In the Restricted Procedure and Competitive Procedure with Negotiation, the timescale for the selection stage shall be no less than 15 days and for the tender stage, shall be no less than 10 days.

**All contracts in excess of £181,302 are subject to strict EU procurement rules**. To note that virtually all of the EU threshold contracts at London Councils are within the Transport and Mobility division and managed by the Chief Contracts Officer, the lifetime value of these contracts exceeds the EU threshold and runs into the £millions. The other OJEU level contracts are within the Corporate Resources section and managed by the ICT & Facilities Manager. **It is important to consider the lifetimes value of any procurement spend and assess the aggregation of spend as this will determine the relevant threshold level.**

**To further note, that in accordance with our FRs (para 8.5) if a planned procurement exercise is in excess of £250,000**, the project manager must submit a report prior to the commencement of the procurement action to either the Leaders or Executive Committee for authority to pursue the planned course of action. This is the authority to procure only. When written confirmation of that authority is received (e.g. minutes of the meeting) then procurement action may commence. The provision of this authority is to separate any subsequent Committee’s authority to select a recommended supplier following selection processes (Acceptance of Tenders per FRs para 8.11.5).

The above EU Threshold applies to procurements with a value net of VAT estimated to be equal to or greater than the following current thresholds:

(a) For public works contracts, the sum specified in Article 4(a) of the Public Contracts Directive (€5,548,000) = £4,551,413.

(b) For public supply contracts and public service contracts awarded by central government authorities, and design contests organised by such authorities, the sum specified in Article 4(b) of the Public Contracts Directive, subject to paragraph (2) (€144,000) = £118,113.

(c) For public supply contracts and public service contracts awarded by sub-central contracting authorities, and design contests organised by such authorities, the sum specified in Article 4(c) of the Public Contracts Directive (€221,000) = £181,302.

(d) For public service contracts for social and other specific services listed in Schedule 3, the sum specified in Article 4(d) of the Public Contracts Directive (€750,000) = £615,278.

For London Councils the vast majority of **above threshold procurement activity** will be covered by (c) above, i.e. €225,000 or £181,302 (reference Financial Thresholds in the FRs para 8.4.1(d)).

**PROCUREMENT PLANNING and TIMETABLING**

As mentioned previously an OJEU level procurement cannot be entered into lightly – it is essential that a procurement timetable is produced. It is the responsibility of the Procuring Manager to set the timetable and it should set out all the key stages in the procurement process, as well as the length of time expected for each stage. The timetable should be determined at the outset of the procurement process and should take into consideration the availability of all the key members of the procurement team, both internal and external.

All too often insufficient and unrealistic timescales are proposed which result in a poor outcome. The amount of time required to carry out a procurement exercise will in part be determined by the value of the procurement and the choice of procedure followed.

The overriding requirement when setting timescales is to allow sufficient time for suppliers to prepare appropriate responses, taking account of the subject of the proposed contract, the contract award procedure to be used and the need, for example, for site visits.

**Choice of Procedure (references given are to the PCR 2015)**

There are choices of which procedure to use indicated in the Process Chart above which will be determined by the nature of the activity/ service being procured, (Chapter 2 – page 26). To note: clause 26 (1) “when awarding public contracts, contracting authorities shall apply the procedures that conform to this part.” Managers to note that the various procedures are prescriptive and detail the process i.e. how it must be carried out, the timescales etc. which must be complied with.

The main choices of procedure are shown summarised below with a reference to the relevant clause and page number in the PCR 2015.

1. **Open Procedure (27: page 27) To note clause 27. (1)** In open procedures, any interested economic operator may submit a tender in response to a contract notice. This is **a one stage bidding process** where all potential service providers may submit a tender in response to an advertisement.
2. **Restricted Procedure (28: pages 27-28) To note clause 28. (1)** In restricted procedures, any economic operator may submit a request to participate in response to a call for competition by providing the information for qualitative selection that is requested by the contracting authority. This **is a two stage process** in which potential contractors are asked, in response to an advertisement, to express an interest in the tender, and to demonstrate this interest by the completion of a Selection Questionnaire (SQ). The SQ’s are evaluated and a shortlist is drawn up. Those organisations on the shortlist are then sent an Invitation To Tender (ITT). This procedure is only allowed for above threshold procurement.
3. **Competitive procedure with negotiation (29: pages 28-30) To note clause 29. (1)** In competitive procedures with negotiation, any economic operator may submit a request to participate in response to a call for competition by providing the information for qualitative selection that is requested by the contracting authority. Only those economic operators invited by the contracting authority following its assessment of the information provided may submit an initial tender which shall be the basis of subsequent negotiations.
4. **Competitive Dialogue (30: pages 30-31) To note clause 30. (1)** In competitive dialogues, any economic operator may submit a request to participate in response to a call for competition by providing the information for qualitative selection that is requested by the contracting authority.

The Competitive Dialogue Procedure is an exceptional procedure and should only be used where the contracting authority wishes to award a particularly complex contract. A particularly complex contract means a contract where the contracting authority is not objectively able to:-

a. define ‘the technical means’ in terms of a British, European or international standards or technical specifications; and/or in relation to the performance or functional requirements; or

b. specifies the legal and/or financial make-up of a project.

**Conclusion**

**If a manager is required to procure goods or services that are indicated to be above the EU threshold, this should be discussed at the earliest opportunity with the Management Accountant in the first instance to fully explore the options and the complexities of an EU procurement exercise.Part 6: FRAMEWORK or DPS DYNAMIC PURCHASING AGREEMENTS**

**Framework agreements (33: pages 34-35) To note clause 33. (1)** Contracting authorities may conclude framework agreements, provided they apply the procedures provided for in this part. This is an alternative to undertaking a full OJEU procurement process as this has already been done as part of setting up the framework contract. So, it may for some procurement exercises, be possible to use a pan government framework agreement. In such cases there would still be the need to produce a specification which would be used as part of a mini competition/invitation to quote exercise with the organisations listed on the framework agreement.

The following Q&A should assist procuring Managers if they are considering the use of a Framework Contract.

**What is a framework agreement?**

A framework agreement is an ‘umbrella agreement’ that sets out the terms (particularly relating to price, quality and quantity) under which individual contracts (call-offs) can be made throughout the period of the agreement (normally a maximum of 4 years).

**Do framework agreements need to be advertised in OJEU?**

If the procurement is being paid for out of the public purse and the value of all the potential call-offs is estimated to exceed the EU thresholds (and it is not excluded by part B of the regulations) then yes, the framework agreement should be advertised in the Official Journal of the European Union (OJEU). However, the individual call-offs do not then need to be re-advertised.

**What is commonly procured using framework agreements?**

Framework agreements are typically used where the authority knows they are likely to have a need for particular products or services, but are unsure of the extent or schedule. So framework agreements are commonly set up to cover things like office supplies, IT equipment, consultancy services, repair and maintenance services for example.

**Who can use a framework agreement?**

Many framework agreements can be utilised by more than one authority. If this is the case, the purchasing authorities need to be identified in the relevant OJEU notice. An example of frameworks available to a wide range of purchasing authorities are those formed BY CCS Crown Commercial Services, ESPO, WYPO and NHS Outcomes Frameworks, these are central purchasing bodies who create framework agreements for use across the whole of the UK public sector.

**How can I get onto a framework agreement?**

If the framework agreement has been advertised in OJEU, you can only be considered for inclusion on the framework agreement if you respond to the OJEU notice by the stated deadline. The procurement process for awarding the framework agreement will then follow all the usual EU procedures and rules and be awarded according to how well suppliers satisfy the selection criteria.

**How are call-offs awarded under a framework agreement?**

If the framework agreement is awarded to one provider, then the purchasing authority can simply call-off the requirement from the successful supplier as and when it is needed. Where the framework is awarded to several suppliers, there are two ways in which call-offs might be made:

1) Where the terms laid out in the framework agreement are detailed enough for the purchasing authority to be able to identify the best supplier for that particular requirement, then the authority can award the contract without re-opening competition.

2) If the terms laid out in the framework agreement are not specific enough for the purchasing authority to be able to identify which supplier could offer them best value for money for that particular requirement, a further mini-competition would be held between all the suppliers on the framework agreement who are capable of meeting the need.

**What are the advantages of framework agreements?**

The main advantage to a purchasing authority of using a framework agreement is that they do not have to go through the full OJEU process every time the requirements arise. Having to go through the tender procedure once rather than several times, will obviously reduce tendering costs. It also means there is less downtime between identifying the need and fulfilling it, which considering how lengthy the OJEU process can be, could be a considerable benefit. There are also further potential savings to the purchasing body because of economies of scale, which may prompt suppliers to offer more competitive prices.

The reduction to tendering costs will also apply to suppliers, as going through the tender procedure is costly and time-consuming for suppliers too. Obviously, the main advantage to suppliers of being on a framework agreement is the chance of being awarded valuable business opportunities.

**What are the disadvantages of framework agreements?**

A disadvantage of a framework agreement for a purchasing authority is that they are relatively unresponsive to change – there may be new suppliers and/or new solutions within the market that were not included when the framework agreement was initially set up. Furthermore, framework agreements tend to apply a ‘one size fits all’ approach, which might make it difficult for authorities to satisfy their own procurement objectives. However, most framework agreements do not place any obligation on the purchasers to actually buy anything. Therefore, if the requirement doesn’t fit into the framework agreement or they think they can achieve better value for money not using it, then they can go elsewhere.

**Project managers should contact the Management Accountant** for advice on how to access such agreements, or discuss further if they have one in mind to consider if they would be appropriate for the type of procurement intended. Section 6 gives some general background Q&As which procurement managers should read first.

**THE USE OF FRAMEWORKS AT LONDON COUNCILS**

Frameworks have been more commonly used in recent years by London Councils, as a means to respond to an urgent need/requirement. However, it should be noted that careful consideration is required before using a framework and due diligence is required to ensure that it meets our requirements both operationally and contractually.

A due diligence pro-forma is required to be completed which will be available online at (Annexe 8), which is reviewed by the Management Accountant and the CoL Contracts Team. **In accordance with our legal support Protocol the Director of Corporate Governance should be alerted to the possibility at the earliest opportunity in order that our colleagues at the CoL can then be alerted.**

**The Framework Due Diligence Process**

Please see below guidance notes **for Officers considering joining an External Framework**.

N.B. Framework Agreements represent a procurement option rather than an exclusive method of obtaining the goods, works and services required.

**STEP 1**: Consult with the Management Accountant. Consider whether joining a Framework represents a sound strategic decision for the goods, works or service required.

**STEP 2**: Identify if there are multiple Frameworks available for the goods, works or service required, investigations may be required into more than one Framework.

**STEP 3**: Establish key contacts at Lead Framework Authority or Organisation – Framework Manager, Legal Representative.

**STEP 4:** Request a full set of documents from the Lead Framework Authority or Organisation:

* OJEU Notice
* Access Agreement
* ITT Documents
* Underlying Contracts
* Terms and Conditions

**STEP 5:** Run through the following checklist below in relation to the Framework

| **Type** | **Action** | **Responsible** | **Documents Required** |
| --- | --- | --- | --- |
| Pass/Fail | Are the London Councils listed as a Contracting Authority able to join the Framework? | Procurement/Legal | OJEU Notice |
| Pass/Fail | What is the duration of the Framework? Xx Years When did it start? xx/xx/xxxx Confirm that the Framework is not due to expire, if it is due to expire will it be renewed? | Procurement | OJEU Notice |
| Pass/Fail | What is the form of the Underlying Contracts? Are the Terms and Conditions compatible with the London Council standard contractual requirements? | Legal | Underlying Contract and Terms & Conditions |
| Pass/Fail | To what extent are amendments to the Terms and Conditions permitted if necessary? Any such amendments must not vary too substantially from the original T&Cs and must be communicated to suppliers on the framework. | Legal | Terms and Conditions |
| Pass/Fail | Is London Councils required to sign an Access Agreement? **Yes/ No**, please see copy of attached If so, what are the terms and are the terms, in principle, acceptable? **Yes/No** | Legal | Access Agreement |
| Pass/Fail | Does the Framework scope cover the precise goods, works or services required? Yes | Working Group | Framework Documentation - Scope/Specifications |
| Pass/Fail | Are there any mandatory specifications? **Yes/No** If so, do they meet the London Councils requirements? **Yes/No** | Working Group | Framework Documentation – Scope |
| Pass/Fail | Review the capability of the Framework providers/suppliers. **To be Assessed** Do the providers/suppliers meet City of London specific requirements? | Working Group | Framework Documentation - Framework Providers |
| **CHECKPOINT** | **In light of the above, consider whether joining a Framework represents a sound strategic decision for the goods, works or service required and represents Best Value for the London Councils** |
| Mandatory | Is there a cost associated with the use of the Framework? Yes/**No** | Procurement | Framework Documentation |
| Mandatory | What level of internal approval is required to join the Framework and to call-off under the Framework? Which Committees? Committee dates? Internal Approval Form | Procurement/Working Group | Committee Diary |
| Mandatory | What method of call-off was provided for under the Framework? **Direct Award / Running a further competition** | Procurement/Working Group | Framework Documentation |
| Mandatory | Identify who the Framework account manager will be and key contacts within the Lead Authority or Organisation. Confirm the rules of engagement under the Framework including roles and responsibilities of both the Lead Authority or Organisation and the London Councils. Is the Framework actively managed and will the London Councils be supported or assisted by the Lead Authority or Organisation? If so, how? | Procurement | Contact Information |
| Mandatory | Identify other Authorities or Organisations that are currently using the Framework. | Procurement | Framework Manager to provide |
| Mandatory | What is the threshold value of the Framework? How much has already been spent through the Framework? | Procurement | Framework Manager to provide |
| Mandatory | Define the Technical Team's precise requirements. Check the Framework meets these requirements. | Procurement/Working Group | Workshop Notes/Framework Documentation |
| Mandatory | Does the Framework have a proven track record? | Procurement |   |
| Mandatory | Are there mechanisms to review providers'/suppliers' performance on the Framework? Does the Framework provide adequate remedies for poor performance? | Procurement/Working Group |   |
| Mandatory | Check the standstill period has ended and that no challenges have been made. | Legal | OJEU Notification |
| Mandatory | Ascertain that the Framework providers are not in dispute with the London Councils. | Legal | Contact Comptroller & City Solicitors Department |
| Mandatory | Ensure that the providers have been appointed to the Framework on the basis of the Most Economically Advantageous Tender" or lowest price, using the criteria listed in Regulation 30 of the Public Contracts Regulations 2015. | Legal | Framework Documentation |
| **CHECKPOINT** | **In light of the above, consider whether joining a Framework represents a sound strategic decision for the goods, works or service required and represents Best Value for the City** |
| Recommended | Site visits to other Contracting Authorities already using the Framework. Obtain references where appropriate. | Procurement/Working Group | Key Questions |

Pass/Fail: If not fulfilled satisfactorily London Councils will be unable to join the Framework.

Mandatory: **Must be checked**

Recommended: Should be checked

Working Group: Officers involved in defining the London Councils requirements in relation to the goods, works or services – this may be a user group or project officers and may involve representatives from various departments.

1. Under exceptional circumstances, where there are compelling grounds why only one provider can deliver a piece of work, it may be acceptable to invite a single provider to quote. However, this is generally not considered to be good practice and will require approval from Chief Executive or appropriate service related Director. [↑](#footnote-ref-1)
2. Whole life value means the total to be paid to the contractor over the full life of the contract e.g. a four year contract worth £25,000 per annum has a whole life value of £100,000. It also means an associated training costs, delivery, warranty running and disposal cost. [↑](#footnote-ref-2)
3. The majority of contracts let by London Councils come under the Public Contracts Regulations 2015. However, occasionally, the [Concessions Contracts Regulations 2016](http://www.legislation.gov.uk/uksi/2016/273/pdfs/uksi_20160273_en.pdf) are appropriate. [↑](#footnote-ref-3)
4. This list is not exhaustive and for large procurement exercises above national and EU thresholds, other principles, such as mutual recognition also apply. [↑](#footnote-ref-4)
5. The EU thresholds were revised in January 2018 [↑](#footnote-ref-5)
6. Subject to review every two years. [↑](#footnote-ref-6)