

F. CONTRACT REGULATIONS

1. Introduction

1.01 The Council's Procurement Framework consists of a number of controls, as follows:

- (a) These Contract Regulations;
- (b) The Finance Procedure Rules (Part Four – D of the Constitution);
- (c) The Tri-borough Procurement Code;
- (d) The Tri-borough Procurement Protocol and Design Principles;
- (e) The Council's Corporate Policies and Procedures;
- (f) The guidelines for procurement on KCnet and TriBnet; and
- (g) Advice from legal, financial and other appropriate technical officers.

1.02 The Procurement Framework is designed to ensure that Council contracts are let lawfully and achieve Best Value.

1.03 The Council and its officers must follow the Procurement Framework. Single and Bi-borough joint procurement activity is not subject to the Tri-borough Procurement Code, or the Tri-Borough Procurement Protocol or Design Principles and will continue to be subject to each Council's procurement rules.

2. Purpose of and Compliance with Contract Regulations

2.01 These Contract Regulations ('the Regulations') contain the Council's minimum requirements for purchasing works, supplies and services (including the appointment of consultants) and must be complied with at all times. All officers responsible for letting contracts are required to do so in accordance with these Regulations and the Procurement Framework.

2.02 These Regulations are not a substitute for an individual's commonsense and judgement. All employees must employ the highest standards of integrity when they deal with the Council's affairs.

2.03 Oral contracts are generally not acceptable and all contracts must conform to any minimum standards laid down by the Tri-borough Director of Law.

2.04 Compliance

- (a) Every contract made by or on behalf of the Council must comply with:
 - i. the Treaty on the Functioning of the European Union (TFEU);
 - ii. the European Public Procurement Directives and all other relevant EU secondary legislation;
 - iii. the Public Contract Regulations (2015);
 - iv. relevant domestic primary and delegated legislation;

- v. the Council's Constitution and these Regulations; and
- vi. capital sourcing.

2.05 Failure in this area could render a competitive tendering process invalid and possibly open the Council to legal challenge and a contract to be declared ineffective.

- (b) Contracts must be let on the basis of acceptable service delivery standards, continuous improvement clauses and incentives, and where relevant, promote the Council's Corporate Policies and best practice principles, in particular those relating to the Public Services (Social Value) Act 2012; health and safety; equalities and diversity; the LGA Transparency Code; business continuity and collaboration and partnership including Tri-borough shared services.
- (c) Contracts must be let on the basis of the Most Economically Advantageous Tender (MEAT) to the Council as assessed on the basis of the best price-quality ratio OR assessed on the basis of price or cost effectiveness only.

2.06 **Employee Conduct and Corruption**

- (a) The Council regards any corrupt practices as completely incompatible with its public service role. All staff must comply with the rules within the 'Code of Conduct for Employees' dealing with the declaration of personal interests and the prevention of bribery.
- (b) If an allegation is made it is for the employee to demonstrate that any rewards have not been corruptly obtained. The Council may cancel any contract which it finds has been corruptly let and may seek to recover losses arising from that cancellation from the contractor.
- (c) Every person associated with the Council, including employees, consultants, agents and contractors performing functions on behalf of the Council, is required to ensure that no inducement or reward is offered, promised or provided to gain personal, commercial, regulatory or contractual advantage in the performance of those functions.

Every person who lets, manages or supervises a contract shall act in accordance with the highest standards of propriety and proper practice and ensure that proportionate measures are taken in respect of persons connected with the contract to mitigate conflicts of interest and identified bribery risks. Such measures shall include keeping adequate records, monitoring and reviewing contracts, facilitating the reporting, investigation and prosecution of criminal offences and any appropriate measures issued by the Cabinet Office pursuant to regulation 24 of the Public Contract Regulations 2015.

2.07 **Tri-Borough Procurement**

- (a) All procurement exercises will primarily be considered in terms of joint procurement activity either on a tri-borough or bi-borough basis. Secondary considerations may dictate that the procurement should, in addition, be opened up to other public bodies. Only in exceptional circumstances will the Council consider procuring works, goods or services solely on its own behalf.
- (b) Officers need to refer to the Tri-borough Procurement Code and the Tri-borough Procurement Protocol and Design Principles for Joint Contracts on TriBnet when carrying out tri-borough procurement exercises.

2.08 **Socio-Economic and Environmental Considerations**

- (a) When purchasing services officers must comply with the Public Services (Social Value) Act 2012¹ and have regard for the economic, social and environmental impacts of the procurement and how it may improve the wellbeing of the Royal Borough, its residents and visitors.
- (b) Officers when procuring works and supplies may also have regard for the economic, social and environmental impacts thereof.
- (c) Where relevant, officers should adhere to the Council's Sustainable Procurement Guidelines on KCnet as well as any administrative measures issued by the Cabinet Office pursuant to obligations under article 18(2) of Directive 2014/24/EU.
- (d) The Cabinet Member for Finance and Strategy shall be authorised to make directions regarding the mandatory use of green criteria for specific types of purchase. A direction given under this Regulation shall be in the form of a key decision report and shall identify the green criteria to be applied, the type/s of purchase to which the direction applies and likely impact on the Council's budget. A direction given under this Regulation shall be followed unless an exemption is granted by the relevant Cabinet Member or the Cabinet Member for Finance and Strategy withdraws the direction.

2.09 **Exemptions/Waivers of Contract Regulations**

Neither tenders nor quotations need be obtained:

- (a) for dealing with emergencies and where immediate action is necessary to comply with the statutory obligations of the Council;
- (b) for the purchase or supply of goods, services or works of a unique character or where there is evidence that there is only one provider due to the nature of the market;

¹ The threshold for the application of the Public Services (Social Value) Act to services covered by the Light Touch Regime (section 7 of the PCR 2015) is £164,176 (w.e.f. 1.1.16).

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- (c) for the purchase or supply of goods, services or works and following advertisement where it is not possible to secure competition;
- (d) for hiring of performance artistes;
- (e) for engagement of legal Counsel;
- (f) for engagement of external legal advisers and experts where urgent advice and assistance or representation is required and the requirement for appointment is unforeseen; and
- (g) where the circumstances of the proposed contract are covered by legislative exemptions.

2.09 (a) – (g) are specific exemptions for which no waiver of the Regulations is required.

2.10 In other cases a waiver from tendering or any other Rule in these Regulations can only be made where:

- (a) a specific waiver is authorised by the relevant Cabinet Member; or
- (b) a specific waiver has been authorised by an Officer of the Council under delegated powers.

2.11 Requests for a waiver under Regulation 2.10 must provide sufficient evidence to allow the decision to be made.

2.12 No waiver or exemption under Regulations 2.09 and 2.10 can override the Council's obligations under Regulation 2.04(a).

2.13 **Tri and Bi-borough Contracts, RBKC Corporate Contracts and Central Purchasing Bodies' Framework Agreements**

In order to ensure best value and to minimise procurement costs, for works, supplies and services, officers should make purchases, based on their reasoned judgement as to suitability using the following (in order of priority):

- (a) Existing Tri or Bi-borough framework agreements or contracts;
- (b) Existing RBKC corporate contracts;
- (c) A new Tri or Bi-borough call-off contract from a framework agreement let by a Central Purchasing Body;
- (d) A new Tri or Bi-borough call-off contract from a framework agreement let by other contracting authorities;
- (e) A new Bi-borough Public Contract.

2.14 Where opportunities exist under 2.13(c) and 2.13(d), the relevant Cabinet Member or Director (exercising delegated powers under paragraph 2.28) should be satisfied that the requirements of paragraph 2.04(a) of the Regulations have been met and that the particular contract advertisement and contract terms contain adequate provision for participation by the Council.

- 2.15 Regard should be had to any guidance on purchasing through public sector framework agreements published by the Council's Head of Strategic Procurement.
- 2.16 When utilising a public sector framework set up under the Public Contracts Regulations 2006 or 2015, officers must ensure that contracts based on a framework agreement are awarded 'within the limits' of the relevant agreement 'following the terms and conditions of the framework agreement' or through re-opening competition 'on the same terms' or, if necessary, more precisely formulated terms, and others terms referred to in the contract documents'.²
- 2.17 When utilising a multi-party public sector framework not regulated by the Public Contracts Regulations 2006 or the Public Contract Regulations 2015 a Director must where practicable follow the rules contained in paragraph 2.28 when obtaining quotations.
- 2.18 Directors can decide whether the Council should be identified as an original party to a framework agreement (that does not include a commitment to purchase) by being named in an OJEU Notice. Directors can authorise the signing of access agreements relating to public sector framework agreements which the Council may lawfully use. The award of a call-off contract under a framework should be dealt with in accordance with Contract Regulation 2.28. Where the terms of the framework agreement permit, call-off contracts may be of shorter or longer duration than the related framework.
- 2.19 **Social and other Specific Services**
- (a) Contracts for social and other specific services listed in Schedule 3 of the Public Contract Regulations 2015 where the value of the contracts is equal to or greater than £589,148 (€750,000) shall be awarded in accordance with Section 7 of the Public Contract Regulations 2015.
- (b) Contracts for social and other specific services listed in Schedule 3 of the Public Contract Regulations 2015 where the value of the contracts is more than £25,000 but less than £589,148 shall be awarded in accordance with Chapter 8 of the Public Contract Regulations 2015. The Tri-borough Executive Directors for Adult Social Care and Children's Services are responsible for ensuring that any specific rules and guidelines are adhered to.

2.20 **ICT Contracts**

The Council must ensure that it obtains best value from its ICT investment. It also needs to ensure that relevant ICT standards are applied and followed and that existing and new applications are fully utilised by all relevant departments to enable Tri-borough working. For this to occur all ICT procurement must be authorised by the Tri-borough Chief Information Officer before a tender process is initiated. This applies to the purchase of

² Regulation 33(7), (8), (9) and (11) PCR 2015

all software and non-standard hardware. Standard hardware will continue to be purchased centrally.

2.21 Schools Contracts

The Council delegates funds to schools. The Council's scheme for financing schools contains the rules for procurement, tendering and contracts for schools. Contracts over £100,000 let by schools spending budgets delegated to them under the scheme for financing schools shall also be sealed by the Council or contain rights in favour of the Council under the Contracts (Rights of Third Parties) Act 1999. Where practicable, third party rights clauses shall be included in other school contracts in which the Council has a legal interest.

2.22 The Kensington and Chelsea Tenant Management Organisation Ltd (KCTMO)

- (a) Contracts let by the KCTMO will not normally be key decisions. Under the terms of a statutory delegation by the Council under Section 27 of the Housing Act 1985 (as amended) the procurement decisions affecting these contracts are the sole responsibility of the KCTMO.
- (b) All KCTMO agency contracts shall contain rights in favour of the Council under the Contracts (Rights of Third Parties) Act 1999.

2.23 For Contracts of £164,176³ and over – RBKC only (single borough)

- (a) Unless specific executive approval has already been obtained these Contracts shall only proceed to advertisement (or other method of letting the contract authorised by these Regulations) with the prior written authorisation of a Director. The Director will need to receive a report containing an officer's 'recommendation to proceed to competition' before that written authorisation can be given. In all cases the Director shall have consulted with the Cabinet Member/full Cabinet prior to giving such authorisation. From the date of the publication of the contract notice in OJEU, the procurement documents must be available for unrestricted and full direct access on capitalEsourcing. These contracts shall require a key decision of the relevant Cabinet Member/Full Cabinet before the contract can be awarded. The Cabinet Member/Full Cabinet will need to receive a report containing an officer's 'recommendation to award the contract' before that written authorisation can be given.
- (b) After these contracts are let, an annual review of performance may be undertaken and reported to the relevant director responsible for the Council function or service.

³ With effect from 1 January 2016 and thereafter the equivalent EU Services threshold on 1 January every second year

- (c) The letting of contracts by the Council on behalf of partnerships are key decisions except where such expenditure is wholly or substantially funded from a source other than the Council's General Fund and prior permission has been given by a key decision of the Cabinet Member/Cabinet to such arrangements and provided it can be demonstrated that:
 - (i) an appropriate partnership structure is established and sufficient evidence is provided that purchasing will be undertaken in accordance with best Council practice, the law and the competition rules contained in these Regulations;
 - (ii) Those persons charged with making decisions and or recommendations on behalf of the partnership have clear roles and responsibilities within the partnership structure.
- (d) Contracts over £100,000 shall normally be sealed by the Council in the Tri-borough Legal Services.

2.24 For Contracts £500,000 and over – RBKC only (single borough)

- (a) All procurement projects should conform to PRINCE2 project management principles including the completion and upkeep of issue and risk logs, exception and highlight reports and the identification of a Senior Responsible Owner for the project.
- (b) A Project Board should be established for all major projects:
 - (i) Terms of reference, membership, roles and responsibilities should be clearly stated;
 - (ii) Meetings should be attended by key officers who have a direct responsibility for delivering the project;
 - (iii) All meetings should include an up to date Project Plan and Business Case;
 - (iv) Project slippage should be escalated to the Project Board as required by the agreed project tolerances and include detail of the risks involved, mitigation thereof and overall impact on the timeline;
 - (v) Minutes of meetings should be formally recorded and actions allocated to specific project team members along with target completion dates;
 - (vi) The decision-making responsibilities and accountabilities should be clearly stated and reviewed on a regular basis.
- (c) All projects should ensure effective risk management arrangements are in place (financial and technical).
- (d) The Council's Standing Orders and Financial Procedure Rules should be complied with and full disclosure made to Members and Executive Directors on recommendations for appointment of consultants and contractors.

- (e) Financial and technical vetting of main contractors should be undertaken prior to making a decision to award a contract.
- (f) A contract management regime should be agreed prior to award of contract and involve frequent quality audits throughout the life of the contract.
- (g) Authorisation of expenditure should not be the responsibility of a temporary member of staff.
- (h) Director approval must be obtained before appointing contractors or consultants outside the main appointed contractors.

2.25 **Packaging Contracts**

- (a) The Council's contract procedures are designed to be fair, open and transparent. All Council officers responsible for or involved in letting contracts are expected to seek best value-for-money and to behave in a demonstrably fair and even-handed manner, whatever the contract value.
- (b) In accordance with the Tri-borough Procurement Code and the Tri-borough Procurement Protocol and Design Principles, all contracts should be on a Tri-borough basis unless collaboration with other authorities or wider collaboration is more beneficial.
- (c) Contracts must be packaged appropriately in accordance with EU procurement rules and follow all standard procedures contained in the Council's guidelines for procurement on KCnet and TriBnet. They should never be packaged in order to avoid particular contract limits or to reduce the potential for fair and open competition. Officers shall explore alternative contract packaging options to existing arrangements, as this may be a means of delivering best value for money.
- (d) The financial threshold applies to the estimated contract sum or contract value (net of VAT) over the lifetime of the contract including any extensions or options.
- (e) Where it is decided not to subdivide into lots, the main reasons for that decision should be indicated in the procurement documents or the contract award notice.
- (f) The estimated contract sum or contract value for contracts which do not indicate a total price is as follows:
 - (i) For fixed term service and supply contracts of up to 48 months, the aggregate value of the payments;
 - (ii) In the case of service or supply contracts of over 48 months, or of uncertain duration, it is the amounts payable in respect of each month multiplied by 48; and
 - (iii) In the case of framework agreements, the estimated value of all call-off contracts over the lifetime of the framework agreement.

- (g) Directors or their nominees are responsible for estimating and recording the total value of the proposed contract.

2.26 **Tri-borough Contracts**

- (a) Tri-borough activity is governed by the Tri-borough Procurement Code involving three *Gateways* and approval by a Contracts Approval Board (CAB).
- (b) The Tri-borough Procurement Code applies to:
 - (i) all contracts whose value exceeds £300,000 or, at lower values where Westminster City Council's share of the total, exceeds £100,000 that are let by Tri-borough Directorates on a single or bi/tri-borough basis; and
 - (ii) contracts involving all three boroughs in any directorate across all three boroughs.
- (c) *Gateways* are clear demarcation points for projects in the planning, procurement and award/implementation stage of a procurement cycle. This is to ensure greater alignment of a service directorate with other key services impacted by procurement, including Finance, ICT and Property.

2.27 **capitalEsourcing**

- (a) The procurement, by quotation or tender, of **all** supplies, construction works and services in excess of £25,000 in value must be carried out using capitalEsourcing, the Council's e-tendering software.
- (b) Quotations and tenders for purchases of less than £25,000 may be obtained by any means (e.g. e-mail, catalogue or websites or capitalEsourcing). Buyers must keep sufficient documentation to justify decisions taken.
- (c) The relevant service director is responsible for ensuring that the details of all contracts with a value in excess of £25,000 are added to the Contracts Register in capitalEsourcing and the record of each contract maintained until its expiry.

2.28 **Financial Thresholds and Best Practice** (see following table)

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Financial Thresholds and Best Practice					
Total Value	Award Procedure	Advertising	Shortlisting	Documentation/Audit Requirement	Member Involvement
Up to £5,000	A minimum of one quotation	No advertisement	n/a	Retain evidence of quote. Use any Council or industry approved list to select or from Council's past experience.	Award decision delegated to relevant director. Directors should compile and maintain a scheme of delegation specific to their area of responsibility identifying staff who may approve orders or contracts up to specific values.
£5,000 to £164,176 ⁴	A minimum of three quotations invited. Open Procedure to be used if required.	Quotations for Contract opportunities <£25,000 need not be obtained through capitalEsourcing Contract opportunities >£25,000 must be published on capitalEsourcing's opportunities notice board and advertised on Contracts Finder.	n/a	Invitations to quote and quotations received. Keep a written record: <ul style="list-style-type: none"> • of any waiver and reasons for it • of the reason if the lowest price is not accepted • of award criteria other than price • of communications with the successful contractor. Follow Council policy on retention and destruction of documents. Under Open Procedure in sub-threshold procurements, PQQ's are not allowed; pass/fail suitability questions are permitted.	Award decision delegated to relevant director. Executive Directors should compile and maintain a scheme of delegation specific to their area of responsibility identifying staff who may approve orders or contracts up to specific values.

table continued overleaf . . .

⁴ W.e.f 1 January 2016 and thereafter the EU equivalent threshold on 1 January every second year

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Total Value	Award Procedure	Advertising	Short listing accountability	Documentation/Audit Requirement	Member Involvement
£164,176 – £499,999	EU procedures must be followed.	Advertisement in OJEU where required or notice to be published on capitalEsourcing opportunities notice board as well as Contracts Finder	Executive Director in consultation with Cabinet Member	<p>Follow the Tri-borough Procurement Code for all Tri-borough contracts: (http://tribnet/Support/procurement/Pages/Default.aspx).</p> <p>Keep written records including:</p> <ul style="list-style-type: none"> • Main reason for not dividing into lots; • the method for obtaining bids; • any contract award decision and the reasons for it; • any waiver together with the reasons for it; • the award criteria (including those other than price) and the evaluation of tenders against these criteria; • tender documents sent to and received from candidates; • pre-tender market engagement; • clarification and post-tender negotiation (to include minutes of meetings); • the contract documents; • post-contract evaluation and monitoring; • communications with tenderers and with the successful contractor throughout the period of the contract. <p>Follow Council policy on retention and destruction of</p>	Contract award is a Key Decision.

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				documents. Use of the Cabinet Office approved PQQ is permitted	
Above £500,000	EU procedures must be followed.	Advertisement in OJEU where required or notice to be published on capitalEsourcing opportunities notice board and on Contracts Finder	Major contracts may require Cabinet Member involvement in short listing process.	As per contracts of £164,176 and above.	Contract Award is a Key Decision. Major and sensitive contracts may require substantial Member involvement from the earliest stages and a Cabinet decision.
£589,148 and above Social and other specific services	EU Light Touch Regime must be followed	Advertisement in OJEU where required or notice to be published on capitalEsourcing opportunities notice board and on Contracts Finder	ditto	ditto	ditto

EU limits: Works contracts £4,104,394
 Supplies contracts £164,176
 Service contracts £164,176

Social and other Specific Services under the Light Touch Regime £589,148

Contracts of £100,000 and above will normally be sealed by the Tri-borough Legal Services Directorate. (Regulation 2.33(d))

Where required, publication of electronic notices including OJEU must be completed through capitalEsourcing.

2.29 Council Approved Lists

- (a) Contractors may be selected from approved lists for works, and the supply of goods and services. For building and construction contracts, the Council has approved Constructionline as a method of sourcing suitable organisations to be invited to quote or tender. Constructionline contains the names and addresses of all contractors who meet Constructionline's approved list criteria and includes the nature and value of contracts for which contractors listed may be used and is publicly advertised periodically. For contracts valued at £24,999 or under for which Construction line provides an adequate source of competition, no further advertisement is required.
- (b) The criteria for admission to and suspension from an approved list shall be specified in writing by the relevant Director in conjunction with the Town Clerk and the Tri-borough Director of Law. The criteria shall relate to economic and financial standing, technical and professional ability, capacity, insurance arrangements, quality systems, health and safety record (where relevant) and environmental record.
- (c) Approved lists may not be compiled without public advertisement inviting applications for inclusion on the list.
- (d) The award of contracts to suppliers on an approved list must be carried out through a competitive process (quotation or tender, depending on value).
- (e) Contractors on approved lists must be chosen to tender in strict rotation except for particular contracts where another method is justifiable on legal, financial and value-for-money grounds and the reasons recorded.
- (f) Approved lists must normally be re-advertised at least every four years (copies of the advertisement being sent to each person on the list) and be available for public inspection.
- (g) Where EU Regulations require contracts of a value above a specified threshold to be advertised in OJEU, contractors on Constructionline or other approved list may be targeted by their attention being drawn to the notice.
- (h) Contracts in this category which are above the EU threshold will normally be let as framework agreements in accordance with EU rules.

2.30 Financial Appraisals

- (a) Directors are responsible for ensuring a contractor's financial viability.
- (b) For contracts with an estimated value of less than £100,000 no check is normally necessary but may be advisable in cases of special risk.
- (c) Directors letting contracts, concluding a framework agreement or setting up an approved list with an estimated value of between £100,000 and £164,176, must ask tenderers to self-certify that they meet a minimum standard for economic and financial standing set out in capitalEsourcing. Before awarding the contract, a report from CreditSafe (or other Council

contracted provider) should be commissioned on the tenderer whose tender the Council wishes to accept. Unless satisfied that the tenderer has the necessary economic resources to perform the contract and is not at unacceptable risk of financial failure, the award should not proceed.

- (d) Directors letting contracts, concluding a framework agreement or setting up an approved list with an estimated value in excess of £164,176 should apply appropriate and proportionate economic and financial standing tests at PQQ or tender stages in capitalEsourcing. These may include a minimum turnover test (limited to a maximum of twice the estimated contract value) and financial ratio tests. Reports should be commissioned from CreditSafe (or other Council contracted provider) on all candidates/tenderers. The contract must not be awarded to a tenderer that has failed the minimum standards.
- (e) A more detailed appraisal of a prospective tenderer's financial position may be necessary, subject to the complexity, value and risk of a contract and the amount of time that has elapsed since the tenderer submitted its most recent audited accounts to Companies House or compiled them⁵.
- (f) For contracts lasting more than one year Directors must satisfy themselves as to the financial stability of the contractor throughout the contract term and may commission further reports during the life of the contract for that purpose.
- (g) Directors must report the results of the financial viability assessment to their Executive Director and Cabinet Member when requested to do so.
- (h) Where financial appraisal results recommend a particular contract financial limit, this may not be exceeded without prior approval of the relevant Group Finance Manager.
- (i) Where reports are not available from CreditSafe reports may be commissioned from Brookes Bates. Tenderers should be asked to provide copies of their latest audited accounts or other evidence of their financial standing. These should be forwarded to Brookes Bates with an order for the standard report requesting a statement on the tenderer's risk of financial failure, its financial strength and an assessment of whether the candidate is suitable to be awarded the contract. All reports should be stored on capitalEsourcing.

2.31 **Delivery of Tenders**

- (a) Candidates invited to tender must be given a reasonable period in which to prepare and submit a proper Quotation or Tender, consistent with the urgency and complexity of the contract requirement. Normally at least five weeks should be allowed for submission of Tenders. The Public Contracts Regulations 2015 setting out EU

⁵ In some cases, it may be appropriate to seek parent company guarantees, performance bonds or directors' personal guarantees. Advice from Procurement or Corporate Finance should be sought whenever there is doubt about a supplier's economic or financial standing.

tendering procedures lay down specific, minimum time periods for tender returns.

- (b) Unless otherwise agreed by the Head of Strategic Procurement, all quotations and tenders above £25,000 must be received through the capitalEsourcing, e-tendering system (the rules for the return of paper based quotations and tenders will be determined on an individual basis by the Head of Strategic Procurement).
- (c) Tenders, which are received after the specified time and date, will not normally be considered.
- (d) Officers responsible for procurement must not disclose the names of Tenderers to any member of staff not involved in the receipt, custody or opening of Tenders.

2.32 **Opening of Tenders**

- (a) The electronic opening of tenders shall be carried out by the person(s) appointed by the Relevant Director to manage the project or in accordance with an approved scheme of delegation for a contract.
- (b) For contracts in excess of £25,000, tenders and all documents relating to tenders should be submitted through capitalEsourcing. On no account should officers accept such documents sent in the post or delivered by hand or by other electronic means.

2.33 **Award and Sealing of Contracts**

- (a) Where information or documentation to be submitted by economic operators is or appears to be incomplete or erroneous, or where specific documents are missing, the economic operators concerned can be asked to submit, supplement, clarify or complete the relevant information or documentation within an appropriate time limit, provided that such requests are made in full compliance with the principles of equal treatment and transparency and this is stated in the procurement documents.
- (b) All contracts of £164,176 and above in value, and framework agreements from which the aggregate spend on call-offs over the lifetime of the framework is likely to exceed £164,176, must be submitted to the relevant Cabinet Member for approval (Regulation 2.23(b)) together with a written report and recommendation from the relevant director.
- (c) Where the Cabinet Forward Plan prevents an urgent decision from being made by the Council to participate in a framework awarded on behalf of more than one public sector partner (consortia/shared service), or the outcome of a public sector e-Auction; the decision to award the contract should be delegated to the relevant Executive Director by prior agreement with the Cabinet Member.

- (d) Contracts of £100,000 and above, and framework agreements from which the aggregate spend on call-offs over the lifetime of the framework is likely to exceed £100,000, shall be sealed or alternatively, with the prior approval of the Tri-borough Director of Law, signed by a Director and another officer of the Council. Contracts under this amount may be sealed if the Tri-borough Director of Law considers it necessary due to the complexity of the contract.
- (e) All contracts of £100,000 and above shall be archived by the Tri-borough Director of Law.
- (f) For the purposes of this Regulation the word tender includes in its meaning quotations for contracts where the estimated value of the contract is £100,000 or more.

2.34 Tenders shall be accepted in writing and the decision communicated electronically through capitalEsourcing.

2.35 **Debriefing Tenderers**

Statutory obligations to inform tenderers of decisions taken must be adhered to. Oral feedback to tenderers must not be undertaken without legal advice.

2.36 **Sub-Contractors**

Directors can approve the appointment of sub-contractors provided that:

1. arrangements are in hand for properly letting the main contract which shall include provisions for the payment of undisputed invoices to and by subcontractors in accordance with Regulation 113 of the Public Contract Regulations 2015;
2. For contracts that fall within the provisions of the Construction Industry Scheme operated by HM Revenue and Customs, evidence of a valid Construction Industry Scheme Registration Card or Document must be verified where applicable prior to letting the contract.

2.37 **Variations of Contract**

Contracts and framework agreements above the EU thresholds may be modified during their term without a new procurement in the following cases a) to e) below:

a) In accordance with the provisions of the existing contract:

- (i) Where the modifications, irrespective of their monetary value, have been provided for in the contract in clear, precise and unequivocal review clauses such as price revision clauses or options, and
- (ii) those clauses state the scope and nature of possible modifications as well as the conditions under which they may be used, and
- (iii) the modifications would not alter the overall nature of the contract or framework.

b) Additional works, services or supplies:

Where any additional works, services or supplies by the original contractor have become necessary and were not included in the initial procurement, where a change of contractor -

- (i) cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, services or installations procured under the initial procurement; or
- (ii) would cause significant inconvenience or substantial duplication of costs for the Council;

provided that any increase in price resulting from any modification in subparagraph (b) does not exceed 50% of the value of the original contract.

Successive modifications under this provision are possible provided that none exceed the 50% limit. A Modification Notice must be published in OJEU on each occasion.

c) Unforeseen circumstances:

In unforeseen circumstances where despite due diligence by the Council a modification has become necessary provided that any increase in price resulting from any modification does not exceed 50% of the value of the original contract. Successive modifications under this provision are possible provided that none exceed the 50% limit. A Modification Notice must be published in OJEU.

d) A new contractor replaces the old one

Where a new contractor replaces the existing one and provision for such a change has been made in the conditions of contract or as a result of takeover, merger or insolvency, the existing contractor is replaced by another provider who is able to meet all the qualitative selection criteria and no substantial changes are made to the contract.

e) De minimis modifications

Where the value of the modification is below the relevant EU threshold and less than 10% of the initial contract value for service and supply contracts and less than 15% of the initial value for works contracts provided that the modification does not alter the overall nature of the contract or framework agreement.

2.37 **Approval of Director/Executive Required**

No modifications not provided for in the conditions of contract of above EU threshold contracts may be made until approved by the Director/Executive Director having consulted the relevant Cabinet Member.

2.38 Where contractors claim for extra amounts arising from modifications which were not clearly within the terms of the original contract as varied, and the estimated claim exceeds £25,000 payment must not be made until:

- the matter has been referred to the relevant Group Finance Manager and the Tri-borough Director of Law for approval; and
- a recommendation has been made and agreed by the Executive Director in association with the relevant Cabinet Member, where practicable.

Directors may settle such claims up to £25,000 in consultation with their Group Finance Manager.

2.39 **Minor Modifications**

Directors may approve minor modifications to all contracts and any modification to below EU threshold contracts where the value of the modification does not exceed £25,000.

2.40 In all cases, Directors are responsible for making sure, where practicable, that all modifications on contracts are costed and authorised in writing within 14 days of the issue of instructions. Where a consultant manages a contract, they must do likewise and must copy their analysis to the Director within a further seven days. Directors should inform consultants of this requirement in their contract of appointment.

2.41 No modification of an above EU threshold contract or framework agreement is permitted if the modification:

- (a) would render the original agreement materially different in character;
- (b) introduces conditions which had they been included initially would have allowed for the admission of other candidates; allowed for the acceptance of a different tender; or attracted additional participants;
- (c) changes the economic balance in favour of the contractor in a manner not provided for in the initial conditions of contract;
- (d) extends the scope of the contract or framework considerably;
- (e) replaces the existing contractor with a new contractor for reasons other than set out in Regulation 72(1)(d) PCR 2015; or
- (f) would breach any provision of the Public Contract Regulations 2015 or EU Directives.

2.42 **Extensions of Contract**

Subject to any statutory restrictions and satisfactory performance, a Director may (in consultation with a Cabinet Member) authorise the extension of an existing contract whose terms provide for an extension and whose OJEU Notice, if any, contained a reference in the 'Options' section of the Notice, to the possibility of an extension.

2.43 Where a contract has previously been varied or extended, any reference to "the contract period" or "initial value" in this regulation is a reference to the contract period or initial value found in the original contract before any variation occurred.