

GUILDFORD BOROUGH COUNCIL
PROCUREMENT PROCEDURE RULES

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Part 1

1 INTRODUCTION

- 1.1 These Procurement Procedure Rules apply to all purchases of works, goods and services by the Council. They provide a framework within which all the procurement activity of the Council is undertaken. The object of these Rules is to ensure that all the Council's procurement activity regardless of value is fair, open, transparent, non-discriminatory and lawful. Their observance is mandatory. The Rules are to protect the interests of the Council and also councillors and officers from the risk of challenge, undue criticism or allegations of wrongdoing.
- 1.2 These Procedure Rules should be seen as setting minimum requirements. Where better value for the Council might be achieved by seeking more tenders or quotations this should be done.
- 1.3 A Corporate Procurement Advisory Board (CPAB), is to take an active role in the management of the procurement process. The CPAB will ensure that the processes and reporting requirements are followed and will enable the identification of areas of strength and weakness within the procurement function. It will seek out solutions and better methods of working, encouraging consistency and efficiency to achieve best value through the procurement process across the Council. Until the CPAB is set up and functioning any reference in these rules to actions to be done by or with respect to CPAB shall be taken to be references to the EHoG and the EHoF acting together
- 1.4 If there is any relevant change to English or European Law, which affects these rules then that change must be observed until these rules can be revised. Where there is a difference between these Rules and the current legislation, the legislation will prevail.

Part 2

2 APPLICATION

- 2.1 These rules apply to:
- 2.1.1 All contracts for the supply of works, goods or services (including consultancy) to the Council, regardless of value.
 - 2.1.2 Partnership and collaborative arrangements with other bodies.
 - 2.1.3 Concession Contracts
- 2.2 These rules do not apply to:
- 2.2.1 Contracts for the purchase or sale of any interest in land including leasehold interests and licences for which reference should be made to the Financial Procedure Rules.
 - 2.2.2 Contracts of employment for the appointment of individual members of staff.
 - 2.2.3 Grant agreements, where the Council is giving an unconditional grant.
 - 2.2.4 Sponsorship agreements regulated by the Sponsorship Rules.

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2.2.5 Supply of works, goods and services **by** the Council. [The Executive Head of Governance must be consulted where the Council is contemplating this route.]

2.2.6 Contracts procured in collaboration with other local authorities where the Council is not the lead authority (subject to the necessary approvals having been obtained from the appropriate decision maker at the Council). The Procurement/Contract Procedure Rules of the lead authority shall apply. Assurance is to be sought that the lead authority is acting in compliance with its own contract procedure rules.

2.3. Exceptions to these rules.

2.3.1 In all cases, where an exception to the tendering or quotation process is sought the EHoS or HoS shall consult with the CPAB. If the CPAB agree the EHOS or HOS shall obtain the consent of the Managing Director or Monitoring Officer and Lead Councillor for the service concerned. The CPAB will document the request, all reasons for the request and record the decision. Additionally the EHoS or HoS will ensure that a record of the decision of the Managing Directors and Lead Councillor are recorded on the procurement file.

2.3.2 The following circumstances represent the permitted exceptions from all or part of these Rules. Tenders or quotations need not be sought in the following circumstances:

2.3.2.1 The work to be executed or the goods or materials or services to be supplied are procured via an approved and valid framework agreement. The CPAB is to be notified of the intention to access such an agreement the use of which must be approved by the EHoG;

2.3.2.2 Goods or materials are proprietary items or are sold only at a fixed price and no satisfactory alternative is available;

2.3.2.3 The price of the goods or materials is wholly controlled by trade organisations, government order or statutory undertakers where they have monopoly status and no satisfactory alternative is available;

2.3.2.4 The work to be executed or the goods or materials to be supplied consist of repairs to or the supply of parts for existing proprietary machinery or plant or the execution of work or supply of goods or services or materials necessary for maintenance or repairs to existing machinery or plant;

2.3.2.5 Where the work to be executed or goods to be supplied are required urgently ~~because of an unforeseen emergency~~ and would not, therefore, permit the invitation of quotations or tenders;

2.3.2.6 The execution of works or the supply of services is of such a specialised nature that in the opinion of the EHoS or HoS the number of prospective contractors is less than required by these rules. In this case, tenders or quotations shall be obtained from the sole or all available suppliers who possess the relevant knowledge or expertise;

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2.3.2.7 The work to be executed or the goods or materials supplied constitute an extension or variation permitted under the terms of an existing contract provided the extension or variation is compliant with English or European law.

2.3.3 No exemptions are permitted if the value requires compliance with EU Procurement Directives.

3 COMPLIANCE

3.1 Every Contract entered into on behalf of the Council shall comply with

- these Procurement Procedure Rules;
- the Council's Financial Procedure Rules, and
- all relevant English and European legislation.

3.2 All members of staff and consultants engaged in any capacity to manage or supervise the procurement of any works, goods or services for the Council must comply with these Procurement Procedure Rules and with the Council's Manual of Procurement Practice. The attention of Officers is drawn to the Council's Code of Conduct for staff at Part 5 of the Constitution. Non-compliance with these Rules may constitute grounds for disciplinary action.

3.3 Generally, work must not begin under a contract until both parties have signed the contract document (or, if the only contract document is a purchase order, until the purchase order has been issued), except in the cases of urgency when the approval of the EHoG is to be obtained. Letters of intent may only be provided with the approval of the EHoG who must agree the terms of any such letter.

3.4 If there is any doubt about the application of the rules the issues should be referred to CPAB and to the EHOg.

4 CONFLICTS OF INTEREST

4.1 Members of staff must avoid any conflict between their own interests and the interests of the Council. This is a requirement of the Council's Code of Conduct for Staff and includes:

4.1.1 not accepting gifts or hospitality from organisations or suppliers that the Council has dealings with;

4.1.2 not working for organisations or suppliers that the Council has dealings with;

4.1.3 notifying the Executive Head of Service or Head of Service in writing if an officer has links with an organisation or supplier who is tendering or quoting for a contract with the Council or already has a contract with the Council. (For example, a family member or close friend works for the organisation).

4.2 All consultants engaged to act on behalf of the Council must declare that they will avoid any conflict between their own interests or those of any of their other clients and the interests of the Council.

4.3 If a councillor or a member of staff has an interest, financial, otherwise, in a contract, or proposed contract, he/she must declare it in writing to the EHoG as soon as

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he/she becomes aware of the interest. A councillor or member of staff who has an interest in a contract must not take part in the procurement or management of that contract.

5 PREVENTION OF BRIBERY AND CORRUPTION

- 5.1 A contract may be terminated immediately, and any losses to the Council arising from the termination recovered from the supplier, if the supplier, or anyone acting on his behalf (with or without the supplier's knowledge), offers or promises or gives a financial or other advantage to a councillor any member of staff or any consultant in connection with the contract.
- 5.2 Any elected councillor, member of staff or consultant who becomes aware or has reason to believe that a supplier or potential supplier has committed one of the corrupt acts referred to in Rule 4.1, must report it to the Monitoring Officer
- 5.3 The Monitoring Officer must maintain a record of all declarations of interest notified by Councillors and Officers.

6 RESPONSIBILITIES OF EXECUTIVE HEADS OF SERVICE AND HEADS OF SERVICE

- 6.1 Procurement activity in the council is devolved to individual service units, which are supported in their purchasing activities by Governance & Law, Financial Services and by the CPAB, from whom advice must be sought as necessary. Procuring officers must observe the Council's Financial Procedure Rules at all times.
- 6.2 It is the responsibility of each EHoS and HoS:
 - 6.2.1 To compile and provide a list of all forecast contract opportunities to the CPAB at the beginning of each business planning year containing projections for the upcoming three years. (This is also part of the business planning process.) This list is to be updated as necessary throughout the year.
 - 6.2.1 To ensure that all procurements and contracts within his/her department comply with Procurement Procedure Rules, Financial Procedure Rules and all applicable public procurement legislation.
 - 6.2.2 To ensure those officers to whom they delegate their functions have received relevant training and have the necessary skills. The CPAB will from time to time in conjunction with the Training Officer organise training for staff engaged in procurement.
 - 6.2.3 To plan the procurement of and manage Contracts within his/her department to ensure that contracts deliver best value, are operated effectively, efficiently and economically and are operated in accordance with the contract provisions.
 - 6.2.4 To keep adequate records to show compliance with the Procurement Procedure Rules, Financial Procedure Rules and all relevant legislation. In particular it is incumbent on the EHoS and HoS to ensure each contract valued at £500 or more is listed on completion in the Contract Register.
- 6.3 At the outset of each procurement, the EHoS or HoS must:

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- 6.3.1 assess the business needs,
- 6.3.2 ensure the procurement complies with corporate policies and priorities
- 6.3.3 review ethical, social and sustainability issues
- 6.3.4 consider potential contractual relationships
- 6.3.5 undertake a risk management exercise at the start of any procurement exercise, which is commensurate with the value and complexity of the procurement
- 6.3.6 undertake when appropriate a premarket testing exercise
- 6.3.7 ensure that they have the necessary authority to undertake the procurement.
- 6.3.8 (a) Prepare or obtain an estimate in writing of the probable cost of the procurement and any ongoing revenue costs arising from the procurement; and
(b) Ensure that adequate provision has been made within the Council's capital or revenue estimates and that proper technical and financial appraisals of the procurement have been carried out in accordance with the Council's Financial Procedure Rules.

7 ESTIMATE OF CONTRACT VALUE

- 7.1 The value of a contract is the total amount that the Council expects to pay for the contract, including any contract extension period and any options within the contract. This may be a lump sum (e.g. £50,000) or a periodic payment (e.g. £10,000 per year for a 5 year contract = £50,000). If the contract is for an uncertain term (e.g. a “rolling” Contract), the value is the amount the Council expects to pay over four years.
- 7.2 Contracts must **not** be packaged or divided into smaller units for the purpose of creating lower value contracts to avoid any provision of these Rules or EU procurement legislation. When tendering consideration must be given to the extent to which it is appropriate to divide the contract into lots to facilitate opportunities for small and medium sized enterprises and voluntary organisations.

8 USE OF FRAMEWORK AGREEMENTS

- 8.1 The use of framework agreements is permitted for any value of contract. The EHoG must be consulted and confirmation given that the Council may lawfully access the framework before a purchase. The CPAB must be informed of the use of a framework agreement.
- 8.2 In order to select a supplier for a call-off contract under a multi-supplier framework agreement or to conduct a mini competition, the procuring officer must follow the procedure set out in that Framework Agreement.

9 SPECIFICATION

- 9.1 Each procurement must be appropriately specified and selection and award criteria must be formulated in advance of inviting expressions of interest to ensure the Council obtains value for money and the procurement process is transparent.

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- 9.2 All works, goods and services must be specified by reference to European standards, or national standards if no European standards are set. The specification must be a clear and comprehensive description of the Council's requirements and should incorporate measurable and, so far as is possible, objective quality and performance criteria to enable a proper assessment to be made of the supplier's ability to meet the Council's requirements.

10 INSURANCE

- 10.1 It is the responsibility of the procuring officer, in consultation with the Executive Head of Financial Services and Executive Head of Governance to set, where appropriate, adequate levels of insurance for every procurement in respect of employers' liability, product liability, professional indemnity, third party and fire and material damage. As a guide the level of insurance required shall not unless exceptional circumstances prevail be less £10 million for employer's liability insurance, £5 million for public liability insurance and £2 million for professional indemnity insurance.
- 10.2 The procuring officer must ensure that any insurance required by the Council is held by the provider with a reputable insurance company(ies) and that the policy(ies) are renewed as necessary during the contract period.

11 TUPE

- 11.1 Where relevant, the procuring officer must consider the implications of the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended and consult with the EHoG as to their application to their application.

12 DISPUTE RESOLUTION

- 12.1 The procuring officer must consider the procedure for resolving disputes arising in relation to the procurement and, where appropriate, contracts shall contain provisions for alternative dispute resolution.

13 PURCHASING SERVICE (ePAYMENTS)

- 13.1 Procuring officers must make enquiries of the Financial/Revenue and Payments Services where the procurement is of consumables. These services will advise of any existing corporate contracts or mechanisms through which the purchase is to be made.

14 ELECTRONIC PROCUREMENT

- 14.1 Systems to enable the Council to procure works, goods and services are to begin introduction in the course of the financial year 2015–2016 and details of the system will be incorporated in an appendix to these Rules.

15 ELECTRONIC TENDERING

- 15.1 Electronic tendering systems will be introduced in the course of the financial year [20142015–2015–2016](#) and details of the system will be incorporated in an appendix to these Rules.
- 15.2 Use of the electronic tendering system will become mandatory after an introductory period during which training will provided.

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16 FORM OF CONTRACT

- 16.1 Each procurement must be in writing or confirmed in writing whether by way of formal contract or by exchange of correspondence. Contracts valued at £10,000 or more must be in a form approved by the EHoG.

17 CONTRACTS REGISTER

- 17.1 All contracts having a value or estimated value of £500 (five hundred pounds) or more must be entered in the central Contracts Register, which will be monitored by the CPAB. The register will specify the information that is to be held, but will include:

- contract value or estimated value
- description of contract
- name of contractor/supplier
- name of contract administrator
- start and completion dates
- payment details

18 PERFORMANCE BOND/PARENT COMPANY GUARANTEE

- 18.1 A performance bond or, in an appropriate case, a deposited sum must be obtained for any construction contract with a contract sum in excess of £100,000.00 unless the procuring officer, in consultation with the Head of Financial Services, deems it to be unnecessary having undertaken an appropriate risk assessment.
- 18.2 For any other contract for works, goods or services having a value of £100,000 or more, the procuring officer must consider in consultation with the Head of Financial Services whether it is appropriate to take security in the form of a Performance Bond or Parent Company Guarantee. In each case, the procuring officer must record his decision with reasons.

19 DEEDS, SEALING AND SIGNING OF CONTRACTS

- 19.1 Any contract valued at £100,000 or more must, unless the EHoG determines otherwise, be sealed with the common seal of the Council. In exceptional cases where the EHoG decides that a contract which amounts to or exceeds £100,000 in value does not require the common seal, it must be signed, subject to compliance with the Council's Financial Procedure Rules, by the Managing Director and one other EHoS or by two EHoS.
- 19.2 Contracts not exceeding £100,000 in value must be signed by the relevant EHoS or HoS (or, subject to compliance with the Council's Financial Procedure Rules, his or her nominee) or may be sealed with the common seal of the Council in cases where the EHoG considers it to be appropriate.
- 19.4 Before a Contract can be sealed by the Council, the Officer must provide the relevant authority to award in writing from the appropriate decision maker.

20 CONTRACT DOCUMENTS

- 20.1 Wherever practicable, work under a contract must not start until the contract documents and all other procedures have been completed to the satisfaction of the Head of Service or, in the case of a procurement valued at £100,000 or more, the Head of Service and the EHoG. A letter of intent must not be issued unless approved by the EHoG.

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21 DELAY IN COMPLETING THE CONTRACT

- 21.1 If a written contract is not signed or sealed, as the case may be, within a period of six months from the date of the decision to enter into it, it shall be the duty of the procuring officer to report the details to the lead councillor for the procurement activity.

22 NOMINATING SUB-CONTRACTORS AND SUPPLIERS

- 22.1 Where it is decided to be in the Council's interest, that a sub-contractor or supplier should be nominated to a main contractor, at least three tenders for the nomination must be invited in accordance with one of the methods described in Table 1 below.
- 22.2 The invitation to tender as sub-contractors or suppliers must require an undertaking from any tenderer to enter into a contract with the main contractor, including an obligation to indemnify the main contractor in respect of matters included in the sub contract.

23 CONFIDENTIALITY OF TENDERS AND QUOTATIONS

- 23.1 All matters concerned with quotations and tenders must be treated as confidential, including the correction of errors, and any information, discussion or correspondence entered into should be confined to those officers of the Council who are directly concerned and any consultant retained by the Council irrespective of the procurement process in question.
- 23.2 The amount or value of any tender or quotation which is to be considered by the Council or Executive shall not be made public before the meeting and shall be omitted from any written report on the subject which may be circulated before the meeting unless the report is marked as confidential.

24 AMENDMENTS TO PROCUREMENT PROCEDURE RULES

- 24.1 The EHoG shall be empowered to review the Procurement Procedure Rules from time to time and as often as may be necessary in consultation with the lead councillor and, following formal approval by full Council, shall publish details of amendments.

Part 3

25 THE PROCUREMENT PROCESS

- 25.1 The process to be adopted is determined by the value of the contract (see paragraph 6 above). The procedure must be both appropriate and proportionate to the value of the contract. It must ensure that the council achieves best value which is to be assessed by an evaluation of both the price and quality of competitive bids so as to determine the most economically advantageous over the life of the contract.

- 25.2 Procuring officers must as a minimum obtain quotations and tenders as follows:

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	Goods, services and works	Goods, services and works	All goods and services other than Schedule 3 services		Services covered by Schedule 3 ² and those not covered by the regulations	Services covered by Schedule 3 ² and those not covered by the regulations	Works	
Value of contract aggregated over 4 years (excluding VAT)	UNDER £10,000	£10,001 - £100,000	£100,001 to the EU threshold for standard goods and services (£173,933) ³	The EU threshold for standard goods and services (£173,934) ³ and over	£100,000 to the relevant EU threshold for Schedule 3 services (£625K as at April 2015) ³	Over the relevant EU threshold for Schedule 3 services (£625K as at April 2015) ³	£100,001 up to - relevant EU threshold for works (£4,348,350) ³	The relevant EU threshold for works (£4,348,350) ³ and over
Minimum requirements	1 written quotation demonstrating value for money	3 written quotations ¹	3 formal tenders ¹	Full EU tender process in accordance with the Public Contracts Regulations,	3 formal tenders ¹	Light-touch tender regime under regulations 74 to 77	3 formal tenders ¹	Full EU tender process in accordance with the Public Contracts Regulations

Table 1

^{*1} For sub-threshold procurements of over £25K which are covered by the Public Contracts Regulations 2015, the procedures set out in regulations 109 to 112 inclusive will need to be followed in obtaining those quotations or tenders. This will equally apply to Schedule 3 contracts under their higher threshold.

^{**2} The social and other specific services mentioned in Schedule 3 to the 2015 Regulations have a higher threshold of Euro 750K, and for those services there is a light-touch procurement regime (referred to in Regulation 74) even over that threshold.

^{***3} The EU threshold for goods and other services (i.e. non-Schedule 3) is Euro 207K, and for works it is Euro 5,186,000. The GBP sums shown in brackets are meant to represent the official GBP equivalents of these Euro sums. For each of the EU thresholds a new official GBP equivalent is expected to take effect as at 1st January 2016 and every two years thereafter, and will replace the stated GBP figures. These official equivalents must be used – the respective market values of the Euro and the GBP from time to time cannot be used.

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25.3 A summary of these processes and requirements is at **Appendix 1**.

25.4 Procuring officers will be issued with the Council's Manual of Procurement Practice providing detailed information and highlighting issues which may arise in respect of which further advice must be sought. The Manual must be followed. Advice must be sought as appropriate from Governance and Law or the CPAB. The following is a summary of the key steps to be taken when engaging in a procurement exercise.

25.5 Preparation of Business case:

25.5.1 A business case proportionate to the complexity, risk and value of any proposed procurement must be prepared setting out the issues in sufficient detail to enable an informed decision to be taken.

25.6 Pre-Tender market research and consultation, with a view to preparing the procurement and informing economic operators in the market place of plans and requirements:

25.6.1 Advice may be sought from independent experts, authorities or from market participants and may be used in the planning and conduct of the procurement process provided that the consultation does not have the effect of distorting competition and does not breach requirements for non-discrimination and transparency. It is recommended advice be sought from the EHoG as appropriate.

25.7 Advertising.

25.7.1 If a Contract (**regardless of value**) may be of interest to both local suppliers and more widely including suppliers in EU member states (cross border interest), a sufficiently accessible advertisement must be published. Generally, the greater the likely interest, the wider the advertising coverage should be. At a minimum advertisements should appear on the Council's web site (mandatory for all contracts above £10,000) and may be placed on regional and national portals in addition to local papers and national specialist journals as appropriate.

In respect of sub-threshold contracts, regulation 109 of the 2015 regulations may require tenders to be advertised on the Cabinet Office's Contracts Finder.

OJEU notices are mandatory for procurements exceeding the threshold values specified by the current European Directive. Procuring officers are required to keep a record of their consideration of and decision in respect of the potential for cross border interest

25.8 Route to market

25.8.1 The appropriate route to market must be selected. This may be an Open procedure through an Invitation to Quote (ITQ) or an Invitation to Tender (ITT) or a Restricted Procedure when candidates are invited to submit initial information respond to a Pre-Qualification Questionnaire (PQQ) and a number are selected to receive an ITT on the basis of the information provided. to receive an ITT. Additional procedures including Competitive Dialogue, the proposed the Competitive Dialogue with Negotiation, the and a Negotiated Procedure Procedure and Innovation Partnership may be available but must be selected only after consultation with the EHoG and the CPAB.

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25.9 Evaluation criteria and scoring mechanism:

- 25.9.1 Each procurement must be properly specified and the evaluation criteria and the scoring mechanism clearly explained in the Invitation to Tender or Invitation to Quote.
- 25.9.2 Award Criteria must be designed to assess the suitability of the offer being made and must be appropriate to the purchase so as to assess which proposal is the most economically advantageous over the life of the contract.

25.10 Return of Quotations and Tenders:

- 25.10.1 Quotations must be returned to the respective EHoS or HoS by whom they will be held securely and unopened until after the closing time and date for receipt of responses. All responses must be opened at one time in the presence of two persons.
- 25.10.2 Tenders must be returned to the EHoG. They will be retained securely unopened until after the date and time for receipt of responses. All tenders must be opened at one time and in the presence of a councillor, the EHoG or his or her nominee and the HoS for the procurement activity or his/her nominee.
- 25.10.3 Any tender received after the date and time indicated for receipt will be retained unopened by EHoG until all other valid tenders have been opened and recorded. It will then be opened and returned to the sender. Exceptionally the EHoG may, on being satisfied that there is evidence of posting in time for delivery by the due date authorise acceptance of the tender provided other tenders have not already been opened.
- 25.10.4 A record shall be kept for both quotations and tenders of:
 - (i) the nature of the works, goods or service to be supplied;
 - (ii) the authority for entering into the contract;
 - (iii) the name of each person by or on whose behalf a quotation or tender was submitted;
 - (iv) the amount of each quotation or tender ;
 - (v) the date and time of opening of the quotation or tenders
 - (vi) the names of those present at the opening of the quotation or tender.
- 25.10.5 A tender or quotation that does not comply with the instructions to tenders or is conditional must be treated as non-compliant and rejected. Non-compliant tenders or quotations will not be evaluated. The Council's decision in this respect is final.

25.11 Evaluation Panels:

- 25.11.1 The evaluation panel must consist as a minimum of the procurement officer [\(when appointed\)](#), Head of Service or their delegate, and the Head of Finance or their delegate. The evaluation panel may include service users and external consultants. The panel may further include those with specific expertise in the subject matter

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- 25.11.2 Negotiations with applicants who have tendered for a contract through an Open or Restricted procedure are not permitted. Clarification of a submission may be sought by the evaluation panel but must not result in any substantive changes to the Tender. Clarification questions and responses must be carefully documented.
- 25.11.3 A tenderer may be permitted to amend his tender sum where there is an obvious arithmetic or similar error in the priced bill of quantities or schedule of rates in which case the tender sum shall be corrected accordingly and the contractor/supplier notified in order to facilitate withdrawal of the submitted tender if the contractor/supplier so determines.
- 25.12 Standstill period:
- 25.12.1 For procurements subject to the OJEU procedure standstill letters prior to the award of contract are mandatory and for other procurements are strongly recommended. If it is not proposed to provide feedback the CPAB must be informed and the reasons provided.

Part 4

26 CONTRACT TERMS

- 26.1 Every contract entered into by the Council for the provision of works, goods or services which exceeds £500.00 in value (and in any other case where the EHOS or HOS shall require) shall:
- 26.1.1 Specify the works to be executed and goods or services to be supplied;
- 26.1.2 State the price to be paid detailing the frequency and method of calculation together with a statement as to the amount of any discounts or other deductions and requiring payment within 30 days of receipt of a valid invoice;
- 26.1.3 State the period or times within which the contract is to be performed;
- 26.1.4 Prohibit any assignment or sub-letting of the contract without the express agreement in writing of the Council;
- 26.1.5 State that the Council may cancel the contract and recover any resulting losses if the contractor, his employees or anyone acting on his behalf, with or without his knowledge, does anything improper to influence the Council or commits an offence under Bribery Act 2010;
- 26.1.6 Require the supplier to comply with the requirements of the Health and Safety at Work etc. Act 1974, and any other relevant Acts, Regulations or Orders pertaining to health and safety;
- 26.1.7 Require the contractor to comply with the Equality Act 2010 including where relevant the Public Sector Equality Duty;
- 26.1.8 State that if the Contractor enters into liquidation or administration, the Council is entitled to cancel the contract and recover any resulting losses

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- 26.2 For contracts with a value in excess of £100,000, if appropriate, make provision for the payment of liquidated damages by the contractor where he fails to complete the contract within the time specified. The level of liquidated damages must be determined by the EHoS or HOS;
- 26.3 For every contract with a value of £100,000 or more, require and take sufficient security for the due performance of the contract, unless the Head of Financial Services, in consultation with the EHoG, deems this inappropriate;
- 26.4 For contracts which permit sub-contracting the contractor is to be required to impose on his sub-contractors equivalent contractual requirements in terms of equality, health and safety, bribery and corruption and payment provisions ;
- 26.5 The terms of appointment of a consultant must include the following provisions requiring the consultant to:
- 26.5.1 Comply in all respects with the Council's Procurement Procedure Rules and Financial Procedure Rules;
 - 26.5.2 Consult the Council's Executive Head of Governance in respect of all tender documents and obtain written approval for such documents prior to tendering;
 - 26.5.3 Maintain adequate records relating to the contract and produce them to the procuring officer whenever requested during the contract; and
 - 26.5.4 Pass all relevant records to the procuring officer on completion of the contract.

26.7 Every contract entered into by the Council shall (where considered appropriate by the EHoG) contain suitable provisions to ensure that a) the Council can terminate the contract in the situations specified in Regulation 73 of the 2015 Regulations, and in any other case where the contract has been entered into in breach of the Council's Procurement Procedure Rules and b) the Council complies with Regulations 113 (payment of invoices within 30 days by the Council and its contractors and subcontractors) in each case the wording of such provision to be such as the EXoG specifies from time to time

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Appendix 1

QUICK GUIDE TO PROCUREMENT: Minimum requirements

	Goods, services and works	Goods, services and works	All goods and services other than Schedule 3 services		Services covered by Schedule 3 and services not covered by the regulations	Services covered by Schedule 3 and services not covered by the regulations	Works		Accessing Framework agreements
Value of contract aggregated over 4 years (excluding VAT)	UNDER £10,000	£10,001 - £100,000	£100,001 to the EU threshold for standard goods and services (£173,934)	The EU threshold for standard goods and services (£173,934) and over	£100,000 to the relevant EU threshold for Schedule 3 services (£625K as at April 2015)	Over the relevant EU threshold for Schedule 3 services (£625K as at April 2015)	£100,001 – up to relevant EU threshold for works (£4,348,350)	The relevant EU threshold for works (£4,348,350) and over	Not relevant
Minimum tendering requirement	1 written quote evidencing value for money.	3 written quotes.	3 formal tenders	Full EU tender process (Public Contracts Regulations) ¹	3 formal tenders	Light-touch tender regime under regulations 74 to 77	3 formal tenders	Full EU tender process (Public Contracts Regulations) ²	Confirmation Framework accessible to authority. Comply with framework conditions re call off. Confirm with legal services
Who authorises process?	EHoS/HoS ³ Budget holder	EHoS/HoS/ Budget holder	EHoS/HoS + CPAB ⁴	EHoS/HoS + CPAB & briefing note to CMT	EHoS/HoS + CPAB & briefing note to CMT	EHoS/HoS + CPAB & briefing note to CMT	EHoS/HoS + CPAB & briefing note to CMT	EHoS/HoS + CPAB & briefing note to CMT	EHoS/HoS + CPAB. Briefing note to CMT on values in excess of £100,000

¹ Different procedures can apply: ~~open; restricted; negotiated; competitive dialogue; competitive negotiated~~. Legal Services will approve most appropriate route.

² Different procedures can apply: ~~open; restricted; negotiated; competitive dialogue; competitive negotiated~~. Legal Services will approve most appropriate route.

³ EHoS – Executive Head of Service; HoS – Head of Service

⁴ CPAB – Corporate Procurement Advisory Board

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	Goods, services and works	Goods, services and works	All goods and services other than <u>Schedule 3 services</u>		Services covered by <u>Schedule 3 and services not covered by the regulations</u>	Services covered by <u>Schedule 3 and services not covered by the regulations</u>	Works		Accessing Framework agreements
Value of contract aggregated over 4 years (excluding VAT)	UNDER £10,000	£10,001 - £100,000	£100,001 to the EU threshold for standard goods and services (£173,933)	The EU threshold for standard goods and services (£173,934) and over	£100,000 to the relevant EU threshold for Schedule 3 services (£625K as at April 2015)	Over the relevant EU threshold for Schedule 3 services (£625K as at April 2015)	£100,001 – up to relevant EU threshold for works (£4,348,350)	The relevant EU threshold for works (£4,348,350) and over	Not relevant
Where should advert be placed?	No advert required ⁵	Consider use of website, portals suitable media ⁶ <u>Use of Contract Finder required over £25K</u>	Appropriate medium - web site, portals, professional journals etc. <u>Use of Contract Finder required</u>	Advert in OJEU website., and other media	<u>Appropriate medium - web site, portals, professional journals etc. Use of Contract</u>	<u>Advert in OJEU website., and other media</u>	Advert on website and other media <u>Use of Contract Finder</u>	Advert in OJEU Also website and other media	No advert required
Who receives quotes/tenders?	EHoS/HoS	EHoS/HoS	EHog Recorded opening with Councillor present	EHog Recorded opening with Councillor present	<u>EHog Recorded opening with Councillor present</u>	<u>EHog Recorded opening with Councillor present</u>	EHoG Recorded opening with Councillor present	EHoG Recorded opening with Councillor present	EHoS

⁵ Use eTendering portal from 1 April 2015.

⁶ Use eTendering portal from 1 April 2015

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	Goods, services and works	Goods, services and works	All goods and services <u>other than Schedule 3 services</u>		<u>Services covered by Schedule 3 and services not covered by the regulations</u>	<u>Services covered by Schedule 3 and services not covered by the regulations</u>	Works		Accessing Framework agreements
Value of contract aggregated over 4 years <u>(excluding VAT)</u>	UNDER £10,000	£10,001 - £100,000	£100,001 to the EU threshold for standard goods and services (£173,933)	The EU threshold for standard goods and services (£173,934) and over	£100,000 to the relevant EU threshold for Schedule 3 services (£625K as at April 2015)	Over the relevant EU threshold for Schedule 3 services (£625K as at April 2015)	£100,001 – up to relevant EU threshold for works (£4,348,350)	The relevant EU threshold for works (£4,348,350) and over	Not relevant
Is a contract required?	Yes, we have to publish all contracts over £500. May be evidenced by order form with GBC appropriate terms and conditions attached.	Yes. Advice from Legal Service.	Yes. Agreed by Legal Service and under seal.	Yes. Agreed by Legal Service and under seal.	<u>Yes. Agreed by Legal Service and under seal.</u>	<u>Yes. Agreed by Legal Service and under seal.</u>	Yes. Agreed by Legal Service and under seal.	Yes. Agreed by Legal Service and under seal.	Yes. Agreed by Legal Service. May be under seal .
Evaluation	Budget Holder	Evaluation panel	Evaluation panel	Evaluation panel	<u>Evaluation panel</u>	<u>Evaluation panel</u>	Evaluation panel	Evaluation panel	Evaluation panel for mini-competition
Who approves exemption from rules?	EHoS/HoS	CPAB, Managing Director/ Monitoring Officer and Lead Councillor	CPAB, Managing Director/ Monitoring Officer and Lead Councillor	No exemption	<u>CPAB, Managing Director/ Monitoring Officer and Lead Councillor</u>	<u>No exemption</u>	CPAB, Managing Director/ Monitoring Officer/ Lead Councillor	No exemption	N/A

PART 4 – PROCUREMENT PROCEDURE RULES

PROCUREMENT PROCEDURE RULES – STEPS TO BE TAKEN TO PROCURE

These notes complement the *Quick Guide to Procurement*. These steps are part of the formal rules for undertaking procurement and bound by the formalities of the Council's Constitution. [Procuring officers will be expected to keep a full trail of documents relating to each procurement undertaken.](#)

STEP 1

IDENTIFY NEED

- You must prepare for a procurement process in good time, having identified in your service/business plan that procurement for goods and/or services and/or works will be required during the lifespan of the plan. This will allow for a legitimate fairer procurement cycle and enable the proper legal guidance necessary to carry out the procurement. The process for urgent procurement is set out in separate guidance.
- Document what you want to do with your procurement and keep it on a file.
- You must record on the file that you have your manager's authority to perform the procurement before you take any steps.

STEP 2

DEVELOP BUSINESS CASE

- Before you start the process, prepare and document an estimated value of the contract you wish to procure.
- You must ensure that you have adequate budget provision for the procurement you wish to undertake or have commenced the process for obtaining funds (e.g. CMT approval; Executive approval) in accordance with the financial procedure rules.
- You must determine the appropriate form of tender or quotation process to follow. You can use the Quick Guide to Procurement that forms part of these procedure rules (and the Council's Constitution) in conjunction with the Council's Manual of Procurement Practice. In either case, you must consult with Legal Services before progressing further. The form of tender might be to use a framework agreement. Use the Manual to determine whether a framework agreement will meet your objectives.
- The guidance suggests the minimum in terms of procedures. You must remember that we are aiming for the best value for Guildford residents, which we may achieve by obtaining a greater number of quotes or tenders than specified.

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STEP 3 IDENTIFY STAKEHOLDERS	<ul style="list-style-type: none">• You may enter into pre-market consultation with potential suppliers to establish that the market can meet your requirement for good, works or services. Dialogue with the market pre-procurement is encouraged not only to bring the opportunity to the attention of the market but also to assist in a greater understanding of the market place for specific products or services.• We purchase such a wide range of goods and services that it is impossible, particularly in a smallish authority like Guildford, to understand the vagaries and needs of all markets. Pre-engagement will assist in the understanding of the feasibility of the requirement, market capacity and the acceptable level of risk in an individual market.• You must take care however, to ensure pre-market engagement does not distort competition or violate the transparency and non-discrimination principles. This exercise may also shape your thinking about what alternatives might exist or how suppliers might deliver your requirements and the extent to which there is cross border interest.
STEP 4 DEVELOP TENDER DOCUMENTATION	<ul style="list-style-type: none">• A specification and selection criteria must be prepared in advance of your request for tenders or quotations. You must keep these on the procurement file ready to use for evaluating the tenders or quotations you receive.• You are seeking the best value for the Council and selection criteria must reflect our ability to secure best value by balancing cost and quality to produce the most economically advantageous solution over the lifetime of the contract.
STEP 5 UNDERTAKE PROCUREMENT PROCESS	<ul style="list-style-type: none">• Determine the most appropriate procurement process• Advertise• Issue documentation• Evaluate tenders/quotations returned• Feedback
STEP 6 AWARD AND IMPLEMENTATION	<ul style="list-style-type: none">• Work under contract must not start until you have completed the contract documents and all other procedures to the satisfaction of the EHoS/HoS.• A letter of intent must not be issued unless approved by EHoG

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OF CONTRACT	
<p>STEP 7</p> <p>CONTRACT MANGEMENT</p>	<ul style="list-style-type: none"> • All contracts will have a contract manager nominated by the EHoS or HoS. • The contract manager will be responsible to the EHoS /HoS for entering contracts over £500 onto the contracts register, including appropriate markers for when the contract is due for renewal or termination. The contract manager must enter the contract on the register immediately following the contract being agreed with the supplier. • The role of the contract manager is to manage the contract throughout its duration, as well as enforce duties owed to the Council and to take responsibility for those duties owed to the contractor. • The contract manager will – <ul style="list-style-type: none"> - monitor performance of the contractor against the agreed level of service, - monitor the continuing level of operational and financial risk to which the Council is exposed and to institute controls as appropriate, - ensure the contractors’ due diligence with all appropriate health and safety obligations, - facilitate the resolutions of issues between the contractor and users of the service, - ensure prompt payment of invoices and compliance with all financial regulations and contract standing orders during the lifetime of the contract, - ensure that appropriate arrangements are made for the termination or re-letting of the contract at the appropriate time.
<p>STEP 8</p> <p>LESSONS LEARNED</p>	<ul style="list-style-type: none"> • All contract managers will use their knowledge and experience gained from each procurement exercise to inform and advise other contract managers. This knowledge sharing will be facilitated by the CPAB in order that mistakes are not repeated and good practice appropriately disseminated.

APPENDIX 2

Regulations 73, 74 to 77, 109 to 112, and 113 of the 2015 regulations .

73. Termination of contracts

73.—(1) Contracting authorities shall ensure that every public contract which they award contains provisions enabling the contracting authority to terminate the contract where—

(a) the contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with regulation 72(9);

(b) the contractor has, at the time of contract award, been in one of the situations referred to in regulation 57(1), including as a result of the application of regulation 57(2), and should therefore have been excluded from the procurement procedure; or

(c) the contract should not have been awarded to the contractor in view of a serious infringement of the obligations under the Treaties and the Public Contracts Directive that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of TFEU.

(2) Those provisions may address the basis on which the power is to be exercisable in those circumstances, for example by providing for notice of termination to be given and by addressing

consequential matters that will or might arise from the termination.

(3) To the extent that a public contract does not contain provisions enabling the contracting authority to terminate the contract on any of the grounds mentioned in paragraph (1), a power for

the contracting authority to do so on giving reasonable notice to the contractor shall be an implied

term of that contract.

Social and Other Specific Services

74. Award of contracts for social and other specific services

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74. Public contracts for social and other specific services listed in Schedule 3 shall be awarded

in accordance with this Section.

75 Publication of notices

75.—(1) Contracting authorities intending to award a public contract for the services referred to

in regulation 74 shall make known their intention by any of the following means:—

(a) by means of a contract notice, which shall contain the information referred to in part H of Annex V to the Public Contracts Directive; or

(b) by means of a prior information notice, which shall—

(i) be published continuously,

(ii) contain the information set out in part I of Annex V to the Public Contracts Directive,

(iii) refer specifically to the types of services that will be the subject-matter of the contracts to be awarded, and

(iv) indicate that the contracts will be awarded without further publication and invite interested economic operators to express their interest in writing.

(2) Paragraph (1) shall not apply where a negotiated procedure without prior publication could

have been used, in accordance with regulation 32, for the award of a public service contract.

(3) Contracting authorities that have awarded a public contract for the services referred to in regulation 74 shall make known the results of the procurement procedure by means of a contract

award notice, which shall contain the information referred to in part J of Annex V to the Public

Contracts Directive.

(4) Contracting authorities may group contract award notices on a quarterly basis, in which case

they shall comply with paragraph (5) by sending the grouped notices within 30 days of the end of

each quarter.

(5) Contracting authorities shall send the notices referred to in this regulation for publication in

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accordance with regulation 51.

76 Principles of awarding contracts

76.—(1) Contracting authorities shall determine the procedures that are to be applied in connection with the award of contracts subject to this Section, and may take into account the specificities of the services in question.

(2) Those procedures shall be at least sufficient to ensure compliance with the principles of transparency and equal treatment of economic operators.

(3) In particular, where, in accordance with regulation 75, a contract notice or prior information

notice has been published in relation to a given procurement, the contracting authority shall, except in the circumstances mentioned in paragraph (4), conduct the procurement, and award any

resulting contract, in conformity with the information contained in the notice about—

- (a) conditions for participation,
- (b) time limits for contacting the contracting authority, and
- (c) the award procedure to be applied.

(4) The contracting authority may, however, conduct the procurement, and award any resulting

contract, in a way which is not in conformity with that information, but only if all the following conditions are met:—

(a) the failure to conform does not, in the particular circumstances, amount to a breach of the principles of transparency and equal treatment of economic operators;

(b) the contracting authority has, before proceeding in reliance on sub-paragraph (a)—

- (i) given due consideration to the matter,
- (ii) concluded that sub-paragraph (a) is applicable,
- (iii) documented that conclusion and the reasons for it in accordance with regulation 84(7) and (8), and

(iv) informed the participants of the respects in which the contracting authority intends to proceed in a way which is not in conformity with the information contained in the notice.

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(5) In paragraph (4)(b)(iv), “participants” means any economic operators which have responded

to the notice and have not been informed by the contracting authority that they are no longer under

consideration for the award of a contract within the scope of the procurement concerned.

(6) All time limits imposed on economic operators for the purposes of this regulation, whether

for responding to a contract notice or taking any other steps in the relevant procedure, shall be

reasonable and proportionate.

(7) Without prejudice to the generality of paragraph (1), and subject to the other requirements of

this Chapter, contracting authorities may apply procedures for the purposes of this regulation which correspond (with or without variations) to procedures, techniques or other features provided

for in Chapter 2, as well as procedures which do not.

(8) In relation to the award of contracts subject to this Section, contracting authorities may take

into account any relevant considerations, including —

(a) the need to ensure quality, continuity, accessibility, affordability, availability and comprehensiveness of the services;

(b) the specific needs of different categories of users, including disadvantaged and vulnerable

groups;

(c) the involvement and empowerment of users; and

(d) innovation.

77 Reserved contracts for certain services

77.—(1) Contracting authorities may reserve to qualifying organisations the right to participate

in procedures for the award of reservable public contracts.

(2) For that purpose, a contract is a reservable public contract only if it is exclusively for one or

more of the services which are covered by CPV codes 75121000-0, 75122000-7, 75123000-4,

79622000-0, 79624000-4, 79625000-1, 80110000-8, 80300000-7, 80420000-4, 80430000-7,

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80511000-9, 80520000-5, 80590000-6, from 85000000-9 to 85323000-9, 92500000-6, 92600000-

7, 98133000-4, and 98133110-8.

(3) In this regulation, “qualifying organisation” means an organisation which fulfils all of the following conditions:—

(a) its objective is the pursuit of a public service mission linked to the delivery of services referred to in paragraph (2);

(b) profits are reinvested with a view to achieving the organisation’s objective, and any distribution of profits is based on participatory considerations;

(c) the structures of management or ownership of the organisation are (or will be, if and when it performs the contract) —

(i) based on employee ownership or participatory principles, or

(ii) require the active participation of employees, users or stakeholders; and

(d) the organisation has not been awarded, pursuant to this regulation, a contract for the services concerned by the contracting authority concerned within the past 3 years.

(4) The maximum duration of a contract awarded under this regulation shall not be longer than 3 years.

(5) Where a contracting authority exercises the power of reservation conferred by paragraph (1),

the call for competition shall make reference to Article 77 of the Public Contracts Directive.

(6) This regulation does not apply in relation to the procurement of health care services for the

purposes of the NHS within the meaning and scope of the National Health Service (Procurement,

Patient Choice and Competition) (No. 2) Regulations 2013(a).

CHAPTER 8

BELOW-THRESHOLD PROCUREMENTS

109. Scope of Chapter 8

109.—(1) Subject to paragraphs (2) and (5), this Chapter applies to procurements by contracting

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authorities with respect to public contracts where Part 2 does not apply because the estimated

value of the procurement is less than the relevant threshold mentioned in regulation 5.

(2) This Chapter does not apply in any of the following cases:—

(a) where Part 2 would not have applied even if the estimated value of the procurement had been equal to or greater than the relevant threshold mentioned in regulation 5;

(b) where the contracting authority is a central government authority and the procurement has

a value net of VAT estimated to be less than £10,000;

(c) where the contracting authority is—

(i) a sub-central contracting authority or an NHS Trust, and

(ii) the procurement has a value net of VAT estimated to be less than £25,000;

(d) the procurement of health care services for the purposes of the NHS within the meaning and scope of the National Health Service (Procurement, Patient Choice and Competition)

(No. 2) Regulations 2013

(3) For the purposes of paragraph (2)(b) and (c) and regulation 111(2), the estimated value of the

procurement shall be calculated on the basis set out in regulation 6(1) to (5), (7) to (10) and (16) to

(19), but as if the reference to a call for competition in regulation 6(7) were a reference to the publication of information on Contracts Finder in accordance with regulation 110.

(4) A procurement shall not be subdivided with the effect of preventing it from falling within the

scope of this Chapter, unless justified by objective reasons.

(5) Regulations 110 and 112 do not apply where the contracting authority is a maintained school

or an Academy.

110. Publication of contract opportunities on Contracts Finder

110.—(1) Paragraph (2) applies where a contracting authority advertises a contract award opportunity.

(2) In those circumstances, the contracting authority shall publish information about the

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opportunity on Contracts Finder, regardless of what other means it uses to advertise the opportunity.

(3) Where a contracting authority is required by paragraph (2) to publish information on Contracts Finder, it shall do so within 24 hours of the time when it first advertises the contract award opportunity in any other way.

(4) A contracting authority may publish on Contracts Finder information about a contract award opportunity even if the contracting authority does not advertise the opportunity in any other way.

(5) For the purposes of this regulation—

(a) a contracting authority advertises an opportunity if it does anything to put the opportunity in the public domain or bring the opportunity to the attention of economic operators generally or to any class or description of economic operators which is potentially openended, with a view to receiving responses from economic operators who wish to be considered for the award of the contract; and

(b) accordingly, a contracting authority does not advertise an opportunity where it makes the opportunity available only to a number of particular economic operators who have been selected for that purpose (whether ad hoc or by virtue of their membership of some closed category such as a framework agreement), regardless of how it draws the opportunity to the attention of those economic operators.

(6) In this regulation, “contract award opportunity” means the opportunity to be awarded a public contract by a contracting authority, regardless of how specific the opportunity is.

(7) For example, advertising by means of techniques similar to prior information notices used to

call for competition under Part 2 amounts to the advertising of contract award opportunities even

though the specific contracts that may in due course be awarded within the scope of such procurements are not identified individually in the advertising.

(8) 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;

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

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

(9) For the purposes of paragraph (8)(a), the time shall be such as to allow the economic operators a sufficient but not disproportionate period of time within which to respond.

(10) The contracting authority shall ensure that the information remains published on Contracts

Finder until the time mentioned in paragraph (8)(a).

(11) Paragraph (10) does not apply where the procedure is, for any reason, abandoned before

that time.

(12) Where a contracting authority publishes information on Contracts Finder under this regulation, the contracting authority shall—

(a) by means of the internet, offer unrestricted and full direct access free of charge to any relevant contract documents; and

(b) specify in the information published on Contracts Finder the internet address at which those documents are accessible.

(13) But paragraph (12)(a) does not require a contracting authority to provide such access where

the access cannot be offered for a relevant reason.

(14) In paragraph (13), “relevant reason” means any reason which, in accordance with regulation 53(3) and (4), would have applied if the procurement had been covered by Part 2 and

the relevant contract documents had been procurement documents.

(15) For the purposes of this regulation, a document is a relevant contract document if—

(a) it contains information about the opportunity which goes beyond the information published on Contracts Finder, and

(b) that information is intended by the contracting authority to be taken into account by those responding to the advertisement.

(16) In complying with this regulation, contracting authorities shall have regard to any guidance

issued by the Minister for the Cabinet Office in relation to—

(a) the form and manner in which information is to be published on Contracts Finder;

(b) what is a sufficient but not disproportionate period of time for the purposes of paragraph

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(9).

111. Assessing suitability etc

111.—(1) A contracting authority shall not include a pre-qualification stage in a procurement.

(2) Where the relevant threshold for the purposes of regulation 109(1) is that mentioned in regulation (5)(1)(a) or (d), paragraph (1) of this regulation applies only if the estimated value of

the procurement is less than the lower threshold mentioned in paragraph (3).

(3) The lower threshold is the threshold mentioned in—

(a) regulation 5(1)(b) where the contracting authority is a central government authority;

(b) regulation 5(1)(c) where the contracting authority is a sub-central contracting authority.

(4) In paragraph (1), “pre-qualification stage” means a stage in the procurement process during

which the contracting authority assesses the suitability of candidates to perform a public contract

for the purpose of reducing the number of candidates to a smaller number who are to proceed to a

later stage of the process.

(5) In any event, contracting authorities may ask candidates to answer suitability assessment questions only if each such question is—

(a) relevant to the subject-matter of the procurement; and

(b) proportionate.

(6) In paragraph (5), “suitability assessment question” means a question which relates to information or evidence which the contracting authority requires for the purpose of assessing whether candidates meet requirements or minimum standards of suitability, capability, legal status

or financial standing.

(7) In complying with this regulation, contracting authorities shall have regard to any guidance

issued by the Minister for the Cabinet Office, which may include guidance on how to establish and

assess, without infringing paragraph (5), whether candidates meet requirements or minimum standards relating to suitability, capability, legal status and financial standing.

(8) Where a contracting authority conducts a procurement in a way which represents a

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reportable deviation from the guidance issued under paragraph (7), the contracting authority shall

send to the Cabinet Office a report explaining the deviation.

(9) For that purpose, something is a reportable deviation only if it falls within criteria laid down

for that purpose in guidance issued under paragraph (7).

(10) In this regulation, “candidate” means an economic operator that wishes to be considered for

the award of a public contract.

112. Publication of information on Contracts Finder about contracts awarded

112.—(1) Where a public contract is awarded, the contracting authority shall, within a reasonable time, publish on Contracts Finder at least the following information:—

(a) the name of the contractor;

(b) the date on which the contract was entered into;

(c) the value of the contract;

(d) whether the contractor is a SME or VCSE.

(2) But the contracting authority may withhold information from publication where its release—

(a) would impede law enforcement or would otherwise be contrary to the public interest,

(b) would prejudice the legitimate commercial interests of a particular economic operator, whether public or private, or

(c) might prejudice fair competition between economic operators.

(3) In complying with this regulation, contracting authorities shall have regard to any guidance

issued by the Minister for the Cabinet Office in relation to—

(a) the form and manner in which the information is to be published on Contracts Finder; and

(b) what is a reasonable time for the purposes of paragraph (1).

(4) In paragraph (1)(d)—

“SME” means an enterprise falling within the category of micro, small and medium-sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises(a); and

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“VCSE” means a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives.

113. Payment of undisputed invoices within 30 days by contracting authorities, contractors and subcontractors

113.—(1) This regulation applies to all public contracts except the following:—

(a) contracts for the procurement of health care services for the purposes of the NHS within the meaning and scope of the National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013(b);

(b) contracts awarded by a contracting authority which is a maintained school or an Academy.

(2) Contracting authorities shall ensure that every public contract which they award contains suitable provisions to require the following:—

(a) that any payment due from the contracting authority to the contractor under the contract is

to be made no later than the end of a period of 30 days from the date on which the relevant invoice is regarded as valid and undisputed;

(b) that any invoices for payment submitted by the contractor are considered and verified by the contracting authority in a timely fashion and that undue delay in doing so is not to be sufficient justification for failing to regard an invoice as valid and undisputed; and

(c) that any subcontract awarded by the contractor contains suitable provisions to impose, as between the parties to the subcontract—

(i) requirements to the same effect as those which sub-paragraphs (a) and (b) require to be imposed as between the parties to the public contract; and

(ii) a requirement for the subcontractor to include in any subcontract which it in turn awards suitable provisions to impose, as between the parties to that subcontract, requirements to the same effect as those required by this sub-paragraph (c).

(3) Paragraph (2) is without prejudice to any contractual or statutory provision under which any

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payment is to be made earlier than the time required by that paragraph.

(4) In complying with paragraph (2), contracting authorities shall have regard to any guidance

issued by the Minister for the Cabinet Office.

(5) Such guidance may, in particular, recommend model provisions, including provisions defining the circumstances in which an invoice is to be regarded as being, or as having become,

valid and undisputed including, for example—

(a) provisions deeming an invoice to have become valid and undisputed if not considered and

verified in a timely manner; and

(b) addressing what is to be considered, for that purpose, to be a timely manner in various circumstances.

(6) To the extent that a public contract does not contain express provisions dealing with any of

the matters which, in accordance with paragraph (2), should have been contained in that contract

or subcontract, it shall be an implied term of the contract that—

(a) any payment due under it from the contracting authority to the contractor is to be made no

later than the end of a period of 30 days from the date on which the contracting authority completes any process of verification that the invoice is valid and undisputed;

(b) the contracting authority is to consider and verify any invoice submitted by the contractor in a timely manner with a view to ascertaining whether the invoice is valid and undisputed; and

(c) the contractor will include in any subcontract which it awards provisions—

(i) imposing, as between the parties to that subcontract, requirements to the same effect as those which sub-paragraphs (a) and (b) refer to as between the parties to the public contract, and

(ii) requiring the subcontractor party to that subcontract to include in any subcontract which it in turn awards provisions imposing, as between the parties to that subcontract, requirements to the same effect as those referred to in paragraphs (i) and

(ii) of this sub-paragraph.

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(7) Every financial year, each contracting authority shall publish on the internet statistics showing, for the preceding financial year, how far the contracting authority has actually complied

with its obligations under this regulation to make payments within 30 days, including—

(a) the proportion of invoices that were paid in accordance with those obligations, expressed as a percentage of the total number of invoices that were, or should have been, paid in accordance with those obligations;

(b) the total amount of any liability (whether statutory or otherwise) to pay interest which accrued by virtue of circumstances amounting to a breach of those obligations; and

(c) the total amount of interest actually paid in discharge of any such liability (including any which had accrued before the beginning of the period to which the statistics relate).

(8) In paragraph (7), “publish on the internet” means—

(a) make freely available on the internet; and

(b) maintain such availability, subject to temporary interruptions for technical reasons, until the publication under paragraph (7) of the statistics for the following financial year.

(9) In complying with paragraph (7), contracting authorities shall have regard to any guidance

issued by the Minister for the Cabinet Office.

(10) Such guidance may, in particular, recommend model templates for presenting the statistics.

(11) In this regulation—

“financial year” means the period in respect of which the accounts of the contracting authority

are prepared;

“subcontract” means a contract between two or more suppliers (at any stage of remoteness from the contracting authority in a subcontracting chain) made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of a public contract; and

“supplier” means a party to a contract or subcontract under which that party is to execute any

works, supply any products or provide any services.