

**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 Panel (CPAP) is to take an active role in the management of the procurement process. The CPAP 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.
- 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 Council Solicitor and Monitoring Officer 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 Director or Service Leader for the service concerned shall obtain the consent of the Council Solicitor and Monitoring Officer, in consultation with the Procurement Officer and the lead councillor with responsibility for governance. The Procurement Officer will document the request, all reasons for the request and record the decision. Additionally the Director or Service Leader will ensure that a record of the decision of the Council Solicitor and Monitoring Officer, 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 Goods or materials are proprietary items or are sold only at a fixed price and no satisfactory alternative is available;
- 2.3.2.2 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;
- 2.3.2.3 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;
- 2.3.2.4 Where the work to be executed or goods to be supplied are required urgently and would not, therefore, permit the invitation of quotations or tenders;
- 2.3.2.5 The execution of works or the supply of services is of such a specialised nature that in the opinion of the Director or Service Leader 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;
- 2.3.2.6 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.

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2.3.2.7 Legal services falling within Regulation 10(i)(d) of the Public Contracts Regulations 2015.

2.3.3 The Procurement Officer will report on exceptions to the CPAP.

2.3.4 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 Council Solicitor and Monitoring Officer is to be obtained. Letters of intent may only be provided with the approval of the Council Solicitor and Monitoring Officer 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 the Council Solicitor and Monitoring Officer.

### **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 Director or Service Leader 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.

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- 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 Monitoring Officer as soon as 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 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 DIRECTORS AND SERVICE LEADERS**

- 6.1 Procurement activity in the Council is devolved to individual service units, which are supported in their purchasing activities by Legal Services, Financial Services and by the CPAP, 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 Director and Service Leader:
- 6.2.1 To compile and provide a list of all forecast contract opportunities to the CPAP 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 CPAP 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 Director and Service Leader to ensure each contract valued at £500 or more is listed on completion in the Contracts Register.

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- 6.3 At the outset of each procurement, the Director or Service Leader must:
- 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 pre-market 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 Council Solicitor and Monitoring Officer must be consulted and confirmation given that the Council may lawfully access the framework before a purchase. The CPAP 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.

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- 8.3 The Council Solicitor and Monitoring Officer will keep a record of framework use and provide regular reports to the CPAP.

### **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.
- 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 Insurance Officer 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 than £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 Council Solicitor and Monitoring Officer as 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 2016-17, details of which are set out in Appendix 2 to these Rules.

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- 15.2 Use of the electronic tendering system will become mandatory after an introductory period, during which training will be provided.

### **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 Council Solicitor and Monitoring Officer.

### **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 CPAP. 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 Chief Finance Officer, 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 Chief Finance Officer 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 Council Solicitor and Monitoring Officer determines otherwise, be sealed with the common seal of the Council. In exceptional cases where the Council Solicitor and Monitoring Officer 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 Director or by two Directors.
- 19.2 Contracts less than £100,000 in value must be signed by the relevant Director or Service Leader (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 Council Solicitor and Monitoring Officer considers it to be appropriate.
- 19.3 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.



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### **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 Service Leader or, in the case of a procurement valued at £100,000 or more, the Service Leader and the Council Solicitor and Monitoring Officer. A letter of intent must not be issued unless approved by the Council Solicitor and Monitoring Officer.

### **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, the procuring officer shall 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 Council Solicitor and Monitoring Officer 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 any 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 <sup>2</sup> and those not covered by the regulations	Services covered by Schedule 3 <sup>2</sup> and those not covered by the regulations	Works	
Value of contract aggregated over 4 years (excluding VAT)	<b>UNDER £10,000</b>	<b>£10,001 - £100,000</b>	<b>£100,001 to the EU threshold for standard goods and services (£181,302)<sup>3</sup></b>	<b>The EU threshold for standard goods and services (£181,302)<sup>3</sup> and over</b>	<b>£100,000 to the relevant EU threshold for Schedule 3 services (£615,278)<sup>3</sup></b>	<b>Over the relevant EU threshold for Schedule 3 services (£615,278)<sup>3</sup></b>	<b>£100,001 up to relevant EU threshold for works (£4,551,413)<sup>3</sup></b>	<b>The relevant EU threshold for works (£4,551,413)<sup>3</sup> and over</b>
Minimum requirements	1 written quotation demonstrating value for money	3 written quotations <sup>1</sup>	3 formal tenders <sup>1</sup>	Full EU tender process in accordance with the Public Contracts Regulations,	3 formal tenders <sup>1</sup>	Light-touch tender regime under regulations 74 to 77	3 formal tenders <sup>1</sup>	Full EU tender process in accordance with the Public Contracts Regulations

**Table 1**

- <sup>1</sup> For sub-threshold procurements of over £25,000 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.
- <sup>2</sup> The social and other specific services mentioned in Schedule 3 to the 2015 Regulations have a higher threshold of £615,278 as at January 2018, and for those services there is a light-touch procurement regime (referred to in Regulation 74) even over that threshold.
- <sup>3</sup> The EU threshold for goods and other services (i.e. non-Schedule 3) is £181,302, and for works it is £4,551,413 as at January 2018.

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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 the Council Solicitor and Monitoring Officer or the CPAP. 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 Council Solicitor and Monitoring Officer as appropriate.
- 25.7 Advertising.
- 25.7.1 If a Contract (**regardless of value**) may be of interest both to 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 and a number are selected to receive an ITT on the basis of the information provided. Additional procedures including Competitive Dialogue, the Competitive Dialogue with Negotiation, the Negotiated Procedure and

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Innovation Partnership may be available but must be selected only after consultation with the Council Solicitor and Monitoring Officer and the CPAP.

### 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 Director or Service Leader 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 Democratic Services Manager. 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 Democratic Services Manager or his or her nominee and the Service Leader 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 the Democratic Services Manager until all other valid tenders have been opened and recorded. It will then be opened and returned to the sender. Exceptionally, the Council Solicitor and Monitoring Officer 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 procuring officer (when appointed), Service Leader or their delegate, and the Financial Services Manager or their delegate. The evaluation panel may include

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service users and external consultants. The panel may further include those with specific expertise in the subject matter.

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 observation of a standstill period and the issue of 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 CPAP must be informed and the reasons provided.

25.12.2 Award decision notification letters are mandatory for all procurements.

### 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 in value (and in any other case where the Director or Service Leader 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;

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- 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
- 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 Director or Service Leader.
- 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 Chief Finance Officer 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 Council Solicitor and Monitoring Officer 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.
- 26.6 Every contract entered into by the Council shall (where considered appropriate by the Council Solicitor and Monitoring Officer) 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 Legal Services Manager specifies from time to time.

## 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 (£181,302)	The EU threshold for standard goods and services (£181,302) and over	£100,000 to the relevant EU threshold for Schedule 3 services (£615,278 as at Jan 2018)	Over the relevant EU threshold for Schedule 3 services (£615,278 as at Jan 2018)	£100,001 – up to relevant EU threshold for works (£4,551,413)	The relevant EU threshold for works (£4,551,413) 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) <sup>1</sup>	3 formal tenders	Light-touch tender regime under regulations 74 to 77	3 formal tenders	Full EU tender process (Public Contracts Regulations) <sup>2</sup>	Confirmation Framework accessible to authority. Comply with framework conditions recall off. Confirm with legal services
Who authorises process?	Director/SL <sup>3</sup> Budget holder	Director/SL/ Budget holder	Director/SL + CPAP <sup>4</sup>	Director/SL + CPAP & briefing note to CMT	Director/SL + CPAP & briefing note to CMT	Director/SL + CPAP & briefing note to CMT	Director/SL + CPAP & briefing note to CMT	Director/SL + CPAP & briefing note to CMT	Director/SL + CPAP. Briefing note to CMT on values in excess of £100,000

<sup>1</sup> Different procedures can apply: Legal Services will approve most appropriate route.

<sup>2</sup> Different procedures can apply: Legal Services will approve most appropriate route.

<sup>3</sup> SL – Service Leader

<sup>4</sup> CPAP – Corporate Procurement Advisory Panel

**PART 4 – PROCUREMENT PROCEDURE RULES**

	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
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Where should advert be placed?	No advert required <sup>5</sup>	Consider use of website, portals suitable media <sup>6</sup> Use of Contract Finder required over £25K	Appropriate medium - web site, portals, professional journals etc. Use of Contract Finder required	Advert in OJEU website., and other media	Appropriate medium - web site, portals, professional journals etc. Use of Contract	Advert in OJEU website., and other media	Advert on website and other media Use of Contract Finder	Advert in OJEU Also website and other media	No advert required
Who receives quotes/ tenders?	Director/SL	Director/SL	Democratic Services Manager Recorded opening with Councillor present	Democratic Services Manager Recorded opening with Councillor present	Democratic Services Manager Recorded opening with Councillor present	Democratic Services Manager Recorded opening with Councillor present	Democratic Services Manager Recorded opening with Councillor present	Democratic Services Manager Recorded opening with Councillor present	Director
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.	Yes. Agreed by Legal Service and under seal.	Yes. Agreed by Legal Service and under seal.	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 .

<sup>5</sup> Use eTendering portal from 1 April 2015.

<sup>6</sup> Use eTendering portal from 1 April 2015



## PART 4 – PROCUREMENT PROCEDURE RULES

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Evaluation	Budget Holder	Evaluation panel	Evaluation panel	Evaluation panel	Evaluation panel	Evaluation panel	Evaluation panel	Evaluation panel	Evaluation panel for mini-competition
Who approves exemption from rules?	Director/SL	Council Solicitor and Monitoring Officer in consultation with the Procurement Officer & Lead Councillor	Council Solicitor and Monitoring Officer in consultation with the Procurement Officer & Lead Councillor	No exemption	Council Solicitor and Monitoring Officer in consultation with the Procurement Officer & Lead Councillor	No exemption	Council Solicitor and Monitoring Officer in consultation with the Procurement Officer & Lead Councillor	No exemption	N/A

## 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.

**PART 4 – PROCUREMENT PROCEDURE RULES**

<p><b>STEP 3</b> IDENTIFY STAKEHOLDERS</p>	<ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> <li>• 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.</li> </ul>
<p><b>STEP 4</b> DEVELOP TENDER DOCUMENTATION</p>	<ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> </ul>
<p><b>STEP 5</b> UNDERTAKE PROCUREMENT PROCESS</p>	<ul style="list-style-type: none"> <li>• Determine the most appropriate procurement process</li> <li>• Advertise</li> <li>• Issue documentation</li> <li>• Evaluate tenders/quotations returned</li> <li>• Feedback</li> </ul>
<p><b>STEP 6 AWARD AND IMPLEMENTATION</b></p>	<ul style="list-style-type: none"> <li>• Work under contract must not start until you have completed the contract documents and all other procedures to the satisfaction of the Director/Service Leader.</li> </ul>

**PART 4 – PROCUREMENT PROCEDURE RULES**

<p><b>OF CONTRACT</b></p>	<ul style="list-style-type: none"> <li>• A letter of intent must not be issued unless approved by the Council Solicitor and Monitoring Officer</li> </ul>
<p><b>STEP 7</b>  <b>CONTRACT MANGEMENT</b></p>	<ul style="list-style-type: none"> <li>• All contracts will have a contract manager nominated by the Director or Service Leader.</li> <li>• The contract manager will be responsible to the Director/Service Leader 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.</li> <li>• 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.</li> <li>• The contract manager will –             <ul style="list-style-type: none"> <li>- monitor performance of the contractor against the agreed level of service,</li> <li>- monitor the continuing level of operational and financial risk to which the Council is exposed and to institute controls as appropriate,</li> <li>- ensure the contractors’ due diligence with all appropriate health and safety obligations,</li> <li>- facilitate the resolutions of issues between the contractor and users of the service,</li> <li>- ensure prompt payment of invoices and compliance with all financial regulations and contract standing orders during the lifetime of the contract,</li> <li>- ensure that appropriate arrangements are made for the termination or re-letting of the contract at the appropriate time.</li> </ul> </li> </ul>
<p><b>STEP 8</b>  <b>LESSONS LEARNED</b></p>	<ul style="list-style-type: none"> <li>• 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 CPAP in order to ensure that mistakes are not repeated and good practice appropriately disseminated.</li> </ul>

## PART 4 – PROCUREMENT PROCEDURE RULES

### Appendix 2: E-Tendering

1. Introduction
  - 1.1 These rules apply to all procurement activity undertaken using the Council's e-tendering portal.
  - 1.2 The use of e-tendering is optional during the introductory period. Following the introductory period, the use of e-tendering will become mandatory for all procurements.
  - 1.3 The use of e-tendering is being introduced following the introduction of the Public Contracts Regulations 2015. The use of electronic means to publish tender opportunities and make the documents available electronically is required by Regulation 22.
  - 1.4 All procuring officers will be required to attend training before being given access to the e-tendering portal.
2. Thresholds
  - 2.1 The use of e-tendering is not based on monetary thresholds, it is suitable for all quotes, tenders and framework mini-competitions.
3. Guidance and Mandatory Settings
  - 3.1 When setting up a new procurement on the e-tendering portal the procuring officer must refer to the separate E-Tendering Guidance document and, in particular, the mandatory settings.
  - 3.2 The E-Tendering Guidance document is available on the intranet in the Procurement Toolkit.
4. Communication
  - 4.1 All communication during the tender process must be conducted via the e-tendering portal, in accordance with the instructions to tenderers.
  - 4.2 Any clarification questions must be submitted by tenderers using the correspondence function of the e-tendering portal.
  - 4.3 In the event the procuring officer is contacted via email, telephone or in person regarding the procurement, they must direct the individual to the e-tendering portal. The procurement must not be discussed directly with individual bidders.
  - 4.4 Clarifications and responses to clarification questions will be issued to all bidders via the e-tendering portal.

## PART 4 – PROCUREMENT PROCEDURE RULES

### 5. Return of Quotations and Tenders

5.1 All quotations and tenders must be returned via the e-tendering portal and will remain unopened and anonymous until the closing time and date for the receipt of responses.

5.1.1 The only exception to 5.1 is where bidders are having problems with the e-tendering portal and are unable to upload their return. The Procurement Officer must have been made aware of the problem prior to the return deadline.

5.1.2 Where a return has been returned by other means, following agreement by the Procurement Officer that this is acceptable, the return must be manually added at the start of the opening ceremony before the electronic submissions are opened.

5.2 Any pending, or late, tender returns will be rejected by the e-tendering portal once the opening ceremony has been started.

5.3 The opening ceremony will be carried out by the procuring officer and relevant Director, or his nominee.

5.4 An electronic record shall be kept for both quotations and tenders of:

- The contract title;
- The contract reference;
- The return date and time;
- The number of expressions of interest;
- The number of returns;
- The name of the person/company submitting the quotation or tender;
- The value of each quotation or tender;
- The date and time the opening ceremony is started;
- The name of the procuring officer carrying out the opening ceremony.

5.5 Following the opening ceremony, a confirmation email shall be sent to the appropriate procurement stakeholders which, dependent on contract value, may include the Lead Councillor, Council Solicitor and Monitoring Officer and the Service Leader, and should include the information listed in paragraph 5.4 above.

### 6. Notification of Award Decision

6.1 Notification of the award decision and feedback for the unsuccessful bidders must be issued using the e-tendering portal.