

# **WEST LONDON WASTE AUTHORITY**

## **Contracts and Procurement Rules**

**1 July 2016**

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## 1. SUMMARY OF CONTRACTS AND PROCUREMENT RULES

Estimated Value	Procurement Process	Documentation Required	Decision to tender and recommendation of Award	Decision to award and Contract Signature
0 - £5k	Minimum of 1 quotation required	Quotation must be kept on file	Responsible Officer	Managing Director/ Senior Assistant Director/ Head of Finance & Performance  <i>(Cannot be the same as the Responsible Officer)</i>
£5k - £25k	Supplier selected from and in accordance with Borough select lists, purchasing organisations or framework agreements  Or  Minimum of 3 quotations required.	Maintain record of Borough select list etc  Quotation must be kept on file  Must demonstrate most economically advantageous tender.		
£25k – £164k (2016 OJEU threshold is £164,000 for services)	Supplier selected from and in accordance with Borough select lists, purchasing organisations or framework agreements  Or  Minimum 3 quotations / tender submissions required  Where advertised the opportunity and award must also be published in contracts finder.	Maintain record of Borough select list etc  Quotation must be kept on file  Must demonstrate most economically advantageous tender  Maintain record of publication and award in contracts finder  As a minimum the Terms & Conditions of Contract must be issued with the Purchase Order or equivalent document. For values above £50k, a contract must be signed by WLWA and the Supplier.	Annual Procurement Plan (and Budget) / Contract Manager / Senior Assistant Director / Head of Finance	Managing Director
£164k - £1m  Public Contracts Regulations 2015 tendering process must be followed where above OJEU threshold (2016 threshold: £164k for services and £4m for works).	<b>Below OJEU threshold (works)</b>  Supplier selected from Borough select lists, purchasing organisations or framework agreements  Or  A tender should be undertaken and the opportunity must be published in contracts finder and where appropriate other tender portals or	Maintain record of Borough select list etc  Invitation to tender documents will include: terms & conditions of contract, service specification, method statement questions, pricing document, information to tenderers including clear evaluation criteria and sub criteria.  Financial status of bidders to be considered as part of tender evaluation. Requirement for	Annual Procurement Plan (and Budget) / Managing Director	Any 2 of the Chief Officers.  Contract to be signed by the Managing Director

Estimated Value	Procurement Process	Documentation Required	Decision to tender and recommendation of Award	Decision to award and Contract Signature
	<p>publication route.</p> <p>Where required standstill period must be observed prior to award of contract.</p> <hr/> <p><b>Above OJEU threshold</b></p> <p>Procurement of supplies, services and works over the OJEU value thresholds require OJEU advertising. See link below for current thresholds and guidance.  <a href="http://www.ojec.com/thresholds.aspx">http://www.ojec.com/thresholds.aspx</a>;</p> <p>When required standstill period must be observed prior to award of contract.</p> <p>Opportunity must be published in contracts finder and where appropriate other tender portals or publication route</p>	<p>a bond or guarantee to be considered.</p> <p>Maintain record of publication and award in contracts finder. A contract must be signed by the Authority and the Supplier.</p> <hr/> <p>Invitation to tender documents will include: terms &amp; conditions of contract, service specification, method statement questions, pricing document, information to tenderers including clear evaluation criteria and sub criteria.</p> <p>Financial status of bidders to be considered as part of tender evaluation. Requirement for a bond or guarantee to be considered.</p> <p>Award report to Authority is required.</p> <p>OJEU and Contracts Finder contract Notice and Contract Award notice (if applicable)</p> <p>A contract must be signed by the Authority and the Supplier.</p>		
<p><b>Over £1m</b></p> <p>Public Contracts Regulations 2015 tendering process must be followed where above OJEU threshold (2016 threshold: £164k for services and £4m for works).</p>	<p>As £164k - £1m requirements</p>	<p>As £164k - £1m requirements</p>	<p>Annual Procurement Plan / Managing Director</p>	<p>The Authority. Contract to be signed by the Managing Director</p>

**Key Requirements:**

- Borough select lists means any list that a constituent borough maintains and that contains the names of contractors, suppliers, consultants and the like from whom works, goods, supplies, services, etc. can be obtained without the need to advertise or otherwise seek expressions of interest. Generally competitive quotes or tenders will still be necessary when using names contained within a Borough Select List. In all cases the Authority's Contracts and Procurement Rules must still be complied with. The Authority may ask a number of companies from these lists to submit quotations to optimise the outcome.
- No commitment must be given to a Supplier for goods or services prior to a Purchase Order or equivalent document being raised.
- Financial disaggregation of Estimated Procurement Value in order to avoid compliance with these and the Public Procurement Regulations is prohibited.
- All Contracts, whether income or expenditure, should be captured on the Authorities Contracts Register as required by the Transparency Code.
- Where a framework agreement is being used to make an award under the rules of the framework this only requires an award to be written for approval of award recommendations.

## **2. INTRODUCTION**

- 2.1 The West London Waste Authority (the "**Authority**") undertakes a range of procurements each year. The Contracts and Procurement Rules ( the "**Rules**") set out the rules that are required to be followed when undertaking the various kinds of procurements.
- 2.2 Effective Procurement depends on ensuring that:
- Requirements are accurately determined; and
  - An appropriate approach is taken to the Procurement that complies with the EU Procurement Rules as defined by the UK Public Contracts Regulations 2015 where necessary.
- 2.3 The Rules support the delivery of the Authority's Annual Procurement Plan and are intended to:
- Secure best value for the Authority;
  - Provide those involved in spending public money with clear and transparent procedural requirements;
  - Ensure fairness to those seeking to Contract with the Authority;
  - Prevent fraud and corruption or the suspicion of it; and
  - Ensure the Authority complies with the law.
- 2.4 The Authority has a responsibility to ensure that, as a minimum, Supplies, Works and Services are of a good quality and are competitively but sustainably priced.
- 2.5 The Authority must at all times act with integrity and comply with statutory requirements.
- 2.6 Officers must at all times act transparently and avoid acting in an unfair and / or discriminatory way.
- 2.7 Officers have a duty to report breaches of the Rules to any one of the following: the Head of Finance, Treasurer, Clerk.
- 2.8 If officers fail to comply with the Rules, which lay down minimum mandatory requirements when engaging in procurement activity, disciplinary action may be considered.

## **3. APPLICATION**

- 3.1 The Rules provide the governance structure within which the Authority may procure Works, Supplies and Services. The aims of these Rules are to ensure:
- 3.1.1 Commitment to the principles of transparency, fairness, proportionality and equal treatment within the procurement process;
- 3.1.2 Value for Money and propriety in the spending of public money;
- 3.1.3 Works, supplies and services are delivered effectively and efficiently without compromising the Authority's ability to take strategic decisions;

The Authority is not exposed to unnecessary risk or challenge arising from non-compliant procurement activity;

3.1.5 Compliance with legislation, and relevant guidance including Procurement Policy Notes issued by the Cabinet Office; and

3.1.6 The delivery of economic, environmental and social value through procurement.

3.2 All officers must comply with the Authority's scheme of delegation.

3.3 All officers must undertake Procurement in a manner which avoids any potential conflicts of interest and must follow the Authority's procedure for declaring interests.

#### **4. SCOPE**

4.1 The Rules apply to all Procurement activities including the receipt of income or where funding is received by the Authority from external sources.

4.2 A Contract includes any agreement to provide supplies, services or works in exchange for a consideration (this is usually a payment). These contracts include but are not limited to:

- Purchase orders (or equivalent documents);
- Leasing arrangements;
- Engaging agency workers; and
- Engaging outside experts or consultants.

4.3 The following contracts are **exempt** from these Rules:

- Employment contracts;
- Contracts relating solely to the disposal or acquisition of an interest in land including leasehold interests;
- Contracts that are entered into in a situation where the Authority's Urgency Procedure has been activated for the provision of goods or services that are necessary to enable the Authority to discharge its responsibilities in such a situation; and
- Inter Authority Agreements and Service Level Agreements with the Constituent Boroughs.

4.4 Framework Agreements that have been established by other Public Sector Bodies that are lawfully accessible to the Authority should be used in accordance with the terms and conditions of the relevant Framework Agreement.

#### **5. DETERMINING CONTRACT VALUE**

5.1 The Rules that need to be followed for each Procurement depend upon the estimated value of the Contract to be let over its entire term including any potential extensions.

5.2 Before commencing a purchasing or tendering process an estimate of the value of the Contract must be prepared. If known in advance it must be and included in the Annual Procurement Plan.

- 5.3 This should be based on a genuine estimate of the value all payments to be made, or potentially to be made to the contractor, for the whole of the Contract period including any potential extension period(s).
- 5.4 Contracts must not be artificially disaggregated to avoid the application of the Public Contracts Regulations and/or these Rules.
- 5.5 To comply with the Public Contracts Regulations 2015, the Authority is required to divide large contracts into lots with the aim of enhancing competition. If the Authority is unable to do so, it must document the main reasons for its decision not to subdivide into lots.
- 5.6 Where a Contract is to be let that does not involve the making of payments by the Authority for the provision of a service (e.g. where the Authority is receiving income from a contractual arrangement or is procuring a service that is not paid for by the Authority); Legal and Procurement advice should be sought in estimating the Contract value.

## **6. WAIVERS**

- 6.1 Circumstances may arise where permission is required to waive one or more of the Rules. Waivers are reserved for exceptional circumstances and will only be approved where good and sufficient reason has been demonstrated. A waiver will not be granted simply on the grounds of convenience or because of inadequate forward planning.
- 6.2 A waiver is a permission granted by the Clerk to commence a Procurement process or award a Contract without applying one or more of the rules set out in these Rules.
- 6.3 A waiver will only be granted in specific situations and will not be granted without a cogent reason.
- 6.4 The granting of a waiver for the commencement of a Procurement process or award of a Contract in can only be granted for sub OJEU values. The Clerk can only waive the Rules established by the Authority – neither the Clerk or the Authority can waive UK Law or the Public Contracts Regulations.
- 6.5 The Managing Director shall keep a register of all waivers to these Rules which shall be available for inspection by members of the Authority and the public, by appointment.
- 6.6 Waivers to any of the Authority's rules must be sought in advance of any contractual agreement, order placement, use of Works, Services or purchase of Supplies.
- 6.7 A waiver of the requirements to follow a tender or quotation procedure (i.e. permission to award a Contract directly to a supplier without genuine competition) **may** be granted in the following circumstances:
- In new and/or emerging markets where little or no competition exists or to pilot/trial new opportunities, technologies or innovation;



- An emergency involving danger to life or health or serious damage to property that requires goods or services to be obtained that would be otherwise possible if the tender or quotation procedure were followed;
- The goods or services can, only be obtained from one supplier;
- Acquiring goods or services from a different supplier would result in incompatibility with existing goods or services or disproportionate technical or operational difficulties;
- Where a grant received is time limited or includes a recommendation as to the supplier; and/or
- If there are exceptional circumstances in which it would not be in the Authority's best interests to follow the tender or quotation procedure.

6.8 A waiver of these Rules is not required in the following circumstances:

- Where an order is being placed for goods or services under an existing Contract or a Contract put in place by one of the constituent boroughs that the Authority may use; or
- Legislation requires the Authority to let a Contract differently from these Regulations.

6.9 The Public Contracts Regulations requirements cannot be waived where the value of the Contract requires compliance with the Public Contracts Regulations to be followed.

## **7. ROLES AND RESPONSIBILITIES**

### **7.1 Responsibilities of all officers undertaking procurements:**

- 7.1.1 All officers involved in procurements are responsible for familiarising themselves with the Authority's Contract and Procurement Rules and seeking financial, legal, Procurement and HR advice as appropriate;
- 7.1.2 All officers must declare to their line manager any interest, which could, or be seen to, influence their judgement in any Procurement or Contract matter; and
- 7.1.3 All officers must report to their line manager or other responsible senior officer any concerns about improper conduct or breach of procedures during a Procurement exercise.

### **7.2 Responsibilities of the Managing Director**

The Managing Director shall:

- 7.2.1 Be responsible for the purchasing undertaken by the Authority and providing the associated information required for reporting purposes;
- 7.2.2 Ensure that Members, WLWA Management Board and any Project Board set up for the Procurement, are consulted as necessary on issues arising as part of a Procurement exercise;
- 7.2.3 Be responsible for ensuring that all procurements are appropriately scoped and follow an appropriate Procurement exercise;

- 7.2.4 Be accountable to the Authority for the performance of his/her duties in relation to Procurement;
- 7.2.5 Comply with the Authority's decision making processes;
- 7.2.6 Designate a Responsible Officer for leading each Procurement in excess of £25,000;
- 7.2.7 Take immediate action in the event of breach of these Regulations being identified to rectify the breach; and
- 7.2.8 Ensure the integrity of the Procurement process.

### **7.3 Role and Responsibilities of the Responsible Officer**

The officer designated as the Responsible Officer is responsible for:

- 7.3.1 Ensuring the integrity of the Procurement process;
- 7.3.2 Where necessary, seeking appropriate advice to ensure compliance with these Rules and the formulation of an appropriate strategy for the Procurement;
- 7.3.3 Ensuring that there is appropriate analysis of the service requirement, risks associated with the Procurement, the estimated Contract value, timescales, procedure and documentation to be used;
- 7.3.4 Consulting with the Constituent Boroughs if appropriate and ensuring that their views are reflected in the Procurement process as appropriate;
- 7.3.5 Ensuring that the officers involved in the Procurement process understand the service requirement and the strategy to be adopted for the Procurement;
- 7.3.6 Quantifying any cost savings arising from the Procurement and ensuring these are reported and delivered;
- 7.3.7 Compliance with the Authority's approvals and decision making processes
- 7.3.8 Compliance with record keeping requirements;
- 7.3.9 Ensuring that value for money is achieved;
- 7.3.10 Ensuring that a business continuity plan is in place and, where considered necessary, appropriate security (such as a bond or guarantee) is taken to protect the Authority in the event of non-performance of the Contract;
- 7.3.11 Ensuring that the contractor has sufficient and appropriate security protocols in place for the storage, use and transmission of sensitive data where this is necessary for the performance of the Contract;
- 7.3.12 Ensuring that a framework for the management of the Contract is put in place prior to Contract award;

- 7.3.13 Ensuring that the Authority's Contract register is updated when the Contract is awarded;
- 7.3.14 Ensuring that the opportunity and award is published on Contracts Finder where necessary; and
- 7.3.15
- 7.3.16 Providing information about the Contract that is required to be published under access to information and contract award notice requirements.

## **7.4 Engaging advisors to Procurement processes**

- 7.4.1 Where a consultant or other advisor is to be engaged to provide specialist or technical advice to support a Procurement process (e.g., by assisting in the preparation of a specification):
- These Rules must be applied as appropriate to the value of the consultant's contract; and
  - There must be a clearly defined schedule of requirements that sets out the advisor's role in the Procurement exercise.
- 7.4.2 Unless specifically authorised to do so, advisors to the Authority are not generally allowed to:
- be designated as or act as the Responsible Officer for the Procurement;
  - tender for contracts being let as part of that Procurement process;
  - communicate directly with bidders unless that communication has been authorised by the Authority's Responsible Officer; and
  - represent the Authority at any meeting with potential suppliers unless the Authority's Responsible Officer is also in attendance at that meeting and is taking a lead role in that meeting.
- 7.4.3 The Responsible Officer must ensure that the requirements set out in these Rules are applied including the use of appropriate Authority Procurement documentation.
- 7.4.4 Legal advice should be sought on the terms and conditions of all contracts with a total value estimated to be in excess of £164,000.

## **7.5 Project Boards**

- 7.5.1 For significant and complex procurements the Authority may, on recommendation of the Authority's Management Board, set up a Project Board to manage the Procurement.
- 7.5.2 Membership of the Project Board shall be decided by the Authority and will usually include some or all of the Authority's officers, one of whom will normally be appointed by the Authority as Chair of the Board.
- 7.5.3 Other members will usually be senior officers of the constituent boroughs, although the Authority may appoint Project Board members from other bodies such as central government.

## 8. COMPLIANCE

- 8.1 Every Contract entered into on behalf of the Authority must comply with:
- these Rules;
  - all relevant EU and UK legislation.
- 8.2 The Responsible Officer must consider the public sector equality duty and whether a full Equalities Impact Assessment is required.
- 8.3 **All contracts must be documented in writing.** Please refer to Table 1 of these Rules which specifies the documentation required for the various values of procurement.
- 8.4 All contracts over £25,000 in value over the life of the Contract must be recorded on the Authority's Contracts Register. The Managing Director must ensure that the Contracts Register is updated at the end of the Procurement process.
- 8.5 Failure to comply with the Rules can lead to disciplinary action.

## 9. PROCUREMENT METHODS

- 9.1 Approved Officers must treat suppliers equally and without discrimination and must act in a transparent and proportionate manner.
- 9.2 Before commencing a Procurement procedure, Approved Officers may conduct market consultations with a view to preparing the Procurement and informing Suppliers of their Procurement plans and requirements provided that it does not have the effect of distorting competition and does not result in a violation of the principles of non-discrimination and transparency. Officers may, for example, seek or accept advice from independent experts or authorities or from market participants.
- 9.3 The default position in acquiring Works, Supplies and Services should always be open competition through competitive tendering. Please refer to Table 1 of these Rules to determine the Procurement process that should be used.
- 9.4 All opportunities for Works, Supplies and Services over £25,000 if advertised must be published on Contracts Finder in accordance with Table 1.
- 9.5 The E-Procurement portal must be used for any Procurement where the lifetime value of the Contract exceeds £164,000.
- 9.6 The use of Pre Qualification Questionnaires is only required for contract values above the EU Threshold. Suitability Assessment Questions may be asked as appropriate for contract values below the EU Threshold.

### Frameworks

- 9.7 The Managing Director must approve accessing externally established Framework Agreements. Approval for subsequent call-offs from the approved Framework Agreements will be subject to the requirements of these Rules and compliance with the rules for call-off set out in the Framework Agreement. (See Procurement Guidance document).

- 9.8 The Authority may utilise the corporate contracts of any of the constituent boroughs for the provision of goods or services that need to be purchased from time to time.
- 9.9 The Authority may be able to procure services through a framework agreement that has been let by a third party:
- 9.9.1 Framework agreements may offer access to a single supplier or to multiple suppliers who can provide a service, services or particular goods. Each framework agreement will set out the process for drawing services off the framework and there will be restrictions as to the extent to which the Authority can vary the service specification, any service level agreements, terms and conditions or other contractual documents.
- 9.9.2 Where a potential framework agreement has been identified:
- Legal advice must be sought to confirm that the framework agreement can be used by the Authority;
  - The scope of the services that can be drawn off the agreement and their associated service levels and terms and conditions need to be investigated to ensure they meet the Authority's needs; and
  - The process for using the framework agreement must be understood and complied with.

## **Collaborative Arrangements**

- 9.10 The Authority can proceed with procurements that have been undertaken through collaborative arrangements with other public bodies:
- 9.10.1 Each collaborative Procurement will have a lead or contracting authority. This is the body that will be responsible for letting and awarding the Contract. The Procurement process will usually be undertaken in accordance with that body's contracting regulations.
- 9.10.2 Each participating authority's role and responsibilities in any collaborative Procurement must be clearly defined.
- 9.10.3 The responsibilities of officers of this Authority will vary depending on whether:
- The Authority is designated as the contracting authority or whether another body is the contracting authority;
  - It is intended that the Authority **will** use the Contract for the provision of goods or services;
  - The Authority is engaged in a collaborative Procurement exercise to award a Contract that it **may** utilise for the provision of goods and services.

## **10 SPECIALIST PROCUREMENT REQUIREMENTS – WASTE SERVICES**

- 10.1 Procurement of all waste services must be compliant with the requirements of the Greater London Authority (GLA) Act 1999 as amended by the GLA Act 2007.
- 10.2 The Mayor for London must be informed in writing of the Authority's intention to procure waste services a minimum of 108 days before an OJEU notice is issued. Any

direction provided by the Mayor for London in response to such notice of intention must be complied with by the Authority under the GLA Act 1999.

## **11 AUTHORISATION**

### **West London Waste Authority as the Contracting Authority**

11.1 Where it is proposed that West London Waste Authority will be the contracting authority for the Procurement:

11.1.1 Authorisation to commence the Procurement process must be obtained in accordance with these Rules;

11.1.2 The Procurement must be undertaken in accordance with these Rules and this Authority's Procurement documentation;

11.1.3 The Project Team that leads the procurement must consult with legal and/or Procurement;

11.1.4 The roles and responsibilities of the participating authorities must be clearly defined and necessary written agreements or memoranda of understanding entered into;

11.1.5 The Procurement timetable should allow for the participating authorities to obtain necessary approvals in accordance with their regulations;

11.1.6 There should be appropriate consultation with the participating authorities on the Procurement process; and

11.1.7 Authorisation to award the Contract must be obtained in accordance with these Rules.

### **Collaborative Procurement where the Authority is not the Contracting Authority**

11.2 If the Authority is committed to using the Contract once it has been awarded, authority to participate in the Procurement process must be obtained prior to the placing of any notice advertising the Procurement.

11.3 The Responsible Officer must ensure that relevant officers within this Authority are provided with an opportunity to comment on the approach to the Procurement and specification.

11.4 Once the Contract has been awarded by the contracting authority, approval to draw down goods or services from the Contract must be obtained.

11.5 If the Authority is not committed to using the Contract, approval to draw down goods or services from the Contract must be obtained before the Contract is awarded.

## 12. Interpretations and Definitions

Advisor	means a consultant or other specialist who is appointed to provide the Authority with technical or other specialist service related advice as part of a Procurement process
Annual Procurement Plan	means the Plan that is approved by the Authority that lists the procurements to be undertaken by the Authority in a particular time period
Commissioning	means specifying a need or outcome
Contract	means any written agreement to provide supplies, services or works in exchange for a consideration (this is usually a payment)
Contract Management	means managing a Contract to achieve a need or outcome
Contracts Finder	means the method where procurements above £23,500 needs to be advertised
Contract Value	means a genuine estimate of the value all payments to be made, or potentially to be made to the contractor, for the whole of the Contract period including any potential extension period
Constituent Boroughs	The Constituent Boroughs of the West London Waste Authority means the London Boroughs of Brent, Ealing, Harrow, Hillingdon, Hounslow and Richmond upon Thames
Managing Director	means the Managing Director for the time being of the Authority or such other person as the Authority shall appoint as Managing Director for the purpose of these Regulations
Authority Procurement Documentation	means that documentation to be used to undertake the Procurement process adopted by the Authority
Procurement Regulations	means the Public Contracts Regulations 2015 as amended from time to time

Services Threshold	means the threshold specified under the Public Contracts Regulations 2015 for the award of supplies and services contracts as amended from time to time. (Updated for 2016 - threshold is £164,176 net of VAT (Note: the threshold is usually reviewed on the 1 <sup>st</sup> January every other year and was last amended on 1 <sup>st</sup> January 2016)
Works Threshold	means the threshold specified under the Public Contracts Regulations 2015 for the award of works contracts as amended from time to time. Updated for 2016 £4,104,394 threshold (Note: the threshold is usually reviewed on the 1 <sup>st</sup> January every other year and was last amended on 1 <sup>st</sup> January 2016)
Framework Agreement	means an agreement between one or more contracting authorities and one or more suppliers which fixes the terms and conditions under which the supplier will enter into one or more specific contracts with a contracting authority under the term of the framework agreement, which must be no longer than four years.
OJEU	means the Official Journal of the European Union). This is the publication in which all notices from the public sector which are valued above a certain financial threshold according to the Public Contracts Regulations, must be published
Procurement	means the process for satisfying a need or outcome
Project Board	means a Board set up to manage a specific procurement
Purchase Order	means the Authority's official order form or equivalent document for the purchase of works, goods or services.
Quotation	means a description as to how a supplier intends to meet the Authority's requirements and, where appropriate, as set out in the Authority's specification and accompanied by a schedule of costs of the works, goods or services to be provided to meet the Authority's specification
Rules	means these Contracts and Procurement Rules 2016



Responsible Officer	means an officer with responsibility for procuring the purchase of works, supplies or services on behalf of the Authority. This shall include the Managing Director and other officers who are exercising the necessary delegated powers on behalf of the Managing Director
Standing Orders and Scheme of Delegation	means the currently adopted Standing Orders and Scheme of Delegation
WLWA Management Board	means the Clerk, Treasurer, Managing Director and Chief Technical Advisor, who will oversee Contract awards and management within the Authority.