

GUILDFORD BOROUGH COUNCIL - PROCUREMENT PROCEDURE RULES

April 2021

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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 Procurement decisions are among the most important decisions a local authority will make in order to ensure that public money is appropriately directed and that the goods, works and services are procured effectively and in accordance with Procurement Legislation and represent best value. The Council's reputation is equally important and should be safeguarded from any imputation of dishonesty or corruption.
- 1.3 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. The threshold for engaging with the Procurement Team is for all expenditure in excess of £1,500.
- 1.4 Corporate Procurement Board (CPB) is to take an active role in the management of the procurement process. The CPB 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.
- 1.5 If there is any relevant change to English 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.

- 1.6 The Council is required by section 135 of the Local Government Act 1972 to maintain these Rules as part of the Constitution.
- 1.7 The Council's Monitoring Officer has Delegated Authority to make minor amends to the Constitution and therefore these Rules. The Senior Specialist Procurement together with the Lead Specialist Legal in consultation with the Lead Councillor, shall publish details of any substantial amendments, following formal approval by full Council.
- 1.8 Procurement and Legal are the custodian of these Rules and are responsible for keeping them under review.

Part 2

2. Key Principles

These Rules are based on the following key principles:

- 2.1 To ensure that the Council meets its statutory duty to deliver **best value for money** and creates healthy competition and markets for the Goods, Services and Works purchased
- 2.2 To be **transparent** to our residents about how the Council spend their money
- 2.3 To ensure that public money is spent **legally** and **fairly**
- 2.4 To support **sustainability** and **social value objectives**, and our public sector **equality** duty, encouraging local small businesses.

3. Application

These Rules apply to:

- 3.1 All contracts for the supply of works, goods or services (including consultancy) to the Council, regardless of value.
- 3.2 Partnership and collaborative arrangements with other bodies.
- 3.3 Concession Contracts

These rules do not apply to:

- 3.4 Contracts for the purchase or sale of any interest in land including leasehold interests and licences, which are purely land transactions, for which reference should be made to the Financial Procedure Rules.

- 3.5 Contracts of employment for the appointment of individual members of staff.
- 3.6 Grant agreements, where the Council is giving an unconditional grant.
- 3.7 Sponsorship agreements regulated by the Sponsorship Rules.
- 3.8 Supply of works, goods and services by the Council. [The Lead Specialist – Legal must be consulted where the Council is contemplating this route.]
- 3.9 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.

Exemptions to these rules:

- 3.10 In all cases, where an exemption to the tendering or quotation process is sought the Director or Service Leader for the area shall obtain the consent of the Corporate Procurement Board. The Senior Specialist -Procurement will document the exemption request, all reasons for the exemption request and record the decision. **It should be noted that no exemptions are permitted if the value requires compliance with the National Procurement Directives and thresholds.**

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

- 3.11 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;
- 3.12 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;
- 3.13 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;
- 3.14 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;
- 3.15 the nature of the market for the goods, works or services has been

investigated and it is demonstrated that a departure from the Regulations is justified.

3.16 If it is in the overall best interest of the Council.

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

3.18 The Senior Specialist Procurement will report on exemptions to the CPB and has authority to approve any direct award requests under the value of £10,000.

4. Compliance

4.1 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 legislation.

4.2 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. 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.

4.3 Generally, work must not begin under a contract until both parties have signed the contract document, except in the cases of urgency when the approval of the Lead Specialist – Legal is to be obtained. Letters of intent may only be provided with the approval of the Lead Specialist - Legal who must agree the terms of any such letter. If a Letter of Intent is provided a contract must be signed as soon as possible thereafter.

4.4 If there is any doubt about the application of the rules the issues should be referred to the Senior Specialist - Procurement.

5. Conflicts of interest

5.1 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:

- 5.1.1 not accepting gifts or hospitality from organisations or suppliers that the Council has dealings with;
- 5.1.2 not working for organisations or suppliers that the Council has dealings with;

- 5.1.3 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).
- 5.2 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.
- 5.3 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.

6. Prevention of bribery and corruption

- 6.1 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.
- 6.2 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.
- 6.3 The Monitoring Officer must maintain a record of all declarations of interest notified by Councillors and Officers.

Part 3

7. Responsibilities of the procurement service

- 7.1 The Procurement service is responsible for:
- Delivering the Procurement Strategy adopting a Category Management approach to the Councils expenditure and purchasing activity.
 - Ensuring transparency over spend, contracts and contract opportunities
 - Embedding social value and sustainability across the supply chain
 - Ensuring efficient and effective purchasing practices are in place for all staff
 - Providing general commercial advice and support as required,
 - Ensuring suppliers are aware of, and follow, the Council's Supplier Code of Conduct when bidding and carrying out contracts
 - Approving all new supplier set up requests

- Authorising any Procurement card transactions outside of the nominated card holders
- Purchasing from existing contracts where they are appropriate and in place
- Ensuring there is adequate budget available prior to any procurement activity commencing
- Taking a commercial lead on all major contracts and relationships with suppliers alongside the Contract Manager

8. Role and responsibilities of the corporate procurement board (CPB)

- 8.1 The Council recognise that, in order to achieve consistency and compliance with these Regulations and the Procurement Strategy, there is a need for the involvement of key corporate advisers in all significant procurement processes. All procurement of goods, works or services in excess of the National thresholds, must be referred to the CPB.
- 8.2 The CPB will consist of the following Officers (or their nominated deputies):
- Director of Resources
 - Senior Specialist Procurement
 - Financial Services representative
 - Legal Services representative
 - Procurement Specialists together with the Service leads shall routinely attend Corporate Procurement Board to present proposals and updates.
 - Deputies must attend if the primary representative is not available.
- 8.3 The CPB aims to ensure that the Council's Procurement Procedure Rules, Scheme of Delegation and Procurement Strategy is implemented in all cases and at all stages.
- 8.4 The CPB shall operate a Procurement Gateway process where by a full report is presented to CPB for sign off, this is split into two stages as follows:
- Gateway part one: Commissioning and Procurement Strategy.
 - Gateway part two: Tender Evaluation and Contract Award.
- 8.5 Any failure to consult the CPB at the appropriate time shall be deemed to be a breach of these Regulations.

9. Responsibilities of service leaders

- 9.1 Service Leaders must ensure adequate budget provision is in place prior to engaging in any Procurement activity. Procuring officers must observe the Council's Financial Procedure Rules at all times.

- 9.2 It is the responsibility of each Service Leader:
- 9.2.1 To incorporate within their service plan, a list of all current and forecast contract opportunities for the upcoming three years. This list is to be updated as necessary throughout the year and shared with the Procurement Team to inform the pipeline of work.
 - 9.2.2 To ensure that all procurements and contracts within the named department comply with Procurement Procedure Rules, Financial Procedure Rules and all applicable public procurement legislation.
 - 9.2.3 To ensure those officers to whom they delegate their functions are aware of the strategic direction of the service and have authorisation to engage with procurement.
 - 9.2.4 To manage Contracts within the named department to ensure that contracts deliver best value, are operated effectively, efficiently and economically and are operated in accordance with the contract provisions.
 - 9.2.5 To keep adequate records to show compliance with the Procurement Procedure Rules, Financial Procedure Rules and all relevant legislation.
- 9.3 At the outset of each procurement, the Service Leader must in conjunction with the Procurement Team:
- 9.3.1 assess the business needs determining whether the requirement shall be subject to the project and programme governance board prior to commencing procurement
 - 9.3.2 ensure the procurement complies with corporate policies and priorities
 - 9.3.3 review ethical, social and sustainability issues
 - 9.3.4 consider potential contractual relationships
 - 9.3.5 undertake a risk management exercise at the start of any procurement exercise, which is commensurate with the value and complexity of the procurement
 - 9.3.6 undertake when appropriate a pre-market testing exercise
 - 9.3.7 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.

10. Tendering thresholds

10.1 The following minimum number of invitations to tender or quote shall apply to all contracts including those let to the Voluntary / Not for Profit Sector, subject to National procurement regulations (including aggregation).

Type of procurement and total cost threshold	Minimum number of invitations to tender or quote	Responsibility
Goods, Works and Services estimated to cost no more than £1,500	No requirement to seek Procurement advice but key principles outlined in Part 2, section 2 apply.	Service led
Goods, Works and Services estimated to cost between £1,500 and £50,000	Seek procurement advice on route to market to demonstrate best value	Procurement led together with Service
Goods, Works and Services estimated to cost between £50,000 and the National threshold for Goods and Services limit (currently £213,477 or £663,540 for Light Touch Regime contract)	3 Formal Tenders as a minimum	Procurement led together with Service
Goods, Works and Services estimated to cost above the relevant National tendering threshold. (works currently £5,336,937)	In accordance with the Public Contract Regulations 2015 as a minimum. Approval from Corporate Procurement Board at Gateway One/Two.	Procurement led together with Service

11. Estimate of total contract value (TCV)

11.1 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.

11.2 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 national 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 businesses and voluntary organisations.

12. Specification / Evaluation criteria / Route to market

- 12.1 Each procurement must be appropriately specified, and selection and award criteria must be formulated in advance to ensure the Council obtains value for money, the procurement process is transparent, and the desired outcome is obtained. Tenders will be assessed on a price / technical split in order to determine the Most Economically Advantageous Tender (MEAT) the weightings and price / technical split will be determined by Procurement taking into account the requirements of the service area.
- 12.2 All works, goods and services must be specified by reference to national standards. 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.
- 12.3 The appropriate route to market must be selected as advised by the Procurement Officer or approved by CPB where required by these Rules. This may be a Request for quote (RFQ) or an Invitation to Tender (ITT) or a two stage procedure when Tenderers are invited to submit initial information via a Selection Questionnaire (SQ) and a number qualify to receive an ITT on the basis of the information provided. Additional procedures including Competitive Dialogue, Competitive procedure with Negotiation, Frameworks and Dynamic Purchasing System (DPS) may be available but advice must be taken from the Procurement team on the most appropriate route.

13. Social Value

- 13.1 The Public Services (Social Value) Act 2012 places a requirement on officers who commission, or buy, public services to consider securing added economic, social or environmental benefits for their local area.
- 13.2 The Act currently applies only to service Contracts over the National Tendering threshold but must be considered in all procurements where applicable.
- 13.3 Social value should form part of a bidder's commitments at tender stage and should be tailored to the subject nature of the contract being awarded

14. Modern slavery

- 14.1 The Modern Slavery Act 2015 was implemented to tackle modern slavery, defined in the act as slavery, servitude, forced or compulsory labour, human trafficking and exploitation.
- 14.2 The Council adopted the Modern Slavery Motion in 2020 and has an obligation to report annually on its progress. Proportionate due diligence is therefore

undertaken to certify that Council appointed contractors do not participate in modern slavery, either directly or within their supply chains.

15. Climate change

15.1 On 23 July 2019 the Council declared a climate emergency across the borough with an ambition of reducing the Council's carbon emissions to net-zero by 2030. As such for every procurement within the scope of these Rules, the environmental impact must be considered, the emphasis should be placed on minimising the carbon footprint and a relevant clause included in the contract where possible.

16. E-Tendering

16.1 All procurement is to take place through the Council's e-tendering portal any exceptions are to be agreed by the Senior Specialist Procurement. The e-tendering portal must be used for all returns which records the time received and all the necessary information to satisfy audit and transparency principles.

16.2 Any tender received after the date and time indicated on the Tender documentation will be excluded from the process.

17. Contracts register

17.1 Spend data, contract opportunities and awards are published in accordance with government requirements and Transparency Agenda, Council expenditure with suppliers that exceeds £500 is published and all contracts valued at £5,000 and above are available on the publicly accessible Contracts Register, this can be found on the Council's public website.

17.2 Any advertised opportunity valued over £25,000 must be advertised on Contracts finder, for Contracts over £25,000 a Contract award notice must also be published.

17.3 Freedom of Information – in accordance with the Freedom of Information Act (FOIA) 2000 and Environmental Information Regulations (EIR) 2004, the Council has an obligation to publish specific information and to provide information to members of the public upon request. By exception confidential or commercially sensitive information may be withheld.

Part 4

18. Legal considerations

18.1 Contract documents

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 Lead Specialist - Legal. A letter of intent must not be issued unless approved by the Lead Specialist - Legal.

18.2 TUPE

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 allocated Legal advisor as to their application.

18.3 Dispute resolution

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.

18.4 Deeds, sealing and signing of contracts

- 18.4.1 Any contract valued at £100,000 or more must, unless the Lead Specialist - Legal determines otherwise, be sealed with the common seal of the Council. In exceptional cases where the Lead Specialist - Legal 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 Procurement Procedure Rules and Financial Procedure Rules, by Legal services under the authority of a Delegated Authority signed by the relevant Managing Director, Director or Service Leader.
- 18.4.2 Contracts less than £100,000 in value must be signed by Legal Services under the authority of a Delegated Authority Form signed by the relevant Managing Director, Director or Service Leader or may be sealed with the common seal of the Council in cases where the Lead Specialist - Legal considers it to be appropriate.

18.5 Contract terms

18.5.1 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:

- 18.5.1.1 Specify the works to be executed and goods or services to be supplied;
- 18.5.1.2 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;
- 18.5.1.3 State the period or times within which the contract is to be performed;
- 18.5.1.4 Prohibit any assignment or sub-letting of the contract without the express agreement in writing of the Council;
- 18.5.1.5 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;
- 18.5.1.6 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;
- 18.5.1.7 Require the contractor to comply with the Equality Act 2010 including the Public Sector Equality Duty, the Modern Slavery Act 2015, freedom of information requests and data protection law.
- 18.5.1.8 State that if the Contractor enters into liquidation or administration, the Council is entitled to cancel the contract and recover any resulting losses
- 18.5.1.9 State the minimum insurance levels required to be held by the contractor

18.6 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.

18.7 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.

18.8 For contracts which permit sub-contracting, the contractor is to be required to impose on the sub-contractors equivalent contractual requirements in terms of equality, health and safety, bribery and corruption, insurance, data protection, modern slavery and payment provisions.

19. Performance bond / Parent company guarantee

19.1 The Procuring Officer must consult the Lead Specialist Finance to determine whether a Parent Company Guarantee, Performance Bond or in an appropriate case, a deposited sum is necessary and at what level when the total contract value is in excess of £1 million and there is concern about the stability of the bidder following financial appraisal.

19.2 Any decision taken in accordance with 19.1 above must be recorded by the Procuring Officer.

20. Insurance

20.1 It is the responsibility of the Service Leader, 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.

20.2 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.

Outline steps to be taken to procure

These steps are part of the formal rules for undertaking procurement and bound by the formalities of the Council's Constitution. Procurement will keep a full trail of documents relating to each procurement undertaken.

Step 1: Identify need

Procurement is required to commence in good time, having identified the requirement in the Service Plan. This will allow adequate time to re procure and enable the proper procurement and legal guidance necessary to carry out the procurement. The process for urgent procurement is set out in separate guidance.

The Procurement initiation form (PIF) requests budget approval from Finance to perform the procurement before commencement.

Step 2: Develop business case

Procurement is required to commence in good time, having identified the requirement in the Service Plan. This will allow adequate time to re procure and enable the proper procurement and legal guidance necessary to carry out the procurement. The process for urgent procurement is set out in separate guidance.

The Procurement initiation form (PIF) requests budget approval from Finance to perform the procurement before commencement.

Step 3: Identify Market

Pre-market consultation with potential suppliers to establish that the market can meet the requirement for good, works or services is permitted until the point at which the Tender is released. 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. This intelligence can help to inform the specification.

Steps must be taken 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 the Council's requirements with the latest innovation.

Step 4: Develop tender documentation

The specification development and technical evaluation criteria is lead by the service. Procurement hold the ownership of the Procurement documentation and application through the etendering system.

Best value for the Council must be achieved by balancing cost and technical to produce the most economically advantageous solution over the lifetime of the contract.

Step 5: Undertake procurement process

Procurement will undertake the process including advertising on appropriate channels, developing and issuing documentation via the Council's e tendering portal, assess due diligence, evaluate the price element, lead the moderation session and take the process to award. Service are responsible for conducting the technical evaluation. At least three officers are required to do this independently on above threshold activity.

Step 6: Award and implementation of contract

Legal will be notified upon commencement of the standstill period of intent to award to the successful supplier.

The contract will be finalised in standstill and will be issued on expiry of the standstill period.

Procurement will record the contract on the Council's Contract Register.

Step 7: Contract management

All contracts will have a contract manager nominated by the Director or Service Leader.

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:

- 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 in conjunction with procurement