

CONTRACTS AND PROCUREMENT PROCEDURE RULES

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1. PROCUREMENT PROCEDURES

- 1.1. Every contract or official order for works, goods or services made by the Council shall be for the purpose of achieving the Council's statutory or approved objectives and shall conform to all relevant EU Directives and United Kingdom legislation.
- 1.2. The **Procurement Procedures** shall govern the Council's tendering and contract procedures. The Corporate Director, Resources shall maintain and issue these Procedures. Any procurement activity shall proceed in accordance with the Procedures and any financial thresholds for procurement specified by the Procedures. These Procedures and any updated or amended versions will then be placed in Appendix A of these Rules.
- 1.3. The Corporate Director, Resources shall make the latest version of the **Procurement Procedures** available to every Chief Officer, the Mayor and all Members of the Council and any other person engaged in procuring works, goods or services on behalf of the Council. Chief Officers or officers acting on their behalf shall apply the requirements of the Procedures when engaging in any procurement activity.
- 1.4. The purpose of procurement activity shall be to achieve best value for local people in accordance with the Council's statutory or approved objectives. Officers with responsibility for procurement shall ensure that they are able to demonstrate achievement of best value by having regard to a combination of economy, efficiency and effectiveness (otherwise known as the Council's Best Value Duty).
- 1.5. Nothing in the **Procurement Procedures** shall be construed as removing or diminishing the responsibility of all involved to meet individual and collective accountabilities. Any failure by an officer to comply with the Procurement Procedures is likely to constitute a disciplinary offence and be investigated under the appropriate disciplinary procedure.

- 1.6.** Chief Officers shall ensure that the Executive or an Executive Member is consulted on any procurement activity of a controversial nature. If however the decision is a 'key' decision that has not been delegated then a report must be submitted to Cabinet for determination having proper regard to the Access to Information Rules at Part 4.2 of the Constitution.
- 1.7.** The contracting strategy and/or award of any contract for goods or services with an estimated value exceeding £250,000, and any contract for capital works with an estimated value exceeding £5,000,000, shall be approved by the Executive in accordance with the Procurement Procedures. Contracts for goods or services with an estimated value of less than £250,000 and contracts for capital works with an estimated value of less than £5,000,000 shall be approved by the relevant Chief Officer, in accordance with the Procurement Procedures. If however the decision is a 'key' decision that has not been delegated then a report must be submitted to Cabinet for determination having proper regard to the Access to Information Rules at Part 4.2 of the Constitution.

APPENDIX A

Procurement Procedures

The purpose of these Procedures is to lay down a set of rules which provide a framework for all those involved in procuring supplies, works and services on behalf of the Council, or interacting with providers, or potential providers.

They apply to all representatives of the Council, Officers, Agents, or Members.

Failure to comply with these Procurement Procedures may put the Council at risk, and can lead to disciplinary action against the person responsible.

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PART 1 – INTRODUCTION

1. Introduction

- 1.1 The purpose of these Procedures is to lay down a set of rules which provide a framework for representatives procuring supplies, works and services on behalf of the Council. For ease of use, the specific rules are set out in shaded boxes throughout the Procedures. The Procedures are supplemented by an RFQ (Request for Quotation) toolkit for expenditure with a total value up to £100,000 and a more detailed contracting Tender Toolkit for expenditure above £100,000. These toolkits provide guidance on techniques to achieve best value for money, and a series of templates to be used throughout the procurement process.
- 1.2 Where a corporate contract is in place it **must** be used unless otherwise agreed by Corporate Procurement.
- 1.3 All Council representatives are warned that it is a **disciplinary offence** to fail to comply with these Procurement Procedures when letting contracts. All Council representatives have a duty to report breaches of the Procedures to the relevant Corporate Director and the Head of Corporate Procurement. The Procedures apply to all expenditure by the Council on supplies, services and works, provided by external organisations.
- 1.4 The Procedures include mandatory requirements, which are normally identified by the word “**must**” in bold letters. These requirements **must** always be followed. The words “**should**” and “**should not**” relate to good practice advice. Whilst not mandatory, you **must** have a good reason for not following the good practice advice and this **must** be recorded on your tender or quotation file. If in doubt, you **must** contact Corporate Procurement and/or Legal Services for advice, and where appropriate, Internal Audit.
- 1.5 The generic term **Bid** covers both tenders and quotations. A bid process below a total value of £100,000 will be classed as a quotation. A bid process at or above a total value of £100,001 will be classed as a tender.
- 1.6 All representatives who commission contracts for supplies, works or services are required to follow these Procedures. This requirement also covers all persons who commission contracts on behalf of the Council, such as external consultants. The person who commissioned the consultant **must** ensure that consultants are given copies of the Procedures and that they comply with them.
- 1.7 The Head of Corporate Procurement will be responsible for updating the Procurement Procedures, and shall make the latest version available to every Corporate Director and Member of the Council as well as posting a copy in the Corporate Procurement area on the Council intranet.
- 1.8 All representatives of the Council must comply with all aspects of legislative requirements relating to purchases made by a public authority.

PART 2 - APPLICABLE TO ALL CONTRACTS

2. Hierarchy of Rules

- 2.1. These Procedures attempt to summarise in a single place all of the Council's Procurement Procedures. The Procedures are derived from provisions contained in the Council's Constitution and Financial Regulations. Every effort has been made to ensure a consistency between the documents, but in the event of any conflict, the Constitution takes precedence, followed by Financial Regulations, followed by these Procedures. These Procedures and Financial Regulations can be amended by the Corporate Director of Resources, whilst changes to the Constitution must be approved by the full Council.
- 2.2. The Procedures refer to European and UK legislation as well as Council policy. Where there is a conflict between European law, English law and Council policy, the requirements of European law take precedence over English law, and the requirements of English law take precedence over Council policy. The Procedures **must not** be waived if failing to comply with these procedures would contravene either UK or European legislation.

3. Procurement Objectives and Imperatives

The purpose of procurement activity is to achieve best value for local people in accordance with the Council's statutory or approved objectives and the Corporate Procurement Strategy. This should include an innovative approach to relationships with the private and not-for-profit sectors within a robust contractual framework. Officers with responsibility for procurement must ensure that they are able to demonstrate achievement of best value by having regard to a combination of economy, efficiency and effectiveness.

4. Procurement Strategy

- 4.1. The Procurement Strategy sets out key policy priorities and an operating framework that **must** be taken into account when procuring supplies, services and works on behalf of the Council. These priorities are:
- **Integration** - full integration of commissioning, procurement and contract management activity and commercial principles into our core business
 - **Governance** - governance, transparency, accountability and probity with proportionality in our operational processes
 - **Approach** – a unified approach to managing the activities in the commercial cycle and in our engagement with markets and suppliers
 - **Partnership** - working with our partners
 - **Technology** - effective use of digital technology

- **People** - making the most of our people, increasing capacity and skills and building an in-house strategic commissioning and procurement capability.

4.2. Every contract or official order for works, supplies or services made by the Council **must** be for the purpose of achieving the Council's statutory or approved objectives and must conform to all relevant domestic and European Union legislation.

5. Responsibilities of Corporate Directors

5.1. Corporate Directors have responsibility for all contracts tendered, let and managed by their departments. They are accountable to the Chief Executive and the Executive Mayor for the performance of their duties in relation to contract letting and management. These duties include:

- a. Ensuring compliance with English and EU legislation and Council Policy;
- b. Ensuring value for money in all procurement activities;
- c. Ensuring compliance with these Procurement Procedures;
- d. Ensuring that all relevant staff are familiar with the provisions of these Procedures and that they receive adequate training;
- e. Ensuring compliance with any guidelines issued in respect of these Procurement Procedures;
- f. Taking immediate action in the event of a breach of Procurement Procedures within their department;
- g. Ensuring that IR35 regulations requirements are complied with when engaging suppliers;
- h. Keeping records of waivers of any provisions within these Procurement Procedures;
- i. Ensuring appropriate contract management takes place of all contracts;
- j. Ensuring that all contracts to be tendered are entered onto the Forward Plan of contracts (administered by Corporate Procurement) at the earliest opportunity, and no later than the point at which the procurement exercise commences;
- k. Ensuring high value and/or high risk contracts are recorded in the corporate risk register;
- l. Ensuring that their staff act ethically in all their procurement activities;
- m. Ensuring that a quarterly report of variations exceeding 10% of the contract value, where the total contract value exceeds the EU threshold, is presented to their own Directorate Management Team.

5.2. Corporate Directors **must** comply with these rules and have a responsibility to ensure that their staff and any consultants or agency staff also comply with them. Corporate Directors **must** put mechanisms in place to ensure that staff who carry out any procurement exercise receive appropriate induction, information and training. Corporate Procurement will provide support for this.

Rule 1

- Where a Corporate Contract is already in place it **must** be used unless agreed otherwise by the Head of Corporate Procurement.
- Corporate Directors have responsibility for all contracts let by their Departments. Authority to make decisions under the Procurement Procedures may be delegated. Those who have delegated authority to make decisions in the name of the Corporate Director will be set out in the Scheme of Delegation in the Constitution for the relevant department (or a specific delegation in writing).

6. Financial Thresholds and Procedure for Contract Letting

6.1 The following financial thresholds shall apply to all contract award processes.

To clarify the table below, the following points should be noted:

- a) Total Value refers to the full remuneration to be paid to the supplier or contractor over the life of the contract, including any extensions; *(N.B. a 3 year contract with an extension of 1 year at £20,000 per annum has a total value £80,000. A contract to purchase supplies, works or services may also include the purchase of additional supplies and services such as, but not limited to, maintenance, consumables, upgrades, training and documentation. The total value includes these elements even if they come from separate budgets, and separate orders are placed.)* The life of the contract includes any actual or potential extension to the contract period that is included in the contract
- b) Where there are a number of linked contracts – e.g. those using the same suppliers, or for similar supplies, services or works – the option for joining them up **should** be explored;

6.2 Table of Threshold Values

Table 1 below summarises the different procurement thresholds, the procedures to be followed and the officers who are authorised to undertake an RFQ or procurement at each level. The authority to award contracts, following a RFQ or procurement process, is set out at paragraph 10.2 of Part 3 of the Constitution.

TABLE 1 - SUMMARY OF PROCUREMENT THRESHOLDS

	Total Value	Procurement Process	Advertising	Authority
LEVEL 1	Up to £25,000	<ul style="list-style-type: none"> ▪ One quotation, through Request for Quote (RFQ) system ▪ Should use local suppliers (E1, E2, E3, & E14). If a good reason exists for not using local suppliers this should be documented and kept on file. ▪ Price only or Price and quality 	None required	Budget Holder
LEVEL 2	£25,001 to £50,000	<ul style="list-style-type: none"> ▪ Two quotation, through Request for Quote (RFQ) system ▪ Should use local suppliers (E1, E2, E3 & E14) If a good reason exists for not using local suppliers this should be documented and kept on file. ▪ Price only or Price and quality 	None required	Budget Holder
LEVEL 3	£50,001 to £100,000	<ul style="list-style-type: none"> ▪ Three quotations, through Request for Quote (RFQ) system. ▪ Should use local suppliers (E1, E2, E3 & E14) If a good reason exist for not using local suppliers this should be documented and kept on file. ▪ Price and quality only 	None required	Budget Holder
LEVEL 4	<p>£100,001 to £164,176 (EU threshold for Supplies & Services)</p> <p>£100,001 to £589,148 (EU threshold for Light Touch Regime: social and other specific services)</p> <p>£100,001 to £4,322,012 (EU threshold For Works)</p>	<ul style="list-style-type: none"> ▪ PIF must be completed ▪ Award criteria to be decided in advance. ▪ Tender process managed by corporate procurement service through the central e-tendering system ▪ Cabinet approval & Tollgate process to be followed for contracts above £250,000 – Supplies and Services; above £5million –Works. 	Council’s website, London Tenders Portal Contracts Finder	Divisional Director

<p>LEVEL 5</p> <p>EU Procedure</p>	<p><u>EU TENDERS</u></p> <p>Over £164,176 Supplies & Services</p> <p>£589,148 Light Touch Regime</p> <p>£4,322,012 Works</p>	<ul style="list-style-type: none"> ▪ PIF must be completed ▪ Cabinet approval & Tollgate process to be followed for contracts above £250,000 – Supplies and Services; above £5million –Works. ▪ Tender process to follow the requirements of the EU & Public Contracts Regulations 2015 ▪ Tender process managed by corporate procurement service through the central e-tendering system 	<p>OJEU Council’s website, London Tenders Portal</p>	<p>Divisional Director or Corporate Director (above cabinet threshold)</p>
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7. Specifications

- 7.1. An appropriate specification must be prepared which sets out a clear and comprehensive description of the Council's requirements with regard to the works, goods or services to be supplied.
- 7.2. All works, goods and services must be specified by reference to European standards, or national standards if no European standards are set. Named products or manufacturers should not be specified.
- 7.3. The specification should incorporate measurable and, so far as is possible, objective quality and performance criteria to enable the service director to see whether the Council's requirements are being met by the supplier. All necessary professional and technical advice and assistance must be obtained in preparing the specification, to ensure a comprehensive document that expresses the Council's requirements and protects its interests.
- 7.4. Officers must take careful consideration of the requirements; in doing so they may undertake research, discussions or briefings with several suppliers before the quotation or tender is issued. Any engagement with supplier must be undertaken in a manner that does not restrict competition or prejudice a fair and transparent procurement process.
- 7.5. In the interests of fairness, non-discrimination and equality of treatment, under no circumstances should an incumbent supplier or contractor be involved in the preparation of a specification for the future procurement of the same or similar contract which they are delivering, or which they would reasonably have an interest in bidding for.

8. E-Procurement

- 8.1. The Council uses secure e-procurement systems and, unless exceptional circumstances apply and a Waiver is granted, all quotations and tenders **must** be managed electronically through this system.
- 8.2. The Head of Corporate Procurement must make arrangements for the receipt, custody, opening and witnessing of all tenders over £100,000, and must ensure that these arrangements are fully auditable.
- 8.3. The administration and development of the e-procurement system is the responsibility of Corporate Procurement including any enhancements to reflect legislative and policy changes within public procurement.

Rule 2

- All quotation and tenders **must** be managed electronically through the e-

procurement system(s) whose administration and development is the responsibility of Procurement.

- Once a contract has been awarded a purchase order **must** be raised in R2P unless supplies, services or works fall within the approved exceptions list.

9. Late Bids

9.1. Late quotations through the RFQ system are not be accepted by the system.

9.2. Electronic tenders are automatically marked as “Late” by the e-tender system. In any event they must not be considered if they arrive after all the other bids have been opened, unless exceptional circumstances apply and the Head of Corporate Procurement (following consultation with the Divisional Director of Legal Services) agrees to accept the late tender. Any unacceptable late bid must not be opened unless it is purely to determine the sender’s details so that the bidder can be advised of the reason for rejection by the Corporate Director or the Head of Corporate Procurement

10. Conflict of Interest

10.1. All 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 Employee Code of Conduct, which all employees of the Council are bound by.

10.2. All consultants engaged to act on behalf of the Council must sign a Consultant’s Undertaking and declare that :

- a. There is no conflict between their own interests or those of any of their other clients and the interests of the Council; and
- b. There is no conflict between their own interests or any links with (e.g. a family member or close friend works for) an organisation or supplier who is tendering or quoting for a contract with the Council or already has a contract with the Council.
- c. They will notify the appropriate director and Corporate Procurement if any conflict of interest arises within the bidding process.

Rule 3

- Conflict of interest in a procurement exercise and subsequent contractual arrangement must be promptly disclosed through the HR Self Service system or, in the case of external consultants, through the completion of a Declaration of Interest document from corporate procurement.



11. Supplier registration and approval

11.1. New supplier registration and approval is managed through the council's procurement system. Supplier approval process is carried out in two stages:

- a) **Stage one - registration:** suppliers wanting to trade with council are required to complete the basic online supplier registration.
- b) **Stage two – approval:** To receive Purchase Orders and payments, a supplier will need to be fully adopted, that is, registered in the Finance system (Agresso) and made visible in the requisition to pay system (R2P). Procurement will issue the supplier adoption form through the electronic procurement portal and verify key registration information provided before the supplier can be approved.

11.2. Officers engaging with any organisation where the contract of engagement **may** fall within the scope of IR35 regulations, that is, individual(s) that will be providing the services under the contract could be considered 'disguised employees' **must** undertake the HMRC employee's status assessment (IR35 assessment) before engaging in or awarding a contract. Guidance and process map on how to undertake the assessment will be on the Council's intranet. Failure to undertake the assessment and follow the agreed process may lead to disciplinary procedure.

12. Official Purchase Orders

12.1. Once a contract has been awarded an official purchase order **must** be placed through the Purchase to Pay (R2P) system quoting the contract reference.

12.2. Contracts should only commence once an official purchase order has been issued. Purchase orders can only be issued to suppliers that have gone through the supplier adoption process.

12.3. There are **exceptional** exclusions to this process and information on these will be available within the Corporate Procurement area of the Council's intranet. The exclusions list is a live document and it will be reviewed by Financial Compliance and Procurement when required. Cases which do not fall within the exclusions listed will be **rejected**.

13. ICT related supplies, services and works

In the case of procurement of ICT related supplies and services, the Corporate ICT partner may need to be engaged and officers **must** consult with the ICT Client Team and/or their ICT Business Partner.

14. Consortia and collaborative Framework Agreements

- 14.1. Recognised consortium or collaborative procurement arrangements which have been properly tendered may be used, provided that the relevant Corporate Director:
- is satisfied that such an approach represents best value;
 - is satisfied – having due regard to advice from Corporate Procurement and Legal Services as appropriate – that use of the arrangements are consistent with all UK and European legislation;
 - is satisfied that the terms and conditions of the arrangement do not place undue restrictions or liabilities upon the Council;
 - is satisfied that the parties to the arrangement are recognised public bodies or providers from the private sector operating appropriate procurement arrangements on behalf of the public sector;
 - ensures that a full, open and proper competition in respect of the creation of the contract has taken place or will take place in accordance with the Relevant UK and European legislation and these Procurement Procedures.
- 14.2. A list of approved Frameworks Agreements will be managed by Corporate Procurement and published on the Council's intranet.
- 14.3. Where the relevant Corporate Director so decides, the Central Government Catalogues operated by the Crown Commercial Services at <http://ccs.cabinetoffice.gov.uk/> or any other appropriate framework may be used on the condition that the process set out in these Procedures are followed.
- 14.4. The award of call off contracts must comply with the procedure set out within the Framework Agreement. This can be either by Direct Award or Mini-competition. Where there is a choice of options, preference should be given to carrying out a mini-competition in order to demonstrate value for money. Where price is not set out in the framework agreement, a mini-competition must always be undertaken.
- 14.5. Legal Services and Corporate Procurement must be involved before joining or buying from a framework agreement not let by the Council where the value of the contract will exceed the £100,000 procurement threshold. The process in Part 4 of these Procedures will be applicable to the procurement exercise.

15. Use of Standard Templates

- 15.1. All quotations **must** be invited using the approved templates published on the Council's intranet. Procurement documentation for the selection, invitation, receipt, evaluation, award and management of contracts are regularly updated to ensure compliance with procurement regulations as well as Council procurement policies.
- 15.2. All tenders **must** be invited using approved standard documentation available from Corporate Procurement.

16. Separation of Duties

Within each Directorate, arrangements **should** be made to ensure that there is adequate separation of duties and checking procedures to ensure probity and compliance with these procedures and financial regulations.

17. Local Businesses

To be classified as local, a supplier must be based in one of the following post codes:

- E1, E2, E3 and E14

Certain postcodes in E15, E16 and EC are also part of the geographical limits of Tower Hamlets.

18. Supply Chain Ethical Code of Conduct

18.1. The Council has adopted a Supply Chain Ethical Code of Conduct which must be included in all quotation and tender documentation, and with which all suppliers must comply. The full details of this Code are available on the Procurement intranet site, but in summary, the code set out the principles and standards of delivery for our suppliers and contractors:

- Maintaining integrity in business relationships.
- Rejecting improper business practice.
- Declaring any potential personal or business conflicts of interest.
- Acquiring and maintaining latest standards of technical knowledge and ethical behavior.
- Optimising the use of resources.
- Compliance with UK law, industry guidelines and contractual obligations.
- Fair, honest and respectable treatment of suppliers.
- Common courtesy at all times.
- Incorporating sustainable procurement aspects into procurement processes including human and employee rights and the environment.

18.2. Whilst it will not be possible to check that every single supplier to the Council complies with the Code, officers should draw suppliers' attention to the Code. Subscription to the code will be mandatory for those suppliers participating in a quotation or tender process.

Rule 5

- The Council is committed to maintaining the highest standards of ethical conduct. The Supply Chain Ethical Code of Conduct is essential to the operation and reputation of the Council. Suppliers are required to sign acceptance of the code when dealing with the Council.
- Quotations and tenders **must** be undertaken using approved procurement templates which will be updated by Procurement.

18.3. Corporate Directors must report to Corporate Procurement any issues or breaches arising under the Supply Chain Ethical Code of Conduct. Corporate Procurement may refer the report to Strategic Competition Board, if considered necessary.

19. The Bribery Act

This Act deals only with bribery – no other forms of white collar crime. The Council may be liable for failing to prevent a person from bribing on its behalf. The Council's policy regarding the Bribery Act is set out on its website at www.towerhamlets.gov.uk and must be adhered to in the contracting process.

20. Sustainable Procurement

20.1. The Council is committed to sustainable economic business development which minimises any adverse impact on the environment and supports social cohesion.

20.2. Sustainable criteria must be included as part of the award criteria in all contracts where appropriate. Sustainability will be assessed taken into consideration the following areas:

- a) Environmental sustainability - purchasing supplies, works and services in a way that minimises, where practically possible, the carbon footprint and encourage a positive impact on the local environment and utilises whole-life analysis.
- b) Economic sustainability – recognises the importance of Small and Medium Enterprises (SME) to the local community and ensures every opportunity is made not to discriminate against SME's during the tender process.
- c) Social Sustainability – ensures that community well-being is considered and that supply chain partners operate under ethical working practices.

21. Freedom of Information Act

The council has an obligation to publish specific information in the public domain. However, the Freedom of Information Act enables certain confidential information and

commercially sensitive material to be withheld. Officers must therefore ensure that bid information is kept confidential at all stages, especially during the bid evaluation process and after the contract is awarded. Suppliers must also be given the opportunity to highlight in their bid any information that they would not wish disclosed under freedom of information request.

22. Contract Register

- 22.1 Contracts let through a quotation process, that is, with a value at or below £100,000, will be published on the Councils website. Contracts let through a tender process, that is with a value in excess of £100,000 will be published through the London Contract Register website: <http://www.londoncontractsregister.co.uk/>
- 22.2 Corporate Directors **must** ensure that all contracts over £100,000 are registered with Corporate Procurement and tendered through Corporate Procurement.

23. Contract Management

- 23.1. All contracts must be monitored to ensure they achieve the objectives and outcomes set out in the specifications. The Contract Management Framework sets out the principles and general guidance for the management of contracts. The Service, under its Director's supervision, will be responsible for the day-to-day operational delivery of contract management.
- 23.2. Corporate Procurement shall agree with Strategic Competition Board critical contracts (based upon value, business and reputation risk) that will be subject to performance monitoring and scrutiny by the Strategic Competition Board.
- 23.3. Corporate Procurement and Legal Services will provide second line support where performance failure is demonstrated.

Rule 6

- All contracts awarded through the quotation and tender processes must be published on the London Contract Register and the Council's website.
- All contracts should be managed in line with the Council's agreed Contract Management Framework
- Tender and quotation documentation and contract management records must be kept in accordance with the Retention Schedule published on the Council's intranet.

24. Extensions and Variations

24.1. Subject to any statutory restrictions and compliance with the Constitution and Financial Regulations, a Corporate Director may authorise the following extensions and variations to an existing contract, following consultation with Legal Services and Corporate Procurement:

24.2. Extensions

- (i) Extension(s) for a particular period provided for within the terms of the original contract (but subject to satisfactory outcomes of contract monitoring);
- (ii) Extension(s) beyond the original contract are considered a new contract and therefore subject to Procurement Procedures and, where applicable, EU Regulations.

Any extensions that fall outside the original terms of the contract must be justified on the grounds provided by the waiver of the procurement procedures outlined in section 50.1.

A copy of the extension documentation must be provided to Corporate Procurement in order to update the Contract file and Contract Register accordingly.

24.3. Variations

The following variations/modifications to a contract are permitted with Corporate Director approval (following advice from Corporate Procurement and Legal Services):

- (i) Variations provided for in the original contract in 'clear, precise and unequivocal' terms; or
- (ii) Variations outside the original contract terms that fall within any of the following **four situations**:
 - a. where the **change in value is relatively small** - under 10% (services & supplies) or under 15% (works) **and** where the revised total contract value is under the applicable EU financial threshold (this is cumulative where there is a series of changes); or
 - b. where there are **unforeseen circumstances**, provided that change does not alter the overall nature of contract **and** the price increase is not greater than 50%; or
 - c. Where **additional works, services or supplies necessary and a change in contractor cannot be made** for economic or technical reasons e.g.: interoperability with existing kit; or

- d. Where to change suppliers would cause significant inconvenience or duplication of costs. In any case, the price increase must not exceed 50% of the value of the original contract.
- (iii) There has been a replacement of the supplier following a corporate **restructuring, insolvency or merger**, and the new supplier still meets the original selection criteria.
- 24.4. In any case, a substantial modification not originally provided for in the contract will trigger a new procurement process. This will arise where the modification materially changes the nature of the contract.
- 24.5. Any Variations that fall outside the original terms of the contract and do not fall under the exceptions listed in section 49.1 must be justified on the grounds provided by the Waiver of the Procurement Procedures outlined in section 50.1.
- 24.6. A copy of the variation documentation must be provided to Corporate Procurement in order to update the Contract file and Contract Register accordingly.

Rule 7

- (a) Subject to compliance with UK and EU law, a Corporate Director may authorise an **extension** to a Contract which was provided for in the original contract terms.
- (b) A Corporate Director may authorise **variations**, including price variations, determined in accordance with the original contract terms, or other variations which do not materially change the contract, and which fall within the scenarios listed in 50.1.
- (c) All extensions and variations outside of the term of the contract that amount to a contract value in excess of £250,000 (for services or supplies) or £5m (for works) must be referred to **Cabinet** for approval.

PART 3 - APPLICABLE TO CONTRACTS BELOW £100,000

25. Competition

- 25.1. Contracts that fall within the level one, two and three that is equal to or below £100,000 in value, the Request for Quotation (RFQ) process **must** be followed and all quotations **must** be invited through the electronic RFQ system.
- 25.2. Officers undertaking the quotation process are responsible for the selection of suppliers. Suppliers selected for quotation **should** be located in the Tower Hamlets area unless a good business reason exists for selecting suppliers who are not based locally.
- 25.3. The Procurement Threshold table in section 6.2 of the Procedures sets out the required number of quotations for each level and the process to be followed.

26. Evaluation and contact award

- 26.1. Evaluation criteria for level one and two quotations **CAN** be based on cost only or cost and quality.
- 26.2. Evaluation criteria for level three quotations (£50,001 – £100,000) **MUST** be based on cost and quality.
- 26.3. In the case of nil response to a quotation exercise, the project manager should investigate the reasons for the lack of responses prior to commencing a new RFQ.
- 26.4. In the event only one quotation is received for level two and three quotation exercises, the evaluation must still be undertaken in accordance with the evaluation criteria. Upon completion, the project manager will need to assess whether the submission received satisfies the requirements and is acceptable to proceed to award or if required commence a new RFQ.
- 26.5. All contracts up to £100,000 **must** be awarded through the RFQ system.

27. Clarification and additional information

- 27.1. All bidder queries relating to RFQ should be in writing and managed through the RFQ system. In circumstances where a clarification response is assessed not be commercially restricted to a single bidder then the question and response should be released to all bidders without disclosing the identity of the originating bidder.
- 27.2. Further clarifications regarding quotation(s) received before contract award may be necessary. This might include areas of ambiguity, assumptions or possible errors. In such

circumstances, all clarifications must be treated as commercial in confidence and managed through the RFQ system.

28. Timescales for Quotations

- 28.1. All requests for quotation include a default minimum of seven working days for the return of responses. This time period can be amended to allow a longer period where it is deemed necessary.

29. Terms and Conditions

All Requests for Quotation are invited with the Council's standard terms and conditions, which must be issued to suppliers with each RFQ. In the event that the standard terms and conditions are unsuitable, any alternative terms must be agreed with Legal Services.

30. Use of Purchasing Cards

- 30.1. Purchase Cards are to be used to order low value supplies and services (e.g. hotels, business travel and tickets) that do not require the additional risk management of terms and conditions encompassing orders or contracts, and only where there is no existing contract or suitable supplier available on the e-procurement system.
- 30.2. Purchasing Cards are to be used in accordance with the Visa Card User guide and associated documents available through the Corporate Procurement area on the Council intranet. The transactions **must** be reviewed and authorised in the Purchasing Card monitoring system. Any misuse may result in the Purchasing Card being withdrawn and lead to disciplinary action.

PART 4 - APPLICABLE TO CONTRACTS IN EXCESS OF £100,000

31. Competition

31.1. All contracts with a value in excess of £100,000 must be procured through Corporate Procurement to ensure compliance with the requirements of the Public Contracts Regulations 2015.

31.2. The Public Contracts Regulations set out detailed procedures for the award of contracts over specific thresholds. Details of the current thresholds are given below and are net of VAT.

	SUPPLIES	SERVICES	WORKS	LIGHT TOUCH REGIME	CONCESSION
Local Government	£164,176	£164,176	£4,104,394	£589,148	£4,104,394

32. Forward Plan

32.1. Corporate Directors must ensure that all contracts to be tendered are entered onto the forward plan of contracts, administered by Corporate Procurement at the earliest opportunity but with a minimum of six months before commencement of the procurement unless circumstances of urgency apply.

33. Project Initiation Form

33.1. In preparation for the Tendering exercise the Procurement Initiation Form (PIF) must be completed. The PIF will include:

- (a) Identification and definition of needs;
- (b) Options appraisal and business case development;
- (c) A review of market conditions;
- (d) Assessment of scope for collaboration; internally, externally with other organisations or the voluntary sector;
- (e) Review of the implications for HR issues, sustainability, equalities, local businesses, etc;
- (f) An analysis of the potential for achieving financial savings;
- (g) Project planning, including definition of roles and responsibilities throughout the process;
- (h) Risk analysis and recording on risk registers as appropriate
- (i) Determining the process for contract management, including the arrangements for collating on a routine basis the financial and performance information needed to evaluate the effectiveness of the procurement exercise;
- (j) Where an external agent is to be involved in the preparation of specifications, tender documentation, tender evaluation or any other procurement activity in relation to a contract, a declaration of interest and a confidentiality agreement must be completed;
- (k) Service Heads or officers with delegated power must assess any potential conflict of interest and seek advice from Legal Services. The procurement should not proceed until such time as the assessment is made;
- (l) Any disclosure of conflict of interest in a procurement process will be assessed by the Corporate Procurement and Legal Services on a case-by case basis. Individuals will be excluded on a case-by-case basis from the procurement process where the identified conflict is material and/or cannot be mitigated.

33.2. Corporate Procurement **must** be contacted as early as possible and full support given to enable the Procurement Instruction Form (PIF) to be fully completed.

33.3. No commitment can be made, and the procurement process **must not** commence, before this has taken place, and procurement advice on how to proceed has been received.

33.4. Corporate Procurement in liaison with the project manager and Legal Services will assess the procurement strategy, specification requirements and market conditions to determine the most suitable procurement procedure to employ and what internal governance measures are required.

33.5. For tenders above the EU threshold, and as part of the PIF process, Corporate Procurement will advise on current EU Law. EU Law is frequently evolving , so you should **not** assume guidance previously given will be unchanged in the future.

34. Cabinet Approval – Automatic Referral

- 34.1. Nothing in these rules obviates the requirement within the Constitution that “The contracting strategy and/or award of any contract for goods (supplies) or services with an estimated value exceeding £250,000, and any contract for capital works with an estimated value exceeding £5,000,000, shall be approved by the Cabinet in accordance with the Procurement Procedures.”
- 34.2. In order to comply with this requirement, the Head of Corporate Procurement will submit a quarterly report to Cabinet, laying down a forward plan of contracting exercises across the Council for the forthcoming 12 months. This report will identify all contracts with a value exceeding £250,000 (for services and supplies) and £5m (for works) during the period in question, and will seek Cabinet’s approval to the outline contracting strategies.
- 34.3. Cabinet will be invited to identify those contracts they consider to be key decisions, and about which they wish to receive further reports on prior to contract award. The Corporate Director must ensure that the Head of Corporate Procurement is notified in good time in order to ensure that contracts are included in this report.
- 34.4. Prior to review by Cabinet, the Strategic Competition Board must have reviewed the strategy and/or award proposal.

35. Cabinet Approval – Referral by Head of Corporate Procurement

- 35.1. If in the view of the Head of Corporate Procurement, either a contract strategy or contract award needs to be approved by Cabinet, the project lead must submit the relevant report to the next available Cabinet meeting, after it has been presented to the Strategic Competition Board, and must not proceed with either the contracting process or the contract award until Cabinet approval has been obtained.

36. Tollgate Process

- 36.1. Contracts for supplies and services in excess of £250,000 in value, or for capital works in excess of £5,000,000 in value, will be subject to the Council’s Tollgate Review Process. This is a procurement project appraisal methodology which assesses the health of the project, makes recommendations for improved outcomes and, where appropriate, provides a post-contract peer review. The Tollgate process is administered by Corporate Procurement on behalf of the Strategic Competition Board. Contracting officers must respond appropriately to recommendations in tollgate reports. In respect of contracts in excess of £250,000 (supplies & services) or £5,000,000 (capital works), you must obtain the approval of the Strategic Competition Board at two key points in the contracting cycle:

- a. To obtain agreement to the contracting strategy, prior to inviting tenders; and
- b. To obtain agreement to award contract, prior to issuing any award notification

36.2. The Procurement Cycle, including the Tollgate procedure, is set out in [Appendix 1](#).

Rule 8

- Where the Contract is subject to the tendering rules of the EU Public Procurement Regulations, then those rules shall apply to the letting of the Contract.
- The contracting strategy for contracts for supplies and services in excess of £250,000 in value, or for capital works in excess of £5,000,000 in value, will be subject to Cabinet approval.

37. Engagement with the Strategic Competition Board

37.1. The approval of the Strategic Competition Board will normally be through the internal Tollgate process. In the case of urgency, approval may be granted to the Contracting Strategy (but not the contract award) by the Head of Corporate Procurement and the Divisional Director of Legal Services with a subsequent report to the Strategic Competition Board.

38. Timescales

38.1. The Public Contract Regulations set out specific timescales for the letting of contracts for supplies, services and works above the EU threshold. It also sets out specific procedures and timescales to be followed. An appropriate timetable must be drawn up in liaison with Corporate Procurement and Legal Services.

39. Tender Documentation

39.1. In inviting Tenders from suppliers, the Tender packs which are issued to suppliers must as a minimum include: Form of Tender, Valuing Diversity, Supply chain Ethical Code of Conduct, Confidentiality Agreement, Bona Fide and Anti-Collusion Certificate, Freedom of Information Disclosure, Conflict of Interest Declaration, Subcontractor or Consortium Member, Specifications, Quality Statements, Cost Schedule and Terms and Conditions

39.2. Local Employment and Community Benefits are intended to improve the economic, social or environmental wellbeing of the Council's area in addition to the main purpose of the contract. The Local Employment and Community Benefit **must** be considered in all relevant contracts above £100,000 and considered on appropriate contracts below £100,000.

40. Terms and conditions

- 40.1. The Terms and Conditions of a contract will be drafted by Legal Services and incorporated as part of the Tender pack. Where a bidder rejects acceptance of the Terms and Conditions (expressly, or by qualifying, caveating or supplying their own terms and conditions), the bid should be rejected as non-compliant.
- 40.2. Variations to the Terms and Conditions proposed by a bidder **must** only be accepted with the approval of Legal Services.

41. Tender Clarification and Additional Information

Pre-tender clarification

- 41.1. All queries from the bidders relating to the invitation to tender should be in writing through the e-procurement system. Where questions are considered of relevance to the subject matter of the contract and likely to affect some or all bidders' response to the tender, the clarification from the Council must be released to all bidders with the questioner's identity kept confidential.
- 41.2. Where the question is specific to one of the bidders (and therefore irrelevant to the submissions of the other bidders), it may be kept confidential between the Council and that bidder.

Post-tender clarification and request for additional information

- 41.3. Tender clarifications may be necessary in order to clarify areas of ambiguity, assumptions or possible errors in the cost and delivery of specifications. Clarifications must be fairly undertaken against the requirements specification released to all suppliers. In certain circumstances, it may be necessary to issue a response to a clarification to all bidders. Equally, competition must not be distorted by allowing any bidders to improve their offer without giving the same opportunity to all other bidders.

42. Negotiations

- 42.1. Tender negotiations refer to the discussions that take place between a Council's officers and the bidders. Unless expressly allowed for within the procedure, tender negotiations must not be conducted as they distort competition and adversely affect trust in the competitive bidding process and contravene procurement regulations. Under no circumstances is it permissible to use the lowest bid to seek a reduction in costs from the other bidders.
- 42.2. Only under specific circumstances laid down in the PCR 2015, and with the agreement of the Head of Corporate Procurement and Head of Legal Services will it be acceptable to negotiate as part of a procurement process. Prior to entering into negotiations, agreement and advice must be obtained from Legal Services and Corporate Procurement, and the process must be conducted in a fair manner that does not disadvantage or show undue favour to any tenderers. All negotiations must be fully documented.

43. Tender Evaluation

- 43.1. Evaluation criteria must be decided in advance of the advert and clearly stated in the tender documentation. All contracts must be awarded on the basis of most economically advantageous tender. For contracts over £100,000 a minimum of three officers must be involved in the evaluation of tender responses.

44. Supplier Selection Criteria

- 44.1. Selection Criteria (through the Standard Questionnaire – the SQ) are used to assess a bidder's ability to perform the proposed contract. Selection Criteria can apply at pre-tender stage in order to short-list bidders or, as part of the Open Procedure, to determine which bidders' tender submissions can be considered. Where a SQ evaluation is required, the statutory Selection Questionnaire published by Crown Commercial Services must be used.
- 44.2. There is statutory guidance on the use of the SQ and Corporate Procurement and Legal advice **must** be sought before the SQ is used. There are very limited criteria under which potential suppliers may be ruled out at the SQ stage.
- 44.3. Where a SQ evaluation is required, the SQ will be issued and returned electronically via the Council's e-procurement systems with appropriate access given to officers to evaluate online. The tender documentation must clearly state the minimum requirements and how they will be assessed.

45. Supplier Award Criteria

- 45.1. Award Criteria are used to identify the tender that is the most economically advantageous to the Council. This will be the optimum combination of cost and quality benefits. Requirements must be related and proportionate to the subject-matter of the contract, and be clearly set out in the Contract Notice together with the means of proof, where appropriate.
- 45.2. Where Local Employment and Community Benefits are included as part of the award criteria, its weighting must not be more than 5% of the overall quality assessment.

46. Tender Report

- 46.1 A full tender report should be prepared by the Project Manager and kept on file. The report should include a complete review of the bidding strategy, methods used, details of bids received, and any justification for the opening of any late bids, the actual written approval for opening late bids, detailed bid evaluation and recommendations for award.

47. Debriefing

- 47.1 For EU tenders supplier debriefs are a statutory requirement and must be completed within 15 days of the date of the receipt of a written request from the tenderer. Legislation

requires a comparison between the bid of the person being debriefed with the winning bid. This must be done in such a way as to comply with the regulations without breaching the FOIA. If you have any doubt as to how to proceed, guidance should be sought from Corporate Procurement and Legal Services.

48 Contract Award

- 48.1 Corporate Directors or Divisional Directors are responsible for signing contract award letters in respect of all contracts with a value between £100,000 and £250,000 for supplies, services; and works below £5,000,000.
- 48.2 Corporate Directors are responsible for signing contracts award letters in respect of all contracts with a value equal or above £250,000 for supplies, services; and works above £5,000,000.
- 48.3 When no bids are received in response to a tender undertaken in accordance with these procurement procedures, the project manager should investigate the reasons for the lack of responses.
- 48.4 Where only one bid is received, the evaluation may still be undertaken in accordance with the tender evaluation criteria. Once this is concluded, the Project Manager will need to assess whether the submission received is sufficient (such assessment to include consideration of best value and value for money) for the Council to proceed to award or whether it would be in the Council's best interest to re-tender.
- 48.5 Alternatively, but only on the advice of Corporate Procurement and Legal Services, it may be appropriate to invoke a negotiated process with the single supplier.
- 48.6 When a procurement exercise is to be abandoned, the Divisional Directors or Corporate Directors must authorise the decision. The Head of Procurement may request that the tender report for the procurement exercise is presented to Strategic Competition Board for approval.

PART 5 – EXCEPTIONS TO THE PROCUREMENT PROCEDURES

49 Valid Exceptions to the Procurement Procedures

49.1 All contracts must follow a quotation or tender process in accordance with this procedures unless, either:

- a. A waiver via the completion of a Record of Directors Action (RCDA) is obtained from the relevant Corporate Director, in accordance with the RCDA Guidance; or
- b. An existing, recognised consortium contract or framework, which has gone through an appropriate competitive tendering process, is being used in line with [section 15](#). The Framework requirements to award a Call-off contract must be followed, either through a mini-competition or a direct call off process; or
- c. An existing term contract, Framework or appropriate arrangement let by the Council, which complies with these rules, is being used (see [section 13](#)) ; or
- d. The contract is to be funded in full by another public or voluntary organisation that has requested in writing that its own procedures are followed, subject to compliance with European law..

Corporate Procurement and Legal services must be involved in the award of such contracts where the value exceeds £100,000 the completion of a PIF and a Contract Award Report may be required.

50 Record of Corporate Director's Actions (RCDA) - Waiving of Procurement Procedures

50.1 Procurement Procedures may be waived by a Corporate Director in liaison with the Head of Corporate Procurement and the Head of Legal Services, where the total value of the contract does not exceed the value of £164,176 (this is cumulative where there are a series of RCDAs in a period of 12 months), after considering a written report (RCDA) by the appropriate officer, that the waiver is justified because:

- a. The nature of the market for the works to be carried out or the supplies or services to be provided has been investigated and has demonstrated that only a single source of supply is available, or
- b. On balancing the risk and circumstances, it is clearly in the Council's interest to do so; or
- c. The contract is for works, supplies or services that are required in circumstances of extreme urgency that could not reasonably have been foreseen – e.g. to protect life or property when no existing contractual arrangement is in place, or if the purchase is needed to urgently comply with an order of Civil or Criminal Court; or
- d. The purchase is from a supplier where there is an existing obligation to the Council (e.g. under a warranty to contribute to the cost).
- e. Variations of contracts that do not fall within the exceptions listed in section 24.3

- 50.2 Corporate Director's Actions must be used only in the circumstances listed above, and not to compensate for poor planning or a desire to retain incumbent suppliers through avoidance of competition.
- 50.3 A record of the decision approving a waiver and the reasons for it must be published on the Council's website once the decision has been taken and kept in a departmental Register of Corporate Directors' Actions.
- 50.4 Corporate Director's Actions in respect of contracts over £100,000 must be reported to Corporate Finance for submission to the next available meeting of the Cabinet.
- 50.5 Corporate Directors' Actions must be completed on the appropriate form.
- 50.6 Waivers of the Procurement Procedures relating to contracts in excess of the OJEU threshold can only be made by a decision of the Mayor, either in Cabinet or through an Individual Mayoral Decision. In such circumstances, consideration must be given to the requirements set out within the Public Contracts Regulations 2015.

Rule 10

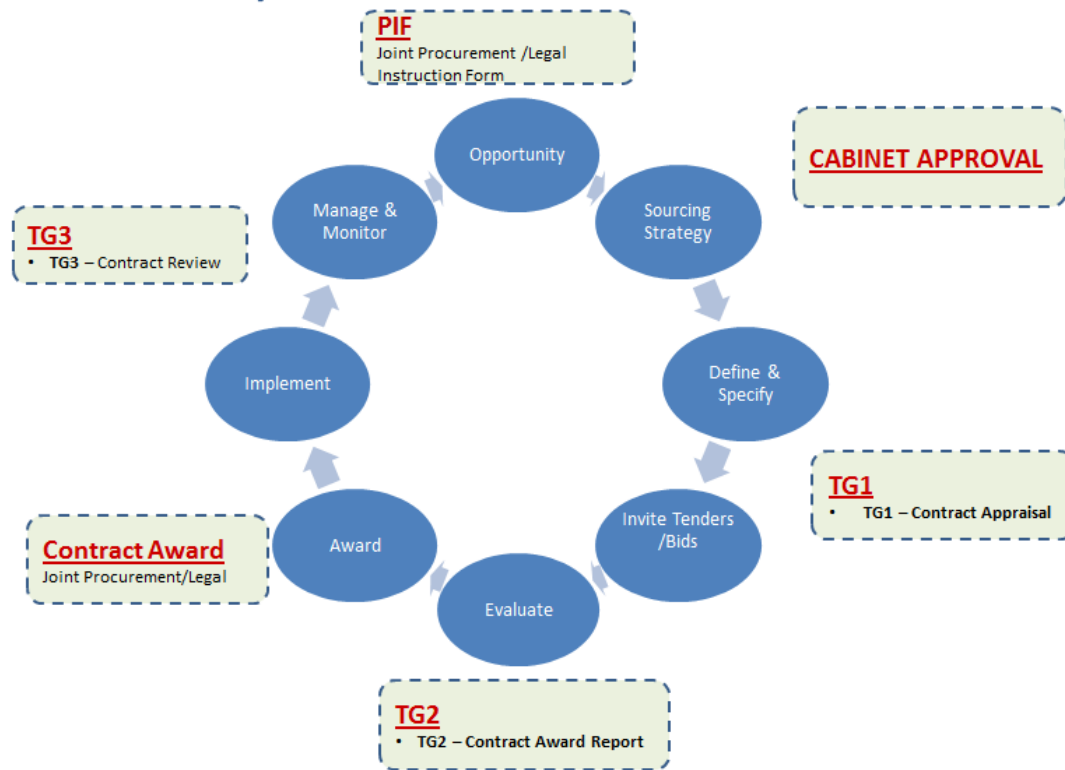
- Where the Procurement Procedures apply to a Contract a Corporate Director's Action may be taken to waive any provision, so long as it is justified in accordance with section 50 and this will not lead to a breach of UK or EU legislation.
- Waivers granted by the relevant Corporate Director must be agreed by the Head of Corporate Procurement and the Legal Monitoring Officer.
- Waivers are an exception and must not be sought unless absolutely necessary.
- Corporate Director Waivers in respect of contracts over £100,000 must be reported to the next available meeting of the **Cabinet**.
- Where there is any doubt about an action breaching UK or EU Legislation advice from Legal Services must be sought.
- A record of the decision approving a waiver and the reasons for it must be kept in a Departmental Register of Corporate Directors' Actions.

Appendix 1: Tollgate process

Purchases of goods and services in excess of £250k in value, or for capital works in excess of £5m in value are subject to the Councils Tollgate Process.

The Tollgate Process examines projects at key decision points in their lifecycle to determine the likelihood of successful delivery of the project, adherence to the Council Strategy and Community Plan and compliance with existing Policies and Procedures.

Procurement Cycle



Project Initiation Form (PIF)

The Procurement Instruction Form acts as the initiation of a procurement project and **must** be completed to instruct Corporate Procurement and Legal Services to support the identified project. This will involve a joint assessment between stakeholders and the procurement category manager.

Assessment will include:

- Identification of project resource to complete the procurement.
- Background and Strategic fit: summary of supplies and works being procured; justification for contract; key changes to current arrangements; link with Council's strategy and objectives.
- Market Assessment: market conditions; possible collaboration; procurement options.
- Financials - Cost and benefit realisation: initial contract value; funding streams; efficiencies.
- Approach to risk management; controls, mitigation and monitoring.
- Agreed procurement timetable

Tollgates 1, 2 and 3

Tollgate reviews will take place for contracts for supplies and services in excess of **£250,000** or capital works in excess of **£5,000,000**.

The review is undertaken in a two stage process by: Competition Planning Forum and Strategic Competition Board.

a) Tollgate 1

Tollgate 1 is completed in liaison with the procurement category manager and **MUST** be signed off by the Project Sponsor (Service Head) and presented to Competition Planning Forum, who will review and make recommendation to Strategic Competition Board for approval with any specific recommendations prior to any advert being placed. Tollgate 1 will examine:

- The outcomes and objectives for the programme
- Confirm that the programme's potential to succeed has been considered in the wider context of Council's policy and procurement imperatives
- Programme takes account of joining up with other programmes, internal (consolidation) and external (collaboration)
- Arrangements for identifying and managing risks
- Provision for financial and other resources has been identified, including a minimum of 10% savings.
- Local Employment and Community Benefits are included and appropriate.
- Sustainability strategy has been outlined.
- LLW has been factored in the cost.
- Procurement is supported by key stakeholders and has been appropriately communicated to Lead Member and to Cabinet.

b) Tollgate 2

Tollgate 2 is completed in liaison with the procurement category manager and **MUST** be signed off by the Project Sponsor (Service Head) and presented to Competition Planning Forum who will review and make recommendation to Strategic Competition Board for approval with any specific recommendations prior to contract award.

Tollgate 2 objectives are to ensure:

- The Business Case is still valid and unaffected by internal and external events or changes.
- The original projected business benefit are to be achieved
- There are feasible and tested business contingency, continuity and/or reversion arrangements in place.
- All on-going risks and issues are being managed effectively and do not threaten implementation.
- Contract management arrangements are in place.
- Lessons for future projects are identified and recorded
- Recommendations from TG1 have been actioned.
- Compliance with all internal governance and reporting procedures

Tollgate 1 and 2 combined

In exceptional circumstances, where it is agreed for a TG1 and TG2 may be combined (5.23), a detailed contract award report (TG2-Report) **must** be completed in liaison with the procurement category manager and **must** be signed off by appropriate Project Sponsor (Service Head).

c) Tollgate 3

High risk contracts or contracts with a value in excess of £1,000,000 will be selected by Strategic Competition Board to present a review report after initial 12 months into the life of the contracts.

Tollgate 3 report will be completed by the contract managers. Procurement Category Managers will provide guidance on report requirements.

The report will be presented by the Contract Manager to Strategic Competition Board which may provide specific recommendations.

The purpose of the Tollgate 3 is to assess:

- There is still a business need for the investment.
- Financial and efficiency benefits are being realised.
- Funding issues and risks
- Variations are being recorded and reported in accordance with the Council's Procurement Procedures.
- Contract Monitoring and Management arrangements in place
- Where applicable, confirm the validity of exit strategy and arrangements for re-competition.
- Local Employment and Community Benefits achievement.
- Compliance with policies and procedures and corrective measures where non-compliance has occurred.

