**Annexe 2**

# WEST LONDON WASTE AUTHORITY

**Procurement Operating Procedures**

**05 November 2020**

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## Contracts and Procurement Authorisation Table for the Procurement of Works

|  | **Total Aggregate Contract Value**[[1]](#footnote-1) | **How many quotes are required?** | **How should WLWA approach the market?** | **Who leads the procurement?** | **Should the Contracts be formally advertised?** | **Documentation Required** | **Governance Process** | **Who must approve contract award?**[[2]](#footnote-2) |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  | Less than £5,000 | Obtain and retain a minimum of one quote. | Though not required, evidence of exploring solutions is strongly advised.  | Responsible Officer | No | Quotation(s) and any evidence of premarket engagement to be kept in the central file. | None**NO WAIVER REQUIRED** | Project / Budget Manager |
|  |  |
|  | £5,000 to £50,000 | Advertised through Dynamic Purchasing System (**DPS**).**OR**Supplier selected through Borough Framework or local/national Frameworks where permitted. Terms of Framework Agreement to be followed noting that mini-competitions may be required.**OR** Minimum of three solutions with quotations required.  | Obtain a minimum of three solutions with quotes.  | Responsible Officer | If over £25,000 consider advertising on, e.g. Contracts Finder or DPS. | Notify the Contracts and Procurement Manager at the outset of procurement. Minimum of 3 solutions with quotations obtained. All documentation and evidence of any premarket engagement to be kept in the central file.Circumstances where only one suitable provider exists need to be notified to the Contracts and Procurement Manager for consideration.  | Contracts and Procurement Manager to log evidence.**NO WAIVER REQUIRED** | Budget holder |
|  |  |
|  | **Works Contracts** £50,000 to £1million(Noting this is below EU Threshold for Works)  | Same as item 2. | Approach to be determined by PRB | Manager / Responsible Officer. | Same as item 2. | A contract must be put in place which will depend upon the value and complexity of the procurement. Business case proposals developed as appropriate for project size/complexity. All documentation and evidence of any premarket engagement to be kept in the central file.Circumstances where only one suitable provider exists will be discussed by the Procurement Review Board as part of the Strategic Procurement meetings. | Business Case to be approved by the Procurement Review Board prior to procurement commencement.  | Procurement Review Board Contracts to be signed by members of the Senior Management Team |
|  |  |
|  | **Works Contracts** £1million to EU Threshold for Works (£4,733,252) | Same as item 3. | Same as item 3. | Responsible Officer Same as item 3. | Same as item 3. | A contract must be put in place which will depend upon the value and complexity of the procurement. Request for Quotation (**RFQ**) documents will include: terms & conditions, service specification, method statement questions, pricing document, information to tenderers including evaluation criteria. The financial status of the bidder to be considered as part of tender evaluation. Requirement for a bond or guarantee to be considered. | Business Case to be approved by the Procurement Review Board prior to procurement commencement | Procurement award report to Members is requiredChief Officers and Members to approve contract award if contract value over 1 millionAll Contracts over 1 million to be Sealed.  |
|  |  |
|  | **Works Contracts** Over EU Threshold for Works (£4,733,252) | Advertised through DPS**OR**Borough Framework or local/national Frameworks where permitted. Terms of Framework Agreement to be followed noting that mini-competitions may be required.**OR**Formal OJEU tender process required tendered in accordance with PCR. | Most economically advantageous tender must be selected, achieving Best Value and Value for Money for the Authority to be determined by PRB | Manager / Responsible Officer | **Yes**Formal OJEU tender process required. **Use of E-Procurement portal is mandatory.** Procurement **must** also be advertised on Contracts Finder. | **Formal tender documents to be prepared pursuant to the PCR.** ITT/ITPDdocuments will include: terms & conditions of the contract, service specification, method statement questions, pricing document, and information to tenderers, including evaluation criteria.The financial status of the bidder to be considered as part of tender evaluation. Requirement for a bond or guarantee to be considered.OJEU and contracts finder contact notice and Contract Award Notice. | Business Case to be approved by the Procurement Review Board prior to procurement commencement | Procurement award report to Members is required.Chief Officers and Members to approve contract award if contract value over 1 million**All Contracts to be Sealed** |

## - Contracts and Procurement Authorisation Table for the Procurement of Supplies and Services

|  | **Total Aggregate Contract Value**[[3]](#footnote-3) | **How many quotes are required?** | **How should WLWA approach the market?** | **Who leads the procurement?** | **Should the Contracts be formally advertised?** | **Documentation Required** | **Governance Process** | **Who must approve contract award?**[[4]](#footnote-4) |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| 1. | Less than £5,000 | Obtain and retain a minimum of one quote. | Though not required, evidence of exploring solutions is strongly advised.  | Responsible Officer | No | Quotation(s) and any evidence of premarket engagement to be kept in the central file. | None**NO WAIVER REQUIRED** | Project / Budget Manager |
|  |  |
| 2. | £5,000 to £50,000 | Advertised through Dynamic Purchasing System (**DPS**).**OR**Supplier selected through Borough Framework or local/national Frameworks where permitted. Terms of Framework Agreement to be followed noting that mini-competitions may be required.**OR** Minimum of three solutions with quotations required.  | Obtain a minimum of three solutions with quotes.  | Responsible Officer | If over £25,000 consider advertising on, e.g. Contracts Finder or DPS. | Notify the Contracts and Procurement Manager at the outset of procurement. Minimum of 3 solutions with quotations obtained. All documentation and evidence of any premarket engagement to be kept in the central file.Circumstances where only one suitable provider exists need to be notified to the Contracts and Procurement Manager for consideration.  | Contracts and Procurement Manager to log evidence.**NO WAIVER REQUIRED** | Budget holder |
|  |  |
| **3.** | **Supplies & Services Contracts** £50,000 to EU Threshold for Supplies and Services (£189,330) | Same as item 2. | Approach to be determined by PRB | Manager / Responsible Officer. | Same as item 2. | A contract must be put in place which will depend upon the value and complexity of the procurement. Business case proposals developed as appropriate for project size/complexity. All documentation and evidence of any premarket engagement to be kept in the central file.Circumstances where only one suitable provider exists will be discussed by the Procurement Review Board as part of the Strategic Procurement meetings. | Business Case to be approved by the Procurement Review Board prior to procurement commencement.  | Procurement Review Board Contracts to be signed by members of the Senior Management Team |
|  |  |
| **4.** | **Supplies & Services Contracts** Over EU Threshold for Supplies and Services (£189,330)  | Advertised through DPS**OR**Borough Framework or local/national Frameworks where permitted. Terms of Framework Agreement to be followed noting that mini-competitions may be required.**OR**Formal OJEU tender process required tendered in accordance with PCR. | Most economically advantageous tender must be selected, achieving Best Value and Value for Money for the Authority to be determined by PRB | Manager / Responsible Officer | **Yes**Formal OJEU tender process required. **Use of E-Procurement portal is mandatory.** Procurement **must** also be advertised on Contracts Finder. | **Formal tender documents to be prepared pursuant to the PCR.** ITT/ITPDdocuments will include: terms & conditions of the contract, service specification, method statement questions, pricing document, and information to tenderers, including evaluation criteria.The financial status of the bidder to be considered as part of tender evaluation. Requirement for a bond or guarantee to be considered.OJEU and contracts finder contact notice and Contract Award Notice. | Business Case to be approved by the Procurement Review Board prior to procurement commencement | Procurement award report to Members is required.**Chief Officers and Members to approve contract award if contract value over 1 million****All Contracts over 1 million to be Sealed** |

**Key Requirements:**

* Borough Select Lists are any list that a constituent borough maintains and that contains the names of contractors, suppliers, consultants and the like from whom works, goods, supplies, services, etc. can be obtained without the need to advertise or otherwise seek expressions of interest. Generally competitive quotes or tenders will still be necessary when using names contained within a Borough Select List. In all cases, an Authority’s Contracts and Procurement Rules must still be complied with. The Authority may ask a number of companies from these lists to submit quotations to optimise the outcome

**Procurement Rules**

**Please note that an EU compliant procurement must be carried out above the EU thresholds with the necessary publication of the contract advert on OJEU and Contracts Finder.**

* No commitment must be given to a Supplier for goods or services prior to a Purchase Order or equivalent document being raised.
* Financial disaggregation of Estimated Procurement Value in order to avoid compliance with these and the Public Procurement Regulations is prohibited.
* All Contracts, whether income or expenditure, should be captured on the Authority’s Contracts Register as required by the Transparency Code.
1. **INTRODUCTION**
	1. These Procurement Operating Procedures (the “**POP**”) must be read line with the WLWA Procurement Rules (the “**Procurement Rules**”).
	2. The West London Waste Authority (the ”**Authority”**) undertakes a range of procurements each year
	3. Together, the Procurement Rules and the POP provide the governance structure for the Authority to procure works, goods and services.
	4. The mandatory Procurement Rules and the POP apply to everyone who commissions or procures contracts on behalf of the Authority, including external consultants and third party providers.
	5. Together, the Procurement Rules and the POP are designed to ensure compliance with the Authority’s Constitution, Financial Rules, Policies, the Public Procurement Regulations 2015 (the “**PCRs**”) and English law.
	6. The Contracts and Procurement Authorisation Tables set out in sections 1 and 2 of both the Procurement Rules and the POP (the “**Authorisation** **Tables**”) provide a summary of the key requirements that must be adhered to for all procurements. However, all Officers are strongly advised to read the rest of the POP and Procurement Rules in their entirety for further guidance and to seek the advice and support of the Contracts and Procurement Manager as appropriate.
	7. If officers fail to comply with the Procurement Rules and/or the POP, which lay down minimum mandatory requirements when engaging in procurement activity, disciplinary action may be considered by the Authority.
	8. Members and Officers have a duty to report non-compliance of the Procurement Rules and/or the POP to an appropriate senior manager and any one of the following: the Finance Director, Treasurer or Clerk. Non-compliance with these Procurement Rules and/or the POP will be monitored and recorded by the Procurement Review Board.

## SCOPE

* 1. The Procurement Rules and the POP apply to all Procurement activities including the receipt of income or where funding is received by the Authority from external sources.
	2. A Contract includes any agreement to provide supplies, services or works in exchange for a consideration (which is usually payment). These contracts include but are not limited to:
		1. Purchase orders (or equivalent documents);
		2. Leasing arrangements;
		3. Engaging agency workers;
		4. Engaging outside experts or consultants;
		5. Service Contracts; and
		6. Works Contracts.
	3. The following contracts are **exempt** from the Procurement Rules:
		1. Employment contracts;
		2. Contracts relating solely to the disposal or acquisition of an interest in land including leasehold interests;
		3. Inter Authority Agreements and Service Level Agreements with the Constituent Boroughs.
	4. Framework Agreements that have been established by other Public Sector Bodies that are lawfully accessible to the Authority should be used in accordance with the terms and conditions of the relevant Framework Agreement.

## DETERMINING CONTRACT VALUE

* 1. The procurement approach which needs to be followed for each procurement depends upon the estimated value of the Contract to be let over its entire term including any potential extensions.
	2. Before commencing a purchasing or tendering process an estimate of the value of the Contract must be prepared. If known in advance it must be included in the Annual Procurement Plan.
	3. The Contract Value should be based on a genuine estimate of the value of all payments to be made, or potentially to be made, to the contractor for the whole of the Contract period including any potential extension period(s).
	4. Contracts must not be unnecessarily disaggregated to avoid the application of the PCRs, the POP and/or the Procurement Rules.
	5. To comply with the PCRs, the Authority is required to divide large contracts into lots with the aim of enhancing competition. If the Authority is unable to do so, it must document the main reasons for its decision **not** to subdivide into lots.
	6. Where a Contract is to be let that does not involve the making of payments by the Authority for the provision of a service (e.g. where the Authority is receiving income from a contractual arrangement or is procuring a service that is not paid for by the Authority); Legal and Procurement advice may be sought in estimating the Contract value.

## COMPLIANCE

* 1. The Responsible Officer must consider the public sector equality duty and whether a full Equalities Impact Assessment is required.
	2. All contracts must be documented in writing.

Procurement Rules

* 1. All contracts over £25,000 in value over the life of the Contract must be recorded on the Authority’s Contracts Register. The Contracts and Procurement Manager must ensure that the Contracts Register is updated at the end of the Procurement process.
	2. The Responsible Officer must consult with the Contracts and Procurement Manager as to whether legal advice should be sought on the terms and conditions of each contracts.
	3. Where an Officer is involved in procurement project of £100,000 and above, the officer must ensure that they complete a confidentiality agreement and a declaration of interest. This must then be returned to the Managing Director. A declaration does not automatically exclude anyone from the procurement process; it alerts the procurement lead and allows them to manage the procurement accordingly.
	4. Where a supplier or an undertaking related to a supplier has advised the Authority, or has otherwise been involved in the preparation of the procurement procedure, the Authority must have regard for this and ensure that soft market testing and consultation with bidders is structured and ensure that competition is not distorted by the participation of that supplier in the procurement.
	5. Unrestricted and full direct on line access free of charge to the procurement documents must be available from the date of the publication in the Official Journal of a Contract Notice or the date on which an invitation to confirm interest is sent

## ROLES AND RESPONSIBILITIES

* 1. **Responsibilities of the Procurement Review Board (PRB)**

The Procurement Review Board or PRB is made up of the Managing Director, Finance Director, Senior Management Team (SMT) and the Contracts and Procurement Manager.

The PRB provides strategic direction and monitors the implementation of the WLWA Procurement Strategy. It has overarching responsibility to ensure compliance with procurement strategy and regulations and

 The PRB will be responsible for:

7.1.1Compliance with the Authority’s Constitution, Financial Rules, Policies, the Public Procurement Regulations 2015 (the “**PCRs**”) and English law.

7.1.2 Reviewing and approving all business cases seeking approval to commence procurement to the value set out in the Contract and Procurement Authorisation Tables

* + 1. Providing a collective decision regarding each appropriate procurement route
		2. Adding an additional level of scrutiny and rigour to procurement decision making
		3. Reviewing and approving all business cases seeking approval to the value set out in the Contract and Procurement Authorisation Tables.
		4. Tracking cost and carbon savings and Social Value delivered through procurement
		5. Promoting compliance with procurement regulations and discussing continuous improvement.
		6. Promoting proactive management of contracts and reviewing contracts at the PRB from time to time.
	1. **The Managing Director shall:**

## 7.2.1.Be responsible for the purchasing undertaken by the Authority and providing the associated information required for reporting purposes;

## Ensure that Members, Procurement Review Board and any Project Board set up for the Procurement, are consulted as necessary on issues arising as part of a Procurement exercise;

## Be responsible for ensuring that all procurements are appropriately scoped and follow an appropriate Procurement exercise;

## Be accountable to the Authority for the performance of his/her duties in relation to Procurement;

## Comply with the Authority's decision making processes;

## Designate a Responsible Officer for leading each Procurement in excess of £25,000;

## Take immediate action in the event of breach of these Regulations in order to rectify such breach; and

## Ensure the integrity of the Procurement process.

**7.3 Responsibilities of the Contracts and Procurement Manager:**

The Contracts and Procurement Manager will be responsible for:

* + 1. Developing the annual procurement plan
		2. Routine short-term materials procurements to:
		3. Actively tracking the market and ensuring best value for materials from HRRC sites
		4. Increase recycling and waste reduction
		5. Monitoring contract expiry to ensure agreement coverage for key, complex and critical spend across the organisation
		6. Maintaining audit trails
		7. Reporting of procurements, extensions, waivers and contract variations
	1. **Responsibilities of all Officers Undertaking Procurements:**
		1. All officers involved in procurements are responsible for familiarising themselves with the Authority’s Procurement Rules and POP.
		2. All officers involved in procurements are responsible for seeking financial, legal, Procurement and HR advice as appropriate;
		3. All officers must declare to their line manager any interest, which could, or be seen to, influence their judgement in any Procurement or Contract matter; and
		4. All officers must report to their line manager or other responsible senior officer any concerns about improper conduct or breach of procedures during a Procurement exercise.

**7.5 Role and Responsibilities of the Officer Leading the Procurement**

The officer designated as the Officer Leading the Procurement is responsible for:

7.5.1 Ensuring the integrity of the Procurement process;

7.5.2 Where necessary, seeking appropriate advice to ensure compliance with these Procurement Rules and the POP;

7.5.3 Formulating an appropriate strategy for the Procurement;

7.5.4 Ensuring that there is appropriate analysis of the service requirement, risks associated with the Procurement, the estimated Contract value, timescales, procedure and documentation to be used;

7.5.5 Consulting with the Constituent Boroughs if appropriate and ensuring that their views are reflected in the Procurement process as appropriate;

7.5.6 Ensuring that the officers involved in the Procurement process understand the service requirement and the strategy to be adopted for the Procurement;

7.5.7 Quantifying any cost savings arising from the Procurement and ensuring these are reported and delivered;

* + 1. Ensuring the capture and reporting of appropriate data and information through the contract.

7.5.9 Complying with the Authority’s approvals and decision making processes;

7.5.10 Ensuring that all Invitation to Tender documents clearly describe the Evaluation Criteria, sub criteria and weighting and that the tender evaluation is based strictly on the published criteria and weighting;

7.5.11 Compliance with record keeping requirements;

7.5.12 Ensuring that value for money is achieved;

7.5.13 Ensuring that a business continuity plan is in place and, where considered necessary, appropriate security (such as a bond or guarantee) is taken to protect the Authority in the event of non-performance of the Contract;

7.5.14 Ensuring that the contractor has sufficient and appropriate security protocols in place for the storage, use and transmission of sensitive data where this is necessary for the performance of the Contract;

7.5.15 Ensuring that a framework for the management of the Contract is put in place prior to Contract award;

7.5.16 Ensuring that the Authority’s Contract register is updated when the Contract is awarded;

7.5.17 Ensuring that the opportunity and award is published on Contracts Finder where necessary; and

7.5.18 Providing information about the Contract that is required to be published under access to information and contract award notice requirements.

**7.6 Project Boards**

7.6.1 For significant and complex procurements the Authority may, on recommendation of the PRB, set up a Project Board to manage the Procurement.

7.6.2 Membership of a Project Board shall be decided by the Authority and will usually include some or all of the Authority’s officers, one of whom will normally be appointed by the Authority as Chair of the Board.

7.6.3 Other members will usually be senior officers of the Constituent Boroughs, although the Authority may appoint Project Board members from other bodies such as central government.

## AUTHORISATION FOR COLLABORATIVE ARRANGEMENTS

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

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

* + 1. Authorisation to commence the Procurement process must be obtained in accordance with the Procurement Rules and the POP;
		2. The Procurement must be undertaken in accordance with these Procurement Rules, the POP and this Authority’s Procurement documentation;
		3. The Project Team that leads the procurement must consult with legal and/or the Contracts and Procurement Manager;
		4. The roles and responsibilities of the participating authorities must be clearly defined and any necessary written agreements or memoranda of understanding entered into;
		5. The Procurement timetable should allow for the participating authorities to obtain necessary approvals in accordance with their regulations;
		6. There should be appropriate consultation with the participating authorities on the Procurement process; and
		7. Authorisation to award the Contract must be obtained in accordance with the Procurement Rules.
	1. **Collaborative Procurement where the Authority is not the Contracting Authority**
		1. If the Authority is committed to using the Contract once it has been awarded, authority to participate in the Procurement process must be obtained prior to the placing of any notice advertising the Procurement.
		2. The Responsible Officer must ensure that the PRB are provided with an opportunity to comment on the approach to the Procurement and specification.
		3. Once the Contract has been awarded by the contracting authority, approval to draw down goods or services from the Contract must be obtained.
		4. If the Authority is not committed to using the Contract, approval to draws down goods or services from the Contract must be obtained before the Contract is awarded.

## SCOPING

* 1. Before commencing a procurement procedure, Responsible Officers may conduct market consultations with a view to preparing the procurement and informing suppliers of their procurement plans and requirements.
	2. Market consultations must not have the effect of distorting competition and must not result in a violation of the principles of non-discrimination and transparency. Officers may, for example, seek or accept advice from independent experts or authorities or from market participants.
	3. The Responsible Officer must state how the procurement will meet social value considerations on a case by case basis (for example - employment, training, apprenticeships, use of SME’s and local Suppliers).

## EVALUATION

* 1. All officers must take appropriate measures to ensure that the evaluations of all Procurements are conducted fairly and transparently.
	2. The Responsible Officer must ensure that all Contracts are awarded based on evaluation of whole system costs
	3. All Invitation to Tender documents must clearly describe the evaluation criteria, sub criteria and weighting and all tender evaluations must be based strictly on the published criteria and weighting.
	4. The evaluation notes of each evaluator must explain adequately the reasons behind the scores they have awarded to each tenderer and must strictly follow the published evaluation criteria and process. The evaluation process must ensure the evaluator notes provide a full, transparent, and fair summary of the discussions that led to the scores.
	5. All evaluation moderation meetings must keep a complete record and comprehensive notes of each point made and of any changes made as a result of moderation and the reasons why. The notes must adequately reveal the panel’s reasons or reasoning for the positive and negative points made during the meeting, and in the notes.
	6. Evaluators’ original score sheets will not always be enough evidence to show the reasons why the evaluating group reached their consensus scores during a moderated discussion. The notes of moderation meetings should track the thinking of the evaluation panel to enable tenderers to scrutinise the marks awarded and the Authority’s reasons.
	7. In every procurement exercise where a contract is substantial and complex the need for transparency requires the Authority to disclose reasons for awarding contracts in a clear and unequivocal fashion.

## INFORMATION GOVERNANCE

* 1. When procuring, the Responsible Officer must ensure due diligence checks are carried out to provide sufficient guarantees that the Supplier’s technical and organisational security measures for handling and protecting information and data are appropriate, suitable and lawful. This is a requirement under Data Protection Legislation.
	2. Evidence of these checks, copies of policies and guarantees provided by the Supplier must be retained by the Responsible Officer who is managing the contract and should be regularly reviewed throughout the life of the contract.
	3. Contract managers must ensure appropriate security measures are applied to prevent the unauthorised or unlawful processing of personal data or accidental loss or destruction of, or damage to, personal data.
	4. Officers must ensure that contracts with providers that involve the processing of personal data contain clauses as required by the Data Protection Legislation.

## PROCUREMENT METHODS

* 1. Responsible Officers must treat suppliers equally and without discrimination and must act in a transparent and proportionate manner.
	2. The default position in acquiring Works, Supplies and Services should always be open competition through competitive tendering. Please refer to the Contracts and Procurement Authorisation Tables in sections 1 and 2 of these CPRs to determine the Procurement process that should be used.
	3. All opportunities for Works, Supplies and Services over £25,000 if advertised must be published on Contracts Finder in accordance with the Contracts and Procurement Authorisation Tables.
	4. The E-Procurement portal must be used for any Procurement where the lifetime value of the Contract exceeds the EU procurement thresholds.
	5. The use of Selection Questionnaires is only required for contract values above the EU Thresholds. Suitability Assessment Questions may be asked as appropriate for contract values below the EU Threshold.

**Frameworks**

* 1. Framework agreements may offer access to a single supplier or to multiple suppliers who can provide a service, services or particular goods. Each framework agreement will set out the process for drawing services off the framework and there will be restrictions as to the extent to which the Authority can vary the service specification, any service level agreements, terms and conditions or other contractual documents.
	2. Framework Agreements that have been established by other Public Sector Bodies that are lawfully accessible to the Authority should be used strictly in accordance with the terms and conditions of the relevant Framework Agreement. The Responsible Officer should consult with the Contracts and Procurement Manager prior to procuring from a Framework Agreement.
	3. Following consultation with the Contracts and Procurement Manager, but before calling off from a Framework Agreement, requisite authority needs to be sought for such contract in accordance with the Authorisation Tables.
	4. The Authority may utilise the corporate contracts of any of the constituent boroughs for the provision of goods or services that need to be purchased from time to time.
	5. Where a potential framework agreement has been identified:

Legal advice must be sought to confirm that the framework agreement can be used by the Authority;

The scope of the services that can be drawn off the framework agreement and their associated service levels and terms and conditions need to be investigated to ensure they meet the Authority’s needs; and

The process for using the framework agreement must be understood and complied with.

**Dynamic Purchasing System**

* 1. The West London Waste Authority Dynamic Purchasing System (DPS) is hosted via the ProContract system (London Tenders Portal, [www.londontenders.org](http://www.londontenders.org)). The DPS provides a record of suppliers that are pre-approved through Selection Questionnaire (SQ) and are considered capable of carrying out the required offtake arrangements within each Lot and material category.
	2. The maximum total value of all call-off contracts for the DPS will be approximately £10 million per annum. The DPS will remain open for the contract period of ten years, terminating in 2029 unless terminated by the authority.

**12. SPECIALIST PROCUREMENT REQUIREMENTS – WASTE SERVICES**

* 1. Procurement of all waste services must be compliant with the requirements of the Greater London Authority (GLA) Act 1999 as amended by the GLA Act 2007.
	2. The Mayor for London must be informed in writing of the Authority’s intention to procure waste services a minimum of 108 days before an OJEU notice is issued. Any direction provided by the Mayor for London in response to such notice of intention must be complied with by the Authority under the GLA Act 1999.

## EXTENSIONS AND VARIATIONS

## Contracts may only be extended if the following provisions are met:

## The original Contract was awarded on a Procurement Rules compliant competitive tender or quotation process and includes an option to extend;

## The extension or variation is in accordance with the terms and conditions of the existing Contract. Input from the Contracts and Procurement Manager should be sought to confirm this is the case and to support the drafting of the extension and/or variation documents;

## If the initial Contract was subject to the EU tender procedure, that the extension option was declared within the OJEU Contract Notice;

## The Contract has not been extended beyond the approved extension period; and

## Approval has been sought and obtained from the Procurement Review Board following submission of a Business Case detailing the Contract Extension requirements.

## In the event that the provisions of 13.1.1 to 13.1.5 are not met then a Waiver must be sought in accordance with section 14 (Waivers) or alternatively a new Procurement must commence.

## Regulation 72 of the PCRs permits an amendment, extension or renewal of an existing Contract without triggering a new Procurement exercise in the following cases:

## The original Contract includes a “clear, precise and unequivocal review clause”. The overall nature of the Contract must not be altered as a result of the change;

## New Services, Supplies and Works need to be purchased from the Supplier and a change of Supplier cannot be realistically made for economic or technical reasons and would cause significant inconvenience or substantial duplication of the Authority’s costs. This is subject to the provision that each change does not increase the Contract’s value by more than 50 per cent as a result;

## Circumstances have arisen that the Authority could not reasonably have foreseen and that require an amendment to the existing Contract. The Contract’s overall nature must not be altered and the Contract’s value must not increase by more than 50 per cent as a result of any change;

## A new Supplier is required to replace the Supplier originally party to the Contract, either because this is the result of corporate restructuring, including takeover, merger, acquisition or insolvency leading to a universal or partial succession of the original Supplier, or because this change was envisaged in a review clause in the original Contract. This provision cannot be relied on if the Supplier is being replaced for a different reason;

## The value of the modification is both below the EU Procurement Thresholds and is less than 10 per cent of the initial Contract value (where the contract is for Supplies or Services) or less than 15 per cent of the initial Contact value, in the case of a Works Contract. More than one change can be made under this provision provided the cumulative value of the modifications does not exceed EU Procurement Thresholds.

## The proposed modifications are insubstantial. This does not include any modifications that result in any of the following:

* + 1. The Contract would become materially different;
		2. The scope of the Contract would extend considerably;
		3. The outcome of the initial Procurement procedure would have been different had the modification been implemented at that time. For example, other tenders would have been accepted or other candidates would have been admitted;
		4. The economic balance would shift in favour of the Supplier; or
		5. A new Supplier would replace the original Supplier in a circumstance not provided for in paragraph 14.3.4 above.
	1. Officers must consult with the Contracts and Procurement Manager to confirm if any of the circumstances set out in section 14.3 above apply, permitting a Contract amendment, extension or renewal and must also comply with the Authorisation Tables.
	2. A Contract Variation Notice needs to be sent to OJEU in the case of Contract variations permitted and made in accordance with paragraphs 14.3.2 and 14.3.3 above.
	3. In the event that the provisions of paragraph 14.3 are not met then a waiver must be sought in accordance with section 15 (Waivers) or alternatively a new Procurement must commence.

## WAIVERS

## Circumstances may arise where permission is required to waive one or more of the Procurement Rules. Waivers are reserved for exceptional circumstances and will only be approved where good and sufficient reason has been demonstrated. A Waiver will not be granted simply on the grounds of convenience or because of inadequate forward planning.

## The Authority can only waive the Procurement Rules established by the Authority. The Authority cannot waive UK law or EU Procurement Regulations.

## Waivers (in whole or in part) from the requirements set out in the Procurement Rules may only be obtained by completing a Waiver Business Case which is available from the Contracts and Procurement Manager.

## The Waiver Business Case must be submitted to the Contracts and Procurement Manager for initial consideration. If the Contracts and Procurement Manager is satisfied that the Waiver Business Case meets the requirements of this section of the Procurement Rules, the Waiver Business Case shall be submitted to the Procurement Review Board for review.

## The Procurement Review Board must be satisfied that special circumstances exist which warrant a waiver being permitted. Such Waiver Business Case must set out in detail the terms of any waiver from the requirements set out in the Procurement Rules.

## Waivers to any of the Authority’s Procurement Rules must be sought in advance of any contractual agreement, order placement, use of Works, Services or purchase of Supplies.

## Any Waiver can only be granted for a maximum period of 12 (twelve) months unless it can be demonstrated that any longer period is in the best interest of the Authority.

## Any Waiver can only be granted where the value of the waiver is below the relevant EU Threshold.

## The circumstances under which a Waiver can be agreed are limited to the following circumstances:

## Sole Supplier: It can be proven that there is only one Supplier who can deliver the Supplies or Services. (It is considered better practice to issue a tender to evidence that there is only one Supplier capable of delivering such Supplies or Services);

## Demonstrable Best Interest: It can be demonstrated that it is in the Authority’s best interest and this is clearly demonstrated in the Waiver report. (For example, the Authority is seeking to redesign service provision or exploring internal / external collaboration opportunities and therefore direct award to the incumbent provider is required for an intervening period only);

## Emergency: There is a clear need to provide a service or a product immediately in the instance of a sudden unforeseen crisis; the immediate risk is to health, life, property or environment (for example, Natural Disaster; Pandemic, Civil Unrest; Provider going into administration);

## Service Imperative: Demonstrable circumstance that is exceptional: For example, an unanticipated delay during the tender process or Strategy and / or Spec and service design not completed when tender needed to begin for unforeseen reasons. For the avoidance of doubt, a Waiver will not be granted simply on the grounds of convenience or because of inadequate forward planning; and/or

## Extension as a Waiver: Where an extension to a Contract is being sought but it is not possible under the current terms and conditions of the Contract.

**For any queries not covered within the Procurement Rules and the POP, please contact the Contracts and Procurement Manage**

1. Contracts should not be artificially underestimated or disaggregated into two or more separate Contracts where the intent is to avoid the application of the Contract Procedure Rules or Public Procurement Regulations. [↑](#footnote-ref-1)
2. Decision to award must be made by a separate individual to the Responsible Officer that is making the recommendation to award. [↑](#footnote-ref-2)
3. Contracts should not be artificially underestimated or disaggregated into two or more separate Contracts where the intent is to avoid the application of the Contract Procedure Rules or Public Procurement Regulations. [↑](#footnote-ref-3)
4. Decision to award must be made by a separate individual to the Responsible Officer that is making the recommendation to award. [↑](#footnote-ref-4)