



PROCUREMENT CODE

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Scope of the Procurement Code

1. This Procurement Code sets out the policy of the London Legacy Development Corporation (LLDC) in relation to the procurement of all goods, services, supplies and works. All contracts (other than contracts of employment) which are entered into by LLDC must be procured in accordance with the requirements of this Procurement Code.
2. Contract or funding agreement?

The following table will help you determine whether you will need to progress through a procurement (contract) or grant award (funding agreement) route.

Contract	Funding Agreement
<ul style="list-style-type: none"> • The LLDC receives a benefit, usually in return for an agreed sum of money. • The contract requirements are specified by the LLDC: there are firm contractual commitments that will be delivered. • The LLDC is able to bring a claim for its resulting losses based on a breach of contract if these commitments are not delivered. • The process leading up to the award of a contract is governed to a greater extent by specific regulations. 	<ul style="list-style-type: none"> • The LLDC is not receiving a direct or indirect benefit. • The LLDC is supporting, via a third party, an activity that aligns with the Mayor's priorities, but which is the initiative and activity of that other organisation. • There is an expectation the organisation will seek or has sought additional funding for the activity from other third parties. • The funding is provided as a conditional gift: the recipient is entitled to the funding as a contribution to costs, provided conditions the LLDC stipulates are met. • The LLDC is entitled to withhold or reclaim the funding if the conditions are not met, but may not be entitled to take any other action. • Although a formal tendering exercise is not required by procurement law, considerations of value for money, fairness, transparency, equalities and avoiding potential distortion in the relevant sectors apply. It may be prudent to undertake some form of competitive exercise.

Procurement Framework

3. This Procurement Code is a summary of the principles behind the procurement processes which LLDC must follow. Procurement must always be carried out with reference to the LLDC's detailed Procurement Framework.
4. The Procurement Framework covers each relevant phase of the procurement life cycle and identifies the considerations that help to achieve wider social, economic and environmental objectives of the LLDC and ensure that the LLDC's procurement activities have a positive impact on Greater London's economic development.
5. The procurement route chosen for any contract will depend on a number of factors, including:

- (a) the type of contract to be entered into (for goods, services or works);
- (b) the classification of the contract in procurement law terms;
- (c) the estimated value of the contract.

Responsibilities

6. Responsibility for compliance with this Procurement Code lies with every person working for and on behalf of LLDC.
7. The LLDC recognises that experienced professional support is necessary for the success of procurement projects.
8. LLDC's Procurement team comprises a team of specialists who are able to advise and assist with all aspects of a procurement process, including planning a procurement strategy, provision of the necessary documentation, including contract terms and conditions, and provision of support to administer the process, including negotiation and evaluation.
9. No procurement activity should be undertaken without first seeking advice from the LLDC Procurement team. Furthermore, if you are unsure whether your proposed transaction amounts to a contract or a grant, please speak to the procurement team. Please note that consultation with TfL's legal team may also be necessary. Notwithstanding advice having been taken from the Procurement Team, no procurement must be undertaken without first obtaining the necessary approvals.
10. The Deputy Chief Executive Officer will advise:
 - (a) on the approach to be adopted when conducting financial appraisals of suppliers; and
 - (b) the financial aspects of contracts.
11. The LLDC has in place a strict policy on disclosure of conflicts of interest. If any member of the team involved in a procurement, or any member of their immediate family, has any link with any potential supplier they must disclose this in accordance with the policy and follow all actions recommended by LLDC Procurement.

Procurement Strategy

12. The procurement strategy for each contract over £25,000 shall be developed by the LLDC Procurement team in consultation with the project sponsor(s), including:
- (a) Project objectives and scope of the procurement
 - (b) Risk identification and management
 - (c) Route to market
 - (d) Contract strategy
 - (e) Market insights
 - (f) Programme
 - (g) Evaluation plan

Procurement Principles

13. Procurement should be used to support LLDC's strategic aims:
- (a) to deliver social, economic and environmental benefits for East London;
 - (b) to deliver agreed financial receipts to the public sector;
 - (c) to optimise sustainability and success of and to secure the development of the Queen Elizabeth Olympic Park and the venues.
14. These objectives also sit alongside broader UK and LLDC procurement objectives, which (subject to the requirements of the procurement regulations) are to:
- (a) achieve continuous improvement in procurement expenditure;
 - (b) work with businesses and organisations to achieve value for money, quality, and effective service delivery;
 - (c) promote equality of opportunity for all businesses, in particular SMEs; BAME businesses; social enterprises; enterprises owned by women and also by people living with disabilities; enterprises owned by lesbian, gay, bisexual and transgendered (LGBT) people; and voluntary and community organisations (in accordance with the GLA Group Responsible Procurement Policy);
 - (d) promote innovation.
15. The LLDC's procurement aims to deliver best value for money whilst leaving a legacy for east London, and supporting the LLDC's four priority themes:
- (a) Delivering inclusive growth and community well-being
 - (b) Delivering sustainable development and responding to the climate emergency
 - (c) Delivering high quality design
 - (d) Delivering inclusion and diversity
16. Specific project objectives under each of these themes should be identified in the project initiation document and/or business case for each project and subsequently audited to enable comparisons to be made between initial objectives and actual outcomes.

Overarching Procurement Principles

17. The LLDC must observe the overarching principles of public procurement in relation to all procurement activities. These principles are:

- (a) Transparency
- (b) Proportionality
- (c) Non-discrimination
- (d) Equal Treatment

Transparency:

18. The requirement of transparency is fundamental to the accountability of the LLDC as a public body and is applicable to all procurement and contracting activities. LLDC should be clear in its procurement processes as to how these will be conducted, how a successful supplier will be chosen and in each case LLDC should retain an auditable documentation trail, that is itself transparent, regarding key decisions (eg tender / no tender), which provides clear accountability and could be subject to review (including Freedom of Information requests).

Proportionality:

19. The level of resources which the LLDC puts into a procurement process should be proportionate to the value, complexity and risk of the required contract, i.e. more resources will be required where higher benefits / costs savings / quality can be gained.

20. When designing and delivering procurements, LLDC should have regard for the bidding costs which potential suppliers will incur and seek to avoid wasted costs due to significant delays or material scope changes. This can be mitigated by engaging the market in advance of procurements.

Non-discrimination

21. The procurement process should be non-discriminatory and transparent at all times, neither including nor favouring nor excluding any particular supplier. This includes documentation and, particularly, the identification of criteria and weightings that will be used as part of any evaluation process.

22. All appropriate information should be supplied in good time to enable potential suppliers to properly assess whether they wish to express an interest in providing the relevant services.

Equal Treatment

23. Unless the work has been agreed by Procurement to be a Reserved Procurement as part of the GLA Small and Diverse Business Action Plan and/or the London Anchor Institutions initiative (or relevant, superseding initiatives as determined by Procurement) ,then the procurement process should not give an advantage to any market sector (public, private, voluntary, charitable and social enterprise). This includes ensuring that decisions are taken, not with regard to the type of organisation specifically, but rather to how well that organisation meets the selection/evaluation criteria.

24. The basic financial and quality assurance checks should apply equally to all types of suppliers, but be proportionate to the service being procured (see 'proportionality', above).

25. All suppliers must operate under these same principles when being asked to respond to any tender specification and pricing payment regimes and currency must be transparent and fair.

Conduct of Procurement Processes

26. Officers of the LLDC and those acting on its behalf must conduct business with suppliers, consultants and contractors on the following principles:
- (a) place orders and award contracts in accordance with this Procurement Code, the Procurement Framework, relevant internal policies, regulations, best value principles and the law;
 - (b) comply with the LLDC's Code of Conduct for employees;
 - (c) adhere to the LLDC's obligations in its terms and conditions of contract;
 - (d) ensure only accurate, consistent and fair information is given to suppliers;
 - (e) account for actions and decisions;
 - (f) comply with the LLDC's audit requirements;
 - (g) comply with all appropriate health and safety requirements;
 - (h) ensure that all contract documents are controlled in the appropriate manner.
27. Any suspicion of fraud or corruption, particularly on any project in which the LLDC has a financial interest, must be reported immediately to the Director of Procurement and the Deputy Chief Executive Officer. Allegations of fraud or corruption will be referred, if necessary, to the Police. Proven allegations may result in disciplinary, and criminal proceedings, and dismissal.
28. Suppliers working on large procurement projects should be made aware of the relevant policies of the LLDC. Suppliers must ensure such policies are brought to the attention of all staff and sub-contractors working on LLDC contracts.

Regulated Procurement under the Public Contracts Regulations 2015

29. The UK public procurement rules will affect many of the procurements undertaken by the LLDC. Contracts exceeding the lower threshold published in relation to the Regulations (see Annex 1 below) will, in general, be subject to regulation by the Public Contracts Regulations 2015 (the "Regulations"), including the requirement to follow a prescribed procedure where the estimated contract value exceeds the applicable regulatory threshold.
30. Other contracts, which may be exempt from the Regulations (because, for example, they fall below the applicable financial thresholds) or partially exempt (for example contracts to which the lighter-touch procurement regime applies), will still always be subject to the overarching procurement principles.
31. The principles of the UK procurement rules are consistent with the procurement objectives of the LLDC; ensuring that the procurement of goods, works and/or services takes place in a transparent and fair manner.

Subsidy Control

32. The seven subsidy control principles are set out in the EU/UK Trade and Cooperation Agreement 2020 (the “TCA”). These seven principles are included in the Subsidy Control Act 2022 (the “SC Act”). The SC Act is not yet in force, however once it does come into force, it will replace the TCA for the purposes of subsidy control.

The seven subsidy control principles are:

- (a) *Common interest*: Subsidies should pursue a specific policy objective in order to: (i) remedy an identified market failure, or (ii) address an equity rationale (such as local or regional disadvantage, social difficulties or distributional concerns).
 - (b) *Proportionate and necessary*: Subsidies should be proportionate to their specific policy objective and limited to what is necessary to achieve it.
 - (c) *Design to change economic behaviour of beneficiary*: Subsidies should be designed to bring about a change of economic behaviour of the beneficiary. Moreover, that change, in relation to a subsidy, should be: (i) conducive to achieving its specific policy objective, and (ii) something that would not happen without the subsidy.
 - (d) *Costs that would be funded anyway*: Subsidies should not normally compensate for the costs the beneficiary would have funded in the absence of any subsidy.
 - (e) *Least distortive means of achieving policy objective*: Subsidies should be an appropriate policy instrument for achieving their specific policy objective, which objective could not be achieved through other, less distortive, means.
 - (f) *Competition and investment within the United Kingdom*: Subsidies should be designed to achieve their specific policy objective while minimising any negative effects on competition or investment within the United Kingdom.
 - (g) *Beneficial effects to outweigh negative effects*: Subsidies’ beneficial effects (in terms of achieving their specific policy objective) should outweigh any negative effects, including in particular negative effects on: (i) competition or investment within the United Kingdom; and (ii) international trade or investment.
33. The LLDC will ensure that its procurements are compliant with the seven subsidy control principles.

Specific Types of Contracts

34. Some contracts have certain features which mean that specific requirements apply to their procurement. This section details some of the most frequent contracts which have such specific requirements but guidance should always be sought from LLDC Procurement as to the classification of a contract into any of these categories.

Light-touch Regime Contracts

35. The public procurement rules provide a light-touch regime for specific reserved categories of services, where only a few of the detailed rules of the Regulations apply.
36. Generally, these services are those considered to be of lower interest to cross-border competition. Whilst a full procurement process is not required in relation to such contracts, LLDC requires a sufficient degree of advertising and competitive process to satisfy the overarching principles of transparency, non-discrimination, equal treatment and proportionality.

Concessions

37. A services concession is a contract for the provision of services to or on behalf of LLDC but crucially, the payment for the provision of those services is either solely the right to exploit the service (by sales to third parties and retaining the profit) or this right together with some payment from LLDC. In a services concession arrangement it is crucial that the financial risk in the venture is primarily transferred to the supplier. A services concession should last only as long as is reasonable for the supplier to recoup its initial capital outlay and to make a reasonable return on that outlay. Justification for the length of term must be recorded in the Procurement Plan and confirmed to decision-makers in the Contract Award form. This is particularly important for proposed concession contracts of more than five years.
38. The procurement of concession agreements is regulated by the Concessions Contracts Regulations 2016 which establish rules on the procedures for procurement by contracting authorities by means of a concession contract. Procurement of concession contracts is subject to the same overarching procurement principles as other public contracts. These regulations set-out thresholds above which (subject to certain exclusions) these regulations apply.
39. The LLDC must carry out a process which ensures value for money and satisfies the overarching principles of transparency, non-discrimination, equal treatment and proportionality.

Framework Agreements

40. A framework agreement is a general term for agreements with suppliers that set out terms and conditions under which specific purchases (call-offs) can be made by the LLDC throughout the term of the agreement.
41. Frameworks can be with either one supplier on a “single supplier framework”, or “multi supplier” with two or more suppliers on a framework “panel”. As they effectively close off competition for contracts on the open market, frameworks cannot be established for more than four years in total. The procurement to establish a framework agreement is subject to the UK procurement rules where the estimated value of all of the purchases to be made exceeds the relevant UK threshold for the type of contract in question.
42. Save in exceptional cases, the duration of a framework agreement must not exceed four years. If exceptional circumstances apply to the procurement of a particular framework agreement, those circumstances and discussion of how they provide justification for a longer term must be set out for the benefit of decision makers in the Contract Award Form.

Call-off contracts from existing Framework Agreements

43. Central purchasing bodies such as the Crown Commercial Services and other local authorities may from time to time set up their own framework panels for various types of contracts which the LLDC is entitled to access. In these circumstances the LLDC can call-off contracts from those frameworks without having to go through its own procurement process.
44. In order to be satisfied that the LLDC is able to access the framework, the following conditions must be satisfied:
 - (a) The LLDC must either be named or included by reference to a specific class of public bodies to which the LLDC belongs e.g. sub-central contracting authorities;
 - (b) The framework must have been established under the Regulations;
 - (c) The goods, services or works required for the call-off contract must be within the scope of the framework;

- (d) The LLDC must follow the call-off process set out in the relevant framework agreement.
45. The call-off process may require the LLDC to carry out a mini-competition process to establish which supplier on the framework panel is best able to meet its needs and provide best value for money. The process will usually be specified in the framework agreement or guidance that accompanies it, and in any event, LLDC must invite all member of the framework to submit a mini-tender in this call-off process, and must observe the overarching principles of transparency, equal treatment, non-discrimination and proportionality at all times.
46. Whilst regulation 72 of the Public Contracts Regulations 2015 applies to the variation of framework agreements themselves, it does not apply to the variation of call-off contracts let under a framework agreement. To that end, where there is no guidance in the framework agreement as to which variations of call-off contracts are to be permitted, the LLDC shall apply the principles set out in regulation 72.

Land acquisition

47. The acquisition of land by the LLDC is expressly exempt from the requirements of procurement regulations. However, LLDC must be very careful when acquiring land that it does not impose any obligations on the seller to carry out any alterations, improvements, construction or other works on the land prior to or after the transfer as this could constitute a works contract to which the procurement rules will apply.

Land disposals

48. The disposal of land (freehold or leasehold) by LLDC is clearly not a procurement. However, LLDC must be very careful that in disposing of land it does not impose obligations on the purchaser to carry out any alterations, improvements, construction or other works on the land prior to or after the transfer as this could constitute a works contract to which the procurement rules will apply.
49. In the process of any land disposal LLDC must ensure value for money.

Sale of naming/sponsorship rights

50. It is not necessary for LLDC to conduct a full competition under the strict requirements of the procurement rules in order to select a naming rights sponsor, provided that the sponsor is only paying cash for those rights. This is because the sale of rights (as opposed to the purchase of goods and services) by a public body does not fall within the scope of the Regulations (as nothing is being “purchased” by LLDC). However, LLDC would still be subject to the obligations of transparency and equal treatment and the need to obtain value for money.
51. Note that LLDC cannot accept value in kind (e.g. goods, works or services) in place of sponsorship money for naming rights as this will constitute a procurement of those goods, works or services. If value in kind is required then this should be subject to a full procurement process as for any contract.

Grant Agreements

52. A grant is a conditional gift with no benefit in return for LLDC and is therefore outside the Public Procurement Regulations. However, making a grant involves expenditure of public money and is therefore subject to the requirements of fairness and transparency. The table at point 2. above sets out the qualification for grants versus contracts.

Single Tender Actions: STAs

53. Whilst LLDC will seek to avoid STAs where possible, there may be circumstances in which only one supplier can provide the LLDC with the required goods or services. In these cases, seeking competitive quotes or tenders will add no value. Seeking a quote from a single supplier and awarding the contract without any competition, or without abiding by the LLDC's financial thresholds and minimum requirements set out in this Procurement Code, is known as a single tender action. It is only allowed under rare and specified circumstances and for all instances consideration must be given as to whether such action is permissible under UK public procurement rules.
54. Guidance should always be sought from LLDC Procurement before initiating an STA.

Responsible Procurement

55. All procurement should be in accordance with the GLA Responsible Procurement Policy and the aims of the GLA Responsible Procurement Implementation Plan as in force (signed up to by the LLDC and agreed by the GLA Collaborative Procurement Board and the GLA Investment Committee) at the time.
56. As a minimum, all procurements will allocate ten percent of the technical/quality score to LLDC priority theme objectives.
57. Like the GLA, the LLDC is an accredited London Living Wage Employer. To that end, where contracts are let in relation to low-wage sectors (e.g. catering, cleaning and security), regard must be given to the need to impose a requirement on the contractor to pay the London Living Wage.

Breach of the Procurement Code

58. It is the responsibility of LLDC Board Members and Officers to comply with the rules and obligations of this Procurement Code. It is the responsibility of all Executive Directors and Directors to take steps to ensure that the provisions of the Procurement Code are brought to the attention of their teams. Failure to comply with the Procurement Code shall constitute a breach. A breach of the Procurement Code may result in disciplinary action being taken in accordance with the LLDC's disciplinary procedures.

Changes to Procurement Code

59. Changes to this Procurement Code (other than changes to the UK procurement thresholds when applicable) must be approved by the LLDC Board and must be notified to the Deputy Chief Executive Officer to enable the Deputy Chief Executive Officer to maintain and publish any updates to Standing Orders.

Annex 1: Procurement threshold Values

Prior to 1 January 2022 the UK Government calculated Procurement Thresholds exclusive of VAT. In line with this the LLDC has operated its calculations for commercial papers exclusive of VAT.

- The new Thresholds have been calculated inclusive of VAT. This change in practice is as a result of the UK's independent membership of the GPA (The Agreement on Government Procurement within the framework of the World Trade Organisation), as we are no longer subject to the EU's agreement and must now operate as other individual nations.
- LLDC's Finance and Procurement functions have reached a consensus agreement on the establishment of a standard LLDC 'local' threshold. This 'local' threshold is lower than the published UK government figure and is intended to provide a safety mechanism against inaccurate estimates of prospective contract values.
- The LLDC thresholds, for ease, have been calculated exclusive of VAT
- Therefore from [1 October 2022] the new LLDC thresholds should be used when calculating estimated contract value and to determine if the Regulations should apply.
- For the purposes of advertising – Contract notices and contract award notices, etc -the published value should remain exclusive of VAT.
- LLDC's commercial templates will be updated to allow for the recording of the (estimated) contract value both inclusive and exclusive of VAT

Threshold values

Due to the inclusion of VAT some of these thresholds represent a decrease in practical thresholds e.g. LTR.

Public Regulations (Services and Goods)	Contracts	Supplies	Services	Works	Light Touch Regime	'Below Threshold' Procurement (Reg 109)
UK Government published thresholds		£213,477	£213,477	£5,336,937	£663,540	£25,000
Threshold minus 20% VAT		£177,897	£177,897	£4,447,447	£552,950	£20,833
LLDC 'local' thresholds		£170,000	£170,000	£4,400,000	£540,000	£20,000
Concession Regulations	Contracts	Supplies	Services	Works	Light Touch Regime	'Below Threshold' Procurement
UK Government published thresholds		N/A	£5,336,937	£5,336,937	N/A	N/A
Threshold minus 20% VAT		N/A	£4,447,447	£4,447,447	N/A	N/A
LLDC 'local' thresholds		N/A	£4,400,000	£4,400,000	N/A	N/A

Annex 2; Choice of Procurement Routes

Procurement Routes

60. The choice of procurement route is primarily governed by the nature of the contract and its value.

Nature of the Contract

Contract Type	Procurement Route
Works	Refer to the Threshold values table in Annex 1 above
Services (excluding the light-touch regime)	Refer to the Threshold values table in Annex 1 above
Services (light-touch regime)	Refer to the Threshold values table in Annex 1 above
Concessions	Refer to the Threshold values table in Annex 1 above
Goods	Refer to the Threshold values table in Annex 1 above
Framework Agreement	Refer to the Threshold values table in Annex 1 above for appropriate procurement route. The regulatory thresholds for works, services and goods will apply depending on the nature of the framework and the contracts to be called off under it. Estimated value for these purposes is the value of all contracts which may be called off over the lifetime of the framework.
Call-off from an existing Framework Agreement	No need for a full procurement process - follow rules of mini-competition/call-off process set out in the relevant framework agreement.
Land disposal	No procurement is required but note that if works are required to the land after (or before) the disposal then this may be classed as a works contract and a procurement route must be followed.
Land acquisition	No procurement is required but note that if works are required to the land before or after the purchase then this may be classed as a works contract and a procurement route must be followed.
Sale of Naming Rights / Exclusive Rights	No procurement is required but the opportunity should be advertised and a fair and transparent competitive process followed to award the rights.

Contract Value

61. The following table sets out the LLDC minimum requirements for procurement routes that fall within certain financial thresholds:

Estimated contract value (As at call for competition and excluding VAT)	Procurement Route
Up to £3,000	One written quote should be obtained
Over £3,000 and up to including £25,000	Three comparable quotations should be sought and provided to Procurement along with a recommendation made on the basis of best value-for-money.
Goods & Services over £25,000 and less than £170,000 and Works and Concessions over £25,000 and less than £4.40m	An invitation to tender advertised on Contracts Finder or framework mini competition, and carried out in collaboration with LLDC Procurement.
Goods & Services over £170,000 and Works and Concessions over £4.40m	Conducted in compliance with the Public Contracts Regulations and carried out by LLDC Procurement