

## Procurement Code

As amended and adopted by LLDC Board April 2012



## **PROCUREMENT CODE**

### **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 have been procured in accordance with the requirements of this Procurement Code.

### **Procurement Framework**

2. 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.
3. 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.
4. 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**

5. Responsibility for compliance with this Procurement Code lies with every person working for and on behalf of LLDC.
6. The LLDC recognises that experienced professional support is necessary for the success of procurement projects.
7. LLDC's Legal Services comprises a team of lawyers and procurement 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.
8. No procurement activity should be undertaken without first seeking advice from Legal Services.
9. The Executive Director of Finance and Corporate Services will advise :
  - (a) on the approach to be adopted when conducting financial appraisals of suppliers; and
  - (b) the financial aspects of contracts.

In consultation with Legal Services s/he will ensure that regular audits of LLDC procurement activities are carried out, either by LLDC staff or our internal auditors.

10. LLDC has in place a strict policy on disclosure of conflicts of interest. If you, or any member of your immediate family, has any link with any potential supplier then you must disclose this in accordance with the policy and follow all actions recommended by Legal Services.

### **Procurement Strategy**

11. The procurement strategy shall be developed in consultation with Legal Services, it shall include:
  - (a) management and governance arrangements;

- (b) scope of works, services or goods;
- (c) procurement options;
- (d) contract form and structure;
- (e) procurement procedure;
- (f) evaluation criteria;
- (g) procurement programme;
- (h) risks and mitigation.

### **Procurement Principles**

**12.** 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 the Queen Elizabeth Olympic Park and the venues.

**13.** These objectives also sit alongside broader EU and LLDC procurement objectives, which 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 trans-gendered (LGBT) people; and voluntary and community organisations;
- (d) promote integration with e-Government;
- (e) promote innovation.

**14.** The LLDC's procurement will aim to deliver best value for money whilst leaving a lasting legacy for East London, and supporting the LLDC's priority themes:

- (a) promoting convergence and community participation;
- (b) championing equalities;
- (c) ensuring high quality design and environmental sustainability.

**15.** Specific project objectives under each of these themes should be identified in the PID and/or business case for each project and subsequently audited to enable comparisons to be made between initial objectives and actual outcomes

### **Overarching Procurement Themes**

**16.** 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) Equality of Treatment

Transparency:

17. 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:

18. 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, ie more resources will be required where higher benefits / costs savings / quality can be gained.

19. 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

20. 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.

21. 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.

Equality of treatment

22. 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.

23. 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).

24. 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 projects**

25. You 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 your actions and your part in reaching 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.
26. Any suspicion of fraud or corruption, particularly on any project in which the LLDC has a financial interest, must be reported immediately to the General Counsel and the Executive Director of Finance and Corporate Services. Allegations of fraud or corruption will be referred, if necessary, to the Police. Proven allegations may result in disciplinary, or even criminal, proceedings and dismissal.
27. 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.

### **EU Regulated Procurement under the Public Contracts Regulations 2006**

28. The EU public procurement rules will affect most of the procurements undertaken by the LLDC. Higher value contracts will, in general, be subject to regulation by the Public Contracts Regulations 2006 (the "Regulations"), including the requirement to follow one of the prescribed forms of OJEU tendering procedures where the estimated contract value exceeds the applicable EU threshold. The current thresholds (valid during 2012 and 2013) are:

Works contracts:	£4,348,350
Goods contracts:	£173,934
Services contracts:	£173,934

29. Other contracts, which may be exempt from the Regulations (because, for example, they fall below the applicable financial thresholds) or partially exempt (for example "Part B"/non-priority services to which a lighter-touch procurement regime applies), will still always be subject to the overarching procurement principles as set out in this Procurement Code.
30. The underlying principles of the EU procurement rules are consistent with the procurement objectives of LLDC; to ensure that the procurement of, goods, works and/or services takes place in a transparent and fair way. Potential suppliers from across the EU should be able to compete for the award of contracts on a level and equitable basis and in accordance with clear rules and criteria.

### **State Aid**

31. The European Union has specific rules concerning public bodies helping commercial organisations (called 'undertakings') to cover expenses, risks or liabilities that they would normally be expected to bear themselves. These are the 'state aid' rules.
32. Legal Services will advise as to the application and/or implications of state aid rules.

### **Procurement Outside EU**

33. Any procurement projects undertaken outside the EU are within the scope of this procurement code. The details of the projects should be discussed with Legal Services in order to address any local constraints and to assess the impact of the EU Procurement Directives and any other legal procurement requirements.

### **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 Legal Services as to the classification of a contract into any of these categories.

#### Part B Services Contracts

35. The public procurement rules divide services contracts into so called 'Part A' (or 'priority') services and 'Part B' (or 'residual') services. Only Part A services are fully caught by the Regulations. Part B

services are caught by a lesser regime, with only a few of the detailed rules of the Regulations applying.

- 36.** Generally, Part B services are those the EU considered would largely be of interest only to suppliers located in the member state where the contract was to be performed. 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.
- 38.** The procurement of concession agreements is not covered by the Regulations but 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

- 39.** 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 LLDC throughout the term of the agreement.
- 40.** Frameworks can be with either one supplier on a “single supplier framework”, or “multi supplier” with three 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.
- 41.** The procurement to establish a framework agreement is subject to the EU procurement rules where the estimated value of all of the purchases to be made exceeds the relevant EU threshold for the type of contract in question.

#### Call-off contracts from existing Framework Agreements

- 42.** Central purchasing bodies such as the Government Procurement Service and other local authorities may from time to time set up their own framework panels for various types of contracts which LLDC is entitled to access. In these circumstances LLDC can call-off contracts from those frameworks without having to go through its own procurement process.
- 43.** In order to be satisfied that LLDC is able to access the framework, the following conditions must be satisfied:
- (a) LLDC must have been named as being entitled to access the framework in the OJEU contract notice which established the framework (or within a class of bodies named as being entitled to access the framework);
  - (b) the framework must have been established by a contracting authority under the Public Contracts Regulations 2006 (i.e. not a private sector body);
  - (c) the goods, services or works required for the call-off contract must be within the scope of the framework;
  - (d) LLDC must follow the call-off process set out in the relevant framework agreement.
- 44.** The call-off process may require 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 who are capable of performing the contract 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.

### Land acquisition

45. The acquisition of land by LLDC is expressly exempt from the requirements of procurement rules. 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

46. 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.

47. In the process of any land disposal LLDC must ensure value for money and comply with the overarching principles of transparency, non-discrimination, equal treatment and proportionality.

### Sale of naming/sponsorship rights

48. 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.

49. Note that LLDC cannot accept value in kind (eg 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

50. 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. Information, advice and documentation on grants will be provided by Legal Services.

### **Single Tender Actions: STAs**

51. 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 EU public procurement rules.

52. Guidance should always be sought from Legal Services before initiating a STA but, in summary, appropriate circumstances in which a STA can be used may include:

- (a) original supplier of goods/services/works; no alternative suppliers exist;
- (b) required parts or equipment incompatible with equivalent by other manufacturers;
- (c) only known item or service matching the requested needs or performing the intended task;
- (d) sole supplier of a licensed or patented good or service;
- (e) urgency not of one’s own making.



53. It should also be noted that familiarity with the LLDC and/or its projects is not a sufficient reason for a STA. A supplier who may have already completed a consultancy project may be well qualified to do any follow-on consultancy but their familiarity with LLDC and/or the project does not in itself give enough cause to re-appoint them under an STA.

#### **Breach of the Procurement Code**

54. 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**

55. Changes to this Procurement Code (other than changes to the EU procurement thresholds when applicable) must be approved by the LLDC Board and must be notified to the Executive Director of Finance and Corporate Services to enable the Executive Director of Finance and Corporate Services to maintain and publish any updates to Standing Orders.

## Annex: Choice of Procurement Routes

### Procurement Routes

56. 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 contract value table below – note that EU threshold for works contracts is £4,348,350.
Services – Part A	Refer to contract value table below – note that EU threshold for Part A services contracts is £173,934.
Services - Part B	Refer to contract value table below – whilst no requirement for a full OJEU process is required for contracts over the EU threshold, an advertised and competitive tender process should be followed in any event.
Services Concession	Refer to contract value table below – whilst no requirement for a full OJEU process is required for contracts over the EU threshold, an advertised and competitive tender process should be followed in any event.
Goods	Refer to contract value table below – note that EU threshold for goods contracts is £173,934.
Framework Agreement	Refer to contract value table below for appropriate procurement route. The EU thresholds for works (£4,348,350), services and goods (£173,934) 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

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

<b>Estimated contract value (net of VAT)</b>	<b>Procurement Route</b>
<b>Up to and including £10,000</b>	One written quote should be sought using the LLDC's procurement portal to ensure value for money
<b>Above £10,001 (and up to £50,000)</b>	At least three written quotes should be sought via the LLDC's procurement portal to ensure value for money.
<b>From £50,001 (and up to EU thresholds)</b>	At least five formal tenders should be invited from interested organisations. Initially a shortlist will be derived through a publicised competitive tender process which is advertised via the LLDC's eTendering portal or on LLDC's website and/or other appropriate publications/media. The process may be managed through the LLDC's eTendering system.
<b>Above EU Thresholds</b>	Formal advertisement and EU-wide competitive tender process should be applied. Regulated contracts which are over the EU minimum tender thresholds must be procured in line with the Public Contracts Regulations 2006, which may require advertisements to be placed in the Official Journal of the European Union (OJEU). The process may be managed through the LLDC's eTendering system.