

Subject: Financial regulations, scheme of delegations and procurement code
Agenda item: 5
Report No: 2
Meeting date: 02/04/2012
Report to: Board
Report of/by: Jonathan Dutton, Executive Director of Finance and Corporate Services

FOR DECISION

This report will be considered in public

1. SUMMARY

- 1.1. This paper seeks approval of the London Legacy Development Corporation's Financial Regulations, Scheme of Delegation and Procurement Code.

2. RECOMMENDATIONS

- 2.1. The Board is invited to **AGREE** to the adoption of Financial Regulations, Scheme of Delegation and Procurement Code attached as Appendices A-C.

3. BACKGROUND

- 3.1. The draft Financial Regulations are based on those used by the Olympic Park Legacy Company (LLDC's principal predecessor), but have been adapted to reflect the formal role and responsibilities of the Chief Finance Officer under Section 127 of the Greater London Authority Act. It is supported by the Scheme of Delegation and the Procurement Code.
- 3.2. The draft Scheme of Delegation is a simplified version of that adopted by the Olympic Park Legacy Company, and creates links financial delegations closely to the corporate processes for agreeing project initiation documents and business cases.
- 3.3. The draft Procurement Code sets out the overall principles that will underpin the Corporation's procurement activity, and the different procedures that will apply in terms of tendering activity.

4. PROPOSAL

- 4.1. It is proposed that the Board adopt the Financial Regulations, Scheme of Delegation and Procurement Code.

5. TIMING

- 5.1. Approval of the financial regulations, scheme of delegations and procurement code is URGENT to enable the effective operation of the London Legacy Development Corporation.

6. CONSULTATION

- 6.1. The draft Memorandum of Understanding with the Mayor of London (see other item) provides that the Mayor will be consulted on the Corporation's Financial Regulations, Scheme of Delegation and Procurement Code. Informal officer consultation has taken place during the drafting process, and further consultation will take place in advance of the Board meeting.

7. LEGAL IMPLICATIONS

- 7.1. The Financial Regulations, Scheme of Delegation and Procurement Code are consistent with the legislative framework for the London Legacy Development Corporation (in particular the Local Government Act 1972, the Greater London Authority acts 1999 and 2007, and the Localism Act 2011).

8. LIST OF APPENDICES TO THIS REPORT

- Appendix A: draft Financial Regulations
- Appendix B: draft Scheme of Delegation
- Appendix C: draft Procurement Code

List of Background Papers

- None

Report originator(s): Richard Brown
Telephone: 020 3288 1830
Email: richardbrown@londonlegacy.co.uk

DRAFT
Financial Regulations

1. Introduction

1.1 The London Legacy Development Corporation (“LLDC” or “the Corporation”) was established on 9 March 2012 under the Localism Act 2011 (“the Act”) as a result of the designation of a Mayoral development area (“MDA”) under the Act comprising:

- The core Olympic Park, comprising land owned by OPLC and the Lee Valley Regional Park Authority, including Eton Manor
- The Olympic Village and associated development sites owned by the Olympic Delivery Authority and London & Continental Railways Ltd
- The Stratford City development site, including the Westfield Shopping Centre and Chobham Farm
- Hackney Wick and Fish Island
- Bromley-by-Bow North (with a southern boundary at the District Line)
- Pudding Mill Lane and Sugarhouse Lane
- Three Mills and Mill Meads
- Carpenters Estate

1.2 The object of the Corporation is to secure the regeneration of its area and the Corporation has the functions allocated to it by the Act and the decisions of the Mayor. It will become the local planning authority for the MDA on 1 October 2012. In establishing the Corporation the Mayor has identified the following particular purpose:

“To promote and deliver physical, social, economic and environmental regeneration in the Olympic Park and surrounding area, in particular by maximising the legacy of the Olympic and Paralympic Games, by securing high-quality sustainable development and investment, ensuring the long-term success of the facilities and assets within its direct control and supporting and promoting the aim of convergence.”

1.3 In fulfilling its object and purpose the Corporation will manage its financial resources in order to achieve its object and fulfil its purpose. The Corporation has a duty under section 127 of the Greater London Authority Act 1999 to make arrangements for the proper administration of its financial affairs and to secure that one of its officers (its chief finance officer) has responsibility for the administration of those affairs. These financial regulations have been approved in the discharge of that duty and the Corporation has made the Executive Director of Finance and Corporate Services responsible to the Board for the proper administration of the Corporation’s financial affairs.

1.4 The Corporation’s financial systems and controls will cover the purchase of the works, goods and services that are required to enable project delivery, provide corporate services and manage the premises that it occupies.

1.5 In these regulations references to the Board are to the members of the Corporation meeting as such.

1.6 These Financial Regulations were adopted by the Corporation at its meeting on 2 April 2012.

Purpose and Scope

1.8 This document sets out the Financial Regulations (“the Regulations”) that provide the framework for managing the Corporation’s financial affairs and will establish its financial reporting processes, its accounting systems and procedures and the principles and fundamental values that underlie these. These Regulations will be reviewed from time to time, to ensure that they remain up to date and consistent with relevant legislation and that they continue to align with the object and purpose of the Corporation and its statutory framework.

Financial Policy

1.10 The Corporation’s overall financial policy is:

1.10.1 to buy the goods, services and works that it needs through fair and open and, normally, competitive processes that maximise value for public money and encompass measures to guard against fraud and corruption;

1.10.2 to account for its income and expenditure efficiently and in a timely manner to enable the up-to-date financial position of the Corporation to be established at any one time in a straightforward manner, thereby enabling effective management decision making; and

1.10.3 to put in place appropriate systems, processes and control procedures to safeguard the assets of the Corporation.

2. Financial management

Financial control framework

2.1 The Financial Control Framework of the Corporation comprises:

- these Financial Regulations;
- the Finance Manual which sets out the day to day financial systems, policies and procedures of the Corporation;
- the financial strategy of the Corporation as set out in the annual budget and Business Plan.

Executive Director of Finance and Corporate Services

2.2 The Executive Director of Finance and Corporate Services is responsible to the Board for the proper administration of the Corporation’s financial affairs. In discharging that duty he is responsible for;

- a) setting and monitoring compliance with financial management standards;
- b) advising on the corporate financial position and on the key financial controls necessary to ensure sound financial management within the Corporation;
- c) selecting the Corporation’s accounting policies, including any changes to those policies, and ensuring that they are applied accurately and consistently;
- d) providing accurate and timely financial information;
- e) ensuring that the annual financial statements comply with applicable law, financial reporting standards and statements of recommended practice;

- f) preparing the budget in accordance with any guidelines set out by the Board and the Mayor's budget guidance;
- g) treasury management;
- h) internal audit subject to any directions of the Audit Committee;
- i) anti-fraud policies and procedures; and
- j) risk management.

2.3 The Executive Director of Finance and Corporate Services has a duty under the Local Government Finance Act 1988 as applied to the Corporation to report to the Board if the Board, a committee or officer or employee:

- a) has or is about to make a decision involving unlawful expenditure;
- b) has taken or is about to take a course of action which if pursued would be unlawful and likely to cause a loss or deficiency on the part of the Corporation;
- c) is about to enter an item of account which is unlawful;
- d) if it appears to him the expenditure incurred including proposed expenditure in a financial year is likely to exceed the resources available including borrowings to meet that expenditure.

Other Directors

2.4 Other Executive Directors and Directors are responsible for ensuring they spend within their allocated budgets and manage these budgets efficiently. They should ensure that the Executive Director of Finance and Corporate Services and the Chief Executive are advised of the financial implications of all proposals from their Departments, and are alerted on a timely basis about potential budget overspends.

Budgeting

2.5 The Executive Director of Finance and Corporate Services is responsible for ensuring that a budget is prepared on an annual basis, for the approval of the Chief Executive, in accordance with the requirements of the Mayor's budget guidance. The budget will also be submitted for consideration by the Board by the Chief Executive, and approved before the financial year in question. Each Executive Director, and other Directors holding their own budgets, will be expected to agree these with the Executive Director of Finance and Corporate Services and the Chief Executive before submission to the Board.

2.6 The Executive Director of Finance and Corporate Services is responsible for the financial management processes enabling the budget to be monitored effectively. The Executive Director of Finance and Corporate Services is responsible for developing and maintaining a resource allocation process that ensures due consideration of the Corporation's policy framework.

Reserves

2.7 It is the responsibility of the Executive Director of Finance and Corporate Services to advise the Board on prudent levels of balances and reserves to enable the Corporation to operate effectively.

3. Banking arrangements

3.1 The Executive Director of Finance and Corporate Services will make arrangements for the opening and operation of bank accounts for the Corporation in accordance with provisions agreed by the Board. All bank account balances should be reconciled monthly with the Corporation's cash book.

3.2 All bank accounts will include the name of the Corporation. In no circumstances will an account be opened in the name of an individual. The Executive Director of Finance and Corporate Services will ensure that copies of specimen signatures to all bank mandates are maintained by the Finance Department.

3.3 Cheques will be ordered from the bank only on the authority of the Executive Director of Finance and Corporate Services who will be responsible for the safe-keeping of all cheques and banking stationery. BACS payments will only be made with the specific authorisation of the Executive Director of Finance and Corporate Services or on the basis of a scheme of delegation approved in writing by the Executive Director of Finance and Corporate Services.

3.4 Cheques and all other instruments directing payment from a Corporation bank account will be signed in accordance with the mandates approved from time to time by the Board.

3.5 The Corporation may not enter into any borrowing or overdraft arrangements without the authority of the Board and the GLA to do so.

4. Risk management

4.1 The Corporation is committed to establishing an effective risk management framework and culture to enable management at all levels to deliver their objectives in the light of those risks. The Executive Director of Finance and Corporate Services is responsible to the Chief Executive for ensuring that appropriate corporate risk management arrangements exist across the Corporation. A risk register should be maintained by the Executive Director of Finance and Corporate Services detailing the risks that have been identified, assessing their likely and potential impact on the Corporation and an analysis of actions that are being taken to mitigate those risks.

4.2 Executive Directors should ensure that risk assessments are conducted across their departments followed by appropriate work to ensure that identified risks are properly managed.

4.3 The Executive Director of Finance and Corporate Services should ensure that appropriate levels of insurance cover are maintained by the Corporation.

5. Internal control

- 5.1 The Executive Director of Finance and Corporate Services is responsible for advising on and establishing effective systems and procedures for internal control. These arrangements need to ensure compliance with all applicable statutes and regulations and other relevant statements of best practice.
- 5.2 The Board will appoint an independent Internal Auditor to perform such audit work as the Audit Committee may deem appropriate.
- 5.3 The Board (if it so chooses, through the Audit Committee) may direct the work of the Internal Auditor and will require an annual review of the effectiveness of the systems of internal control. The Executive Director of Finance and Corporate Services will ensure that the Internal and External Auditors have access at all reasonable times to all assets, books of account and other documentation that they may need in order to do their work.
- 5.4 The Corporation is committed to tackling fraud and other avoidable losses as well as ensuring that all its funds are used legitimately. The Executive Director of Finance and Corporate Services is responsible for the development and maintenance of an anti-fraud and corruption policy and applying that policy across the Corporation.

6. Asset register

- 6.1 The Executive Director of Finance and Corporate Services will ensure that an asset register of all Corporation fixed assets is maintained on a timely basis. All Executive Directors will ensure that Corporation assets are properly maintained and securely held. They should also ensure that there are in place appropriate contingency plans for the security of assets and continuity of service in the event of a disaster or system failure.
- 6.2 The Chief Executive, supported by the Executive Director of Finance and Corporate Services, is responsible for ensuring that all disposals of Corporation assets realise value for money.

7. Purchasing and Contract Management

- 7.1 Contracts and grant agreements will only be signed or otherwise executed by the Chief Executive and Executive Director of Finance and Corporate Services, with advice from General Counsel.
- 7.2 The Chief Executive and Executive Director of Finance and Corporate Services may appoint in writing such employees of the Corporation as they think fit either generally or in specific cases to sign or otherwise execute contracts and grant agreements.
- 7.3 Orders for goods and services shall be made in writing in a form specified from time to time by the Executive Director of Finance and Corporate Services and shall be in accordance with the requirements of the Corporation's Procurement Policy. All authorising officers under the Procurement Policy will ensure that the estimated cost of the order is covered by budget provision.
- 7.4 Purchase orders, which shall clearly indicate the nature and quantity of the goods and services to be supplied and contain an estimate of the sum involved, will be raised for the purchase of all goods and services, except as expressly agreed by the Executive Director of Finance and Corporate Services.

- 7.5 Where contracts are administered on behalf of the Corporation, the relevant Executive Director should ensure that those persons responsible for such administration comply with these Regulations as if they were officers of the Corporation.

8. Treasury management

- 8.1 The Board is responsible for approving the treasury management policy statement and it has delegated to the Executive Director of Finance and Corporate Services responsibility for implementing and monitoring the statement.

9. Taxation

- 9.1 The Executive Director of Finance and Corporate Services is responsible for advising the Board, or seeking external advice where necessary, on all issues that affect the taxation position of the Corporation. The Executive Director of Finance and Corporate Services will seek to optimise the tax-efficiency of the Corporation's operations and will be responsible for maintaining the Corporation's taxation records, making all tax payments, receiving tax credits and submitting tax returns by their due date.

10. Imprest accounts

- 10.1 The Executive Director of Finance and Corporate Services will ensure that the Corporation operates imprest accounts, as appropriate, for the purposes of defraying petty cash and other expenses. These accounts will be maintained in the manner prescribed by the Executive Director of Finance and Corporate Services.
- 10.2 No income received by the Corporation may be paid into an imprest account but must be paid into a Corporation bank account. Imprest accounts should not be used for cashing personal cheques and should not be used for travel and subsistence claims due to the potential tax implications of so doing.

This page is blank

DRAFT
Scheme of Delegations

Scheme of Delegation

1. This Scheme of Delegation of the Corporation has been adopted by the Board (meaning the members of the Corporation meeting as such) at its meeting on 2 April 2012 after consultation with the Mayor and it can only be altered by the Board.
2. Financial commitments may only be made pursuant to a delegation if all necessary approvals and authorisations have been obtained at appropriate stages. These are:
 - a. For projects with a value of up to £250,000, a project initiation document to be completed before orders are placed (a shortened form of the project initiation document will be used for projects with a value of £10,000-£100,000)
 - b. For projects above £250,000, a project initiation document, an outline business case (before procurement commences) and a full business case (before orders are placed).
 - c. In addition, for projects above the relevant European procurement threshold or above £250,000 (whichever is lower), a standalone procurement strategy will be required – the legal and procurement team should be consulted.
3. Delegations may only be exercised in accordance with the Corporation's Financial Regulations and Procurement Code (and other associated procurement frameworks and documents). Budgetary controls will be maintained through the finance department. Attention is drawn to the provisions of the Financial Regulations in relation to the signature or other execution of contracts and grant agreements.
4. Delegations are made in accordance with the Table below to staff of the Corporation holding the posts designated in para 6 below, and subject to any specified limitations. If no limitation is specified in the table, then the post in question will be able to discharge all the various functions applicable to the relevant levels.
5. Expenditure may only be incurred within budgets and for purposes approved by the Corporation's Board, generally through its approval of the Corporation's budget and/or business plan.
6. The defined Levels for staff delegations are:

Level One	the Chief Executive
Level Two	an Executive Director
Level Three	a Director
Level Four	a Head of Service
Level Five	a Senior Manager
Level Six	a Manager
7. In the Table, "in conjunction with" means all parties are in agreement; "in consultation with" means with the advice of the parties and "estimated" means a genuine estimate of outturn expenditure.
8. All decisions under this scheme of delegation should only be taken subject to appropriate legal advice.

Finance Delegations

Function	Level 1	Level 2	Levels 3-6
Authority to proceed with procurement and to commit to spend	The Chief Executive can approve procurement or spend up to £10m.	<p>The Executive Director of Finance and Corporate Services can approve procurement or spend up to £1m.</p> <p>The Executive Director of Infrastructure and Executive Director of Finance and Corporate Services can approve estimated spend up to £3m within the approved transformation budget.</p> <p>All other Executive Directors can approve procurement or spend up to £250,000 within their approved budgets.</p>	<p>Level 3: Authorised to approve procurement or spend up to £100,000 within their approved budgets.</p> <p>Level 4: Authorised to approve procurement or spend up to £50,000 within their approved budgets.</p> <p>Level 5: Authorised to approve procurement or spend up to £20,000 within their approved budgets</p> <p>Level 6: Authorised to approve procurement or spend up to £10,000 within their approved budgets</p> <p>Within the Infrastructure Directorate:</p> <p>The LLDC Transformation Project Sponsor can approve estimated spend up to £250,000 within the approved transformation budget.</p> <p>The levels of delegation for the LLDC's project management partner (PMP) within the transformation approved budget are as follows: PMP Project Director £175,000, PMP Head of Commercial £125,000, PMP Project Managers and Contract Administrators £50,000 all being estimated sums.</p>

Function	Level 1	Level 2	Levels 3-6
Virements within: <ul style="list-style-type: none"> • agreed departmental /directorate budgets • Corporation Budget 	<p>The Chief Executive or Executive Director of Finance and Corporate Services can vire <u>within</u> directorates. The sum of these virements must be zero.</p> <p>The Chief Executive or Executive Director of Finance and Corporate Services can vire <u>between</u> directorates up to £2m of the directorate budget. The sum of these virements must be zero.</p> <p>The Chief Executive or Executive Director of Finance and Corporate Services can vire project budgets into the Transformation budget for the purposes of delivery. The sum of these virements must be zero.</p>	<p>The Chief Executive or Executive Director of Finance and Corporate Services can vire <u>within</u> directorates. The sum of these virements must be zero.</p> <p>The Chief Executive or Executive Director of Finance and Corporate Services can vire <u>between</u> directorates up to £2m of the directorate budget. The sum of these virements must be zero.</p> <p>The Chief Executive or Executive Director of Finance and Corporate Services can vire project budgets into the Transformation budget for the purposes of delivery. The sum of these virements must be zero.</p>	No delegation
Settling Insurance claims: <ul style="list-style-type: none"> • within excess • outside of excess 	<p>The Chief Executive can authorise insurers to settle claims within excess limits.</p> <p>The Chief Executive in conjunction with the Executive Director of Finance and Corporate Services can settle claims outside of excess up to £10m.</p>	The Executive Director of Finance and Corporate Services can authorise insurers to settle claims within excess limits and up to £500,000 outside of excess limits.	No delegation
Writing off debt	The Chief Executive can write off up to £250,000.	The Executive Director of Finance and Corporate Services can write off up to £100,000.	No delegation
Issuing grants from an agreed budget	✓	✓	No delegation

Assets and Land Delegations

Function	Level 1	Level 2	Levels 3-6
Asset disposal with no financial value	✓	✓	No delegation
Asset disposal other than land with financial value	✓ Up to £1m.	✓ Up to £500k.	No delegation

Function	Level 1	Level 2	Levels 3-6
Land disposal (freehold and or leasehold interests in land to include Compulsory Purchase) provided this is detailed with the Corporation's Business Plan.	The Chief Executive in conjunction with the Executive Director of Real Estate and the Executive Director of Finance and Corporate Services can authorise disposals with a capital value up to £1m (rents to be capitalised in accordance with a yield appropriate to the asset and market conditions at the time)	No delegation	No delegation
Acquiring Freehold or Leasehold Property interests provided this is detailed within the Corporation's business plan	The Chief Executive in conjunction with the Executive Director of Finance and Corporate Services is authorised to acquire land interests up to £1m.	No delegation	No delegation
Submitting planning applications	✓	No delegation	No delegation
Issuing notices seeking possession; exercising functions to pay compensation in respect of land interests, enforcing covenants; serving notices relating to land; and disposal of property left on land.	✓ For compensation, The Chief Executive in conjunction with the Executive Director of Finance and Corporate Services are authorised to agree compensation up to the value of £10m plus fees.	✓ For compensations, the Executive Director of Real Estate in conjunction with the Executive Director of Finance and Corporate Services is authorised to agree compensation up to the value of £1m plus fees.	No delegation
Limiting public access to premises or land	✓ In conjunction with the Executive Director of Real Estate.	✓ In conjunction with the Executive Director of Real Estate.	No delegation

Strategy and policy delegations

The Chief Executive may approve strategies and policies that have a wholly or primary internal impact or purpose

Human resource and management delegations

The Chief Executive shall undertake the day-to-day management and operation of the Corporation.

This page is blank

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 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 top 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:

Estimated contract value (net of VAT)	Procurement Route
Up to and including £10,000	One written quote should be sought using the LLDC's procurement portal to ensure value for money
Above £10,001 (and up to £50,000)	At least three written quotes should be sought via the LLDC's procurement portal to ensure value for money.
From £50,001 (and up to EU thresholds)	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.
Above EU Thresholds	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.