CONTRACT RULES

1. Introduction

1.1 In these Rules:

1.1.1 the "Assembly" means the Council acting as or through the Assembly, and includes any person or body to which the Assembly delegates functions

1.1.2 the "Council" means the London Borough of Barking and Dagenham

1.1.3 the expression "Cabinet" includes any person or body to which the Cabinet delegates functions

1.1.4 “Code of Practice” is the Contracts Code of Practice approved by the Assembly and set out in the Appendix to these Rules

1.1.5 the “Chief Officer” means the relevant Corporate Director

1.1.6 “Value” shall mean, where known, the precise value or, where not known, the estimated value, of the works, services, goods or materials that will be payable by the Council over the entire contract period (including any extension period). Where the anticipated value is near the turning point between two classifications, the value of the contract shall be treated as if it were in the higher classification

1.1.7 “Partnership” means public sector partnerships in which the Council participates as a constituent participant or lead authority within a separate organisation.

1.2 The term “contract” shall include all the contracts, agreements and orders for the carrying out of work, the provision of services and the supply of goods or materials to, for, or by the Council, by the purchase, lease, rental or hire purchase, including the provision of services to the public on the Council’s land or premises. It shall not include contracts for the employment of staff, or for the sale, purchase, lease or licence of land or buildings.

1.3 These Rules are to be interpreted subject to United Kingdom and European Union legislation, regulations, orders and directives. EU Procurement legislation in particular prohibits discrimination on grounds of national standards or in support of the promotion of local economic interests. These EU Treaty provisions apply to all contracts including those below the EU Public Procurement thresholds.

1.4 Chief Officers will refer to the Chief Executive any questions relating to the interpretation of the Rules.

1.5 These Rules should be applied in accordance with the Code of Practice.
2. **Agency Arrangements, Partnerships and Grants**

2.1 When the Council acts as an agent, any instructions or requirements issued to the Council under the agency agreement take precedence over these Rules, subject to the overriding requirements of Rule 1.3.

2.2 When a body or person acts on the Council’s behalf then it shall be a term of the agreement that these Rules and the Constitution of the Council shall prevail.

2.3 When a consultant or other organisation is employed to undertake a procurement exercise of behalf of the Council, it shall be the commissioning Chief Officer’s responsibility to ensure that these Contract Rules and the Constitution of the Council is followed and complied with by that consultant or organisation.

2.4 Subject to the prior agreement of the Cabinet, when the Council participates in a Partnership, the Standing Orders and Financial Regulations of the Partnership may take precedence over these Rules. In these cases, the Partnership Board would assume the powers and responsibilities of the Cabinet.

2.5 Where the Council is in receipt of grant funding (whether from Government or otherwise), such funding must be used in the manner dictated by the grant agreement and will always be subject to these Contract Rules.

2.6 In some circumstances the Council may enter an agreement with a voluntary or community organisation in the form of a grant which is not subject to the requirement to tender. Such grants must:

2.6.1 be notified to Corporate Procurement;

2.6.2 demonstrate best value; and

2.6.3 be awarded on the Council’s relevant standard terms, as advised by the Legal Practice.

2.7 Where the Council has received grant funding and subsequently enters into a contractual obligation to spend such funding (either through a contract or a grant) and the funding stream is withdrawn earlier than the date stated in the relevant funding agreement, the commissioning Chief Officer must seek advice from the Chief Financial Officer and the Legal Practice regarding the Council’s continuing obligations.

3. **Contract Packaging and Tender Classification Values**

3.1 The commissioning Chief Officer must ensure that orders for goods and services are aggregated into packages both in respect of content and timescales that are the most economically advantageous to the Council. They must also be consistent with the Council’s overall procurement strategies and Best Value planning processes.
3.2 The following shall be the financial classifications referred to in these Rules together with a summary of the relevant tendering requirements.

3.2.1 **Class A contracts of value not exceeding £10,000.**

*No formal tender – duty to secure reasonable value for money*

3.2.2 **Class B contracts of value exceeding £10,000 but not exceeding £50,000**

*Three documented quotes. Wherever possible quotations should be obtained using Council’s Oracle electronic Request For Quote system.*

3.2.3 **Class C contracts of value exceeding £50,000**

*Formal invitation to Tender, including specification (and, where appropriate, the contract conditions) to at least four potential tenderers. EU Public Procurement Regulations apply to contracts with value in excess of the EU thresholds. See Rules 6 & 8 regarding requirements for tendering and advertising.*

3.3 Orders must not be fragmented to circumvent tendering requirements. In cases where a number of contracts, both within and across departments, may be reasonably anticipated, every practical effort should be made to accommodate them into one contract with a view to maximising the Council’s purchasing potential.

3.4 Contracts that form part or the whole of a capital project must be packaged in a manner consistent with the requirements of the authority’s policies for selecting and controlling capital projects.

3.5 The threshold over which the EU Public Procurement Regulations for contracts are applicable is set out in the Code of Practice. This is reviewed periodically.

3.6 **Contracts with value in excess of £400,000**

Proposed contracts with a value in excess of £400,000 must be reported to the Cabinet before any procurement process begins. Reports to the Cabinet must specify the strategy proposed for the procurement, which must include:

3.6.1 outcomes, savings and efficiencies expected as a consequence of awarding the proposed contract;

3.6.2 a recommended procurement procedure and the reasons for the recommendation;

3.6.3 detailed criteria against which the contract is to be awarded (this is now a requirement under the EU Public Procurement Regulations);

3.6.4 request to the Cabinet to indicate whether it wishes to be further informed or consulted on the progress of the procurement and the award of the contract,
or whether it is content for the commissioning Chief Officer to award the contract;

3.6.5 the Value of the contract;

3.6.6 the duration of the contract including any options for extension;

3.6.7 the date the contract was last formally tendered;

3.6.8 where applicable, the identity of the contractor(s) used since the contract was last tendered.

3.7 **Forward Plan**

Any proposed contract that amounts to a Key Decision must be placed on the Forward Plan

4. **Exceptions to Tendering Requirements**

4.1 It shall not be necessary to invite tenders for:

4.1.1 Class A contracts (under £10,000)

4.1.2 Class B (£10,000 to £50,000) contracts in cases where three documented quotations have been secured in accordance with the Contracts Code of Practice. Quotations must not be secured by staff with a direct responsibility for managing the subsequent contract.

4.1.3 The supply of goods and services from public purchasing bodies which have already completed a tender process in accordance with EU procedures where appropriate.

4.2 **Waivers**

4.2.1 The Council can waive the application of a provision of the contract rules (e.g. the requirement to tender contracts), but it cannot waive UK or EU legislation.

4.2.2 A waiver of the requirement to tender contracts may be granted in the following circumstances:

4.2.2.1 where the goods, services or works to be procured are of a specialist or proprietary nature and the appropriate Chief Officer considers, subject to EU Public Procurement Regulations requirements, that no satisfactory alternative is available. The appropriate person to grant a request for a waiver on this basis is the Chief Officer where the value of the contract is less than £50,000, the Chief Officer acting in consultation with the Corporate Director of Finance and Resources (Section151 Officer) where the value of the contract is between £50,000 and £400,000 and the Cabinet where the value of the contract exceeds £400,000;
4.2.2.2 in an emergency, by the commissioning Chief Officer in consultation with the Chief Executive and in accordance with the requirements of the Urgent Action procedure set out in paragraph 17 of Article 1 of the Constitution and subject to any EU Public Procurement Regulations. The matter must then be reported to the next available meeting of the Cabinet;

4.2.2.3 by direction of the Cabinet, subject to the Scrutiny process and any EU Public Procurement Regulations.

4.2.3 In other circumstances where approval to waive one or more of the contract rules (other than the requirement to tender) is required, the approval of such waivers must follow the same rules, including financial thresholds, as for the approval of contracts.

4.3 Contract Extensions

4.3.1 The Cabinet must be notified of all plans to tender or extend contracts of a value in excess of £400,000 or tenders where authority to negotiate is required before invitations to tender are issued.

4.3.2 Subject to 4.3.3 below, the Cabinet must approve any proposed extensions to a contract with a value in excess of £400,000 where that extension has not been provided for as an option within the terms of the original tendered contract. The commissioning Chief Officer will be responsible for approving any proposed extension up to the value of £400,000, in consultation with Chief Financial Officer (Section 151 Officer).

4.3.3 There is virtually no scope for such extensions in respect of contracts that have a value in excess of EU Public Procurement thresholds. In such cases legal advice must always be sought from the Legal Practice.

5. Format and Key Conditions of Contracts and Tenders

5.1 All Partnership frameworks and all contracts shall be in a form approved by the Chief Executive. For smaller value purchases the Council’s general terms and conditions shall normally apply. If a contractor’s terms and conditions of contract are to be considered, the Legal Practice must be consulted.

5.2 Contracts for the provision of work or services valued in excess of £100,000 must be under seal in accordance with the Code of Practice.

5.3 The Chief Officer responsible for a contract shall ensure that the most appropriate measures of financial management and security are employed in connection with such contract in accordance with the Code of Practice.

5.4 Every contract for the carrying out of work or the provision of services shall require the contractor to take out and maintain during the duration of the contract Employers Liability, Third Party Liability, Professional Indemnity and, where appropriate, Road Traffic Liability insurance policies (or similar insurance polices).
5.5 The policies shall provide cover for such sum(s) as the Chief Financial Officer (as S.151 Officer) shall specify in respect of injury or death and/or damage to property arising out of one incident, the number of incidents to be unlimited to any one year.

5.6 Such insurance policies shall contain endorsements sufficient to indemnify the Council against any loss, damage or injury to persons or property arising from the contractor’s operations in connection with the contract.

5.7 Every contract shall contain a condition permitting the Council to cancel the contract and recover from the contractor the amount of any loss resulting from such cancellation, should the contractor, his servant or agent:

5.7.1 offer, give or agree to give to anyone any inducement or reward in respect of this or any other Council contract (even if the Contractor does not know what has been done); or

5.7.2 commit an offence under the Prevention of Corruption Acts 1889 to 1916 or Section 117(2) of the Local Government Act 1972; or

5.7.3 commit any fraud in connection with this or any other Council contract whether alone or in conjunction with Council members, contractors or employees.

5.8 Any clause limiting the Contractor’s liability shall not apply to this clause.

5.9 All contracts must be based on the Council’s relevant standards terms, unless otherwise agreed by the Legal Practice

6 Shortlisting of Suppliers to Tender

6.1 Before starting the procurement process reasonable timescales must be planned for the invitation, return and evaluation of tenders. These timescales must be adequate to promote effective competition. In respect of contracts in excess of EU Public Procurement Regulations thresholds, statutory minimum timescales will apply.

6.2 Subject to Rule 3, no Class C contract shall be made unless competitive tenders have been obtained by one of the following methods:

6.2.1 For contracts below European thresholds by selection of tenderers from an approved list or advertisement.

6.2.2 For contracts above European thresholds selection of tenderers may only be made subsequent to a formal contract notice being published in the Official Journal of the European Union. Copies of all such notices must be published on the Council’s web site.

6.3 If the commissioning Chief Officer wishes to select tenderers for a Class C other than by approved list or advertisement the reason should be documented and a report made to the Cabinet for prior approval and legal clearance.
7. **Approved Lists**

7.1 Approved lists of tenderers will be compiled, maintained, used and revised by the appropriate Chief Officer or his authorised agent in accordance with the Code of Practice where goods and services are regularly used.

7.2 Before a list is first compiled, notices inviting applications for inclusion shall be published in appropriate journals. Any subsequent application, deletion or suspension in respect of lists is to be dealt with in accordance with the Code of Practice.

7.3 A copy of these Rules and the Code of Practice will be made available for inspection to all applicants for inclusion on any list and will be supplied to all persons included on any list.

7.4 New and amended lists shall be reported to the Cabinet.

7.5 Selection to submit a tender shall be from the appropriate category of approved lists on the basis of strict rotation, provided that the Chief Officer may select one contractor without regard to rotation. Where an invitation to tender is refused a further contractor shall be selected in strict rotation. Where a contractor is suspended by a Chief Officer they shall be excluded from the selection process.

8. **Advertisement**

8.1 Contracts should be advertised in accordance with this Rule 8 and the Code of Practice.

8.2 All contracts in excess of European thresholds must also be advertised in OJEU in accordance with statutory provisions and timescales.

8.3 Irrespective of whether a proposed contract is of low value (under a relevant threshold) or a Part B service and therefore not subject to the full requirements of the relevant legislation, all contracts must be advertised in a manner that is appropriate to the nature of the goods/works/services being procured. The nature, location and timing of the advertisement must demonstrate adherence to the EU procurement principles of openness and competition. Additionally, the advertisement must be placed in such a manner that it ensures, as far as is possible, that returned tenders represents best value. Advertisements must always be placed on the Council’s website and may also be placed on:

- Portal websites specifically created for contract advertisements;
- National official journals;
- Newspapers;
- Sector-specific magazines and journals; and
- The Official Journal of the European Union (OJEU)/Tenderers electronic Daily (TED)
9. **Shortlisting**

9.1 Irrespective of how the tenderers are selected, invitations to tender shall be sent to not less than four persons or, if fewer than four are available, then to all persons available.

9.2 If a shortlist of potential tenderers has to be drawn up from a larger response then the criteria and reasons for shortlisting must be documented. That documentation must be retained and kept available for inspection for a minimum of six years after the conclusion of the contract period.

9.3 The commissioning Chief Officer must ensure the shortlisting process is open and transparent in respect of all contractors using a pre-determined selection criteria. For contracts in excess of EU thresholds legal advice should be sought before any company is excluded from the shortlist.

10. **Tender Evaluation**

10.1 Before tendering any contract, the commissioning Chief Officer must decide the criteria and associated weighting on which tenders and quotations will be evaluated. This must be documented before the start of the advertisement or request for quotation (as appropriate). All those who are invited to tender or quote must be notified of the evaluation criteria.

10.2 The evaluation criteria must establish that the contract will be awarded to the most economically advantageous solution. This should be made explicit in both the Invitation to Tender and any advertisement. Any sub-criteria must be documented in the Invitation to Tender. Non-commercial considerations must not feature in these criteria unless relating to Part B services which are relevant to the subject of the contract. No contractor shall be informed of the weightings attached to each criteria.

10.3 A full documented record must be made of the selection process recording relevant scores for each contractor and a clear statement as to how the final decision was reached. All such decisions must now be communicated to unsuccessful tenderers and are open to challenge therefore this record must be retained and kept available for inspection.

10.4 The selection process must be demonstrably fair to all participants; no contractor should be given information from which an unfair advantage may be gained over rival tenderers who do not have access to that information.

10.5 Where the approval of the Cabinet is required prior to the commencement of the procurement process, the report to the Cabinet must include the detailed tender evaluation criteria.

11. **Administration of the Tender Process**

11.1 Tenders will be opened in accordance with the Code of Practice as soon as possible after the date and time specified for the receipt of tenders. Electronic tenders may only be received via Bravo Solutions electronic tendering system.
which will only allow tenders to be opened and viewed after the closing date and time has passed. Tenders for contracts in excess of £200,000 should be returned to the Corporate Director of Finance and Resources for receipt and opening.

11.2 Tenders received after the specified date and time shall not normally be considered. If the Chief Officer wishes to consider such tenders, in liaison with the Chief Financial Officer (Section 151 Officer), he/she must be satisfied that:

11.2.1 the delay was caused by exceptional circumstances for which the tenderer was not primarily responsible; and

11.2.2 he/she can demonstrate that the tender process has not been compromised as a result

11.3 All tenders shall be opened in the presence of the appropriate Chief Officer or their nominated representative and witnessed in writing by at least one other officer who must have no responsibility or involvement in the contract. Specimen documentation to record tender invitations and outcomes is contained in the Code of Practice.

11.4 In cases where the Council’s own workforce tenders for work at least one witness should be selected from outside the department of the workforce concerned.

11.5 All tender related documentation must be stored in a secure location and shall be kept available for inspection.

11.6 If any Officer or Member has any connection past or present, direct or indirect, with any potential tenderer then that connection should be declared and registered in accordance with the Council’s Codes of Conduct for both Officers and Members. The Officer or Member should then be precluded from participating in any aspect of the procurement process.

12. Alterations and Negotiation of Tenders

12.1 The appropriate Chief Officer may only allow alteration of a tender in accordance with the Code of Practice.

12.2 No negotiations, other than those relating to a received tender, may be conducted without the prior approval of the Cabinet. The results of all negotiations shall be reported to the Cabinet.

12.3 All negotiations shall be conducted in accordance with the Code of Practice. Negotiations must be conducted by or in the presence of at least two officers, one of whom must be technically qualified, on Council premises and a detailed contemporaneous written record kept.
13. **Acceptance of Tenders and Award of Contracts**

13.1 The Cabinet will formally award the following categories of contract after receiving a report on the tender outcome by the commissioning Chief Officer:

13.1.1 Contracts for which the most economically advantageous solution, in accordance with the established tender evaluation criteria, is not being recommended for acceptance. In such cases, the commissioning Chief Officer must provide a written justification;

13.1.2 Contracts for which the award is not in line with the conditions agreed at the pre-tender approval stage;

13.1.3 Contracts for which the Cabinet has chosen in advance to become involved in awarding the contract (e.g. when notified of plans to let the contract).

13.2 With the exception of construction contracts considered to be of a controversial or contentious nature, individual contracts that are to be let under the auspices of the Council’s Construction Framework Agreements do not require the pre-approval of the Cabinet provided those contracts meet the agreed evaluation and award criteria as set out in the Framework Agreements. Details of all contracts awarded under the Council’s Construction Framework Agreements must be reported retrospectively on a quarterly basis.

13.3 For all other contracts, in the absence of any direction to the contrary from the Cabinet, tenders may be accepted by the commissioning Chief Officer where the value is less than £50,000 and by the commissioning Chief Officer, in consultation with the Chief Financial Officer (Section 151 Officer), where the value is in excess of £50,000.

13.4 The Chief Officer may only accept or recommend acceptance of tenders where the necessary financial approval for a scheme as a whole has been made in the Council’s estimates.

13.5 The confidentiality of quotations, tenders and the identity of tenderers must be preserved at all times. Information about one tenderer’s response must not be given to another tenderer.

13.6 Contracts must be evaluated and awarded in accordance with an established Award Criteria.

13.7 Where the Total Contract Value is over £50,000, the appropriate Chief Officer must inform all tenderers of their Intention to Award the contract to the successful tenderer. The Chief Officer must allow a period of not less than 10 days after announcing their Intention to Award to provide unsuccessful tenderers with a period in which to challenge the decision before the Officer awards the contract. If the decision is challenged by an unsuccessful tenderer then the Chief Officer shall not award the contract and shall immediately seek the advice of the Partners of the Legal Practice and inform Corporate Procurement.
13.8 The Chief Officer shall debrief in writing all those tenderers who submitted a tender about the characteristics and relative advantages of the leading tenderer. This should normally include:

- how the award criteria were applied;
- the prices or range of prices submitted, in either case not correlated to tenders’ names; and
- the names of tenderers where there were three or more tenderers.

No other information should be given without taking the advice of the Partners of the Legal Practice.

13.9 If requested, the Chief Officer may also give the debriefing information required by Rule 13.7 to tenderers who were deselected in a pre-tender shortlisting process.

14. Contract Instructions and Certification

14.1 All instructions and certifications to contractors will be in accordance with the form and conditions of contract in use, in writing and signed by the appropriate Chief Officer.

14.2 Before extra work is undertaken and/or any extra costs incurred, a Chief Officer shall ensure that such work or costs does not exceed the necessary financial approval in the Council’s estimates.

14.3 Before extra work is undertaken and/or any extra costs incurred which would exceed either the budget or the contract sum by 5% or £10,000 whichever is the greater, the prior authority of the Cabinet shall be sought by the appropriate client budget holder. In cases of urgency a Chief Officer may take immediate action but must report this action and the reason for it to the next meeting of the Cabinet.

15. Sub-Contractors

15.1 Where a sub-contractor or supplier is to be nominated these Rules will apply in their entirety to the selection and use of that subcontractor.

15.2 No contractor shall enter into any sub-contract without the written consent of the appropriate Chief Officer.

16. Action by Members

16.1 No Member shall enter either orally or in writing into any contract on the Council’s behalf.

17. Reporting and Review of Contracts

17.1 All reports requesting authority to tender a contract must include the information set down in paragraph 3.6.
17.2 Monitoring and review of contracts shall be undertaken in accordance with the requirements of the Council’s policy for controlling the Capital Programme.

17.3 Final accounts for contracts with a value in excess of £400,000 must be reported to the Audit Committee in accordance with the Code of Practice.

18. Retention of Documents

18.1 Successful tender documents, including copies of reports, adverts, successful tender and any correspondence relating to that tender, tender evaluation documentation, approvals, etc. must be retained for a minimum period of six years, or in the case of contracts under seal, twelve years.

18.2 Unsuccessful tender documentation, pre-qualification questionnaires, etc must be retained for a minimum period of twelve months from the tender closing date.

19. Extension of Contracts

19.1 Contracts may only be extended in accordance with the terms of the award and will always be subject to the terms of the contract an applicable legislation.

19.2 If the value of the extension is in excess of £50,000, the extension must be approved by the commissioning Chief Officer and the Corporate Director of Finance and Resources (Section 151 Officer).

19.3 If the value of the extension is in excess of £400,000, the extension must be approved by the Cabinet.

(Contact Officer: Corporate Director of Finance and Resources: Tel: 020 8227 2932)