

# Procurement Policy

Approved by the Board  
26 July 2022

## Introduction

Luton Rising is, for the purposes of procurement, a “body governed by public law”. That means it is subject to regulations that govern public procurement. This policy covers all procurement exercises (which includes contracts awarded through open competition or through a framework agreement) where the estimated value of the contract exceeds the thresholds set either by the relevant Regulations or by the operation of this policy (for which, see page 10).

The principal policy objective is that all public procurement must be based on value for money, defined as “the best mix of quality and effectiveness for the least outlay over the period of use of the goods or services bought”. This should be achieved through competition, unless there are compelling reasons to the contrary.

Public sector procurement is subject to a legal framework which encourages free and open competition and value for money, in line with internationally and nationally agreed obligations and regulations. As part of its commitment to good governance, Luton Rising aligns this procurement policy with the legal framework, as well as with its wider objectives in relation to positive social impact.

### **Purpose of this Procurement Policy:**

- **Governance and Compliance:** Governance and compliance will be deployed to ensure organisational controls while balancing speed of delivery with commercial risk. Luton Rising will ensure that all procurement activities will be carried out in accordance and compliance with the regulations for public procurement. Compliance with Procurement policy and all applicable legal and regulatory requirements is mandatory and will be monitored and enforced.
- **Value for Money:** Luton Rising will ensure that all Procurement activities carried out by, or on behalf of, Luton Rising are done so in a responsible and effective manner that conforms with all relevant regulatory requirements to deliver Value for Money.
- **Social Value:** Luton Rising will ensure that opportunities to deliver Social Value are actively promoted through procurement activity. We will consider the overall value contributed by the supply chain, with the aim of encouraging greater voluntary sector, apprenticeship schemes and small and medium enterprise (SME) participation in goods, services and works whenever possible.
- **Managing Public Money:** All procurement activities will be delivered to the standards expected when managing public money, in particular transparency, equal treatment and non-discrimination.

### **Treaty obligations**

Notwithstanding the withdrawal of the UK from the European Union, many of the principles governing public procurement still apply and are embedded into UK law through the relevant regulations. Public procurement is subject to the **EU Treaty** principles of:

- non-discrimination
- free movement of goods
- freedom to provide services
- freedom of establishment

In addition to these fundamental treaty principles, some general principles of law have emerged from the case law of the European Court of Justice. The most important of these general principles of law to be aware of in the procurement context are:

- equality of treatment
- transparency
- mutual recognition
- proportionality

Luton Rising's procurement activities are governed by the Public Contract Regulations 2015 ("PCR") or, where the matter in question relates directly to airport of DART business, the Utilities Contract Regulations 2016 ("UCR"). The Concession Contract Regulations 2016 ("CCR") are also applicable in relation to the procurement of works and services concessions (together "the Regulations").

## Support and training

Where the estimated value of a proposed procurement exercise is in excess of £50,000 thought should be given to engaging with Luton Council's Corporate Procurement team at the earliest opportunity as that team will be able to advise and assist with the administration of the process. Where the estimated value exceeds the thresholds set out in Regulations, the Corporate Procurement team, must be notified. A retainer is paid to the Council for this purpose.

The Procurement team also provides online training which can be accessed at <https://lutonbc.sharepoint.com/sites/procurement/SitePages/Training.aspx>

Please note, however, that the limits on spend used by the Council do not apply to Luton Rising. There is no requirement for any spend by Luton Rising above £5,000 to be channelled through the Corporate Procurement team. The thresholds at which authorisation is required for the initiation of Luton Rising's procurement exercises are set out at page 10 of this policy.

## Application of this policy

This policy applies to any persons undertaking procurement activity on behalf of Luton Rising and should be read in conjunction with Section 6 of the company's Financial Regulations which is reproduced at Appendix A.

Any procurement activity undertaken outside the Regulations may be deemed to be unlawful and could lead to **disciplinary action being taken**.

## Which contracts are caught?

The Regulations apply in principle to the award of contracts for pecuniary interest that are concluded in writing between one or more contracting authorities (that is, Luton Rising) and one or more economic operators (that is, the successful bidder), and that have as their object the execution of works, the supply of goods or the provision of services.

"Pecuniary interest" means, broadly, consideration, whatever its nature. The courts have clarified that the provision of goods, works or services in exchange for the full, or even partial, reimbursement of costs can be sufficient for pecuniary interest to arise.

The award of works and services concession contracts is also subject to regulation. Concession contracts involve consideration that consists, either solely or partly, in the right to exploit the works or services that are the subject of the contract with operating risk transferring to the concessionaire.

The Regulations apply only where the estimated value of the regulated contract meets or exceeds certain thresholds, which are reviewed every two years by the Cabinet Office to ensure that they align with the thresholds set out in the World Trade Organisation's Agreement on Government Procurement ("GPA"). The current thresholds noted below are applicable from the 1st January 2022. These figures are all inclusive of value added tax (VAT).

The **PCR value thresholds** are:

- works contracts – £5,336,937;
- supplies and most services contracts – £138,760 for central government bodies and £213,477 for other contracting authorities; and
- contracts for social and certain other types of services – £663,540.

The **UCR value thresholds** are:

- works contracts – £5,336,937;
- supplies and most services contracts – £426,955; and
- contracts for social and certain other types of services £884,720.

The value threshold for concession contracts under the CCR is £5,336,937.

## What does the law require?

Access to contract award procedures is guaranteed, with remedies for breaches available, to economic operators from:

- the UK;
- EU member states, for procurements covered by the EU-UK Trade and Co-operation Agreement (“TCA”);
- a non-EU GPA state, for procurements covered by the GPA; and
- other countries with which the UK has a bilateral agreement, for procurements covered by those agreements.

Where the legislation applies, contracting authorities must, in general, meet their contractual requirements for goods, works and services by means of an advertised competitive contract award process that is based on objective, relevant and proportionate criteria. They must treat bidders equally and without discrimination, and act in a transparent and proportionate manner.

Generally, the contracting authority must:

- advertise the contract by means of the publication of a contract notice on Find a Tender (FTS), describing the requirements and inviting expressions of interest within given timescales;
- determine whether an economic operator that has expressed an interest has the necessary legal and financial standing and the relevant technical and professional ability to perform the contract;
- invite a shortlist of qualified economic operators, selected on the basis of objective and non-discriminatory rules and criteria, to submit tenders or carry out negotiations before submitting tenders;
- evaluate the tenders submitted on the basis of pre-disclosed objective award criteria that must be linked to the subject matter of the contract, so as to determine the most economically advantageous tender (MEAT);
- notify the contract award decision to all economic operators that have submitted a tender, as well as those that have participated in earlier stages of the competition in certain cases;
- observe the standstill period of a minimum of ten clear calendar days, during which time the contract cannot be concluded;
- conclude the contract only after the expiry of the standstill period (if there is no legal challenge to the contract award decision before then); and
- advertise the contract award on FTS.

Contracting authorities are also subject to an express obligation not to design procurements with the intention of excluding operators from the scope of the legislation, or of artificially narrowing competition.

## How are contracts awarded?

### Advertising requirements

Contract award procedures launched after the end of the UK's EU-withdrawal transition period must be advertised on FTS and on Contracts Finder, the national online portal for public contracts in England. National publication can only take place following publication of the contract notice on FTS. However, if 48 hours elapse after the notice was submitted to FTS and the notice has not yet been published, contracting authorities are entitled to publish at national level.

Contracting authorities must publish the notice on Contracts Finder within 24 hours of them becoming entitled to do so.

Advertisement must be made using standard online forms and generally requires publication of:

- the identity, address and other relevant details of the contracting authority;
- details of how to access the procurement documents;
- a description of the procurement and the contracting authority's requirements including the nature and quantity of works, supplies or services and the estimated value and duration of the contract;
- the award criteria;
- conditions for participation including any legal, economic and financial, technical and professional requirements; and
- details of the procedure including type and time limits.

### Preliminary consultation

The legislation expressly permits contracting authorities to carry out preliminary market consultations with a view to preparing the procurement and informing the market of their plans and requirements. When doing so, contracting authorities are permitted to seek or accept advice from independent experts or authorities, and from market participants. The advice may be used in the planning and conduct of the procurement procedure, provided this does not distort competition or violate the principles of non-discrimination and transparency.

The contracting authority must take appropriate measures to ensure that competition is not distorted as a result of the participation in the procurement process of an economic operator involved in its preparation. This must include communicating any relevant information exchanged with that economic operator in the context of preparing the procurement process with all other participants, and setting adequate time limits for receipt of tenders.

Where there are no means of ensuring the equal treatment of all participants, the economic operator who was involved pre-procurement must be excluded from the procedure after being given the opportunity to prove that its prior involvement is not capable of distorting competition.

## Tender procedure

There are six procedures that may be used to award a contract:

- **Open procedure** – the contracting authority invites interested parties to submit tenders by a specified date. The process does not involve a separate selection stage. All tenders that meet the qualitative criteria must be evaluated and the contract awarded to the bidder with the most economically advantageous tender. Negotiations are not permitted.
- **Restricted procedure** – the contracting authority considers applications from interested parties and invites a minimum of five qualified applicants to submit tenders, determined based on objective and non-discriminatory rules and criteria. The contract is awarded to the bidder who has submitted the most economically advantageous tender. Negotiations are not permitted.
- **Competitive procedure with negotiation** – the contracting authority considers applications from interested parties and invites a minimum of three qualified applicants to negotiate the contract with the contracting authority. Two may be permissible in specific circumstances. Negotiations may involve successive bidding rounds, to reduce the number of tenders to be negotiated. Final tenders cannot be negotiated.
- **Competitive dialogue** – the contracting authority considers applications from interested parties and invites a minimum of three qualified applicants to enter into discussions with a view to identifying the solution(s) capable of meeting its needs. Again, two may be permissible in specific circumstances. A competitive dialogue may take place in successive stages to reduce the number of solutions to be discussed. There can be no substantive discussions following the submission of final tenders, although these may be clarified, specified and optimised at the contracting authority's request. Limited non-substantive negotiations may also take place after the bidder with the most economically advantageous offer has been identified, with a view to finalising the terms of the contract.
- **Innovation partnership** – the aim here is to set up a partnership between a contracting authority and one or more economic operators for the development of an innovative product, service or works meeting the contracting authority's minimum requirements. The contracting authority can purchase the outputs without the need for a new procurement process, provided that these meet the performance levels and maximum costs agreed between the contracting authority and the participants. The process for setting up an innovation partnership is based on the procedural rules that apply to the competitive procedure with negotiation.
- **Competitive procedure without prior publication** – permitted in certain limited and narrowly defined circumstances. These include where there is extreme urgency not attributable to the contracting authority, and where the requirement can only be met by a particular economic operator due to technical reasons or the existence of exclusive rights.

In line with all other aspects of the procurement process, any negotiations are subject to the obligation to treat economic operators equally and without discrimination. This means, among other things, that the contracting authority cannot disclose the confidential information of one bidder to the others without agreement. This agreement must be specific, with reference to the intended disclosure of specific information, and not a general waiver.

The legislation permits the use of the open or restricted procedures at the discretion of the contracting authority. The other procedures are only permissible where specific conditions are met.

## Timing for publication of documents

Contracting authorities must generally offer unrestricted direct access to the procurement documents online with effect from the date of the publication of the contract notice on FTS. The definition of "procurement documents" is broad and essentially captures all documents relevant to the carrying out of a procurement process including contract notice, technical specifications, an invitation to tender or negotiate, any document that describes the requirements of the rules of the competition and the proposed conditions of contract.

It is arguable that this obligation applies only in relation to documents that are capable of publication at the start of the process. However, the legislation does not clarify this, and this interpretation is yet to be confirmed by the courts. For this reason, it is not unusual for contracting authorities to issue some of the procurement documents as drafts at the start of the process, and reissue them in a final form at a later stage.

## Time limits

The legislation sets certain minimum time limits for receipt of expressions of interest or submission of tenders. These vary depending on which procedure is used and whether certain conditions are met.

- **Open procedure** – 35 days from the date on which the contract notice was submitted to FTS for publication. May be shortened to 30 days where the contracting authority accepts submissions electronically, and to a minimum of 15 days where the requirement is urgent;
- **Restricted procedure and competitive procedure with negotiation** – for receipt of requests to participate in the process, 30 days from date on which the contract notice was submitted to FTS for publication, or a minimum of 15 days if the requirement is urgent. For receipt of tenders/initial tenders – 30 days from the date on which the invitation is sent, may be shortened to between 10 and 25 days in certain circumstances, include where the requirement is urgent;
- **Competitive dialogue procedure and innovation partnership** – 30 days from the date on which the contract notice is submitted to FTS for publication.

Where a prior information notice (PIN) is submitted for publication between 35 days and 12 months before the publication of the contract notice, and provided also that the PIN is not used as a call for competition, certain timescales can be reduced under the open and restricted procedures or the competitive procedure with negotiation.

Contracting authorities also have an obligation to take into account the complexity of the contract and the time required for drawing up tenders when fixing time limits.

## Eligibility

In determining whether interested parties are eligible to participate in a procurement process, a contracting authority may only take into account its suitability to pursue a professional activity, its economic and financial standing, and its technical and professional ability. The legislation sets out detailed rules on how these criteria may be taken into consideration at the selection stage of a procurement process and the type of evidence that contracting authorities may ask applicants to provide.

Contracting authorities are also required to consider whether applicants have committed certain offences that would normally require their exclusion from the competition (“mandatory exclusions” and may also exclude interested parties that find themselves in certain situations (“discretionary exclusions”). The exclusion period is five years from the date of the operator’s conviction for mandatory exclusions, and three years from the date of the relevant event for discretionary exclusions. Operators may avoid disqualification if they can demonstrate that they have taken appropriate “self-cleaning” measures.

When using one of the competitive procedures other than the open procedure, contracting authorities may restrict participation to only a small number of qualified applicants. The decision as to which applicants should be shortlisted must be made on the basis of objective and non-discriminatory criteria or rules that must be disclosed at the start of the process.

A minimum of five applicants must be shortlisted when using the restricted procedure and a minimum of three when using the competitive procedure with negotiation, competitive dialogue and innovation partnership. However, where the number of applicants meeting the relevant requirements is below the legal minimum, the contracting authority may continue with the procedure provided that there is a sufficient number of qualifying applicants to ensure genuine competition.

## Evaluation criteria

The contracting authority must award the contract to the bidder with, in its view, the most economically advantageous tender. This must be determined by reference to price or cost alone, or the best price-quality ratio assessed on the basis of criteria that are linked to the subject matter of the contract. These may include qualitative, environmental or social aspects.

The criteria must not have the effect of conferring unrestricted freedom of choice on the contracting authority – this would be the case if, for example, the criteria are not clearly defined. The criteria must also ensure the possibility of effective competition, enabling an objective comparison of the relative merits of the tenders; and must be accompanied by specifications that allow the information provided by the tenderers to be effectively verified.

## Transparency obligations

Selection criteria, including grounds for exclusion and the rules on the basis of which the contracting authority will determine qualified applicants that will be invited to participate in the competition, must be disclosed at the start of the process. Award criteria and their weightings must also be disclosed in the procurement documents.

There is no explicit obligation for contracting authorities to inform unsuccessful applicants, in a timely manner, of the decision to reject their application. However, it must do so, and provide the reasons for that decision, before commencing the ‘standstill period’ that must precede the award of the contract if it has not already done so. In practice, contracting authorities choose to inform unsuccessful applicants of their rejection and the reasons for this without undue delay, not least so as to limit the risk of a challenge against that decision at a later stage in the process. The contracting authority is also required to provide an unsuccessful applicant with information about the reasons for its rejection within 15 days of receipt of a written request.

Bidders must be informed about the contract award decision as soon as possible after the decision has been made. When doing so, the contracting authority must specify:

- the criteria for the award of the contract;
- the reasons for the decision, including the characteristics and relative advantages of the successful tender;
- the scores, if any, obtained by the tenderer receiving the notice and of the successful tenderer;
- the name of the successful tenderer; and
- confirmation of when the standstill period will expire.

The notice communicating the contract award decision is normally sent electronically, although “other means” are also permissible in principle. In some circumstances, the contracting authority must also notify the contract award decision to rejected applicants and bidders eliminated at earlier stages of the competition.

## Standstill period

The contracting authority must not conclude the contract with the successful bidder before the expiry of a ‘standstill period’ following the notification of the contract award decision to bidders. The length of this period depends on the means of communication used to notify the contract award decision, but must be a minimum of 10 clear calendar days where all bidders have been notified electronically. The first day of the standstill period is the day after sending the last of the standstill letters and the final day must be a working day – if not, the period has to be extended to the end of the next available working day.



## Challenging an award

Applications for review of a contracting authority's decision are heard by the UK's national courts (for example, the High Court in England and Wales). Decisions may be appealed to the relevant appellate court. In matters of public interest, or those involving a point of law of general importance, further appeal may be permitted to the UK Supreme Court.

Complaints may also be made directly to the European Commission in relation to alleged breaches that occur in procurements launched before the end of the transition period. Under the terms of the Withdrawal Agreement, the European Commission may pursue such complaints within four years following the end of the transition period.

Issuing a claim in the courts against the award decision automatically suspends the procurement process, preventing conclusion of the contract, provided the contracting authority is made aware of the claim before the contract is concluded.

Where the contract has not been concluded, the court may order the setting aside of the unlawful decision or action, or order the contracting authority to amend any document. Where the contract has been concluded, the court may award damages to an economic operator who has suffered loss or damage due to the breach. The UK Supreme Court has clarified that damages will only be available if the breach is "sufficiently serious", meaning that it has an impact on the outcome of the procurement process.

The court must also make a declaration of "ineffectiveness", unless there are general interest reasons for not doing so, in certain circumstances including:

- the contract was awarded without prior publication of a contract notice, in circumstances where one was required; or
- there has been a breach of the automatic suspension or standstill obligations, depriving the claimant of the possibility of pursuing pre-contractual remedies, and this is combined with a breach of the Regulations that has affected the chances of the claimant obtaining the contract.

Where a declaration of ineffectiveness is granted, the contract is prospectively ineffective as from the time when the declaration is made. The court must also impose a civil financial penalty on the contracting authority of an amount that it considers to be "effective, proportionate and dissuasive". Declarations of ineffectiveness are rare, with only two examples granted in the UK to date.

A claim seeking the remedy of "ineffectiveness" must be made within a period of six months starting from the day following the date of the conclusion of the contract; or within 30 days of the contracting authority publishing a relevant contract award notice on FTS or informing the relevant economic operator of the conclusion of the contract along with a summary of the reasons for the award.

Claims seeking a remedy other than ineffectiveness must be brought within 30 days, beginning with the date on which the claimant first knew or ought to have known that grounds for starting the proceedings had arisen. The court has the power to extend this period to up to three months where it considers that there is a good reason for doing so.

## After the award

With the exception of the DSPCRs, the Regulations incorporate provisions prohibiting “substantial” modifications to contracts following their award. Modifications will generally be deemed substantial if they:

- render a contract materially different in character from the one initially concluded;
- introduce conditions that would have allowed or attracted additional bidders to the procurement exercise;
- change the economic balance of the contract in favour of the contractor in a manner that was not provided for in the initial contract;
- extend the scope of the contract considerably; or
- involve the replacement of the original contractor.

“Safe harbour” provisions in the Regulations specify the conditions that, if met, would mean a modification would not be deemed substantive and would therefore be permissible. Some of these also require the publication of a “modification of contract” notice on FTS.

## Luton Rising specific policy requirements for contracts

### Initiation of procurement process

When it is identified that a procurement process needs to take place, the officer identifying that need shall prepare a specification and seek consent to the initiation of the process in accordance with the following table:

#### **Contracts for the supply of goods and services** (in respect of both PCR and UCR)

- with an estimated value of £100,000 or less – any Executive Director
- with a value between £100,000 and the statutory threshold – in respect of a development project, the relevant Executive Committee; in respect of general business, any two Executive Directors
- with a value at or in excess of the statutory threshold – the Board of Directors

#### **Contracts for works** (in respect of both PCR and UCR)

- with an estimated value of £500,000 or less – any two Executive Directors
- with a value between £500,000 and the statutory threshold – in respect of a development project, the relevant Executive Committee; in respect of general business, the Board of Directors
- with a value at or in excess of the statutory threshold – the Board of Directors

#### **Concession contracts**

- in all cases, irrespective of value – the Board of Directors

The Chief Executive Officer shall designate a suitable officer as the lead officer in respect of that procurement process.

## Award of contract

Before a contract is awarded, the lead officer for the procurement exercise shall prepare a "Contract Award report" in the format set out at Appendix B. The report must contain the certification by the Executive Director, Governance that the procurement exercise complies with this policy. The following table sets out the thresholds for the award of contracts:

### **Contracts for the supply of goods and services** (in respect of both PCR and UCR)

- with an estimated value of £100,000 or less – any Executive Director
- with a value between £100,000 and the statutory threshold – in respect of a development project, the relevant Executive Committee; in respect of general business, the Board of Directors
- with a value at or in excess of the statutory threshold – the Board of Directors

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- with an estimated value of £500,000 or less – any two Executive Directors
- with a value between £500,000 and the statutory threshold – in respect of a development project, the relevant Executive Committee; in respect of general business, the Board of Directors
- with a value at or in excess of the statutory threshold – the Board of Directors

### **Concession contracts**

- in all cases, irrespective of value – the Board of Directors

## Signing of contracts

Contracts of any value may only be signed by a duly authorised officer of the company who is a permanent employee of Luton Council.

A contract with a value less than £100,000 for supplies and services or £500,000 for works may, but only if the execution clause permits, be signed by any officer of the company who is authorised to do so under the company's general scheme of delegation.

A contract with a value in excess of £100,000 for supplies and services or £500,000 for works must be signed by a statutory director.

## Contracts register

A register of all contracts entered into shall be kept by the Shared Services team. Any officer entering into a contract of any value in excess of £10,000 shall provide the Shared Services team with the following details:

Date of execution

Name and contact details of contractor

Regulation under which the contract was procured

Nature of contract (goods, service or works)

Purpose of contract

Value of contract

Duration and end date of contract

Lead officer for the contract

The officer shall also provide the Shared Services team with a copy of the contract documentation, both electronic and printed. The Shared Services team will store the electronic copy on the shared drive in a place where it is easily identifiable and readily accessible and the printed copy in the fireproof deeds store. No later than 12 months before the contract is due to end, the Shared Services team will remind the lead officer of that fact so that the lead officer can take prompt and timely action should the contract need to be extended (if permitted) or re-procured.

## **Monitoring procurement processes**

The Executive Director, Governance should be informed, prior to initiation, of all proposed procurements with an estimated value in excess of £100,000. The Executive Director, Governance will, in consultation with the Head of Legal and Commercial, determine the type and degree of scrutiny that is appropriate and proportionate to that procurement.

## **Monitoring contracts**

Each contract will have an assigned lead officer, who may or may not be a permanent employee, who will be responsible for managing the relationship with the contractor and ensuring that performance of the contract is in accordance with the terms and conditions of the contract including, but not limited to, quality standards.

## **Creating Social Value through Procurement**

Luton Rising's procurement policy and practices aim not only to ensure compliance with the law and to secure best value but also to contribute to the economic and social wellbeing of the community we serve through deriving meaningful social value from the contracts we let.

This means that we do not simply look for the lowest cost solution that does a basic job. Instead, we want to make a difference, creating social value in everything we do. As such, our policy and practices in procurement are intended to be a significant enabling strategy for the achievement of our wealth building ambitions; we recognise that this is a complex and long term challenge however, we see that by changing the way we approach procurement, we can make an immediate and important start while we develop additional plans and strategies.

Our approach supports Luton's community wealth-building approach, ensuring that economic growth benefits local residents and businesses and, in turn, addresses poverty and deprivation in the borough. The increased focus on using local suppliers and social value will, through increasing the proportion of the company's expenditure spent locally, help deliver our shareholder's vision for Luton 2040 and its aims of improving skills and productivity, raising aspirations, ensuring equality and improving both the standard of living and the quality of life of residents.

## **The Public Services (Social Value) Act 2012**

The Public Services (Social Value) Act 2012 (the "Social Value Act") came into force in January 2013. Public authorities are required to 'consider, prior to undertaking the procurement process, how any services procured (whether covered by the Public Contracts Regulations 2015 or otherwise) might improve economic, social and environmental well-being.'

The requirements of the Social Value Act are compulsory for all above-threshold public services contracts and those public services contracts with only an element of goods or works (it does not apply to public work contracts or public supply (goods) contracts). However, the guiding principles of the Act can be applied to all commissions that the company undertakes.

The Social Value Act came into being from a Private Member's Bill; as such, the Public Contracts Regulations, 2015 (PCR15) will always take precedence. It is important to ensure that the law is not breached in pursuit of social benefits. Restricting a procurement to local businesses, forcing the winner to employ local labour or other specifications that are materially easier to be satisfied by local/national tenderers than foreign ones are liable to breach the law. The key is to distinguish measures which prohibit or actively disadvantage foreign economic operators (which is unlawful) from steps which encourage local participation/benefits to the local economy. Examples may include making procurements attractive to SMEs or requiring winning contractors to advertise job vacancies in local job centres.

The Equality Act 2010 requires organisations to ‘have due regard to the need to; advance equality of opportunity between people who share a protected characteristic and those who do not; eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act and foster good relations between people who share a protected characteristic and those who do not’. Incorporating equality outcomes, where relevant and in a proportionate way, should be a normal part of designing and specifying a service. It is important that they be considered before the procurement process starts. The company must therefore, not seek to just assess the implications of all commissioning decisions regarding the risk to groups of people but must look for opportunities, such as social value, to advance opportunities for those people.

## Pillars of Social Value

The Social Value Act refers to economic, social and environmental outcomes as the three pillars of sustainable procurement. Sustainability in this context is most often defined as meeting the needs of the present without compromising the ability of future generations to meet theirs.

**Economic** contributions to the local economy and economic growth that supports social outcomes. Retaining, re-circulating and leveraging funds in local areas – a wider contribution to skills, tackling worklessness and maintaining employment.

**Social** outcomes contribute to a vibrant and healthy community. Equality, diversity, inclusions and cohesion – raising awareness of health issues, eradicating poverty, and encouraging community participation.

**Environmental** outcomes are about protecting, promoting and enhancing the environment. Supporting local activities to improve the environment.

Our procurement policy and practices set out our approach to social value centred on three main themes: the real living wage; local recruitment/ skills/developing staff and potential employees and community health and wellbeing.

In delivering this policy, our aim is to realise meaningful social value from the contracts we put in place. We believe this can best be achieved through:

- developing an understanding of deprivation and need within Luton’s communities enables us to guide suppliers to meet those specific needs;
- promoting fairness by targeting effort towards those in the greatest identified need or facing the greatest potential disadvantage;
- supporting the local economy, so that micro, small and medium sized enterprises and the voluntary and community sector in Luton and immediate area can thrive;
- undertaking early engagement and collaboration, where appropriate, with Council services, partners and communities in scoping the project plan for each procurement to ensure we co-produce social value that meets the needs of our communities and that adds to rather than duplicates work already underway.

The principles underpinning our procurement policy and practices are to:

- ensure that all contracts (works, supplies and services) over the threshold demonstrate the addition of real social value (where relevant and proportionate to do so);
- apply an appropriate weighting to social value as part of the tender evaluation process, starting with 20% of the overall evaluation being attributed to social value, and noting this may move up or down to ensure, after considering the subject matter of the contract, that it is proportionate and relevant to that specific contract.
- determine which approach may have the biggest impact from the smallest intervention to ensure social value objectives are proportionate and achievable.
- understand the wider market for delivery to determine if the use of mutual, social enterprises or reserving contracts may be appropriate.

- engage suppliers in “meet the buyer” events early on in the project to sell our vision and ensure they understand the scope and potential of social value to make a difference. Signpost suppliers to the existing provision in order that they can build their bid in partnership with those that would receive the benefit.
- support fair and ethical trading in the supply chain. We expect all of our contracted partners to observe and demonstrate a similar commitment, and, where necessary, improving their ethical practices locally and globally, including, where appropriate, taking action to combat modern slavery and human trafficking.
- ensure that social value is monitored throughout the life of the contract and forms part of the regular performance management of the supplier.
- identify the social value tendered and delivered through our integrated Annual Report on and take lessons learnt forward into future procurement activity.

## **Relevant Documents**

Documents relevant to this policy can be accessed through the following links:

[Utilities Contracts Regulations 2016](#)

[Public Contracts Regulations 2015](#)

[Concession Contract Regulations 2016](#)

[Managing Public Money \(in particular Annex 4.6\)](#)

[Public Services \(Social Value\) Act 2012](#)

[Equality Act 2010](#)

# Appendix A – from the company's Financial Regulations

## 6 PROCUREMENT

### Introduction

6.1 The Company is committed to competitive procurement from the marketplace to achieve best value while minimising risk.

### Procurement Practices

6.2 All those involved in procurement will ensure that the company's procurement practices are lawful, fair, open, transparent and professional and will observe the requirements of the company's Procurement Policy at all times.

6.3 All individuals carrying out Procurement activities for the Company will raise any suspicions relating to unethical/unlawful practices immediately with the Chief Finance Officer.

6.4 In order to ensure that there is a robust segregation of duties, all procurement activities and procedures will as far as is practically possible adopt the principle of having more than one approver for key controls, including all supplier competitions, purchasing and payments.

6.5 Any individuals involved in procurement on behalf of the company will immediately withdraw from that involvement if they become aware of any potential perceived or actual conflict of interest on their part.

6.6 Official orders must be in a form approved by the Chief Finance Officer. Official orders must be issued for all work, goods or services to be supplied to the company, except for supplies of utilities, periodic payments such as rent or rates, petty cash purchases or other exceptions specified by the Chief Finance Officer.

6.7 Official orders must not be raised for any personal or private purchases, nor must personal or private use be made of company contracts.

### Key Controls

6.8 The key controls for ordering and paying for work, goods and services are as set out below.

- (a) All goods and services are ordered only by appropriate persons and are correctly recorded.
- (b) All goods and services shall be ordered in accordance with the company's procurement practices.
- (c) Those staff responsible for initiating any procurement shall ensure that the suppliers used are appropriate, reputable and financially sound and that they maintain appropriate insurances relating to their service provision, as well as employer, public and, for suppliers of professional services, professional indemnity insurances.
- (d) All goods and services received are checked to ensure they are in accordance with the order, and the check is evidenced. Goods should not be received by the person who placed the order.
- (e) Payments are not made unless the goods or services have been received by the company, and checked as to the price, quantity and quality standards, in accordance with (c) above.
- (f) All payments are made to the correct company or person, for the correct amount and are properly recorded, regardless of the payment method.
- (g) All appropriate evidence of the transaction and payment documents is retained and stored for the appropriate period, which shall be 6 years for all those related to taxable transactions, and one year after the completion of the audit of the year in which they were paid, for the rest.
- (h) All expenditure, and VAT, is accurately recorded against the right budget and any exceptions are corrected.

## Appendix B – Contract Award Report

<b>Contract Title:</b>	<b>Start Date:</b>	<b>End Date and term:</b>
<b>Review Date:</b>	<b>Value of Contract:</b>	<b>Savings:</b>
<b>Contract Reference Number:</b>	<b>Service Lead name:</b>	<b>Procurement Lead:</b>

### **1 Introduction**

This section should describe the purpose and objectives of the procurement exercise.

### **2 Governance**

This section should state the Regulations under which the procurement was conducted (if relating to a procurement in excess of the relevant threshold or the authorization of initiation of the procurement exercise in accordance with the Luton Rising Procurement policy

### **3 Risks identified and mitigation applied**

This section should set out the risks associated with the procurement and how these have been mitigated.

### **4 Approach**

This section should set out the procurement strategy, for example, whether the opportunity has been offered in open competition or through a framework agreement.

### **5 Market Engagement**

This section should set out the response of the market in broad terms to the procurement.

### **6 Award Criteria**

This section should set out the criteria adopted for the procurement. The following are examples only and the criteria should reflect the nature and complexity of the contract to be awarded



## Marking Scheme

The following marking scheme will be used to assess the responses provided to the questions:

<b>0</b>	No information is provided.
<b>3</b>	Information is generic relying on the organisation's general experience and not tailored to the specifics of the services required.
<b>7</b>	The Tenderer provides convincing reasons for its appointment and demonstrates application of best practice in the delivery of the Contracting Authority Scope. This is supported by limited examples demonstrating that experience gained from other projects is being applied to the services to add value.
<b>10</b>	The Tenderer provides strong and convincing reasons for its appointment and demonstrates strong application of best practice in the delivery of the Contracting Authority Scope. This is supported by comprehensive examples demonstrating that experience gained from other projects is being applied to the services to add value.

<b>QUESTION</b>	<b>AVAILABLE SCORE</b>	<b>WORD LIMIT</b>	<b>WEIGHTING (%)</b>
Q1.	0-10		
Q2.	0-10		
Q3.	0-10		
Q4.	0-10		
Q5.	0-10		

## Pricing criteria

<b>Position</b>	<b>Estimated Hours</b>	<b>Hourly rate (Used for evaluation)</b>	<b>Day rate (for information only - not to be used for evaluating price submission.</b>
Partner/Director	50 hours		
Senior professional	200 hours		
Professional	200 hours		
Senior technician	350 hours		
Technician	150 hours		
Administrator	50 hours		
<b>Total Hours</b>	<b>1000 hours</b>		

A total price was then provided for the 1,000 estimated hours which was used for evaluation purposes.

### 7 Evaluation

This section should describe the process of evaluation including the names of those undertaking, how it was carried out and whether it required a material level of moderation

### 8 Social Value

This section should draw out the specific social value elements of the bids comparing the preferred bidder with others

### 9 Implementation of Contract

This section should set out the steps that will be taken by both Luton Rising and the successful bidder to implement the contract

### 10 Contract Management

This section should identify how and by whom the contract will be managed and monitored.

### 11 Conclusion and Appointment

The recommendation is to appoint XXXXX with a contract start date of XXXXX

Certified for compliance by Executive Director, Governance:	Signed:	Date:
Contract awarded by (name of individual or body):	Signed:	Date: