

## Commissioning and Procurement Guidance:

### Contract Terms and Conditions

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This document is draft guidance for commissioners when considering the content of contract terms and conditions. Contract terms and conditions should be relevant and proportionate to the commissioning intentions and procurement strategy, and can be adapted prior to the issue of tender. The legal and procurement team will provide assistance in designing appropriate contract terms and conditions.

Through adjusting contract documentation it will ensure that the tender is attractive to the right market, and creates appropriate and unambiguous terms and expectations for both parties.

The Council's principles around commissioning and procurement underpin the approach to reviewing and designing the right terms and conditions

- **Flexibility** - Commissioning approaches and contract documentation should be tailored to be proportional to the outcomes being sought both in size and importance.
- **Accessibility and transparency** - Richmond's commissioning systems and processes should be accessible to suppliers. The contract documentation should therefore be clear and easy to understand for potential suppliers, and the clauses are relevant to the service that is being procured. The Council is keen to develop effective working relationships with its suppliers and ensure that there are clear and agreed expectations on both sides.
- **Consistency** - There should be a consistent approach across the Council to how it commissions and procures services, helping to make the process more transparent and accessible for suppliers interested in bidding for different contracts
- **Outcomes focus** – where appropriate to the service, the Council will take an outcomes based approach. This means that the Council will identify key indicators and milestones that measure progress towards achieving an outcome for local people. These measurement tools will be proportionate and appropriate to the service.

Below is a table containing key terms and conditions which should be reviewed in relation to the commissioning intentions and procurement strategy.

<b>Contract Condition</b>	<b>Contract Condition Title</b>	<b>Consider</b>
2	Agreement and Duration	<p>The duration of the contract should reflect the service requirement:</p> <ul style="list-style-type: none"> <li>• Consider the use of extension periods that can be included in the contract terms.</li> <li>• Be mindful of the maximum length of framework agreements and ensure that the contract terms sits within the maximum length.</li> <li>• Duration should be appropriate to recover any significant investment required by the provider in performance of the contract.</li> <li>• Balance flexibility for the Council with degree of certainty of business to the contractor. <ul style="list-style-type: none"> <li>○ E.g. length of contract may be an important factor for services which have high set up costs or are high risk for the contractor such as a new service.</li> </ul> </li> <li>• Consider attractiveness of the contract to the market, to ensure a competitive and appropriate choice of tenderers.</li> </ul>
5	Council's Obligations	<p>Be clear as to what you will be committing the Council to do.</p> <p>Consider whether any facilities are to be provided. Note, the provision of facilities (office space, hard standing etc) may reduce the barriers to entry for new contractors that are looking to work in LBRuT, increase attractiveness of the opportunity to the market and competition.</p> <p>Consider whether any information will be provided to the provider by the Council (e.g. service user data), when and by whom, and ensure that systems have been developed in advance of the contract award in order to ensure the obligations can be fulfilled.</p> <p>Failure of the Council to fulfil its obligations may result in erosion of its ability to enforce the</p>

		contractor's obligations and potentially lead to dispute.
6	Contractor's Obligations	<p>The Contractor's obligations are explicit in the service specification in the tender document, and the Contractor's tender submission (e.g. through the supply of a method statement).</p> <p>The contract may, in addition, refer to particular sections of the specification, or the specification in its entirety.</p> <p>Note, the obligations put on the contractor should only be those necessary to fulfil the requirements of the service. Obligations outside those strictly necessary are likely to have an impact on the cost of the contractor performing the service and hence the price to the Council.</p> <p>Therefore it is important not to over specify and ensure council/ contractor risk is balanced appropriately.</p>
9	TUPE	<p>TUPE information should be determined at the earliest opportunity and ideally before the contract opportunity is advertised.</p> <p>TUPE information should be included within the Invitation to Tender (where possible) in order that tenderers can understand the extent to which it, and any associated costs, may apply. This will allow tenderers to take the information into account when they construct their tender.</p> <p>TUPE is a specialist area and additional consultation with Legal is recommended.</p>
11	Default Rectification Procedure	<p>This should reflect the nature of the service.</p> <p>This condition is not a substitute for a professional working relationship where there is a clear and firm understanding of mutual responsibilities and expectations. The Council recognises the mutual benefits of working collaboratively to resolve issues, before invoking this clause.</p> <p>If utilised, good contract management practice needs to be maintained for the duration of the contract. This will require accurate and up-to-</p>

		<p>date records. It is important to consider how those records will be recorded and maintained at the outset and ensure systems are in place to maintain the records.</p>
13	Payment and Review	<p>The default position should be that the Council pays on invoice to minimise financial exposure and risk. Recovering sums owed if paid in advance may not be possible if that organisation ceases its operations, or fails to perform the contract.</p> <p>All aspects should take account of the nature of the goods, works or services being procured, and the market.</p> <p>Be mindful of the effect on smaller organisations (including voluntary organisations) in relation to cash flow. There could be a case for reduced payment terms from the standard 30 days, depending upon the market. Alternatively the use of front-loaded payments can help to ease cashflow for organisations.</p> <p>Indexation could be used depending upon the nature of the requirement. If used, an appropriate industry specific index should be selected that best reflects the nature of the requirement and cost to supply the goods/service. This should be discussed with Finance.</p> <p>Payment should only be withheld for non-performance as a last resort.</p>
14, 15	Termination, Consequences of Termination	<p>The right of termination should balance the need for flexibility for the Council and the degree of certainty of continuity of business for the contractor.</p> <p>Mutual rights of termination may not be appropriate where a break in the supply of the goods/service have a significant impact on the delivery of Council services.</p> <p>If mutual rights are included, the Council will need to be assured that any risk of early termination (on the part of the Contractor) can be reasonably mitigated. For example where there are high risks to clients, then the Council</p>

		<p>may limit the Contractors right to termination.</p> <p>Note, where a high degree of uncertainty/risk is placed on the Contractor it may have the affect of reducing the attractiveness of the opportunity, and reduce the number of tenders received.</p> <p>This should be considered alongside the duration clause. For example it may be more appropriate to have a shorter contract duration with lower termination for convenience rights for the Council, rather than have a longer contract duration and increased termination rights.</p>
16	Warranties	An organisation's accounts are a snapshot in time. Consider whether a frequent review of the organisations financial position is necessary and amend wording accordingly.
17	Insurance and Indemnity	Appropriate levels for each procurement should be set in consultation with the Councils Insurance department.
24	Performance Bond and Parent Company Guarantee	The requirement for Bonds or Guarantees should be decided in consultation with the Finance department.
26	Variations	<p>Be mindful that there is limited scope to vary the basis on which tenders are solicited, evaluated against and ultimately awarded in public sector procurement (Part A and B), as it can create an unlevel playing field and fall foul of fairness.</p> <p>This should be discussed with the Legal team.</p>

For further advice and guidance contact the Procurement and/ or Legal Team.