

# OSDC Contracts and Funding Code

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# Part A. Overview

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## 1. Purpose and scope

1.1 Oxford Street Development Corporation's (OSDC) governance arrangements are designed to ensure:

- there are clear expectations for all staff – and in particular that everyone upholds the seven principles of public life: selflessness, integrity, objectivity, accountability, openness, honesty and leadership
- we conduct our business in line with the law and proper standards
- we safeguard and properly account for public money and spend it economically, efficiently and effectively.

1.2 This Code sets down the rules and processes at OSDC concerning expenditure on the procurement of and entry into contracts and other formal arrangements for:

- goods and services, including with consultants
- land disposal and / or development opportunities
- works
- the provision of grant funding
- sponsorship.

1.3 It applies to everyone at OSDC: Board and Committee Members and staff – but noting it is predominantly for staff and especially those who are involved in entering into arrangements with third parties.

### *Outcomes*

1.4 The outcomes sought from this Code, grounded in the three wider governance imperatives outlined above, are that OSDC and its staff:

- secure and deliver value for money (VfM) to maximise public benefit, and, in the case of contracts with suppliers, based on the 'most advantageous tender' (MAT)
- act, and be seen to act, with integrity, fairly and transparently, ensuring third parties with which OSDC deals are treated equally, given the same opportunities and information and are evaluated properly and even-handedly. This means you must treat all potential suppliers and grant recipients the same unless a difference between the suppliers / grant recipients justifies different treatment. Where you do consider that different treatment is justified in a particular case, you must take all reasonable steps to ensure it does not put a supplier at an unfair advantage or disadvantage
- have regard to the fact that small and medium-sized enterprises (SMEs) may face particular barriers to participation and consider whether such barriers can be removed or reduced

- support the GLA's leadership of the London Anchor Institutions' Network, which commits pan-London institutions, including OSDC, to work together, using their procurement, workforce and estate management capacity for social and economic benefit
- communicate with suppliers electronically (utilising OSDC's 'source to pay' system, SAP Ariba, as appropriate) and where TfL Procurement & Commercial (P&C) is leading a procurement, ensure you coordinate any and all communications with suppliers through the P&C lead
- in conjunction with the assigned procurement lead from TfL Procurement & Commercial, ensure a 'pipeline notice' is published which sets out specified information about the contract with an estimated value (i.e. the value for the time being estimated by OSDC) of more than £2 million (inclusive of VAT) in which OSDC intends to publish a 'tender notice' or 'transparency notice'
- safeguard against allegations of corruption or bias, and take all reasonable steps to identify, keep under review and mitigate conflicts of interest and ensure that a conflict of interest does not put a supplier at an unfair advantage or disadvantage
- maintain proper audit trails to support actions, ensuring compliance with this Code can be demonstrated at any time, and keep such records to explain a decision made for the purpose of awarding or entering into a contract or grant funding agreement, in line with OSDC's records management policies
- avoid the need to retender a contract due to a breach of rules or regulations
- keep the need for audit intervention to a minimum
- properly approve and formalise relationships with suppliers and external organisations, so as to protect and enhance OSDC's interests, position and reputation
- be open and make information available about on our contract and grant funding processes and the agreements OSDC puts in place
- share information for the purpose of allowing suppliers and others to understand OSDC's procurement policies and decisions
- comply with the law.

### *What this document covers*

1.5 This Code is both policy and practical guide. It explains:

- the legal and procurement advice and assistance available and from whom this should be sought
- the types of arrangements that can be entered into with third parties and the application and impact of each
- the approvals you must obtain prior to entering into a formal arrangement with a third party
- how TfL Procurement and Commercial procedures must be followed to procure goods and services, land development opportunities and works

- the procedures that must be followed when entering into funding and sponsorship arrangements.

### *Related procedures and protocols*

1.6 The Contracts and Funding Code relates to and interacts with the following other governance procedures and protocols, in particular:

- OSDC Scheme of Delegation and underpinning decision-making procedures
- GLA Group Responsible Procurement Policy
- GLA Modern Slavery Statement
- OSDC Financial Regulations
- OSDC Expenses and Benefits Framework
- OSDC Gifts and Hospitality Policy and Procedure
- Register of Interests requirements and guidance
- OSDC Code of Conduct for Board and Committee Members
- Staff Code of Ethics and Standards
- OSDC Use of Resources Policy
- OSDC Anti-Fraud and Corruption Framework
- Subsidy Control guidance
- OSDC's published transparency commitment and reporting arrangements, including to comply with the [Local Government Transparency Code](#).

1.7 In addition, to complement these formal documents, a Procurement Guidance document has been developed and is available upon request to the Finance team. It contains step by step, practical advice, including templates, for procurements led by OSDC officers (generally those below £25,000, exclusive of VAT) and signposts to the steps involved in more complex procurements led by the GLA Group's procurement service, provided by TfL Procurement and Commercial, and the support available from them. **\*NB: Estimated contract value should not be taken as the sole factor determining whether OSDC officers I should lead on such activity, e.g. if the OSDC's requirements are of a particularly technical nature or there are significant risks associated with a prospective contract advice should be sought from or TfL Procurement & Commercial.**

### **Responsible procurement: Our mechanism for delivering social value**

Social value refers to the economic, social and environmental wellbeing of our communities in London and beyond. Through our Responsible Procurement (RP) Policy and approach, we create and deliver social value as part of our purchasing and commissioning activity. We do this across five themes:

- improving supply-chain diversity
- embedding fair and inclusive employment practices
- enabling skills, training and employment opportunities
- promoting ethical sourcing practices
- improving environmental sustainability.

The Responsible Procurement team provides the tools and the support the GLA and wider Group needs to implement relevant and proportionate RP requirements as part of the contract process. The team works with commercial staff and contract managers to monitor requirements in contracts and engages suppliers, through supplier relationship management and collaboration, to ensure best practice social value outcomes.

## 2. Core responsibilities

### *Approval and review*

2.1 Major changes to the Code must be approved by the Board. Approving the Code at the highest-level serves to underpin and communicate OSDC's commitment to delivering the outcomes at paragraph 1.4.

2.2 The Head of Governance will ensure this Code is reviewed at least every two years and that this review informs any subsequent update. The Head of Governance and Director of Finance and Corporate Operations are responsible for reviewing how it is applied and adhered to on an ongoing basis.

### *Delegated authority to make updates*

2.3 Substantive but less significant changes can be approved by the Audit & Risk Committee.

2.4 The Head of Governance, having consulted with the Senior Management Team where the changes constitute more than minor factual changes or presentational updates, may amend this Code providing the OSDC policy on which it is based is not significantly or materially altered. That includes updating this document to reflect changes in the law and other external guidance that directly impact on the OSDC's contracts and funding approach. Such updates will be reported to the Audit & Risk Committee.

2.5 The Head of Governance and Director of Finance and Corporate Operations may also issue and amend as necessary guidance to support this Code – providing any such guidance is consistent with it.

### *Implementation*

2.6 The Head of Governance and their team, working with TfL Procurement and Commercial, is responsible corporately for ensuring there is a good awareness of this Code, and its procedures are understood and followed. This includes communicating and advising on the requirements of the Code, with appropriate reinforcement and support.

2.7 OSDC's procurement function is provided by TfL Procurement and Commercial under a shared service arrangement. Its role is explained further in section 6.1. Working with OSDC, it will ensure this Code is supported by clear procurement guidelines and well-understood and effective processes.

2.8 As a public authority wholly or mainly funded out of public funds and subject to public authority oversight, OSDC is a 'contracting authority'.

#### **Collaborative Procurement Board**

The Collaborative Procurement Board is responsible for overseeing the GLA Group's approach to procurement in certain agreed categories where several parts of the Group are looking to purchase similar goods or services. The aim is to ensure a joint approach and drive efficiencies

2.9 TfL Procurement and Commercial is not, however, responsible for OSDC's grant funding procedures. The Head of Governance, working with the Director of Finance and Corporate Operations and TfL Legal, will ensure there are robust corporate arrangements and clear guidance.

2.10 Further guidance, forms and templates supporting OSDC contract and funding arrangements are available via the OSDC Governance team, including procurement guidance. Staff are strongly encouraged to review this guidance alongside the Code.

2.11 At the directorate and team level, Directors and Senior Managers are responsible for ensuring this Code is implemented by staff working to them.

2.12 Everyone at OSDC is responsible for adhering to and applying this Code.

# Part B. Preliminaries

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## 3. Overview of the process for entering into agreements with third parties

3.1 The following, high-level chronological process should be followed at all times:

- a) Approval for expenditure should be sought as per OSDC's Scheme of Delegation and decision-making process: a Board; CEO; Director; and Head of Service decision, according to the level of financial commitment involved. The Board report or decision form should set out the procurement / grant funding route being pursued and any relevant options. TfL Procurement and Commercial should be engaged as you develop your decision form where they are to be involved in the procurement.
- b) Once the decision form has been approved, work closely with TfL Procurement and Commercial (procurements over £25,000 or that are complex) to follow its procurement procedures and governance. If you are managing the procurement directly, design the specification and evaluation criteria and begin the procurement or grant funding process.
- c) Having completed the procurement or grant funding exercise, enter into the commitment with the successful third party by executing the appropriate contract or funding documents. Where you have engaged TfL Procurement and Commercial, you must do so through its procedures. Note no commitment should be made, in any form, until such documentation has been executed by the OSDC and contractor/funding recipient.

3.2 If this chronological process is not followed, then the OSDC will be exposed to unnecessary risk. Retrospective approvals should not be sought. Should you be in a position where you have no choice but to seek approval retrospectively, you must provide a valid business reason for this and be able to explain why approval prior to the start of procurement or grant funding was not sought and the steps that have been taken to ensure that such a situation does not re-occur.

3.3 Early engagement with TfL Procurement and Commercial is vital (and in the instance of grant funding, engagement with TfL Legal). Do not underestimate the amount of time that may be required. Procurement and grant funding exercises can be a lengthy process, even simple and lower value matters can take a number of months and at the more complex end of the spectrum, a year or more.

3.4 In compliance with the Procurement Act 2023<sup>1</sup>, TfL Procurement and Commercial maintains a pipeline of upcoming OSDC procurement activity. It is important senior officers, when requested, ensure this is up to date to support effective planning, including capacity planning in the TfL team, and to help identify opportunities, through

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<sup>1</sup> The **Procurement Act 2023** is effective from 24 February 2025 (and for new procurements carried out after this date). Until this time, all current and relevant legislation under the Public Contracts Regulations 2015 shall apply, and all references in this document to the 'Procurement Act 2023' shall be read and replaced as appropriate.

joint contracting, to secure better value of money. Failure to populate the procurement pipeline may result in your procurement exercise being delayed.

3.5 Note that if an organisation asks for notification while a procurement process is still in train, it must be informed in writing that:

- its tender or request for funding is being considered but no final decision has been taken
- any expenditure by them prior to the execution of the contract or funding agreement by both them and the OSDC is incurred or committed at their own risk (this should be flagged expressly in all procurement and funding exercise documentation in any event).

## 4. Contract or funding agreement?

4.1 It is not always immediately clear whether the proposed engagement is a contract (i.e. concerns a payment for works, services or supplies) or the award of grant funding (i.e. concerns a payment which is a contribution to the costs of the funding recipient's, rather than an OSDC, project). The following table sets out some of the more common differentiators, but in essence, and if the OSDC wishes to pay someone:

- a) to do something for the OSDC, then a **contract** for works, services or supplies will apply and (depending upon the nature and value of the works, services or supplies) you will need to follow a procurement process unless this Code permits you to do otherwise or
- b) to make a contribution to that organisation's costs of delivering its own (rather than an OSDC) project which is of benefit to London/Londoners, then a **grant** funding agreement will apply and (depending upon the nature of the project and recipient and value of the funding) you will typically need to undertake some form of competitive exercise to identify the recipient(s).

Contract	(Grant) Funding agreement
<ul style="list-style-type: none"><li>• The OSDC receives a benefit, usually in return for an agreed sum of money.</li><li>• The contract requirements are specified by the OSDC: there are firm contractual commitments that will be delivered.</li><li>• The OSDC needs to own or take a licence of Intellectual Property rights to assets created as part of the contract.</li><li>• The OSDC is able to bring a claim for its resulting losses based on a breach of contract if these commitments are not delivered.</li></ul>	<ul style="list-style-type: none"><li>• The OSDC is not receiving a direct or indirect benefit.</li><li>• The OSDC is supporting a third-party project that aligns with the Corporation's priorities, but which is the initiative and activity of that other organisation.</li><li>• The ODPC is entitled to withhold or reclaim the funding paid up to the date of the breach of funding conditions but may not be entitled to take any other action.</li><li>• Typically, the organisation being supported will be expected to provide a</li></ul>

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- The process leading up to the award of a contract is governed to a greater extent by specific regulations.
- contribution to its project costs and will in any event be required to take reasonable steps to seek additional funding from other third parties.
- The funding is provided as a conditional gift: the recipient is entitled to the funding as a contribution to costs, provided conditions the OSDC stipulates are met.
- Although a formal tendering exercise is not required by procurement law, considerations of value for money, fairness, transparency, equalities and avoiding potential distortion in the relevant sectors apply. It may be prudent to undertake some form of competitive exercise.
- The OSDC may need a licence created as part of the funded project for the purpose of reporting and publishing the project and its outcomes and archival of the same.

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## 5. Declaring interests

5.1 Under the Procurement Act 2023, the OSDC has a duty to identify, keep under review and mitigate conflicts of interest and must take all reasonable steps (which may include requiring a supplier to take reasonable steps) to ensure that an actual or perceived conflict of interest does not put a supplier at an unfair advantage or disadvantage.

5.2 In addition, to preserve the integrity of contract and grant funding award processes, it is imperative proposals are evaluated objectively, consistently and without bias towards particular suppliers and/or recipients.

5.3 Prior to the start of the process, all those involved in the evaluation must declare any interest or perceived conflict of interest and take appropriate action. If, after consulting with senior managers, it is decided that a conflict of interest exists, the person concerned must remove themselves from the process.

5.4 Where TfL Procurement & Commercial are leading on the procurement activity, you must, in any event, complete and return a Declarations of Interest form to the assigned TfL P&C lead (copies of which are available on the intranet or from the assigned TfL P&C lead).

5.5 An interest is where you or a 'Connected Person' (as defined in OSDC's Interests Guidance) has a personal, financial or other interest in, or a pre-existing personal relationship with, a potential supplier or funding recipient. Examples include:

- present, recent or planned future employment
- owning a shareholding or having another financial interest
- influence in or a role with a potential supplier or funding recipient
- having or having the potential to receive cash or other benefits from the potential supplier or funding recipient or anyone associated with it.

5.6 Failure to declare these can, in certain circumstances, lead to you committing a criminal offence, so it is essential you identify these and take suitable action to remove the conflict.

## 6. The role of and early engagement with TfL Procurement and Commercial

### *TfL Procurement and Commercial role*

6.1 TfL Procurement and Commercial leads on procurement issues for the OSDC. It is responsible for:

- developing and coordinating a corporate approach to the purchase of goods and services, working closely with the Head of Governance and their team
- developing procurement strategy and policy (in conjunction with the OSDC)
- advising and providing guidance on procurement issues, working closely with the OSDC's Finance and Governance teams, and TfL's Legal teams
- helping ensure OSDC meets all legislative requirements and demonstrates value for money (VfM) based on the 'most advantageous tender (MAT)' and a fair and transparent approach to procurement
- maintaining a pipeline of upcoming OSDC procurement activity (in conjunction with the OSDC business teams)
- managing corporate procurement exercises above the relevant threshold
- providing advice on smaller procurement exercises OSDC is running directly
- conducting financial appraisals of potential suppliers
- advising directorates with complex contract monitoring
- procurement administration, such as:
  - allocating procurement reference numbers
  - maintaining a comprehensive procurement pipeline and contracts databases
  - checking progress on procurement within directorates
  - procurement monitoring and reporting
  - monitoring compliance with procedures
  - monitoring performance on particular issues, such as equalities.

6.2 The OSDC has a Business Partner, a senior manager within the team at TfL who is our primary contact for procurement shared service matters. OSDC officers are

expected to work with TfL procurement leads to translate OSDC objectives into procurement requirements, identify and deliver opportunities for efficiencies and greater value for money (VfM) based on the 'most advantageous tender' (MAT), as well as enhancing the service provided by TfL.

### *Engaging with TfL Procurement and Commercial*

6.3 TfL Procurement and Commercial should be engaged at the earliest possible opportunity once you have identified a need to procure goods or services valued at more than £25,000 (excluding VAT) – or if you otherwise need to use their services, including, for example, where the value of the proposed purchase is between £10,000 and £25,000 (excluding VAT) and you are pursuing single source and/or direct award request of OSDC's requirements are particularly technical or there are significant risks associated with a contract.

6.4 You must follow the guidance and templates approved by TfL Procurement and Commercial and available from the Governance team in any competitive procurement scenario (i.e. where you are running the procurement directly). This helps to reduce the risk of procurement problems, which can delay projects later on.

6.5 The route for involving TfL Procurement and Commercial is to submit to it a Procurement Engagement eForm so that it can determine the appropriate level of their involvement.

6.6 A table with an Overview of Procurement Process at different values can be found at Appendix 1.

### *Procurement governance*

6.7 TfL Procurement and Commercial lead on providing governance assurance processes for individual procurement activities, including to help deliver value for money (VfM) based on the 'most advantageous tender' (MAT) and effectively manage commercial risks. This is under the oversight of the Director of Corporate Operations and Finance.

### **Approval to spend and contract value**

Before a procurement process or grant funding process can commence, you must, as a general rule, have in place approval to spend at the appropriate level – as specified in OSDC's Scheme of Delegation and Decision-Making documents. This means you will need a decision form and whenever non-routine (including programme) expenditure is over the threshold, a Board Decision will be needed.

That is not to say, however, that you cannot seek advice from TfL Procurement and Commercial about how to undertake a procurement exercise before getting approval. Indeed, that will often be desirable and you should reflect on procurement options and considerations in the decision form. In particular, the decision form should seek specific approval for Single Source Request (SSR) and Novel, Contentious or Repercussive (NCR) procurement routes.

In exceptional circumstances it may be acceptable to begin a procurement or grant funding process without approval via a decision form. The most usual circumstance is when the procurement process itself will provide valuable information to enable the decision to be taken. For example, if it would not otherwise be clear what level of spend would be required. In such cases, you should speak to the Governance team for advice; but you must not enter into contract or grant agreement without an approved decision at the level required in OSDC's Scheme of Delegation.

6.8 For the larger value, higher risk, and more significant procurements, the relevant forum is the TfL ‘Commercial Assurance Meeting’ (CAM), which includes representation from procurement and finance professionals and the relevant business area leads at the OSDC.

6.9 The Procurement and Commercial Team will advise on the minimum thresholds above which CAM must endorse decisions on procurement strategy, contract award recommendations and variations, single source and direct award requests and derogations – and the exact process to be followed.

## 7. Financial and legal advice

7.1 The Finance team is responsible for assessing the budget implications of procurement exercises and can advise on pricing and other financial aspects of contracts and funding agreements. You should contact the team as soon as you begin to formulate any matter or project to which this Code may apply.

7.2 TfL Legal can provide advice on issues, including:

- the OSDC’s powers to undertake proposed activity, enter into certain arrangements and constraints on and the procedural requirements of the exercise of such powers
- legislative compliance and certain procedural requirements
- complex procurement queries (in liaison with TfL Procurement and Commercial)
- the use of OSDC resources (in liaison with the Finance and Governance teams)
- the proposed arrangements for the delivery of grant funding programmes and award of grant funding to third parties where these are atypical or non-routine
- the proposed entry into sponsorship arrangements with third parties
- a range of other commercial, employment, property, planning and public law issues.

7.3 You must seek both financial and legal comments on all OSDC decisions exceeding £50,000 or where there are NCR (Novel, Contentious, or Repercussive) elements. That does not, however, preclude seeking advice earlier on in the process and before a decision form is started – or where a decision form is not required (i.e. where routine expenditure is involved).

7.4 Indeed, such early engagement with Finance and TfL Legal is expected, as it is with TfL Procurement and Commercial. TfL Legal should be contacted at the earliest opportunity as soon as you begin to formulate any matter to which this Code may apply, including preparing decision forms; for example, where your project or an element of your project involves paying or receiving grant of funds from third parties. That way, TfL Legal can assess the extent to which your proposals are lawful and where their support may be required on legal steps to protect the OSDC’s interest. Failure to engage with Legal at this point can lead to delays to proposed activity and in certain instances the rejection of such proposals.

## 8. Summary of sources of advice

8.1 You should seek advice and assistance as follows:

What	Relevant section of the Code	From whom
Procurement	Part C: Sections 9-11	TfL Procurement and Commercial, Responsible Procurement team and Procurement Guidance
Grant funding	Part C: Section 12	TfL Legal (where required), the OSDC Finance team and/or the OSDC Governance team
Sponsorship arrangements	Part C: Section 13	The OSDC Comms and Engagement, Governance and Finance teams and TfL Legal
Recruitment and procurement of professional services - Employment contracts and the distinction with consultancy contracts	Part E	The OSDC Human Resources (employment) and Finance (consultancy contracts and distinguishing as to which is which) teams

# Part C. Procurement processes

## 9. Procurement thresholds

9.1 The thresholds determining the process for procuring goods and services, works and land development opportunities are as follows. Remember, you must have an approved decision form for all procurement expenditure.

Estimated contract value	Procurement process (in overview)
<ul style="list-style-type: none"><li>• Goods and services <b>above £150,000 (excluding VAT)</b></li><li>• Works and land development opportunities above £4,000,000 (excluding VAT)</li></ul>	<ul style="list-style-type: none"><li>a) Engage TfL Procurement and Commercial.</li><li>b) Develop a procurement strategy with TfL Procurement and Commercial.</li><li>c) Seek a call-off from an appropriate and compliant framework, where possible.</li><li>d) Undertake a tender process compliant with the Procurement Act 2023 through TfL Procurement and Commercial</li></ul>
<ul style="list-style-type: none"><li>• Goods and services of <b>more than £25,000 (£25,000) and up to £150,000 (excluding VAT)</b></li><li>• Works and land development opportunities of more than £25,000 and up to £4,000,000 (excluding VAT)</li></ul>	<ul style="list-style-type: none"><li>a) Engage TfL Procurement and Commercial.</li><li>b) Develop a procurement strategy with TfL Procurement and Commercial (if over £100,000 excluding VAT).</li><li>c) Seek a call-off from an appropriate and compliant framework, where possible.</li><li>d) Undertake a formal tender process, which will be managed by TfL Procurement and Commercial via SAP Ariba.</li></ul>
<ul style="list-style-type: none"><li>• Goods and services of <b>more than £10,000 and up to £25,000</b></li></ul>	<ul style="list-style-type: none"><li>a) Seek a call-off from an appropriate and compliant framework, where possible.</li><li>b) If not, opt for competitive tendering, seek three or more written quotes from appropriate potential suppliers and attach all quotes received to the Purchase Order Requisition.</li><li>c) For procurements between £10,000 to £25,000 (excluding VAT) you are still required to complete the Single Source Request and/or Direct Award Request Form for review with TfL Procurement and Commercial, but approval through formal procurement governance procedures is not required.</li></ul>

## Estimated contract value

## Procurement process (in overview)

	d) Otherwise seek advice from TfL Procurement and Commercial only in exceptional circumstances.
• Goods and services <b>up to £10,000 (excluding VAT)</b>	a) Seek a call-off from a suitable framework, where possible.
• Works and land development opportunities up to £25,000 (excluding VAT)	b) If not, decide whether it would be preferable to opt for a competitive tendering route or, where permissible, a single supplier route. c) If using a single supplier, secure value for money. d) If opting for competitive tendering, contact Procurement and Commercial team for access to templates and seek three or more written quotes and attach all quotes received to the shopping cart.

9.2 The estimated value of the contract must be based on the total cumulative amount (based on the relevant market pricing) over the maximum term of the contract, including all optional extension periods, i.e. not solely on an annual or initial fixed term basis. It should include any amount earmarked in the contract to cover risks, as a contingency and for optional extensions and additions.

9.3 Contract values should not be estimated with a view to securing that any requirement of this Code does not apply.

## 10. Exemptions from normal procurement processes

10.1 Exemptions to the standard procurement processes will only be considered where there is a clear and specific rationale. These include:

- urgency – the legal definition of ‘urgent’ has to be satisfied, for example, an unforeseen situation like fire, flood or civil unrest

- complete absence of competition
- technical, artistic, exclusive right or intellectual property rights (IPR)
- previous involvement in a specific current project or continuation of existing work that cannot be separated from the new project/work
- the supplier is unique in its ability to provide compatibility with an existing service (not applicable to the majority of contracts with contract values exceeding £150,000 excluding VAT)
- bargain advantageous conditions, for example, bankruptcy and liquidation.

10.2 When seeking approval for an exemption, you must:

- clearly set out the proposed exemption as a recommendation in the decision box of the decision form (or Board report)
- explain why the proposed exemption applies and is required in the decision form (or Board report) – you will need to make a very strong case
- set out any competitive process that you will conduct
- explain how you intend to obtain and know the proposed supplier will provide value for money (VfM) based on the ‘most advantageous tender’ (MAT).

10.3 Financial and legal comments on the decision form (or Board report) must reflect on the exemption so a fully informed decision can be made.

#### **Single Source and/or Direct Award exemption**

Approval to award a contract flows from the approval to spend the associated budget, and normally through a decision form (in advance of the procurement process). Legal advice must be sought on the potential application of an exemption and reflected in the decision form. The TfL Procurement and Commercial Single Source Request form should be circulated with the decision form.

If expenditure has already been approved and there would not otherwise be a need for a decision form, please consult the Governance team. However, a Single Source Request form is always required.

#### **HM Government ‘Central Digital Platform’**

All competitive procurements over £25k (excluding VAT) must be advertised on HM Government ‘Central Digital Platform’, an online platform to help connect businesses with public sector contract opportunities. That is unless you are using a framework or a pre-selected list of suppliers (ie. you know which three or more suppliers you would like to approach).

TfL Procurement & Commercial will manage this process on your behalf.

## Relevant thresholds under the Procurement Act 2023 regulations

This Code has set £150,000 (excluding VAT) as the OSDC's threshold for goods and services and £4,000,000 for works and land development opportunities for the application of the rules and procedures prescribed in the regulations. Specific advice must be sought from TfL Procurement and Commercial for procurement of contracts above the thresholds.

# 11. Specifications and evaluation criteria

## *Invitations to tender*

11.1 An effective invitation to tender (ITT) document (i.e. the formal call for bids) will articulate what you need – and why and by when. It should be written with the perspective of the third-party bidder firmly in your mind: it must be clear not just to you but to a third party what you are seeking to procure.

11.2 An Invitation to Tender (ITT) will typically:

- describe the OSDC – its role and remit
- make clear what it is you wish to procure – and why, including relevant background
- include a schedule of requirements – what you want the service to provider to deliver (the outputs), by when and to what extent or quality
- set out the high-level governance arrangements for the contract, such as how progress will be reported and overseen, and any issues dealt with.

11.3 You will also need to provide bid response instructions, which will include details of timings, selection and evaluation criteria, weightings and scoring scales/methodology.

11.4 See the [procurement guidance](#) for examples of these documents.

## *Award criteria and process*

11.5 An 'award criteria' refers to the criteria set at the start of the procurement process against which tenders will be assessed for the purpose of awarding a public contract.

11.6 You must establish award criteria early on and before you go to the market – making sure they are intrinsically linked to your specification; they are likely to relate directly to the specification's outputs and deadlines, as well as price. You will need to consider which criteria you consider most important and can weight them accordingly.

## Frameworks

A framework is a pre-procured list of suppliers. TfL Procurement and Commercial have access to a number of different frameworks; speak to the TfL team for advice.

Using a framework can save time and money:

- they avoid the need for a full tender process
- headline prices, terms and conditions are pre-agreed
- the opportunity to include bespoke terms and conditions, providing they are not 'substantial modifications', to the original framework terms.

Frameworks are set up so that you can either appoint one supplier directly (without the need for a mini-competition) and/or you can run a mini-competition with the suppliers on the framework and select one of them after this.

11.7 Selection criteria concern bidders rather than bids and are used to identify organisations, having what OSDC considers to be sufficient technical and financial standing, to be invited to submit a bid for evaluation.

11.8 Evaluation criteria concern the bids themselves – and so look forward to proposed provision rather than back at past provision – and are usually split between:

- technical (quality) – can the supplier do what you want them to do and to the desired quality?
- commercial – how much will it cost?

11.9 Typically, these criteria will be weighted between 80:20 and 60:40 in favour of technical. A more detailed break-down of scoring within these categories is, however, generally required. If you are using a framework, the criteria will already be partially determined.

11.10 In line with the Procurement Act 2023, when setting an award criteria, you must be satisfied that it (a) relates to the subject-matter of the contract, (b) is sufficiently clear, measurable and specific, (c) you do not break any rules or requirements on the technical specifications (as set out in the Procurement Act 2023), and (d) is a proportionate means of assessing tenders, having regard to the nature, complexity and cost of the contract.

11.11 Award criteria must clearly describe how tenders are to be assessed by reference to them and, in particular, specify whether failure to meet one or more criteria would disqualify a tender (the “assessment methodology”), and (b) if there is more than one criterion, indicate their relative importance by (i) weighting each as representing a percentage of total importance (ii) ranking them in order of importance, or (iii) describing it in another way. Further supporting guidance on this and other Procurement matters is available from the Finance team. Through the GLA’s Responsible Procurement Policy and Implementation Plan, we aim to design and frame contracts and projects so as to make London a more equal, fair and sustainable city. For contracts over £150,000 (excluding VAT), you must (generally) devote at least ten per cent of the evaluation criteria to relevant responsible procurement and social value considerations. Lower value contracts can also include responsible procurement requirements in a relevant and proportionate manner, including reserving spend for SMEs, local businesses and voluntary, community, and social enterprises (VCSE).<sup>2</sup>

11.12 If you are using a framework, the criteria will already be wholly or partially determined. For contracts worth over £10,000 (excluding VAT), bids must be assessed by a panel to ensure fairness. Depending on the value and nature of the contract, you may need to ensure different panel members evaluate the commercial and technical aspects of the bids separately. You may also want to hold a moderation meeting to explore other panel members’ responses and explore variances in scoring.

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<sup>2</sup> The Social Value Portal is a free tool that helps organisations procure, measure, manage and report social value. This includes guidance on developing and evaluating tenders. Procurement Policy Note 11/20 provides guidance on reserving lower value contracts to local, SME and VCSE organisations. Contact the central Responsible Procurement Team for further advice.

11.13 If necessary and depending on the number and quality of bids you receive, the panel may follow up with bidders to clarify points on which it needs more information, ordinarily in writing but occasionally via interviews. It is important you set these potential steps out in the procurement documents – businesses spend a lot of time bidding for contracts and need to assess whether or not they have the resources to see the process through to the end.

11.14 Note that if an organisation asks for notification while a procurement process is still in train, it must be informed in writing that:

- its tender or request for funding is being considered, but no final decision has been taken
- any expenditure by them prior to executing the contract or funding agreement is incurred or committed at their own risk (this should be flagged expressly in all procurement and funding exercise documentation in any event).

### *Contracts and terms and conditions*

11.15 For contracts under £25,000 (excluding VAT), it may be sufficient to rely on the standard Purchase Order (PO) terms and conditions. For contracts over £25,000 (excluding VAT), and where a framework is not being used, TfL Procurement and Commercial will identify suitable terms and conditions (liaising with TfL Legal where necessary). *\*NB: Estimated contract value should not be taken as the sole factor in determining the appropriate form of contract for use, e.g. if the OSDC's requirements are of a particularly technical nature or there are significant risks associated with a prospective contract advice should be sought from TfL Procurement & Commercial.*

11.16 The relevant terms and conditions to which the chosen supplier will be subject must be shared with the potential bidders during the procurement process when the specification and procurement documents are issued.

11.17 For all procurements over £150,000 (excluding VAT), you must summarise the process you have followed, the result and the basis on which you selected the successful supplier. This is done through a 'Contract Award Recommendation' document. It is good practice to follow this process for lower value contracts also.

# Part D. Grant funding and sponsorship

## 12. Grant funding

12.1 There are important distinctions between grant funding agreements and contracts for services, supplies and works. This is potentially a complex matter and where you are uncertain if it is appropriate to follow a grant funding or contract route, you should seek early input from TfL Legal as soon you become aware of the need for a possible funding arrangement.

12.2 Similarly, you should seek early Legal input if your grant arrangement cannot readily be facilitated through the standard OSDC grant agreement template and approach. Routine and low risk grant arrangements do not require Legal review.

12.3 Arrangements will need to be considered on both a programme and case-by-case basis to determine whether it is in fact a funding arrangement or if instead, a contract for goods or services should be put in place. You will need to be aware of any additional processes and rules that are attached to specific programmes.

12.4 The table at paragraph 4.1 will help you determine if a funding agreement is appropriate. Remember, a funding agreement is not appropriate where the OSDC:

- is looking for a third party to deliver an OSDC programme, project or initiative on behalf of or for the OSDC
- is to receive goods, services, works or any other benefit (whether direct or indirect) from the third party
- wishes to maintain particularly robust controls over delivery by third parties
- is at risk, as a result of third-party breach of funding conditions, of suffering losses exceeding the value of funding paid to the third party at any point.

12.5 Decisions to award grant funding should generally be made on the basis of the outcome of a transparent, competitive application process and financial and other due diligence should be carried out on applicants. All of the OSDC's other Financial Regulations continue to apply and value for money must be demonstrated. Where the grant is a direct award, the decision form should provide a justification.

12.6 Ensure that the chosen organisation is made aware in writing that any spending they incur before the award has been approved and the funding agreement has been signed by both it and the OSDC is at

### Funding agreement template and toolkit

Drafting a funding agreement is the responsibility of the Unit managing the grant. You should in the first instance use one of the funding agreement templates on the intranet, tailoring it to your needs. There are two templates: a shorter one for simple, low value agreements (typically under 10k) and a more extensive template. Ensure that you understand the agreement terms and conditions, and your role in ensuring they are met. You should get legal advice before finalising the agreement and particularly if you need to adapt the template.

their own risk. A pre-agreement letter that essentially protects the Authority's position before a formal decision is made is available on the intranet.

12.7 You must always take steps to demonstrate why it is appropriate and within the Corporation's priorities and strategic objectives to make the funding available.

12.8 The effect of a funding arrangement is that the recipient is entitled to make claims for and be paid (and keep) the OSDC's funding – provided it has complied and continues to comply with all of the conditions attached to the funding. Conditions must set out clearly:

- a statement of what the OSDC wants to achieve or support with the funding
- what the funding can (and cannot) be used for
- the measures the OSDC expects to be taken and the measures it will take to protect the funding from fraud or irregularities
- how the recipient must demonstrate the funding has been properly applied and how payments have been linked to clear, specified milestones, outputs and outcomes.

12.9 If the recipient does not meet these conditions, it is not entitled to make claims and/or the OSDC may require some or all of the funding to be repaid to the OSDC. However, because this is a funding agreement and not a contract for goods or services, the OSDC may not be able to impose any other sanctions. Therefore, particular care must be exercised in using funding agreements when large sums are involved or if there are particular risks associated with the use by the recipient of funding that may lead to the OSDC suffering loss.

12.10 Any multi-year grant agreements must include break clauses to enable programme review, or to reflect changes in the OSDC/Mayoral priorities including where there has been a change in Mayor.

12.11 You must obtain approval of funding arrangements from a Director before informing the proposed recipient that funding is to be granted, giving details of:

- the proposed recipient and how they have been selected
- the purpose of funding
- why it should be granted
- the duration and amount of the funding
- the measures the OSDC will take to ensure that the funding is used only for the prescribed purpose

and providing:

- a copy of the funding agreement for signature.

12.12 All funding agreements must be executed by either the Chief Executive Officer or Director of Finance and Corporate Operations or any signatory authorised under OSDC's Scheme of Delegation.

## 13. Sponsorship opportunities and donations

13.1 Where the OSDC seeks sponsorship, it will abide by the GLA's Sponsorship Policy; and the Comms & Engagement, Governance and Finance teams should be informed early on. Where necessary, expert advice will be sought from the GLA.

13.2 It is vital that the OSDC acts in a fair and open manner and gives a wide range of organisations access to sponsorship activities. Companies tendering for the OSDC contracts should not be approached for sponsorship as this could be misinterpreted by third parties.

13.3 For due diligence, potential sponsors are subject to the vetting process for approval before any contractual arrangement. All sponsorship must be subject to a formal sponsorship agreement so that it is clear what is being received by each party.

### *Distinguishing between sponsorship and donations*

13.4 A donation has no conditions attached whereas, under a sponsorship arrangement, the sponsor receives discretionary services from the OSDC in return for a sponsorship fee (either financial or benefit in-kind); for example, a mention in a brochure or branding in the marketing of an event.

13.5 Sponsorship, including sponsorship in kind, is subject to VAT. Donations are not subject to VAT.

13.6 Invoices must be raised for all sponsorship arrangements and donations, as well as having the appropriate decision form to accompany it. Please contact the Finance and Governance teams for advice.

# Part E. Recruitment and procurement of professional services

## 14. Employee, temp, off-payroll worker or consultant?

14.1 If you are thinking about bringing in an individual or individuals in your work area, the first question to answer is whether that person or persons will be an employee, a temporary worker, an off-payroll worker<sup>3</sup> or a consultant<sup>4</sup>. This will determine:

- whether you should progress the appointment through a HR or a procurement route (i.e. the approval and procurement requirements)
- the type of contractual relationship and, where applicable, contract management
- the arrangements for payment (via payroll, an agency or as a supplier).

14.2 The Employment Status Indicators (ESI) at Appendix 2 can give you an indication of whether this engagement is one of employment/deemed employment or consultancy.

14.3 A definitive assessment of employment status can only be undertaken once you have selected the individual or Personal Service Company (PSC). At this point, and prior to finalising the contract, please contact the Finance team, which will advise whether to use the HMRC CEST tool or whether a specialised employment assessment is required.

14.4 Please ensure that early on in the sourcing/procurement of an individual you advise the relevant party that an employment status assessment may be required prior to the signing of the contract.

### IR35

When considering whether to engage an individual in a consultancy, temporary or similar capacity, it is important you consider their employment status, which could be:

- self-employed
- operating through their own limited company, known as a Personal Services Company (PSC); including as a freelancer, via an agency, or through another intermediary company.

Under tax legislation (IR35), these individuals, though not employed by the OSDC, may be subject to tax and NI if they are undertaking work in a manner similar to that of an employee. If this is the case, such individuals are referred to as 'off-payroll workers'.

It is the OSDC's responsibility, as the engager, to determine whether the individual is providing services in a manner similar to that of an employee; or if this is not the case and a contract for consultancy/professional services exists.

HMRC has developed a Check Employment Status for Tax (CEST) tool. It was previously named the Employment Status Service (ESS). The OSDC will be held liable for the PAYE tax, NI and penalties for failing to correctly determine the employment status of individuals engaged to provide services.

<sup>3</sup> An off-payroll worker refers to contractors, freelancers, consultants, individuals working through their own company in a manner similar to that of an employee.

<sup>4</sup> A consultant can be a director of a limited company, a partner or a self-employed individual. It does not refer to consultants who are employees of a company.

14.5 Once you have determined whether an employee, a temporary agency worker, an off-payroll worker or consultant is required, you must obtain approval to proceed, as described below.

## 15. Employees

15.1 If you wish to recruit someone as an OSDC employee (someone on an OSDC contract, for a fixed-term or on a permanent basis), you must first determine whether an approved post exists. If not, funding for the post will need to be identified. Once funding for the post has been identified by your unit and the Finance team, HR will support the unit through the approval process.

15.2 Once the post is approved, or if you are recruiting to an existing post, TfL will lead on recruitment to roles up to and including Grade 12 for external recruitment. The OSDC People Function leads on internal recruitment also for these grades and above which include Board members, Planning Committee members and Apprentices.

## 16. Temporary agency staff

16.1 You should normally only engage a temporary agency worker to cover a short-term requirement for additional resource (up to 12 weeks); for example, to cover time-limited and exceptional work demands or project work that cannot be covered by already established posts.

16.2 Temporary agency workers may, however, be engaged to cover posts on the establishment; for example, to cover long-term sickness absence or a vacant post while the permanent recruitment process is finalised.

16.3 Units wishing to engage a temporary worker should seek approval from their Director via the approval for a temporary agency worker form. Once approved, all temporary agency workers should be sourced via the line manager with HR support.; using the GLA Group Agency provider.

## 17. Consultants and off-payroll workers

17.1 You must not use consultancy arrangements to avoid the approval process for new posts. Note also that initial approval – prior to the proposed appointment being taken forward via the OSDC's decision-making framework – from the Chief Executive Officer is required for any appointments exceeding £600 (excluding VAT) per day per person.

17.2 If the Employment Status Indicators in Appendix 2 point to a consultancy (i.e. not an employee/off-payroll worker) arrangement, then you should proceed as follows:

Value of contract	Process
Above £10,000	<ul style="list-style-type: none"> <li>Secure approval through a decision form or Board report at the appropriate level (as per the OSDC's Scheme of Delegation and decision-making process)</li> <li>Source the services, as per the procurement guidance at Part C</li> <li>Once the consultant has been selected, and prior to signing the contract, an employment status check is required. Contact the Finance team which will advise whether to use the HMRC Check Employment Status for Tax (CEST) tool or whether a specialised complex employment assessment is required</li> <li>See paragraph 18 for payment arrangements.</li> </ul>
Up to and including £10,000	<ul style="list-style-type: none"> <li>Secure approval through the relevant decision form (you can request this form the OSDC Governance team)</li> <li>Source the services, as per the procurement guidance at Part C</li> <li>Once the consultant has been selected, and prior to signing the contract, send the form to the Finance team for the section on employment status to be completed.</li> <li>See paragraph 18 for payment arrangements.</li> </ul>

17.3 You will need to assess the employment status afresh, or for the first time if you did not do so initially, if during the procurement process your service requirements or arrangements change; or if you have selected an individual or a Personal Service Company (PSC) and the final service delivery arrangements indicate that an employment status review is now required.

#### *Procurement documentation*

17.4 To ensure professional services deliver optimum value (based on quality and price), you must ensure appropriate documentation is put in place to govern procurement exercises and the engagement.

17.5 The documentation required will differ depending on the procurement process. For engagements procured via TfL Procurement and Commercial you must as a minimum provide TfL Procurement and Commercial with a completed Procurement Pipeline Engagement eform, with details of the services required and a copy of the proposed specification. Whether or not you procure via TfL Procurement and Commercial you must issue to prospective consultants a service specification that sets out specific details of:

- the services required, tasks to be undertaken and deliverables

- the date by which the services must be provided or dates by which any particular phases/stages of those requirements must be met
- the proposed payment approach, structures and/or milestones
- any particular technical, legislative or policy requirements
- the OSDC officer who is to manage the contract and any other governance arrangements.

17.6 The documents issued to prospective consultants in order to solicit responses, quotations or tenders will form the basis of any consultancy contract awarded. Where required, you should liaise with TfL Procurement and Commercial to ensure that all appropriate documentation is signed for the OSDC and the consultant prior to the contract starting.

## 18. Payment and contract management

18.1 Payment should be made as follows:

Employment status	Process
Employees	<ul style="list-style-type: none"> <li>• Paid via payroll and organised by TfL HR Shared Service.</li> </ul>
Consultants and professional services	<ul style="list-style-type: none"> <li>• If they are a new supplier, you will need to complete the New Supplier Request Form on SAP Ariba. Once this is complete, the new supplier is sent an email from TfL asking them to complete their registration.</li> <li>• Purchase Order Requisitions and Purchase Orders must be raised once the contracts have been signed.</li> </ul>
Off-payroll workers	<ul style="list-style-type: none"> <li>• If the HMRC CEST tool / specialised assessment gives an 'employment' result, this means that the service contract falls within HMRC's off-payroll worker rules and any payments under this contract will be a 'deemed employment payment'. PAYE tax and National Insurance will have to be deducted from payments.</li> <li>• You need to speak to the Finance team and HR to discuss how best to arrange payments.</li> <li>• The options are for the consultant to contract with an agency or to be paid as an off-payroll worker via the OSDC's payroll. In both cases, their payments will be subject to PAYE tax and NI deductions.</li> <li>• You will need to inform the consultant and discuss their preferred payment route.</li> <li>• If the consultant/PSC is also VAT registered, VAT will also be paid on the provision of a VAT invoice.</li> </ul>

### *Contract management*

18.2 Consultants should not be treated as or in a manner similar to employees. For example, they should not be line-managed, manage other members of staff or undertake tasks falling outside the scope of their contracted services.

18.3 The contracts should be monitored in line with the agreed milestones and deliverables and POs should only be goods receipted once you are satisfied that the agreed milestones have been delivered to the required standard.

18.4 More information about contract management is at section 22.

# Part F. Approved signatories, record keeping and contract management

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## 19. Executing contracts and other formal documents

19.1 Authority for to execute contracts and other formal documents is set out in OSDC's Scheme of Delegation.

19.2 Certain contracts and other formal documents will need to be executed as deeds. OSDC may execute deeds by: applying its seal and having this authenticated by the CEO or one of the below signatories authorised under the Scheme of Delegation:

- Chief Executive Officer;
- any Director;
- any Head of team
- any other employee appointed in writing either by the Chief Executive Officer or Director of Finance and Corporate Operations.

19.3 The Governance team may set down procedures and provide advice and guidance, consulting with TfL Legal, on the execution of formal documents. This may include the use of digital and/or electronic signatures and, otherwise, the execution of formal documents via electronic means. It is important staff are aware of the latest procedures and guidance available from the Finance team.

## 20. Record keeping and transparency

20.1 You must keep detailed and accurate records of any and all procurement and grant funding exercises. This ensures there is a proper audit trail. The information you and TfL Procurement and Commercial should retain includes:

- details for the procurement database; including reference number, title, lead officer, process applied and outcome
- the evaluation report
- a summary of financial appraisals
- a copy of the final contract (signed electronically by the supplier(s) and on behalf of the OSDC must be held within SAP Ariba)
- funding agreement details for the 360Giving website, which publishes grant-giving information in an open and standardised format.

20.2 Any information retained by the OSDC may be subject to requests for its release under the Freedom of Information Act (FoIA) or Environmental Information Regulations (EIR). Both pieces of legislation provide that information must be disclosed in response to a request unless it is subject to an exemption provision.

20.3 No information is automatically exempt from disclosure. Non-Disclosure Agreements do not prevent information from being disclosed under FoIA or EIR. The most relevant exemption provisions will relate to information which would prejudice commercial interests or involve the disclosure of genuinely confidential information. However, these provisions have limited scope and can only be used to withhold discrete pieces of information; they rarely apply to whole documents. Exemptions are considered on a case-by-case basis and you will need to seek advice from the OSDC Governance team.

20.4 More information about FoIA exemption provision can be found on the [Information Commissioner's Office website](#) and information about document retention is set out in the OSDC's Records Management Policy.

### *Transparency*

20.5 The OSDC has a published commitment to openness and transparency. That includes meeting and seeking to go beyond the requirements of government's mandatory Local Government Transparency Code. To this end the OSDC publishes:

- a register of its contracts
- contract opportunities and invitations to tender
- details of subsidy control assessments
- contracts, with appropriate redactions
- details of the OSDC grants through the 360 Giving website (the Governance team must be informed of all executed funding agreements so they can be added).

20.6 OSDC teams must support the good data quality in respect of the above by complying with any procedures and record-keeping arrangements established corporately.

20.7 It is important those the OSDC engages are aware of and agree to comply with our transparency obligations, whether arising from legislation or policy choice, and that this is reflected in contract documentation.

### *Subsidy Control*

20.8 The OSDC must adhere with the Subsidy Control Act 2022, which regulates the giving of subsidies out of public resources. Subsidies can include grants, but also cover a wide range of other assistance using public resources (guidance on subsidy control can be found on the intranet).

20.9 The OSDC's obligations under the Subsidy Control Act 2022 will only be triggered where all of the following tests are satisfied:

- Financial or other assistance is to be given by the OSDC.
- That assistance confers an economic advantage on one or more organisation which is engaging in economic activity (providing supplies, services or works on a market on which it has competitors). Please note that this question is activity

rather than sector focussed, as voluntary/community/charity sector organisations can and often do operate on competitive markets).

- The assistance is specific and benefits one or more organisations engaging in economic activity over others engaging in economic activity.
- The assistance has, or could have, an effect on competition or investment in the UK or affect trade or investment between the UK and a country outside the UK.

20.10 If the assistance proposed is a subsidy under the Act, OSDC officers must self-assess the proposed subsidy against seven subsidy control principles (see on subsidy control guidance on the intranet), completing a Subsidy Control Assessment Form, which is available on the intranet, when developing proposals in respect which they are considering seeking approval. The outcome of that assessment where remaining applicable to the decision sought, or the must be set out clearly in section 4 of the decision paper under a sub-heading “Subsidy Control”. The assessment must also be retained alongside, other decision-recording documents in accordance with the OSDC’s transparency obligations. Where the award of standalone subsidies with value over £100,000 are approved details of the subsidy must also be uploaded to the national Department for Business and Trade database, where another enterprise or interested party may make a challenge for up to 30 days.

## 21. Project management and risk assessment

21.1 Procurement and grant funding processes can be complex in of themselves or because they are part of a bigger piece of work. Project management best practice should therefore be deployed to assure effective delivery.

21.2 It is important also to consider the risks associated with your procurement and for larger projects you should maintain a risk register.

21.3 Examples of the risks associated with procurement exercises include:

- failure to follow correct procedure and/or comply with relevant laws
- procurement not completed in time or not successful
- insufficient staff time to manage process
- insufficient resources to cover cost.

21.4 Where risks are identified you should take action to mitigate them as far as possible. Examples include:

- identifying the budget provision and any external funding at outset
- appointing a project team
- developing a clear timetable and a procurement strategy
- putting together a clear specification and pricing schedule
- ensuring staff involved have had appropriate training

- engaging TfL Procurement and Commercial and other experts early on, including Legal, Finance and Equalities.

21.5 Examples of risks associated with grant funding exercises include:

- Team capacity to monitor and manage funds
- Unrealistic timelines impact efficacy of delivery
- Risk of fraud or loss of public money
- Due diligence issues related to the grant recipient causing reputational damage
- Payments are not made promptly or accurately to grant recipient.

21.6 Where risks are identified you should take action to mitigate them as far as possible:

- Ensure sufficient budget and resources to manage funds throughout the grants lifecycle
- Allow sufficient time for planning and delivery of grant programmes
- Identify and manage risks to funding programme
- Develop robust and proportional due diligence processes
- Engage with experts early on in developing proposals (well in advance of seeking approvals), including Legal, Finance and Governance teams.

## 22. Contract management and Key Performance Indicators

22.1 All OSDC staff must hold to the following principles when managing contracts:

- all contracts should be included on the OSDC's contracts register alongside relevant information
- the contract management approach should be proportionate to risk
- senior staff should identify where and what resources are needed to support high-standards of contract management, putting in place named contract managers that are suitably skilled and trained, and taking an approach that is proportionate to risk
- there should be sound financial control of all contracts, including clear links to the wider management accounts process
- in line with the Procurement Act 2023, before entering into a contract that has an estimated value of more than £5 million (**inclusive** of VAT), the OSDC (with the support of TfL Procurement & Commercial) must set at least three key performance indicators (KPIs) in respect of the contract. (Unless the contract is from a framework, or it is considered that the supplier's performance under the contract could not appropriately be assessed by reference to key performance indicators).

- a KPI is a factor or measure against which a supplier's performance of a contract can be assessed during the life-cycle of the contract
- contract managers should hold good quality information on all our contracts, working closely with TfL Procurement and Commercial and obtaining information and evidence on timely basis from contractors, checking it for accuracy
- contract managers should use performance and risk management disciplines to support contractor performance that meets or exceeds expectations, undertaking regular monitoring of progress against contract expectations and deliverables, reporting to Senior Managers as appropriate<sup>5</sup>
- contract managers should identify and proactively seek to resolve delivery failures and/or declining contractor performance at an early stage, in line with contractual remedies and escalating matters to Senior Managers
- working closely with TfL Procurement and Commercial, senior staff and contract managers should periodically review contracts, adapting them to meet changing needs, considering the OSDC's operational and strategic priorities. All commercial changes to a contract should be discussed with Procurement and Commercial before agreeing the changes with the supplier
- contract managers should effectively manage relationships with contractors, and others involved to unlock value for money.

22.2 Contract management can be divided into three elements: service delivery, relationship management and contract administration. Senior staff are required to:

Element	Key points
Service delivery	<ul style="list-style-type: none"> <li>• This is about ensuring the contract is delivered in line with the specification, timescales and any other performance indicators – and identifying any need to vary the contract.</li> <li>• The contract manager, normally the client, is responsible for managing service delivery.</li> <li>• One of the tools the contract manager might use to help is a contract management plan. This plan identifies the resources required to deliver the contract, with responsibilities allocated to client and supplier and the processes and performance criteria to be used on the contract. It might also include a communications plan.</li> <li>• The contract manager needs to monitor regularly the supplier's performance against the contract criteria and ensure improvement plans are developed to bring performance back on track where there are issues.</li> <li>• Successful supplier improvement plans will look at the performance issue both from the client and supplier perspective, set clear improvement objectives, identify constraints and</li> </ul>

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<sup>5</sup> Where the Social Value Portal has been used during the tender process, this will verify supplier claims and a dashboard will be made available to view supplier social value performance over the contract term.

Element	Key points
	enablers, and establish measures against which the improvement plan will be monitored.
Relationship management	<ul style="list-style-type: none"> <li>This is about maintaining a sound, business-like relationship with the supplier.</li> <li>The day-to-day relationship with the supplier is the responsibility of the contract manager. But this is sometimes supplemented by an account manager from both parties to whom any day-to-day matters can be escalated. This is particularly relevant where the supplier is contracting with more than one area at the same time and some degree of coordination is required.</li> <li>The account manager holds regular meetings with their supplier counterpart to discuss general performance issues, identify and resolve problems early and to discuss ways in which performance can be enhanced in the future.</li> </ul>
Contract administration	<ul style="list-style-type: none"> <li>This is the formal governance of the contract, including the way in which any changes to the contract are made.</li> <li>Contract administration is normally carried out by TfL Procurement and Commercial, with assistance from Legal if required.</li> <li>It normally results in amendments to the terms and conditions of the contract; be it a variation to the scope or value, an update to the contract rates as the result of an elapse of time or a change necessitated by a change in legislation.</li> <li>A variation to the scope or value would normally be instigated by the contract manager, who would complete a variation request with a full justification for the need for the variation.</li> <li>A variation in rates would normally be instigated by the supplier because of a pre-agreed price variation clause included in the contract terms.</li> <li>A variation brought about by a change in legislation would normally be instigated by the procurement agent who carried out the original tender.</li> <li>All variations would be processed by TfL Procurement and Commercial, which prepares the formal variation document for signature by the supplier.</li> </ul>

# Appendix 1. Overview of Procurement Process at different values for goods and services

Value	OSDC approval	TfL involvement	Procurement strategy	Best value / quotes	Single Source	Contract Award Recommendation	Evidence to attach to shopping cart <sup>6</sup>	Procurement timescales <sup>7</sup>
<£10k	Head of Service	No	Not required	<ul style="list-style-type: none"> <li>Use TfL Framework</li> <li>Or receive 3+ quotes are required (If only 2 respond with quotes, but the other declines, this is acceptable but you must collect evidence)</li> <li>Otherwise demonstrate value for money</li> </ul>	<p>Not recommended</p> <p>You should record the reasoning in the DAR and show how value for money has been obtained</p>	Not required	<ul style="list-style-type: none"> <li>The quote(s) (email, written quote or catalogue reference)</li> <li>OSDC approval document</li> </ul>	3-9 weeks
£10k - £25k	Head of Service	Not mandatory – but for Single Source procurements, you should complete the Single Source Request Form for review, but approval through formal procurement governance procedures is not required	Only needed if engaging TfL Procurement and Commercial	<ul style="list-style-type: none"> <li>Use TfL Framework</li> <li>Or receive 3+ quotes (If only 2 respond with quotes, but the other declines, this is acceptable, but you must collect evidence)</li> </ul>	<p>Not recommended</p> <p>This needs to be approved in the DD and also needs a Single Source Request Form, on which TfL will provide advice</p>	Preferable, but only produced if TfL lead on the procurement	<ul style="list-style-type: none"> <li>The quotes (written quote on headed paper, signed)</li> <li>Evidence of declining to quote (if relevant)</li> <li>Contract Award Recommendation (if applicable)</li> <li>Single Source Request Form (if relevant)</li> <li>OSDC approval document</li> </ul>	3-9 weeks, depending on the supplier engagement

<sup>6</sup> Note some of this should not be made available to the vendor.

<sup>7</sup> Not including timescales for OSDC & Legal approval.

£25k up to £50k	Head of Service	Required - contact early	Required if >£100k	<ul style="list-style-type: none"> <li>Use framework</li> <li>Or a minimum 3 quotes required</li> <li>Must be advertised on Contracts Finder (unless using a framework or pre-selection list of suppliers)</li> <li>Pre-agreed award criteria</li> <li>Must be managed via the e-Tendering portal</li> </ul>	Will be considered, but must be discussed up-front (the higher the value, the less likely to be approved) with TfL	Required - produced by TfL when leading on the procurement	<ul style="list-style-type: none"> <li>The quotes</li> <li>Single Source Request Form (If using)</li> <li>Contract Award Recommendation</li> <li>OSDC approval document</li> </ul>	3-6 months depending on complexity and route to market. Faster if using a framework
£50k up to £150k	Head of Service (up to £75k)				Should normally be approved in the DD/CD and requires a Single Source Request Form document			
Director (up to £250k)								
>£150k	Director (up to £250k)	Required - contact early	Required	<ul style="list-style-type: none"> <li>Use framework</li> <li>Or Find a Tender (will take a minimum of 6 months, but is usually 9-12 months)</li> </ul>	Not permitted	Required - produced by TfL when leading on the procurement	<ul style="list-style-type: none"> <li>The signed contract</li> <li>The successful bid</li> <li>Procurement Strategy</li> <li>Contract Award Recommendation</li> <li>OSDC approval document</li> </ul>	9-12 months if full. Faster if using a framework
	CEO Decision (up to £500k)							
	Board (>£500k)							

## Appendix 2. Employment Status Indicators

22.3 The table below sets out the indicators that need to be considered when engaging an individual as a contractor. This will in turn help you complete HMRC's online Check Employment Status Tool (CEST).

Employee /off-payroll worker indicators	Consultants / Professional Services Company/Self-employed indicators
<input type="checkbox"/> Working solely or largely for OSDC	<input type="checkbox"/> Works for several clients at the same time
<input type="checkbox"/> OSDC has engaged the services of a specific individual. You will not accept a replacement/substitute	<input type="checkbox"/> OSDC will accept that the individual/firm provides a replacement/substitute if they are unable to work
<input type="checkbox"/> The work brief is a list of open-ended duties to be undertaken	<input type="checkbox"/> Required to deliver a particular specialist service with clear deliverables in accordance with a brief or specification
<input type="checkbox"/> Training on how you wish the work to be undertaken is provided at the start of the contract	<input type="checkbox"/> No training is provided as the individual is a highly trained specialist in her/his field and has been engaged to deliver specialist services
<input type="checkbox"/> Paid by the hour, day or month for the time worked	<input type="checkbox"/> Paid a pre-determined fixed or measurable-based fee for the work on the achievement of milestones
<input type="checkbox"/> Managed by someone at OSDC who takes responsibility for checking or reviewing the work carried out	<input type="checkbox"/> Responsible for determining how the work is done and for producing the work to the required standard (as set out in specification) and making any necessary amendments in their own time and at their own expense
<input type="checkbox"/> OSDC determines the days or hours worked	<input type="checkbox"/> Decides when to work and the key requirement is to deliver the output by the agreed dates
<input type="checkbox"/> Manages or supervises OSDC staff or contractors	<input type="checkbox"/> Does not manage or supervise OSDC staff or OSDC contractors
<input type="checkbox"/> Based at OSDC premises and uses OSDC equipment and services	<input type="checkbox"/> Works at their own premises – and they provide their own equipment and services and insurance
<input type="checkbox"/> The OSDC is unable to charge costs or withhold payments to the individual for unsatisfactory or delayed work and/or	<input type="checkbox"/> Bears the risk for services provided and work produced. The consultancy agreement specifies what happens if

Employee /off-payroll worker indicators	Consultants / Professional Services Company/Self-employed indicators
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pays for the additional time the individual takes to correct failures

services or work are not provided on time or if they are not to the standard required

### *HMRC's Check Employment Status for Tax (CEST) Tool / Qdos Assessments*

22.4 The law mandates that OSDC reviews contracts for services to ensure that individuals providing services in a manner similar to employees pay the correct tax and National Insurance contributions.

22.5 Before signing the contract or engagement letter, email the Technical Accountancy team with details of the services to be contracted. They will advise whether to use HM Revenue & Customs (HMRC) 'Check Employment Status for Tax' (CEST) tool or if an assessment by Qdos, a specialist in complex employment evaluations, is required. When raising the Purchase Order Requisition (POR) on SAP, a copy of the CEST/in-depth status check result in must be attached. The CEST result must include the HMRC generated reference number.

22.6 It is the responsibility of the budget holder to ensure these requirements are complied with prior to approving the Purchase Order Requisition (POR).

22.7 If the employment status is questioned in the future, HMRC will only be bound by the CEST outcome if the questions were answered honestly, the nature of the engagement has not changed over time and you are able to provide copies of the CEST result.

22.8 The CEST/Odos tool and any in-depth assessment required will need to be run when an individual/company has been selected, towards the end of the procurement process and prior to the contract being signed.

### *Frequency of assessments*

22.9 A new CEST/Qdos assessment is required if you enter into a new contract with the same individual or if there are changes to the current contract that impact on what or how services are delivered.