

Contracts and Funding Code

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Part A. Overview

1. Purpose and scope

1.1 The Greater London Authority's (GLA) governance arrangements are designed to ensure:

- there are clear expectations for the Mayor, Assembly Members and 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 the GLA for procuring or otherwise entering into contracts and other formal arrangements for:

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

1.3 It applies to everyone at the GLA: Members and staff – but noting it is predominantly for staff and especially those who enter 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 the GLA and its staff:

- secure value for money
- act fairly and transparently, ensuring third parties with which the GLA deals are treated equally, given the same opportunities and information and are evaluated properly and even-handedly
- safeguard against allegations of corruption or bias
- maintain proper audit trails to support actions, ensuring compliance with this Code can be demonstrated at any time
- 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 the GLA's interests, position and reputation
- be open and make information available about on our contract and grant funding processes and the agreements the GLA puts in place

- comply with the law

What this document covers

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

- the legal and commercial 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 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:

- Mayoral Decision-Making in the GLA
- Head of Paid Service's Staffing Protocol and Scheme of Delegation
- GLA Group Responsible Procurement Policy
- Financial Regulations
- Sponsorship Policy
- Expenses and Benefits Framework
- Gifts and Hospitality Policy and Procedure and the registering of gifts and interests
- Codes of Conduct for Members and Ethics and Standards for Staff
- Use of Resources Policy
- Anti-Fraud and Corruption Framework
- Whistleblowing Policy and Guidance
- Risk Management Framework
- Records Management Policy
- the GLA'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 via the intranet. It contains step by step, practical advice, including templates, for procurements led by GLA officers (generally those below £25,000) and signposts to the steps involved in more complex procurements led by the GLA Group's procurement service, provided by TfL Commercial, and the support available from them.

2. Core responsibilities

Approval and review

2.1 This Code was approved by the Mayor under MD2085 in April 2017. Subsequent revisions in November 2018 and July 2019 were approved by the Assistant Director of Finance and Governance, and this revision has been agreed by the Executive Director of Resources in consultation with the Mayor's Chief of Staff in accordance with para 2.4 below. It supersedes all previous versions.

2.2 Approving the Code at the highest-level serves to underpin and communicate the GLA's commitment to delivering the outcomes at paragraph 1.4.

2.3 The Executive Director of Resources will ensure this Code is reviewed at least every two years and that this review informs any subsequent update. The Assistant Director, Group Finance and Performance is responsible for reviewing how it is applied and adhered to on an ongoing basis.

Delegated authority to make updates

2.4 The Executive Director of Resources, having consulted with the Chief of Staff, may make amendments to this Code providing the 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 GLA's contracts and funding approach.

2.5 The Assistant Director, Group Finance and Performance has authority to make minor drafting, corrections and presentational changes to this document. He may not, however, substantively amend its provisions.

2.6 The Assistant Director, Group Finance and Performance may also issue and amend as necessary guidance to support this Code – providing any such guidance is consistent with it.

Implementation

2.7 For practical purposes, the responsibility for day-to-day implementation of this Code rests with the Assistant Director, Group Finance and Performance and their team, working with TfL Commercial. This includes communicating and advising on the requirements of the Code, with appropriate reinforcement and support.

2.8 The GLA's procurement function is provided by TfL Commercial under a shared service arrangement. Its responsibilities are set out paragraph 6.1. Working with the GLA, it will ensure this Code is supported by clear procurement guidelines and well-understood and effective processes.

2.9 TfL Commercial is not, however, responsible for the GLA's grant funding procedures. The Assistant Director, Group Finance and Performance, working with the Assistant Director of Financial Services and TfL Legal, will ensure there are robust arrangements and clear guidance for grant funding.

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 savings.

- 2.10 Further guidance, forms and templates supporting the GLA's contract and funding arrangements are available via the intranet, specifically through a Procurement Guidance document. Staff are strongly encouraged to review this intranet guidance alongside this Code.
- 2.11 At the directorate and team level, Executive Directors and Assistant Directors / Heads of are responsible for ensuring this Code is implemented by staff working to them.
- 2.12 Everyone at the GLA is responsible for adhering to and applying this Code.

Part B. Preliminaries

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 Mayoral Decision-Making in the GLA and, as appropriate, via a decision form (Mayoral, Director or Assistant Director Decision; or via a Delegated Authority Record). The decision form should set out the procurement / grant funding routes available to you
- b) once the decision form has been approved, 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. Note no commitment should be made, in any form, until such documentation has been executed

3.2 If this chronological process is not followed, then the GLA will be exposed to unnecessary risk. Retrospective approvals should not normally be sought. Should you be in a position where you must 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.

3.3 Do not underestimate the amount of time that may be required. Procurement and grant funding can be a lengthy process taking, at the more complex end of the spectrum, several months and perhaps up to a year.

3.4 If an organisation asks for notification while the process is still in train, it must be informed in writing that:

- its bid 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

4. Contract or funding agreement?

4.1 The following table will help you determine whether you will need to progress through a procurement (contract) or grant award (funding agreement) route.

Contract	Funding agreement
<ul style="list-style-type: none">• The GLA receives a benefit, usually in return for an agreed sum of money.• The contract requirements are specified by the GLA: there are firm contractual commitments that will be delivered.• The GLA is able to bring a claim for its resulting losses based on a breach of contract if these commitments are not delivered.• The process leading up to the award of a contract is governed to a greater extent by specific regulations.	<ul style="list-style-type: none">• The GLA is not receiving a direct or indirect benefit.• The GLA is supporting, via a third party, an activity that aligns with the Mayor's priorities, but which is the initiative and activity of that other organisation.• There is an expectation the organisation will seek or has sought additional funding for the activity 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 GLA stipulates are met.• The GLA is entitled to withhold or reclaim the funding if the conditions are not met, but may not be entitled to take any other action.• 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.

5. Declaring interests

5.1 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. 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.

5.2 An interest is where you, a member of your close family or someone in your household 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

6. The role of and early engagement with TfL Commercial

TfL Commercial's role

6.1 TfL Commercial leads on procurement issues for the GLA. They are responsible for:

- developing and coordinating a corporate approach to the purchase of goods and services, working with the GLA
- developing procurement strategy and policy
- advising and providing guidance on procurement issues, working closely with the Finance and Governance, and TfL Legal teams
- helping ensure the GLA meets all legislative requirements and demonstrates value for money and a fair and transparent approach to procurement
- managing major corporate procurement exercises
- supporting directorate GLA procurement exercises
- conducting financial appraisals of potential suppliers
- advising directorates with complex contract monitoring
- procurement administration, such as:
 - allocating procurement reference numbers
 - maintaining a comprehensive procurement 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

Engaging with TfL Commercial

6.2 TfL Commercial should be contacted at the earliest possible opportunity once you have identified a need to procure goods or services valued at more than £25,000 – or if you otherwise need to use their services. This helps to reduce the risk of procurement problems, which can delay projects later on.

6.3 You should involve TfL Commercial by submitting to them a Procurement Engagement Form so that they

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 Mayoral Decision-Making in the GLA. This means you will need a decision form (MD, DD or ADD) whenever non-routine (including programme) expenditure over the minimum threshold is involved. Similarly you must also ensure you have the relevant approvals for any expenditure from Greater London Returning Officer and Assembly budgets through the distinct processes that exist for these two areas.

That is not to say, however, that you cannot seek advice from TfL 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 and novel, contentious or repercussive (NCR) procurement routes. The latter requires an MD.

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 clear what level of spend would be required. In such cases, you should speak to the Governance Team for advice; and you must not enter into contract or grant agreement without an approved decision at the level required by Mayoral-Decision Making in the GLA.

can determine the appropriate level of their involvement: the procurement process will not be able to proceed until you have done so.

7. Financial and legal advice

7.1 Financial Services are responsible for advising on pricing and other financial aspects of contracts and funding agreements and you should also contact the team as soon as you begin to formulate any matter or project to which this Code may apply.

7.2 TfL Legal advise on issues such as:

- the GLA'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 Commercial)
- the use of GLA resources (in liaison with Finance and Performance & Governance)
- the proposed award of grant funding to third parties
- the proposed entry into sponsorship arrangements with third parties
- a range of other commercial, employment, planning and public law issues

7.3 You must seek both financial and legal comments on GLA decision forms; principally on Mayoral and Director's decision forms; but where there is a proposed departure from this Code, on Assistant Director's decision forms also. That does not, however, preclude seeking guidance 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). Indeed, such early engagement with Finance and Legal is recommended, as it is with TfL Commercial. Legal should be contacted at the earliest opportunity and in any event as soon as you begin to formulate any matter or project to which this Code may apply; 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 their support may be required.

8. Other sources of advice

8.1 You should seek advice and assistance as follows:

What	Relevant section of the Code	From whom
Procurement	Sections 9-11	Procurement Champions and Procurement Guidance
Grant funding	Section 12	TfL Legal, Financial Services and/or the Performance and Governance Team
Sponsorship arrangements	Section 13	Sponsorship Team in External Affairs
Employment contracts and the distinction with consultancy contracts	Part E	Human Resources (employment) and Financial Services (consultancy contracts and distinguishing as to which is which)

Part C. Commercial 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 involving non-routine (usually programme) expenditure.

Estimated contract value	Procurement process (in overview)
<ul style="list-style-type: none">• Goods and services above £150,000• Works and land development opportunities above £4,000,000	<ul style="list-style-type: none">a) Engage TfL Commercialb) Develop a procurement strategy with TfL Commercialc) Seek a call-off from a suitable framework, where possibled) Undertake a tender process compliant with the Public Contracts Regulations 2015 through TfL Commercial, which can take up to a year
<ul style="list-style-type: none">• Goods and services of more than £25,000 and up to £150,000• Works and land development opportunities of more than £25,000 and up to £4,000,000	<ul style="list-style-type: none">a) Engage TfL Commercialb) Develop a procurement strategy with TfL Commercial (if over £100,000)c) Seek a call-off from a suitable framework, where possibled) Undertake a formal tender process, which will be managed by TfL Commercial via eTendering
<ul style="list-style-type: none">• Goods and services of more than £10,000 and up to £25,000	<ul style="list-style-type: none">a) Seek a call-off from a suitable framework, where possibleb) If not, opt for competitive tendering, seek three or more written quotes and attach all quotes received to the shopping cartc) Seek advice from TfL Commercial only in exceptional circumstances
<ul style="list-style-type: none">• Goods and services up to £10,000• Works and land development opportunities up to £25,000	<ul style="list-style-type: none">a) Seek a call-off from a suitable framework, where possibleb) If not, decide whether it would be preferable to opt for a competitive tendering route or, where permissible, a single supplier routec) If using a single supplier, secure value for moneyd) If opting for competitive tendering, 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 its full term; ie. not solely on an annual or fixed term basis. And it should include any amount earmarked in the contract to cover risks, as a contingency and for optional extensions and additions.

10. Exemptions from normal procurement processes

10.1 Exemptions to 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
- 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)
- 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
- explain why the proposed exemption applies and is required in the decision form – 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

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

Single source exemption

The award of contracts should normally be sought through a decision form, at the point at which the spend is being approved (ie. in advance). Legal advice must be sought on the potential application of an exemption and reflected in the decision form (including Assistant Director decision forms). The TfL Commercial single source request form should be appended to the GLA 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.

Contracts finder

All competitive procurements over £25,000 must be advertised on Contracts Finder, 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 Commercial will manage this process on your behalf.

Contracts above the EU thresholds are subject to the Public Contracts Regulations 2015. This Code has set £150,000 as the GLA 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 Commercial for procurement of contracts above the GLA 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 The Procurement Guidance document includes a link to a template. But an ITT will typically:

- describe the GLA – 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.

<http://intranet.london.gov.uk/node/12956>

Selection and evaluation criteria and process

11.5 You must establish selection and evaluation 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.

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

Frameworks

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

Using a framework can save time and money:

- they avoid the need for a full tender/OJEU 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.

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.

11.7 For contracts worth over £10,000, 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.

11.8 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.

Contracts and terms and conditions

11.9 For contracts under £25,000, it may be sufficient to rely on the standard purchase order (PO) terms and conditions. For contracts over £25,000, and where a framework is not being used, TfL Commercial will liaise with TfL Legal to identify suitable terms and conditions.

11.10 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.

11.11 For all procurements over £150,000, 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. As this is potentially a complex issue and influences decisions about which route to follow, you should seek legal advice as soon you become aware of the need for a possible funding arrangement. Individual arrangements will need to be considered on a 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.

12.2 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 GLA:

- is looking for a third party to deliver a GLA programme, project or initiative
- 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

12.3 Decisions to award grant funding should generally be made on the basis of the outcome of a transparent, competitive application process. All of the GLA's other Financial Regulations continue to apply and value for money must be demonstrated.

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

12.5 The effect of a funding arrangement is that the recipient is entitled to make claims for and be paid (and keep) the GLA'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 GLA wants to achieve or support with the funding
- what the funding can (and cannot) be used for
- the measures the GLA 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

12.6 If the recipient does not meet these conditions, some or all of the funding can be reclaimed by the GLA. However, because this is a funding agreement and not a contract for goods or services, the GLA may not be able

Funding agreement template and toolkit

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 and a more extensive template. You should get legal advice before finalising the agreement and particularly if you need to adapt the template.

Also on the intranet is the GLA's funding agreement toolkit, which must be followed at all times.

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 GLA suffering loss.

12.7 In general, you should only use a funding agreement to cover a period of one year and organisations should be encouraged to secure funding from other sources.

12.8 You must obtain approval of funding arrangements from an Executive Director, Assistant Director or Head of 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 GLA will take to ensure that the funding is used only for the prescribed purpose

and providing:

- a copy of the funding agreement for signature

12.9 VAT is not payable by the GLA on payments made under funding arrangements. Care must be taken to ensure that potential recipients are made aware the amount of any funding awarded will be the gross value of the payment and the costings in their proposals for funding must take account of this. No additional funding will be provided to cover a recipient's VAT costs not included in its proposal.

13. Sponsorship opportunities and donations

13.1 The GLA has a Sponsorship Policy and a small team, based in External Affairs, that leads on sponsorship. You should refer to that policy, available on the intranet, and contact the team at the outset if you are thinking about seeking sponsorship for an activity or event.

13.2 The Sponsorship Team has limited resources and must take a view on priorities for the year across the GLA. They are experienced and will have a clear idea about which activities are likely to attract sponsorship.

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

13.4 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

13.5 A donation has no conditions attached whereas, under a sponsorship arrangement, the sponsor receives discretionary services from the GLA 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.

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

13.7 Invoices must be raised for all sponsorship arrangements and donations. Please contact the Financial Services Team 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 worker¹ or a consultant². This will determine:

- whether you should progress the appointment through 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 1 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 [Finance and Governance](#) who will advise whether to use the HMRC CEST tool or whether an assessment is required using Qdos (a company specialised in complex employment assessments).

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

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

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 GLA, 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 now the GLA'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 GLA 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.

¹ An Off-Payroll worker refers to contractors, freelancers, consultants, individuals working through their own company in a manner similar to that of an employee.

² 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.

15. Employees

15.1 If you wish to recruit someone as a GLA employee (someone on a GLA 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 business accountant, HR will support the unit through the approval process via a Head of Paid Service (CO) form.

15.2 Once the post is approved, or if you are recruiting to an existing post, the HR team will lead on recruitment.

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 Executive Director via the approval for a temporary agency worker form. Once approved, all temporary agency workers should be sourced via HR; and normally via the TfL Agency Framework.

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 GLA's decision-making framework – from the Chief Officer (Head of Paid Service) is required for any appointments exceeding £600 per day per person.

17.2 If the Employment Status Indicators in Appendix 1 point to a consultancy (i.e. not an employee) arrangement, then you should proceed as follows.

Value of contract	Process
Above £10,000	<ul style="list-style-type: none"> Secure approval through a decision form at the appropriate level (as per Mayoral Decision-Making in the GLA). Source the services, as per the procurement guidance at Part C. Once the consultant has been selected and prior to signing the contract, an employment status check is required. Contact Finance and Governance will advise whether to use the HMRC CEST tool or whether an assessment is required using Qdos (a company specialised in complex employment assessments). See paragraph 18.1 for payment arrangements.
Up to and including £10,000	<ul style="list-style-type: none"> Secure approval to procure through a Delegated Authority Record (DAR) form. Source the services as per the procurement guidance at Part C. Once the consultant has been selected and prior to signing the contract, send the DAR to Financial Services for the section on employment status to be completed. Financial Services will advise whether to use the HMRC CEST tool or whether an assessment is required using Qdos (a company specialised in complex employment assessments). See paragraph 18.1 for payment arrangements.

17.3 You may 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 So that professional services are chosen so as to 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 you must as a minimum provide TfL Commercial with a completed procurement engagement form, with details of the services required and a copy of the proposed specification.

17.6 Whether or not you procure via TfL Procurement 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 GLA officer who is to manage the contract and any other governance arrangements

17.7 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 Commercial to ensure that all appropriate documentation is signed for the GLA and 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">• Paid via payroll and organised by HR.
Consultants and professional services	<ul style="list-style-type: none">• If they are a new supplier, they will need to <u>register as a supplier</u> on the supplier registration portal, BRAVO.• Shopping carts and POs must be raised once the contracts have been signed.
Off-payroll workers	<ul style="list-style-type: none">• If the HMRC CEST tool/Qdos 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.• You need to speak to Financial Services (GLATEchnicalAccountancy@london.gov.uk) and HR to discuss how best to arrange payments.• The options are for the consultant to contract with an agency or to be paid as an off-payroll worker via the GLA payroll. In both cases, their payments will be subject to PAYE tax and NI deductions.• You will need to inform the consultant and discuss their preferred payment route.• If the consultant/PSC is also VAT registered, VAT will also be paid on the provision of a VAT invoice.

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

19. Executing contracts and other formal documents

19.1 Mayoral Decision-Making in the GLA gives certain senior members of staff a 'Signatory Permission', allowing them to sign contracts and other formal documents without going through an additional approval process.

19.2 Certain contracts and other formal documents will need to be executed as deeds. The GLA may execute deeds a) by applying its seal and having this authenticated by the Mayor or any member of staff with Signatory Permission, or if authorised by such a person, one of the GLA's legal advisors; or, where this is not practicable, (b) by any two members of staff with Signatory Permission signing the formal document as a deed.

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 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 (a signed, scanned copy should be sent electronically to TfL Commercial)

20.2 Any information retained by the GLA 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 GLA Information Governance Team.

20.4 More information about FoIA exemption provision can be found on the Information Commissioner's Office website (<https://ico.org.uk/for-organisations/guide-to-freedom-of-information/refusing-a-request/#10>) and information about document retention is set out in the GLA's Records Management Policy.

Transparency

20.5 The GLA 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 GLA publishes:

- a register of all its contracts
- contract opportunities and invitations to tender
- contracts, with appropriate redactions
- a register of funding agreements (the Performance and Governance team must be informed of all executed funding agreements so they can be added to the register)

20.6 It is important those the GLA 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.

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. See the GLA's Risk Management Framework for further information.

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 Commercial and other experts early on, including Legal, Finance and Equalities

22. Contract management

22.1 All contracts for services must be managed in line with the principles set out below.

22.2 Contract management can be divided into three elements: service delivery, relationship management and contract administration.

Element	Key points
Service delivery	<ul style="list-style-type: none">• 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.• The contract manager, normally the client, is responsible for managing service delivery.• 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.• 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 line where there are issues.• Successful supplier improvement plans will look at the performance issue both from the client and supplier perspective, set clear improvement objectives, identify constraints and enablers, and establish measures against which the improvement plan will be monitored.
Relationship management	<ul style="list-style-type: none">• This is about maintaining a sound, business-like relationship with the supplier.• 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.• 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.
Contract administration	<ul style="list-style-type: none">• This is the formal governance of the contract, including the way in which any changes to the contract are made.• Contract administration is normally carried out by TfL Commercial with assistance from Legal if required.• 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.• 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.• A variation in rates would normally be instigated by the supplier as a result of a pre-agreed price variation clause included in the contract terms.

Element	Key points
	<ul style="list-style-type: none"> • A variation brought about by a change in legislation would normally be instigated by the procurement agent who carried out the original tender. • All variations would be processed by TfL Commercial, which prepares the formal variation document for signature by the supplier.

Appendix 1. Employment Status Indicators

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 the GLA	<input type="checkbox"/> Works for several clients at the same time
<input type="checkbox"/> The GLA has engaged the services of a specific individual. You will not accept a replacement/substitute	<input type="checkbox"/> The GLA 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 measurables-based fee for the work on the achievement of milestones
<input type="checkbox"/> Managed by someone at the GLA 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"/> The GLA determines the days or hour 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 GLA staff or contractors	<input type="checkbox"/> Does not manage or supervise GLA staff or GLA contractors
<input type="checkbox"/> Based at City Hall or other GLA premises and uses GLA 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 GLA is unable to charge costs or withhold payments to the individual for unsatisfactory or delayed work and/or pays for the additional time the individual takes to correct failures	<input type="checkbox"/> Bears the risk for services provided and work produced. The consultancy agreement specifies what happens if 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

The law requires the GLA to undertake a review of how the services are being delivered; and HMRC has developed a CEST assessment tool to help. Your responses will allow the CEST tool to determine whether the engagement is similar to that of an employee or to one of self-employment/consultancy; or it may state that the result is inconclusive. If you obtain an inconclusive result, contact the Technical Team in Financial Services, who will arrange for a more in-depth employment status review to be undertaken via Qdos (a company specialising in employment status assessments)

When raising the shopping cart on finance system, a copy of the CEST/Qdos result in PDF format must be attached to the shopping cart. The CEST result must include the HMRC generated reference number.

It is the responsibility of the budget holder to ensure these requirements are complied with prior to approving the shopping cart.

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.

The CEST tool/Qdos assessment 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.

Appendix 2. Overview of Procurement Process at different values

Value	GLA approval	Commercial Procurement involvement	Procurement Engagement Form	Procurement Strategy	Best value / quotes	Single source	Transaction Award Report	Evidence to attach to the Shopping cart (note some of this should not be made available to the vendor)	Procurement timescales (not including timescales for GLA approval)
<£10k	DAR	No	Not necessary	Not required	Use framework or 3 quotes are required (If only 2 respond with quotes, but the other declines, this is acceptable but you must collect evidence) or, single supplier justification	Not recommended. You should record the reasoning in the DAR and show how best value has been obtained	Not required	The quote(s) (email, written quote or catalogue reference) DAR	3-9 weeks
£10 - £25K	ADD	Not mandatory	Only needed if engaging Commercial	Not required	Use framework or 3 quotes are required (If only 2 respond with quotes, but the other declines, this is acceptable but you must collect evidence)	Not recommended. This needs to be approved in the ADD and also needs a Single Source Justification document	Preferable, but not compulsory	The quotes (written quote on headed paper, signed) Evidence of declining to quote (if relevant) Procurement Engagement Form (if using) Transaction Award Report (if using) Single Source Justification (If using) ADD	3-9 weeks, depending on the supplier engagement
£25k - £50K	ADD	Required - contact early	Required	Required if >£100k	Use framework or minimum 3 quotes required Must be advertised on Contracts Finder (unless using a framework or pre-selection list of suppliers) - Pre-agreed award criteria Must be managed through the e-Tendering portal	Will be considered, but must be discussed up-front (the higher the value, the less likely to be approved) Should normally be approved in the ADD / DD and requires a Single Source Justification document	Required	The quotes Single Source Justification (If using) Procurement Engagement Form Transaction Award Report GLA approval document (ADD or DD)	3-6 months depending on complexity and route to market. Faster if using a framework
£50 - £150k	DD								
>£150k	MD	Required - contact early	Required	Required	Use framework or OJEU (will take a minimum of 6 months, but is usually 9-12 months)	Not permitted	Required	The signed contract The successful bid Procurement Engagement Form Procurement Strategy Transaction Award Report MD	9-12 months if full OJEU. Faster if using a framework