

Role of contracts & procurement

Many bring sites and/or containers are provided and serviced without any formal arrangement between the different parties (i.e. the local authority and the service provider) involved. While this arrangement may operate well in some cases, in general it is recommended that contracts are put in place for bring bank services. A well prepared contract can:

- ensure all parties clearly understand what is required;
- allow for change and flexibility;
- aid the management of risk;
- facilitate performance monitoring;
- assist in the resolution of disputes;
- allow for price adjustments;
- provide incentives to encourage exceptional performance or default mechanisms following poor performance; and
- generally help avoid recourse to expensive legal arbitration.

This fact sheet looks at why contracts are important for bring site service provision, examines some of the key issues to consider in defining the overall scope of the contract and summarises relevant European Union (EU) procurement rules and guidance. For more detailed information on the key issues to include in your contract and the decisions you may need to make, see the separate fact sheet *Procuring new contracts*.

Formalising arrangements for containers on private land

Regardless of whether a service is provided by the local authority or a contractor, if containers are located on private land, you should consider having a formal agreement with the landowner to set out the terms of this arrangement and to manage the risk and liabilities related to potential fly-tipping, vandalism and resultant site cleaning.



For containers on private land, define within the contract clear responsibilities for cleaning up fly-tipping incidents.

Issues to consider

When considering contracting for bring recycling services, there are several key issues to bear in mind at the outset.

- When letting waste management contracts, there can be opportunities to package various services under one contract – e.g. incorporating servicing of bring containers within a kerbside collection service contract. This can reduce both procurement and contract management costs, but could reduce your authority's scope to understand the costs of individual services, which may be important to you.
- Most authorities collect a range of materials for recycling at bring sites. Contracts can be put in place for all bring recycling services, or for specific materials. Such decisions will affect the value of the contract and the procurement procedures that need to be followed (see EU procurement rules). One contract may be simpler to manage from the authority's perspective, and reduce the resources needed to manage the procurement exercise, but it may reduce the number of parties that are interested in tendering.
- Does your authority wish to partner with another authority/ies? Partnering can provide economies of scale, reducing both procurement and contract management costs. However, it is important that partners have similar service objectives and requirements, otherwise it can make specifying the service difficult.
- When tendering services it is critical to specify clearly the services required, as lack of clarity over the required services can lead to a poorly defined contract (see Procuring new contracts sheet). Information such as likely emptying frequencies and tonnages per site per container or per material per site will help tenderers to price their bids.
- Contracts should include some scope for flexibility and for managing risk. For example, you may wish to specify how often you would have an opportunity to change elements of the service – every year, every 6 months, or when specific issues arise. Another issue to consider is fluctuations in market prices for materials, particularly if you share income with a collection contractor or a third sector organisation. How often you review material prices and your share of income will depend on the length of the contract and the likely volatility of the markets.

EU procurement rules

When contracting bring services, you must follow EU procurement rules. These rules aim to open up competition and ensure transparency, fairness and equal treatment for all bidders for public contracts. In January 2006, the Consolidated Procurement Directive (2004/18/EC) came into force and is transposed into English law via the Public Contracts Regulations 2006.

The EU directive and UK regulations work on the basis that if the total value of a contract exceeds the set financial threshold, the contract **must** be open for competition across the EU and **must** be advertised in the Official Journal of the European Union (OJEU). The thresholds for goods, services and works, which are set and reviewed every two years, are currently (since 1 January 2012):

- Goods and services: >£173,934; and
- Works (e.g. construction projects) : >£4,348,350.

Whether bring site provision and services are over these thresholds will depend on the extent of the services being tendered and the length of contract. In general, contracts for the purchase of containers only, or for servicing containers only, are likely to be below the "goods and services"

threshold, while works such as putting in place hard standing, fencing, lighting, etc on a bring site are likely to be below the “works” threshold.

Check the latest thresholds at www.ojec.com/Thresholds.aspx.

Contracts below the threshold

Where the proposed contract is below the relevant threshold, your authority’s ‘standing orders’¹ need to be followed. These are rules set by a local authority in relation to a wide variety of activities connected with the fulfilment of their responsibilities, including staff recruitment and letting of contracts. For contract procurement, standing orders typically include requirements/procedures related to:

- contract values at which tendering must be undertaken;
- criteria upon which to select tenderers (or the number of estimates to be obtained in lieu of a tender process), tender board procedures and the tender evaluation model;
- financial regulations, incorporating measures to protect an authority’s fiduciary duty to secure best value for money and clarifying officer levels of authority and responsibility;
- legislative requirements, concerning the limits of officer authority;
- human resources (equal opportunities policy and race relations);
- environmental and sustainability policies; and
- competition requirements, i.e. avoidance of corrupt or illegal practices and responsibility to secure the most economically advantageous tender or quotation for the authority.

Your authority’s procurement team will be able to provide you with full details of the standing orders you need to follow.

Contracts above the threshold

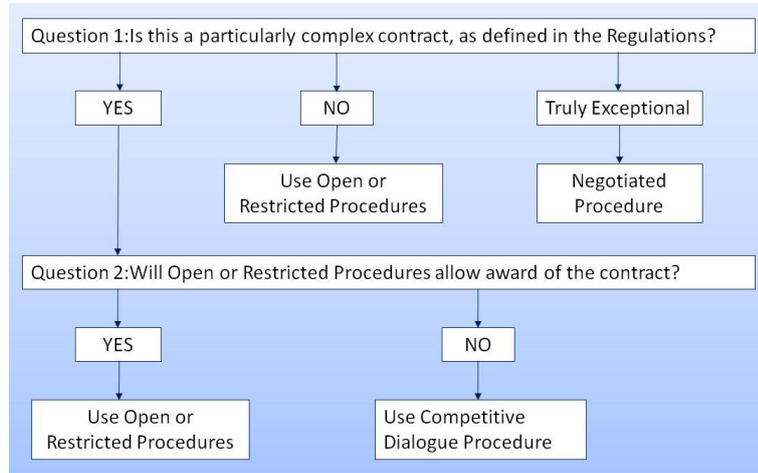
If your proposed contract is **above** the relevant threshold, then you must follow one of the four procedures set out in the EU directive – open, restricted, negotiated or competitive dialogue.

It is unlikely that the procurement of bring site recycling services would meet the criteria (in HM Treasury’s Guidance on Competitive Dialogue) for using the Competitive Dialogue or Negotiated procedures, see http://www.hm-treasury.gov.uk/d/competitive_dialogue_procedure.pdf. Instead, as a local authority generally would be able to clearly define the services required, the open or restricted procedure should be followed:

- open – the authority places a notice in the OJEU. All companies who respond to the notice are sent tender documents and invited to submit a tender;
- restricted – the authority places a notice in the OJEU. All companies who respond to the notice are sent a pre-qualification questionnaire (PQQ). The authority assesses all the PQQs and selects a shortlist of between 5 and 20 companies who are invited to tender.

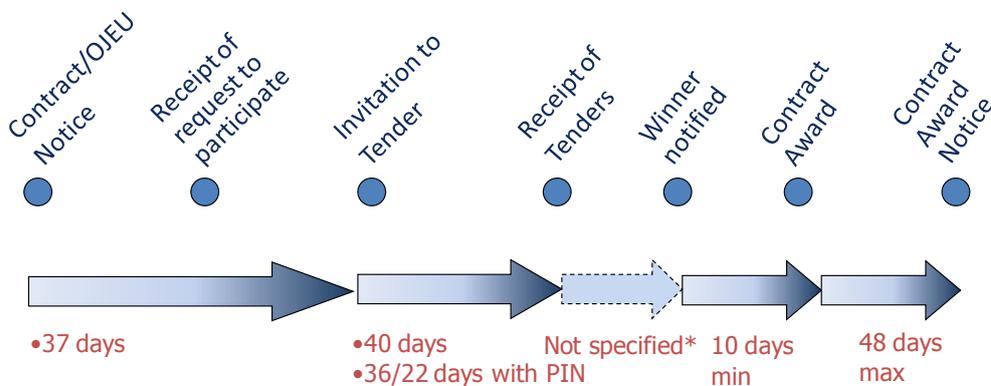
¹ Standing Orders are governance rules which local authorities are required to set and cover wide range topics including financial and legal matters.

The choice of open or restricted will depend on what is being procured: the open procedure tends to be used for processes with limited evaluation criteria, such as the purchase of standard containers, while procurement of more complex goods/services, such as operating the bring site recycling service, normally would be via the restricted procedure.



Selecting the procurement procedure Source: HMT Guidance on Competitive Dialogue

Each procedure imposes minimum timescales for each of the tender activities. These ensure that interested parties have a reasonable time to respond at each stage.



- Electronic communication: 7 day reduction for electronic notices
5 day reduction for electronic tender documents
- *must be reasonable

Restricted procedure: minimum timescales

Frequently asked questions

Is the procurement of bring site recycling services covered by the EU procurement procedures?

It depends on the total value of the contract. If the total value for a goods/services contract is over £173,934, then you must follow EU procurement procedures. For example if a 4 year contract, valued at £45,000 per annum, is to be let, the total value of the contract would be £180,000 and hence the EU procurement procedures would need to be followed.

Is there a recommended contract length for bring site recycling contracts?

No. Contract length for bring recycling services could be affected by a range of factors including:

- whether the bring services are being tendered with other services – for example, if the bring service is being tendered with a kerbside collection service it is likely the kerbside element will dictate the contract length;
- the scope of the services – for example, if a contract is for just one material, it may be worth setting the contract length to match existing bring services;
- if you are considering a joint procurement with another local authority. If so, short term contract lengths could be set to make end dates coterminous with the other authority's contracts, or contracts could be longer to allow for the partner authority to join once its existing contract has come to an end, in a phased start; and
- when you think you will need to purchase new equipment, undertake site development work etc., allowing a reasonable depreciation period for the capital assets or any infrastructure work.

Check list

- Define the services that are to be procured and decide if bring site recycling services are to be included in a contract with other services or awarded as a separate contract.
- Define the scope of the services to be tendered –all services provided on the bring sites, site cleaning only, or services for specific materials only?
- Consider opportunities to procure services jointly with another local authority.
- For containers located on private land, seek to put in place a formal agreement with the landowners for the use of the sites.
- Based on the contract to be let, consider which procurement procedure will be followed: Is the total value of the services to be contracted greater £173,934? If so the EU procurement rules will apply. If the contract is below the EU threshold of £173,934, check the requirements of your authority's Standing Orders.
- Ensure the contract length fits with the services to be tendered and other arrangements related to the service, for example current kerbside collection contracts, or future plans with regards to partnering with other authorities.