



REPORT PREPARED FOR

**London Borough of Bromley**

**Pension Fund**

February 2018

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**This report by your adviser, John Arthur of AllenbridgeEpic Investment Advisers (“Allenbridge”), is a review of the UK Public Procurement Process for the London Borough of Bromley Pension.**

## UK Public Procurement Process

### The Regulations

The recent tenders for the London Borough of Bromley Pension Fund were conducted under UK Public Procurement Regulations 2015. These set out the rules under which all contracting authorities must procure public contracts with a value above a certain threshold (c £180,000) Almost all contracts with asset managers for the management of LGPS Fund assets will be above this threshold and therefore covered by these regulations.

The regulations (which run to 128 pages!) set out how contracts must be designed; tenders publicised; the time scale for receipt of submissions; the comparison and scoring of submissions and the final contract awarded. They are highly prescriptive, time consuming and not well suited to procuring a highly technical service such as fund management, however, they are designed to create a level and non-discriminatory playing field across Europe for public sector tenders and must be adhered to at the current time.

The rules exempt the procurement of single line investments such as individual securities but do include any service such as the provision of a segregated mandate to manage a proportion of a Pension Scheme's assets. The issue of whether pooled funds are included or excluded is open to some contention and the exact interpretation of a number of the rules can depend on each LGPS Fund's Procurement Officer. For example, an investment into a Private Equity Fund may be deemed acceptable outside of the Public Procurement rules due to it being a investment into a fund. This interpretation could be extended to include investments via pooled funds where multiple investors are invested in one vehicle. This is shown as one line in custodian records and therefore they can be interpreted as a single line investment thus enabling the procurement to be conducted outside of UK Public Procurement rules. Whilst this practice has not, to our knowledge, been challenged through the courts, not all LGPS Funds or their Procurement Officers accept that this exclusion can be taken to cover the investment into a pooled fund.

With the manager selection requirements for the London Borough of Bromley recently conducted, the procurement was for either a segregated or pooled mandate and therefore the tender was conducted under the UK Public Procurement Rules.

The UK Public Procurement Rules do include a number of general principles of procurement as set out below:

#### ***Principles of procurement***

*18.(1) Contracting authorities shall treat economic operators equally and without discrimination and shall act in a transparent and proportionate manner.*

*(2) The design of the procurement shall not be made with the intention of excluding it from the scope of this Part or of artificially narrowing competition.*

*(3) For that purpose, competition shall be considered to be artificially narrowed where the design of the procurement is made with the intention of unduly favouring or disadvantaging certain economic operators.*

## Challenges to Public Procurement

Based on our research, there have been numerous challenges to public procurements conducted under these regulations across Europe since their introduction, both through the national courts and up to and including the European Court of Justice and the European Financial Ombudsman. This is not overly surprising given the high volume of public contracts issued across the EU in any one year. The majority of these challenges have been regarding scoring methodology and an inconsistency between the scoring mechanisms described in the tendering documents and that actually undertaken; or in the inclusion or exclusion of tenders on technical grounds differing from that described in the tender documents. This underlines the need to write the tender documents concisely and to then follow the scoring methodology described in these documents to the letter and to keep records of the process. There have also been challenges based at least in part on Clause 18 stated above, regarding the equal treatment of bidders.

It is our assumption that the Authority wish to avoid the likelihood of any legal challenge irrespective of whether it is ultimately successful or not due to the potential adverse publicity and cost of fighting such a challenge. To date Allenbridge have never been challenged on a procurement conducted under these rules (or any procurement for that matter!).

## Type of Tender

There are a number of different types of tender allowable under the UK Public Procurement Rules, each of which is best suited to a particular type of service or product being procured. The relevant approach for procuring a provider of a highly technical service such as fund management is a Restricted Tender. This is a two stage approach and allows the buyer to make an initial, qualitative, assessment of each candidate before inviting the a limited number who best fit the brief to submit a tender for the contract.

The initial documentation in a Restricted Tender has to be completed by all those who wish to be considered for the contract and is termed a Standard Questionnaire. This covers various pass/fail questions and grounds for automatic exclusion due to past misdemeanours (bankruptcy, fraud, non-payment of taxes etc). It also allows for a limited number of high level technical questions which, in the case of the recently conducted tenders for LB Bromley, were used to access a firms organisational structure; customer service; investment philosophy; past track record and administration. These questionnaires are then scored and the submissions ranked with the top few being invited to tender for the contract. In the case of the recent Bromley Multi Asset Income mandate, Allenbridge received 29 responses to the initial Standard Questionnaire and, post discussion with the Funds Pension Officer and Chair of the Investment Committee, agreed to invite the top 8 to continue to the second stage of the procurement.

The second stage of a Restricted Tender is an Invitation to Tender Questionnaire, this questionnaire is more focused around technical questions which, in this case, is the manager's investment process – how will they actually manage the portfolio. It allows a more in depth analysis of the technical capabilities of each tenderer to be assessed. Again, post receipt of these submissions, they are scored and ranked with only those still capable of winning the mandate, invited to interview.

At the end of a Restricted Tender the best tenderers may be interviewed. This allows a selection panel to meet the individuals who will be delivering the service and to question their capability and fit with the ethos of the Fund.

Allenbridge have conducted numerous procurement exercises under UK Public Procurement Rules and have been instructed by LGPS Fund Procurement Officers that all the required documentation needs to be provided at the onset of the procurement process. This includes the Standard Questionnaire, the Invitation to Tender and any questions that the selection committee may wish to ask at the interview stage. The reason for this is to aid the tenderer in ascertaining whether they wish to compete for the tender but also to show consistency of treatment of each tenderer and thereby adherence to clause 18 of the General Principles for the UK Public Procurement rules.

Throughout the Standard Questionnaire, the Invitation to Tender and the interview process, Allenbridge has developed a standard set over time and, in conjunction with the client, will review and or amend them to meet not only the mandate specific requirements but also any particular issues raised by investment committee members (i.e. usage of derivatives in the case of Bromley). This enables us to score the submissions in a way that best reflects the intentions of the client.

The current rules have been written in conjunction with EU requirements. The UK's departure from the EU will provide the opportunity to revisit these rules, however, I would expect the intention to provide a level playing field for tendering for public contracts will remain and that because of this, any changes may be minimal.

John Arthur