

# Contract Standing Orders

# Contents

<b>CONTENTS</b> .....	<b>2</b>
<b>SECTION A – SCOPE OF THE CONTRACT STANDING ORDERS</b> .....	<b>3</b>
<b>SECTION B – LOW VALUE CONTRACTS UP TO £50,000</b> .....	<b>9</b>
<b>SECTION C – MEDIUM VALUE CONTRACTS – £50,000 TO BELOW SERVICES THRESHOLD</b> .....	<b>11</b>
<b>SECTION D – HIGH VALUE CONTRACTS – OVER THE SERVICES THRESHOLD</b> .....	<b>15</b>
<b>SECTION E – WAIVER</b> .....	<b>21</b>
<b>SECTION F - POST AWARD/IN-CONTRACT DECISIONS</b> .....	<b>23</b>
<b>SECTION G - FRAMEWORKS AND DYNAMIC PURCHASING SYSTEMS (DPS)</b> .....	<b>28</b>
<b>SECTION H - SPECIAL PROCEDURES</b> .....	<b>29</b>
<b>APPENDIX 1: GLOSSARY</b> .....	<b>32</b>
<b>APPENDIX 2: RELEVANT THRESHOLDS</b> .....	<b>38</b>
<b>APPENDIX 3: CONTRACT VALUE AND CONTRACTS REQUIREMENTS</b> .....	<b>39</b>
<b>APPENDIX 4: SUMMARY OF APPROVALS</b> .....	<b>41</b>
<b>APPENDIX 5: SLT MEMBERS RESPONSIBILITIES</b> .....	<b>45</b>
<b>APPENDIX 6: MODIFICATIONS AND REGULATION 72 OF THE PCR</b> .....	<b>46</b>
<b>APPENDIX 7: TIME LIMITS FOR PROCUREMENTS</b> .....	<b>48</b>
<b>APPENDIX 8: PROCUREMENT PROCESS STEP BY STEP FOR HIGH VALUE PROCUREMENTS</b> .....	<b>49</b>
<b>APPENDIX 9: REPORT TEMPLATES</b> .....	<b>60</b>

## Section A – Scope of the Contract Standing Orders

### 1. BASIC PRINCIPLES

- 1.1. These Contract Standing Orders (CSOs) are made pursuant to [section 135](#) of the Local Government Act 1972. They apply to all Council staff and external consultants with responsibility for letting contracts.
- 1.2. Words or phrases that begin with an initial capital letter, initialisms and acronyms are defined in [Appendix 1: Glossary](#).
- 1.3. Clear and consistent lines of management accountability must be demonstrable and enforced. We need to embed a new ruthlessly financially efficient mindset which shows we have zero tolerance, right across the Council, for non-compliance with Contract Standing Orders, Financial Regulations and controls.
- 1.4. Officers with responsibility for buying goods or purchasing services or procuring works, entering into concession arrangements, modifying or extending contracts or otherwise dealing with contract arrangements must comply with the minimum requirements established by these CSOs. The aims of these CSOs are to promote good purchasing practice, public accountability and transparency, to support the delivery of Council's objectives and priorities, to ensure that the Council obtains value for money, compliance with legislation and to deter corruption. Following the rules is the best defence against allegations that a decision has been made incorrectly or fraudulently. Failure to follow them may result in disciplinary action being taken or even criminal proceedings.
- 1.5. Every contract entered into by the Council must be in connection with a Council function and shall be procured in accordance with all relevant legislation including procurement Regulations. These CSOs have been written to reflect the current legislative requirements; however, in the event of any inconsistencies between these CSOs and the requirements of the Regulations the latter will take precedence.
- 1.6. Where you consider there is any ambiguity in these CSOs please let the Head of Procurement know, who will determine any such query following consultation with the Director of Resources.
- 1.7. Each Strategic Leadership Team (SLT) Member must take immediate action in the event of breach of these CSOs by reporting this breach to the Head of Procurement. It will be the responsibility of the Head of Procurement to determine the nature of the breach. If it is deemed to be serious (e.g. involving a Key Decision, or where a corrupt/criminal act is suspected) the Head of Procurement will refer the matter to the Director of Audit, Fraud, Risk and Insurance for investigation with view to identifying the steps to be taken to avoid a recurrence and to ensure appropriate action is taken.

### 2. WHAT TRANSACTIONS DO THESE CONTRACT STANDING ORDERS APPLY TO?

- 2.1. These CSOs apply to all contractual arrangements made by, or on behalf of, the Council for the carrying out of works or for the supply of goods, materials or services. This includes all types of procurements, re-lets, direct awards, variations, novations, extensions and any other contractual transactions which the Council enters into.
- 2.2. However, they only apply where the Council is **providing** goods, works or services to another to the limited extent set out in [CSO 34](#). All the other provisions relate to

where the Council is the purchaser.

- 2.3. These CSOs do not apply to contracts relating to:
  - 2.3.1. An employee's individual terms of employment,
  - 2.3.2. the acquisition, disposal, or transfer of land (to which Financial Regulations will still apply), or
  - 2.3.3. the making of grants.
- 2.4. Special cases, relating to the:
  - (a) engagement of solicitor/barristers, or adjudicators/arbitrators in construction disputes,
  - (b) supply of personal and social care services to a single individual,
  - (c) where the Council is **providing** goods and services to another,are set out in [Error! Reference source not found](#).below. These special cases only have to comply with the provisions of [Error! Reference source not found](#).

### 3. ESTIMATING CONTRACT VALUES

- 3.1. The procedures which apply to Contracts are different, depending on their value. Therefore, producing a contract estimate is the very first thing to do when considering if a contract needs to be put in place. For a High Value Contract you also need to ascertain whether the contract spend will be from Capital or Revenue.
- 3.2. The value of a Contract is the total estimated spend throughout the lifetime of the proposed contract including any anticipated extensions. It is not the annual value. See [Appendix 3](#) for more details on calculating the value of a contract.
- 3.3. Where the Contract is a concession contract (e.g. to run a café open to the public or other facility where service users are charged) special rules apply – see [Appendix 3](#).
- 3.4. For the purposes of these CSOs the procedures are split as follows:
  - 3.4.1. Low Value Contracts valued at below £50,000 – see [Section B](#);
  - 3.4.2. Medium Value Contracts valued at £50,000 up to the Services Threshold (currently £213,477<sup>1</sup>) - see [Section C](#); and
  - 3.4.3. High Value Contracts valued at above the Services Threshold (currently £213,477) – see [Section D](#).
- 3.5. Where you know that there are, or will be, similar or recurrent transactions for the same goods, services or works the value of those similar/ recurrent transactions must be aggregated to determine the value of the overall transaction.
- 3.6. Estimates of contract value must not be manipulated by artificially dividing the contract requirement into smaller contracts or lots, whether or not this is done with the intention of avoiding competition or a particular decision-making route. However, having smaller contracts to make these genuinely attractive to suppliers based in the borough or other SMEs may be allowed, as would encouraging bidders on larger contracts to use local supply chain/labour as part of their bid; take advice from the Head of Procurement.

---

<sup>1</sup> Enforced from 1 January 2020.

## 4. IDENTIFYING A BUSINESS NEED AND PROCUREMENT PRINCIPLES

- 4.1. Under the [Local Government \(Contracts\) Act 1997](#), local authorities can enter into contracts with third parties in connection with any of their functions. However, first the SLT Member must be able to demonstrate there is a business need for the proposed Contract.
- 4.2. Being Ruthlessly Financially Efficient means our three financial obsessions are:
  - 4.2.1. Necessity - what would happen if the spend isn't approved?
  - 4.2.2. Value for money - how much really needs to be spent and could this be a one-off cost?
  - 4.2.3. Collaboration - who is responsible? Can partners and other organisations share the costs?
- 4.3. Having identified a business need for works, goods or services, the SLT Member must consider whether:
  - 4.3.1. to seek a new contractual arrangement with an external provider; or
  - 4.3.2. to provide, deliver and manage the service or works or make the goods within the Council (i.e. an in-house delivery model); or
  - 4.3.3. to procure the services through arrangements made by another public sector provider;
  - 4.3.4. to enter into a shared service agreement; or
  - 4.3.5. the required goods, services or works are covered within the scope of any contractual arrangements the Council already has in place, provided that such Contract allows for extra goods, services or works to be included or added, and there is no breach of the Regulations (approval for a contract modification under these CSOs may also be required).
- 4.4. If a decision is made that the services, works or goods can be resourced in-house then in law there is no award of a Contract and so these CSOs no longer apply (although under Financial Regulations, other parts of the Constitution, or good governance practice, a formal approval report may still be required). Otherwise, the process followed must follow these CSOs, including that any Reports required must be prepared and submitted in accordance with these CSOs. [Report templates are available on the Intranet](#).
- 4.5. Unless otherwise agreed by the Head of Procurement, all procurement exercises over £10,000 will be undertaken using the Council's e-tendering system. This includes call-offs from Frameworks or DPS.
- 4.6. All procurements (including Quotes) must be carried out in a fair, open and transparent manner. All procurement exercises over £10,000 must have a fixed closing date, the same for every participant, set up on the capital e-sourcing system. The Head of Procurement will make appropriate arrangements for the opening of Tenders via capital e-sourcing, which includes the verification of the contract sum stated in each Tenderer's Form of Tender against other information submitted.
- 4.7. Where a procurement exercise is for a High Value Contract, a formal Tender Appraisal Panel (TAP) must be set up to ensure that the Council receives value for money and to demonstrate transparency.
- 4.8. Social Value: there is an obligation on all local authorities to consider social value during the letting of all service contracts. This is set out in the [Public Services \(Social](#)

[Value\) Act 2012](#). The Council's policy on Social Value must be complied with at all times. The Social Value Policy applies to new contract awards (inclusive of direct awards), contract variations, framework agreements and contracts proposed to be called off a Framework (where permitted by the framework rules).

- 4.9. **Local and SME/VCSE Provision<sup>2</sup>**: Where possible for Medium Value and High Value Contracts which are below the Relevant Thresholds, SLT Member shall consider whether or not to reserve the procurement to local businesses based within the Greater London area or UK-wide and/or Small and Medium sized Enterprises (SMEs) /Voluntary, Community and Social Enterprises (VCSEs) ("**Local and SME/VCSE Provision**") as follows:
- 4.9.1. Reserve the procurement by supplier location - this means running the procurement and specifying that only suppliers located in the Greater London area can bid. Supplier location is determined by where the supplier is based or established and has substantive business operations and not by location of corporate ownership.
  - 4.9.2. Reserve the procurement for Small and Medium sized Enterprises (SMEs) /Voluntary, Community and Social Enterprises (VCSEs) - this means being able to run a competition and specify that only SMEs and VCSEs can bid.
- 4.10. The SLT Member shall consider the merits of local and/or SME/VCSE provision on a case-by-case basis and shall carry out a pre-procurement assessment and complete a checklist with an aim to :
- 4.10.1. assess the sector / market and consider the ability of the market to provide the quantity and quality of the services, goods or works required;
  - 4.10.2. identify whether there is a market available locally and that it is of sufficient size to ensure that there are at least three companies capable of providing the services/goods/works locally;
  - 4.10.3. identify and manage associated risks, including fraud and corruption.
- If the SLT Member's assessment concludes that the contract may be reserved to Local and/or SME/VCSE Provision the procedures set out in CSO 9 for Low Value Contracts and CSO 13 for Medium Value Contracts shall be followed when advertising.
- 4.11. The SLT Member may choose to award on the basis of locality or SME/VCSEs or both of these together. The procurement documentation must be clear about any intention to reserve the procurement, for example by including the standardised definitions of SME / VCSE and supplier location outlined in the Council's standard documentation.
- 4.12. The SLT Member may still choose to compete below threshold contracts on an open basis without any reservation for supplier type or supplier location.
- 4.13. In order to ensure value for money, SLT Members are not permitted to direct award when reserving procurements.

## 5. **SLT MEMBERS' RESPONSIBILITIES**

- 5.1. These CSOs must be strictly complied with; they are the Council's minimum requirements. A more thorough procedure may be appropriate for a particular Contract.

---

<sup>2</sup> Introduced to reflect PPN11/20 for Contracts above £50,000 and below the Relevant Threshold

- 5.2. SLT Members have responsibility for all Contracts put in place within their Departments. **This includes seeking advice on the proposals in draft reports before they are sent to officers for statutory comments and implications.** Each SLT Member is accountable to the Cabinet for the performance of their duties in relation to procurement strategy, contract approval and management, including those matters set out in [Appendix 6](#). The following conditions must be observed:
- 5.2.1. all procurement exercises and awarded Contracts must be recorded on the e-tendering system;
  - 5.2.2. officers need to have training to ensure they know how to use the e-tendering system;
  - 5.2.3. ensuring appropriate arrangements are in place within his/her department for the storage of original Contracts not sealed as a Deed once completed (signed and dated). All original contracts exceeding £30,000 should be passed to Legal Services who will enter the details onto the Contracts Register and store the original contract offsite;
  - 5.2.4. an electronic copy of all completed contracts over £10,000 must be saved on the Corporate /Contracts Register.
- 5.3. The SLT Member can authorise any officer within their Department to act on their behalf. However, such authority will not affect their accountability for actions taken in their name. **As a result, these Contract Standing Orders are addressed throughout to the SLT Members. However, it is recognised that in practice these Contract Standing Orders will be implemented by staff (including consultants) within the SLT Member's department.**
- 5.4. Throughout the CSOs there are requirements for formal decisions to be taken. This is undertaken by preparing a report recommending a decision and this demonstrates an audit trail of the decision once taken. [Report templates are available on the Intranet](#). Various departments input into these reports and it is for the SLT Member to ensure that those departments are consulted. Implication sections from the consulted department cannot be inserted on their behalf and under no circumstances should Implication sections be amended by anyone other than the author of those comments. The Head of Procurement must be sent the report once finalised and approved.

## 6. CONFLICTS OF INTEREST

- 6.1. [Part 5 of the Constitution](#) incorporates Codes of Conduct of both Officers and Members, these state what interests are to be declared when the member is elected/ the officer is appointed and the need to keep these updated as circumstances change.
- 6.2. The need to ensure that any procurement process is conducted fairly means that extra responsibilities are put on those running a procurement. The SLT Member should ensure that for all procurements of Medium and High Value Contracts, including direct awards, all officers and consultants involved complete a declaration confirming they (or their spouse/partner) do not have pecuniary interests or non-pecuniary interest which could conflict with the interests of the Council in securing a fair procurement. The declarations should be saved on the e-tendering portal.
- 6.3. If a Member or an officer of the Council or a consultant working on the Council's behalf becomes aware that a Contract in which they have an interest is being re-tendered or has been or is proposed to be entered into by the Council, they shall

immediately give written notice to the Monitoring Officer. Such written notice is required, irrespective of whether the pecuniary interest is direct or indirect. Consideration will then be given as to the appropriate action.

- 6.4. The Monitoring Officer shall maintain a record of all declarations of interests notified by Members and officers.

## **7. PREVENTION OF CORRUPTION**

- 7.1. All Council officers and Members must comply with the relevant [Code of Conduct](#) and the Council's anti-fraud and corruption strategy and must not invite or accept any gift or reward in respect of the award or performance of any Contract. It will be for the officer/ Member to prove that anything received was not received corruptly.
- 7.2. High standards of conduct during a procurement are obligatory. While in the normal course of events, gifts and hospitality from suppliers can be accepted provided that they are declared in accordance with the Gifts and Hospitality Policy, while a tender process is ongoing, such hospitality should be declined. Corrupt behaviour will lead to dismissal and can be fraud or another crime under the statutes referred to in 7.3. Such matters will be investigated and appropriate action taken, including legal proceedings.
- 7.3. The Assistant Director, Legal Services shall ensure that all contract conditions contain robust terms that will allow the Council to terminate a contract where there have been acts relating to fraud, bribery, or corruption as defined under the [Bribery Act 2010](#), and/or section 117(2) of the [Local Government Act 1972](#); and/or the contractor/supplier has committed an act which is an offence under the [Enterprise Act 2002](#). More information about the Bribery Act is available in the Council's Anti-Bribery Policy or speak to the Head of Fraud.



## Section B – Low Value Contracts up to £50,000

### 8. LOW VALUE CONTRACTS

8.1. Contracts valued at up to £50,000 are to be procured and awarded as set out in this [Section B](#). However, there are special cases set out in [Section H](#).

8.1.1. Before any contract is considered the SLT Member must be satisfied there is a business need for the contract (see [CSO 4](#)). The SLT Member must also ensure that a contract estimate is calculated and recorded and be satisfied that the estimated contract value is below £50,000. If the contract value could be £50,000 or greater the process for Medium Value Contracts should be followed.

### 9. ADVERTISING PROCESS AND COMPETITION REQUIREMENT FOR ALL LOW VALUE CONTRACTS

9.1. The SLT Member is responsible for ensuring value for money in all procurement matters. The following competition requirements have been set considering the contract value and to achieve value for money. The SLT Member must meet these requirements for all Low Value Contracts:

Estimated Value	Advertising Requirement	Competition requirement <sup>3</sup>
£1 to £10,000	None	Either: <ul style="list-style-type: none"> <li>• At least one written Quotation obtained with preference to sourcing from providers based in the borough; or</li> <li>• Call-off from suitable third party or Hammersmith &amp; Fulham Framework or DPS (rules of the Framework or DPS to be followed).</li> </ul>
£10,000 to £49,999	None	Either: <ul style="list-style-type: none"> <li>• Written Quotations or Tenders with a minimum of three companies invited to Quote or Tender through the e-tendering system with a preference to sourcing from providers based in the borough; or</li> <li>• Advertised opportunity inviting Quotations or Tenders – use e-tendering system and Contracts Finder (latter within 24 hours of appearing in e-tendering system); or</li> <li>• Call off from suitable third party or Hammersmith &amp; Fulham Framework or DPS using the e-tendering system.</li> </ul>

9.2. For recurring Low Value Contracts SLT Members may consider establishing an Approved List or Dynamic Purchasing System (subject to approval from the Head of Procurement and other appropriate approval) to reflect the aggregated estimated value of goods, work or services estimated as likely to be procured

<sup>3</sup> If the Contract involves works to housing premises where the Council could make recovery of costs from leaseholders pursuant to s20 of the Landlord and Tenant Act 1985 the rights of the leaseholders must be taken into account when considering the competition for the works. Failure to consult as required by the Service Charges (Consultation Requirements) (England) Regulations 2003 means that the Council's ability to recover costs from leaseholders is limited to £100/£250 depending upon the proposed arrangement for delivering the Works. Take appropriate advice, especially where you are thinking of using a Framework, Approved List or DPS.

through the Approved List or DPS.

## **10. APPROVAL PROCESS FOR LOW VALUE CONTRACTS**

- 10.1. SLT Members approve the award of all Low Value Contracts within their area, once [CSO 9](#) has been complied with.
- 10.2. The SLT Member must ensure that a written record is prepared of the procurement process followed, to accompany the request for approval of the award of contract, to include:
  - 10.2.1. a description of the competition process that was adopted and confirmation that this was in accordance with [CSO 9](#);
  - 10.2.2. a report on the results of the competition and the Quotations or Tenders received;
  - 10.2.3. the registered name of the contractor to be awarded the Contract;
  - 10.2.4. details of the contract price and relevant budget that will be funding the Contract;
  - 10.2.5. commencement and expiry dates.
- 10.3. Details of all contracts that have a value of £5,000 or greater must be published by the SLT Member in the Corporate Contracts Register on the e-tendering system in accordance with the [Transparency Regulations 2015](#) and the [Local Government Transparency Code 2015](#) published by the Department for Communities & Local Government.
- 10.4. In addition, an electronic copy of the completed (dated) Contract, where valued at £10,000 or more, must be uploaded to the Contracts Register along with a copy of the record referred to at [CSO 10.2](#).
- 10.5. Except for out of hours purchases or minor expenses, no telephone orders are to be placed for goods, works or services, unless otherwise agreed by the Head of Procurement. A purchase order number must be provided to the supplier at the time of the order.

## Section C – Medium Value Contracts – £50,000 to Below Services Threshold

### 11. MEDIUM VALUE CONTRACTS

- 11.1. Contracts valued between £50,000 and the Services Threshold (currently £213,477<sup>4</sup>) are to be procured and awarded as set out in this [Section C](#). However, there are special cases set out in [Section H](#).
- 11.2. Before any Medium Value Contract is considered the SLT Member must:
- 11.2.1. be satisfied there is a business need for the contract (see [CSO 4](#));
  - 11.2.2. ensure that a contract estimate is calculated and recorded and be satisfied that the estimated contract value is between £50,000 and the Services Threshold (currently £213,477). If it could be greater the process for High Value Contracts should be followed;
  - 11.2.3. make an assessment in accordance with [CSO 4.9](#) to [CSO 4.13](#) as to whether the contract may be reserved to **Local and SME/VCSE suppliers**

### 12. PROCUREMENT STRATEGY FOR MEDIUM VALUE CONTRACTS

- 12.1. The SLT Member decides upon the most appropriate Procurement Strategy. Once the Procurement Strategy is decided upon, a Tender Appraisal Panel (TAP) must be established to take responsibility for managing all aspects of the procurement process. The provisions of paragraph 39 of [Appendix 8](#) shall apply to the TAP and the Tender process.

### 13. ADVERTISING PROCESS AND COMPETITION REQUIREMENT FOR ALL MEDIUM VALUE CONTRACTS

- 13.1. The SLT Member is responsible for ensuring value for money in all procurement matters. The following competition requirements have been set in light of the contract value and in order to achieve value for money:

Type of Medium Value Contract	Competition requirement <sup>5</sup>	Advertising Requirement
Supplies/Services	<ol style="list-style-type: none"> <li>1. Invitation without pre-qualification stage to submit Tenders. Where Local and SME/VCSE Provision is assessed and considered suitable, the procurement shall be reserved to local suppliers and/or SMEs/VCSEs</li> <li>2. Call off from suitable third party or Hammersmith &amp; Fulham Framework or DPS (rules of the Framework or DPS to be followed)</li> </ol>	For 1: Advertised opportunity – use capital e-sourcing and Contracts Finder (latter within 24 hours of appearing in e-tendering system)

<sup>4</sup> Enforced from 1 January 2020.

<sup>5</sup> If the Contract involves works to housing premises where the Council could make recovery of costs from leaseholders pursuant to s20 of the Landlord and Tenant Act 1985 the rights of the leaseholders must be taken into account when considering the competition for the works. Failure to consult as required by the Service Charges (Consultation Requirements) (England) Regulations 2003 means that the Council's ability to recover

Type of Medium Value Contract	Competition requirement <sup>5</sup>	Advertising Requirement
Works and Maintenance Services for assets e.g. housing repairs and FM (except information technology)	<ol style="list-style-type: none"> <li>1. Invitation to submit Quotations through the e-tendering system (though Tenders can be invited where considered appropriate). Or</li> <li>2. Call off from suitable third party or Hammersmith &amp; Fulham Framework or DPS (rules of the Framework or DPS to be followed)</li> </ol>	<p>For 1: Advertised opportunity – use capital e-sourcing and Contracts Finder (latter within 24 hours of appearing in e-tendering system) Where Local and SME/VCSE Provision is assessed and considered suitable, the procurement shall be reserved to local suppliers;</p> <p>OR</p> <p>Invite at least four written Quotes or Tenders preferably from suppliers based in the borough</p> <p>For 2: Follow the rules of the Framework/DPS and use the e-tendering system for all mini-competitions</p>

13.2. The procurement process for all Medium Value Contracts must be run without any pre-selection (pre-qualification) stage. This is sometimes called open or single-stage tendering. However, the asking of questions during any Tender exercise about whether the provider meets the Council's minimum requirements of suitability, capability, legal status and financial standing (see reg 111 of the Regulations).

#### 14. TENDER DOCUMENTATION

14.1. The SLT Member must prepare a specification and all appropriate Quote or Tender documentation using the Council's standard form documentation. Amendments to the Council's standard form documentation must be agreed with the Head of Procurement or, in appropriate cases, Assistant Director, Legal Services. The award criteria must relate specifically to the contract to be procured and shall be based on the most economically advantageous tender.

14.2. See also [Appendix 3](#) of these CSOs concerning the contents of the terms and conditions of contract.

14.3. For recurring Medium Value Contracts SLT Members may consider establishing a Council Framework or Dynamic Purchasing System subject to approval from the Head of Procurement and after appropriate approval to reflect the aggregated estimated value of goods, works or services to be placed through the Framework or DPS.

14.4. It is not anticipated that there will be interviews with tenderers on a Medium Value contract. However, if there are, full records of the interview must be kept and the

---

costs from leaseholders is limited to £100/£250 depending upon the proposed arrangement for delivering the works. Take appropriate advice, especially where you are thinking of using a Framework, Approved List or DPS.

purpose of the interviews and how they will be used in the evaluation process must be set out in the Invitation to Tender.

## **15. APPROVAL PROCESS FOR AWARD OF MEDIUM VALUE CONTRACTS**

- 15.1. All contract awards over £100,000 must be submitted to the Contracts Assurance Board before being submitted for approval to the decision maker. The Contracts Assurance Board may:
  - 15.1.1. Recommend that the SLT member approve the report
  - 15.1.2. Provide advice and/or make recommendations to the report author and request an updated report for consideration
  - 15.1.3. Recommend that the SLT member does not approve the report where the Council's priorities are not achieved.
- 15.2. SLT Members approve the award of all Medium Value Contracts within their area, once CSO 13 has been complied with.
- 15.3. If the value of the Contract to be awarded is more than 10% higher than the initial estimated value of the Contract and over the Service Threshold, the SLT Member must consult the Head of Procurement before the decision is taken.
- 15.4. The SLT Member must prepare an award report in the standard form. [Report templates are available on the Intranet.](#)
- 15.5. The award report must contain the comments of the Director of Finance, the Director of Audit, Risk, Fraud and Insurance and the Assistant Director, Legal Services.
- 15.6. Provided that the SLT Member approves the award report the Contract shall be awarded by way of a notification via the e-tendering system and:
  - 15.6.1. Where the value of the contract is below £100,000, then unless the Assistant Director, Legal Services considers otherwise, it will be entered as a simple agreement signed by the relevant SLT Member (electronic signatures are permitted);
  - 15.6.2. Where the value of the contract is £100,000 or more, the Assistant Director, Legal Services will arrange for the Contract to be sealed on behalf of the Council where this is appropriate, and a link to the award report as published on the Council's website must be provided with the request for sealing.
- 15.7. For all Medium Value Contracts, the Contract documentation must be concluded (including the formal execution of contracts by both/ all parties) before its commencement. Only in exceptional circumstances, and then only with the written consent of the Assistant Director, Legal Services, may a contract commence on the basis of an exchange of correspondence.
- 15.8. An electronic copy of the completed (dated) Contract must be uploaded to the Contracts Register along with a copy of the award report. A Contract must be kept for six years after the end of the Contract.
- 15.9. Documents which relate to the procurement process should be kept for a minimum period of 12 months, provided there is no dispute about the award (these may be stored electronically).
- 15.10. The SLT officer must ensure a record is kept of:
  - 15.10.1. pre-tender market research (if any);

- 15.10.2. the subject-matter and value of the contract, Framework Agreement or DPS;
- 15.10.3. when a Local and SME/VCSE Provision has been identified a copy of the checklist completed prior to advertisement;
- 15.10.4. actions taken to identify and manage associated risks, including fraud and corruption;
- 15.10.5. where applicable, the results of the qualitative selection and reduction of numbers including supplier due diligence checks;
- 15.10.6. the names of the selected candidates or tenderers and the reasons for their selection;
- 15.10.7. the names of the rejected candidates or tenderers and the reasons for their rejection;
- 15.10.8. the name of the successful tenderer and the reasons why its tender was selected;
- 15.10.9. where applicable, the reasons why the contracting authority has decided not to award a contract or Framework Agreement or to establish a dynamic purchasing system;
- 15.10.10. where applicable, the reasons why means of communication other than electronic means have been used for the submission of tenders;
- 15.10.11. where applicable, conflicts of interests detected and subsequent measures taken;
- 15.10.12. clarification (and where appropriate post-tender negotiation) (to include minutes of meetings);
- 15.10.13. the contract documents;
- 15.10.14. simple and proportionate KPIs and data reporting mechanisms included in the contract;
- 15.10.15. post-contract evaluation and monitoring; and
- 15.10.16. written records of communications with Candidates and with the successful Candidate(s).

## Section D – High Value Contracts – over the Services Threshold

### 16. HIGH VALUE CONTRACTS

- 16.1. Contracts valued over the Services Threshold (currently £213,477<sup>6</sup>) are to be procured and awarded as set out in this [Section D](#). However, there are special cases set out in [Section H](#).
- 16.2. Before any High Value Contract is considered the SLT Member must be satisfied there is a business need for the contract (see [CSO 4](#)). The SLT Member must also ensure that a contract estimate is calculated and recorded, which will determine the process to be followed to approve the procurement strategy and the contract award.

### 17. PREPARING FOR HIGH VALUE CONTRACTS – SERVICE REVIEW TEAM

- 17.1. For every High Value Contract, the SLT Member shall establish a Service Review Team comprising:
  - 17.1.1. Contract Officer,
  - 17.1.2. client-side officers,
  - 17.1.3. relevant stakeholders, and
  - 17.1.4. relevant professional officers (including legal, finance, procurement, IT and HR as appropriate) including external advisers as applicable and warranted.
- 17.2. The Service Review Team shall take responsibility for all pre-procurement related activity as set out in [Appendix 8](#) including:
  - 17.2.1. carrying out preliminary market consultation and consultation, and coming to a decision as to whether a new contract arrangement is to be procured or that the business need is to be met within the Council;
  - 17.2.2. researching available Frameworks and DPS, or considering whether an existing contract can be varied to add in the new business need (advice to be taken from the Head of Procurement in these cases, and the Assistant Director, Legal Services if appropriate);
  - 17.2.3. developing the Procurement Strategy;
  - 17.2.4. identifying whether the Contract will be paid for from Capital or Revenue;
  - 17.2.5. for High Value Contracts for works which are below Works Threshold only, make an assessment in accordance with CSO 4.10 to 4.13 as to whether the contract may be reserved to **Local and SME/VCSE suppliers**; and
  - 17.2.6. maintaining records of all internal and external meetings.

### 18. PROCUREMENT STRATEGY APPROVAL PROCESS FOR HIGH VALUE CONTRACTS

- 18.1. Prior to starting any tendering exercise for a High Value Contract, the Service Review Team must prepare a report ([template on the Intranet](#)) for approval of the Procurement Strategy for the procurement. This is submitted as follows:

---

<sup>6</sup> Enforced from 1 January 2020

Capital Contracts	Procurement Strategy Approval
Services Threshold (currently £213,477 <sup>7</sup> ) to £1.5m	Chief Executive/SLT Member in consultation with the relevant Cabinet Member
£1,500,001 - £5m	The relevant Cabinet Member
In excess of £5m	Cabinet

Revenue Contracts	Procurement Strategy Approval
Services Threshold (currently £213,477) to £500,000	Chief Executive/SLT Member in <b>consultation</b> with the relevant Cabinet Member
£500,001-£5m	The relevant Cabinet Member
In excess of £5m	Cabinet

- 18.2. All procurement strategies must be submitted to the Contracts Assurance Board before being submitted for approval to the decision maker in accordance with CSO 18.1. Where the procurement strategy concerns a contract with estimate value in excess of £300,000 in value or the expenditure is otherwise significant, then it is a Key Decision (see Article 12 of the [Constitution](#)) and the report must be submitted to Committee Services for publication on the Council's website.

## 19. ADVERTISING PROCESS FOR HIGH VALUE CONTRACTS

- 19.1. The SLT Member is responsible for ensuring value for money in all procurement matters. The SLT Member will use the methods for selecting potential bidders as set out below in the relevant table. All processes (including call-offs from Frameworks or a DPS) must be run through the Council's e-tendering system, unless the Head of Procurement agrees otherwise. The process must be set out in the Procurement Strategy.

### Requirements for "Supply and Service" Contracts (excluding "Social and Other Specific Services")

Value	Competition requirement	Advertising requirement
Above Services Threshold (currently £213,477)	Either: 1. Use of an existing Framework or DPS which is compliant with the Regulations; or 2. Procedure selected in accordance with the Regulations as approved through the Procurement Strategy.	For 1, Follow the rules of the Framework/DPS and use the e-tendering system for all mini-competitions For 2, all of the following: <ul style="list-style-type: none"> <li>• Contracts Finder</li> <li>• Contract Notice published in Find a Tender Service Opportunity listing on the e-tendering system webpage</li> <li>• Trade Journal (if SRT decides)</li> </ul>

<sup>7</sup> Enforced from 1 January 2020.



**Requirements for “Social and Other Specific Services” as defined in Schedule 3 of the Regulations**

<b>Value</b>	<b>Competition requirement</b>	<b>Advertising requirement</b>
From Services Threshold (currently £213,477 <sup>8</sup> ) – up to the “Social and Other Specific Services” Threshold	<p>Either:</p> <ol style="list-style-type: none"> <li>1. The use of a suitable Framework or DPS;</li> </ol> <p>OR (<i>if not appropriate</i>)</p> <ol style="list-style-type: none"> <li>2. Either a single-stage (open) Tender procedure or two-stage (with pre-qualification stage) Tender procedure as set out in the Procurement Strategy. Where Local and SME/VCSE Provision is assessed and considered suitable, the procurement shall be reserved to local suppliers and/or SMEs/VCSEs</li> </ol>	<p>For 1:</p> <p>Follow the rules of the Framework/DPS and use the e-tendering system for all mini-competitions</p> <p>For 2, all of the following:</p> <ul style="list-style-type: none"> <li>• Contracts Finder</li> <li>• Opportunity listing on the e-tendering system webpage</li> <li>• Trade Journal (if TAP decides)</li> </ul>
From the “Social and Other Specific Services” Threshold and above	<p>Either:</p> <ol style="list-style-type: none"> <li>1. Use of an existing Framework or DPS which is compliant with the Regulations;</li> </ol> <p>OR (<i>if not appropriate</i>)</p> <ol style="list-style-type: none"> <li>2. Procedure selected in accordance with the Regulations (regs 74-77) as approved through the Procurement Strategy.</li> </ol>	<p>For 1:</p> <p>Follow the rules of the Framework/DPS and use the e-tendering system for all mini-competitions</p> <p>For 2, all of the following:</p> <ul style="list-style-type: none"> <li>• Contracts Finder</li> <li>• Contract Notice published in Find a Tender Service</li> <li>• Opportunity listing on the e-tendering system webpage</li> <li>• Trade Journal (if TAP decides)</li> </ul>

<sup>8</sup> Enforced from 1 January 2020.

## Requirements for Works contracts (meeting the definition in the Regulations)

Value	Competition requirement	Advertising Requirement
From Services Threshold (currently £213,477 <sup>9</sup> ) to Works Threshold (currently £5,336,937)	<p>Either:</p> <ol style="list-style-type: none"> <li>the use of a suitable Framework or DPS;</li> </ol> <p>OR (<i>if not appropriate</i>)</p> <ol style="list-style-type: none"> <li>Either a single-stage (open) tender procedure or two-stage (with pre-qualification stage) tender procedure as set out in the Procurement Strategy and where Local and SME/VCSE Provision is assessed and considered suitable, the procurement shall be reserved to local suppliers;</li> </ol>	<p>For 1:</p> <p>Follow the rules of the Framework/DPS and use the e-tendering system for all mini-competitions</p> <p>For 2:</p> <ul style="list-style-type: none"> <li>Contracts Finder</li> <li>Opportunity listing on the e-tendering system webpage</li> <li>Trade Journal (if TAP decides)</li> </ul>
Above Works threshold (currently £5,336,937)	<p>Either:</p> <ol style="list-style-type: none"> <li>Use of an existing Framework or DPS which is compliant with the Regulations; or</li> <li>Procedure selected in accordance with the Regulations as approved through the Procurement Strategy.</li> </ol>	<p>For 1:</p> <p>Follow the rules of the Framework/DPS and use the e-tendering system for all mini-competitions</p> <p>For 2:</p> <ul style="list-style-type: none"> <li>Contracts Finder</li> <li>Contract Notice published in Find a Tender Service</li> <li>Opportunity listing on the e-tendering system webpage</li> <li>Trade Journal (if TAP decides).</li> </ul>

- 19.2. If the Contract involves works to housing premises where the Council could make recovery of costs from leaseholders pursuant to s20 of the [Landlord and Tenant Act 1985](#) the rights of the leaseholders must be taken into account when considering the competition for the works. Failure to consult as required by the [Service Charges \(Consultation Requirements\) \(England\) Regulations 2003](#) means that the Council's ability to recover costs from leaseholders is limited to £100/£250 depending upon the proposed arrangement for delivering the works. Take appropriate advice from the appropriate Solicitor.

<sup>9</sup> Enforced from 1 January 2020.

## Establishing a Tender Appraisal Panel

- 19.3. Once approval for Procurement Strategy is granted in accordance with [CSO 18](#), a Tender Appraisal Panel (TAP) shall be established to take responsibility for managing all aspects of the procurement process. This may be the same membership as the SRT or may be different.
- 19.4. The provisions of [paragraph 39](#) of [Appendix 8](#) apply to the TAP.

## 20. TENDER PROCESS

- 20.1. [Appendix 8](#) shall apply to the Tender process.
- 20.2. Unless the Assistant Director, Legal Services agrees otherwise the TAP shall use the Council's standard documentation for the tender and contract documentation.
- 20.3. Unless the Head of Procurement agrees otherwise:
- 20.3.1. the time limits for submission of selection questionnaires (as applicable) and Tenders are as set out in [Appendix 7](#);
- 20.3.2. all Tenders and Responses to Mini-Competition must be received through the Council's e-tendering system; and
- 20.3.3. the contract terms shall comply with the provisions of [Appendix 3, section 2](#).

## 21. APPROVAL PROCESS FOR CONTRACT AWARD OF HIGH VALUE CONTRACTS

- 21.1. The TAP shall prepare an award report for all High Value Contracts and submit the report for decision as follows:

Capital Contracts	Contract Award Approval
Services Threshold (currently £213,477) up to £1.5m	Chief Executive/SLT Member in consultation with the relevant Cabinet Member
£1.5m and above	The relevant Cabinet Member
Revenue	Contract Award Approval
Services Threshold (currently £213,477 <sup>10</sup> ) up to £0.5m	Chief Executive/SLT Member in consultation with the relevant Cabinet Member
£0.5m and above	The relevant Cabinet Member

- 21.2. If the value of the Contract to be awarded is more than 10% higher than the initial estimated value of the Contract and over £10,000,000 approval must be sought from Cabinet.
- 21.3. The TAP shall prepare an award report in the standard form. [Report templates are available on the Intranet](#).

<sup>10</sup> Enforced from 1 January 2020.

- 21.4. The award report must contain the comments of the Director of Finance, the Head of Procurement, the Director of Audit, Risk, Fraud and Insurance Manager and the Assistant Director, Legal Services.
- 21.5. All contract awards over £100,000 must be submitted to the Contracts Assurance Board before being submitted for approval to the decision maker as set out in 21.1.
- 21.6. Once the award decision has been made the service should ensure that the supplier is set up on the Council's finance system. If the contract is awarded to a new supplier, the service should request a new supplier set-up which will be approved by Procurement on receipt of the final award report. All service areas should raise purchase orders and approve invoices to pay suppliers through self-service on the Council's finance system. Officers should not undertake this for anyone outside of their own team area. This way the approval goes to the responsible budget holder and the right teams can complete the good receipting when service or goods are received. No orders should be made without providing a valid purchase order, without this there is no approval to spend and the supplier will not be paid.
- 21.7. Where the award report concerns the award of contract in excess of £300,000 in value or the expenditure is otherwise significant, then it is a Key Decision (see Article 12 of the [Constitution](#)) and must be submitted to Committee Services for publication on the Council's website. The award decision cannot be implemented without the expiry of the call-in period for that decision as shown on the website AND (if a Regulated Contract) expiry of the Standstill Period (see [Appendix 8](#)).
- 21.8. Provided that the report has been approved in accordance with this [CSO 21](#) and any Standstill Period has expired, the TAP shall ensure that the Contract is entered into and arrange for the Assistant Director, Legal Services to seal the Contract on behalf of the Council.
- 21.9. For all High Value Contracts, the Contract documentation must be concluded (including the formal execution of contracts by all parties) before its commencement. Only in exceptional circumstances, and then only with the written consent of the Assistant Director, Legal Services, may a contract commence based on an exchange of correspondence or letter of intent.
- 21.10. An electronic copy of the completed (dated) Contract must be uploaded to the Contracts Register along with a copy of the award report.

## Section E – Waiver

### 22. GROUNDS FOR WAIVER

22.1. In the event that any requirement of these CSOs cannot be complied with, and this is for one of the reasons set out in [22.3](#) below, the SLT Member may apply for a waiver of the relevant CSO.

**22.2. It should be noted a waiver cannot be sought in relation to any legal requirements contained in the Regulations or other legislation.**

22.3. A waiver can only be granted where one of the following grounds applies:

22.3.1. Where the works, services, or supplies can only be supplied by a particular economic operator for any of the following reasons:

22.3.1.1. the procurement relates to a unique work or intellectual property rights of the provider; or

22.3.1.2. competition is absent for technical reasons; or

22.3.1.3. where there is no reasonable alternative or substitute in the market;

provided that the reasons for the absence of competition is not due to an artificial narrowing of the Council’s requirements;

22.3.2. the contract is for works, goods or services that are required in circumstances of extreme urgency that could not reasonably have been foreseen; or

22.3.3. the circumstances of the proposed contract are covered by legislative exemptions; or

22.3.4. the procurement will be run as Collaborative Procurement or other partnership arrangement with another public body, and the procurement procedures of that other public body will apply (see further [CSO 32](#));

22.3.5. The Council has no influence over supplier selection because:

22.3.5.1. The procurement activity is grant funded and the supplier is named as a condition of that funding; or

22.3.5.2. Where the Council is matching grant funding and the original grant has been given conditional on the use of a named supplier;

22.3.6. there are other circumstances which are genuinely exceptional.

### 23. AUTHORISING A WAIVER

23.1. The SLT Member shall prepare a waiver report in the standard form as set out below and submit the report to the appropriate decision maker as follows:

Contract Value	Form of request	Comments required from	Decision Maker
Waiver in relation to Low and Medium Value Contract	<a href="#">Waiver Request Form</a>	No comments required	Assistant Director procurement and commercial on recommendation of the Contract Assurance Board

Waiver in relation to High Value Contracts	<a href="#">Waiver Request Form</a>	Assistant Director, Legal Services	For service contracts, S151 Officer on recommendation of the Contract Assurance Board For works contracts up to £5,336,937, Assistant Director procurement and commercial and above that, S151 Officer on recommendation of the Contract Assurance Board
--	-------------------------------------	------------------------------------	--

- 23.2. The [Waiver Request Form](#) shall **ONLY** seek a waiver of the relevant CSO and shall not include any other recommendations. A subsequent procurement strategy approval or award report will follow the provisions of CSOs as applicable.
- 23.3. Retrospective waivers cannot be granted but will be noted. This noting, along with the Award Report will enable you to set up the supplier on the financial system.
- 23.4. The Head of Procurement shall submit all waiver requests to the Contracts Assurance Board to make a recommendation to the decision maker.
- 23.5. A record of the decision and reasons will be kept by the Procurement team. A report on all waivers shall be submitted to SLT quarterly and reviewed annually by the Audit Committee.

## Section F - Post Award/In-contract Decisions

### 24. MODIFICATIONS (VARIATIONS) AND NOVATIONS

24.1. Approval must be sought for all variations, modifications and any novations to Contracts in accordance with this [CSO 24](#). **Note: extensions are dealt with in [CSO 25](#).**

24.2. The only exception to this is:

- (a) if the change is in relation to a construction contract where provisional sums have been allowed for in the contract sum and the change relates to instructing the expenditure required against those provisional sums, in which case the provisions of the contract should be followed; or
- (b) the contract is a term Contract allowing repeated orders for works, goods or services over its term, in which case the placing of an order is not modification of the Contract where it is within the scope of that Contract and its order process and any advertised estimated contract value for the whole Contract is not exceeded (though new budgetary approval may still be required).

### 24.3. Modifications (except extensions) of Low and Medium Value Contracts, PLUS High Value works contract below the Works Threshold

24.3.1. For all Low and Medium Value Contracts, and High Value Works Contracts below the Works Threshold (currently £5,336,937) where the proposed change in value is not modifying the current value by +/-10% or more, the SLT Member must be able to demonstrate the type of modification was provided for in the original contract<sup>11</sup> and:

24.3.1.1. that the cumulative value of the modification plus any other previous modifications do not increase the total contract value so that it exceeds the Relevant Thresholds; or

24.3.1.2. for construction or highways works only, that the works are covered by a contingency sum which was authorised as part of the award of the contract, provided that the contract was awarded in accordance with these Contract Standing Orders.

24.3.2. For all Low and Medium Value Contracts or High Value Works Contracts below the Works Threshold (currently £5,336,937), where the proposed change in value is modifying the current value by +/-10% or more, approval shall be sought from the relevant SLT Member in consultation with the relevant Cabinet Member in accordance with [CSO 24.3.4](#) below

24.3.3. The SLT Member shall prepare a record demonstrating that:

24.3.3.1. [CSO 24.3.1](#) has been complied with; and

24.3.3.2. where [CSO 24.3.1.2](#) is relied upon, confirmation of the previous approval for the Contract; and

24.3.3.3. details of the relevant budget for the modification.

24.3.4. The SLT Member (in consultation with the Cabinet Member where [CSO 24.3.2](#) applies) may then approve the modification subject to compliance

---

<sup>11</sup> Regulation 72 Public Contract Regulations may be used as a guide in determining whether or not to modify these contracts. See Appendix 6

with Financial Regulations.

## 24.4. Modifications of Above Threshold Contracts (Regulated Contracts)

- 24.4.1. Modification of an Above Threshold Contract, or one that has become Above Threshold when previous modifications and extensions are taken into account, are only permitted in accordance with [regulation 72](#) of the Regulations. See **Error! Reference source not found.** for details of the exemptions granted by [regulation 72](#). A new procurement procedure in accordance with these CSOs is required for modifications which are not permitted under [regulation 72](#).
- 24.4.2. Modifications to all contracts that are Above Threshold must first be referred to the Assistant Director, Legal Services and the Head of Procurement to ascertain whether the modification is permissible under the Regulations.
- 24.4.3. Where the assessment under [CSO 24.4.1](#) determines that the proposed modification is permitted under regulation 72, the SLT Member must prepare a report ([report template on the Intranet](#)) explaining:
- 24.4.3.1. how the modification is permitted under [regulation 72](#) of the PCR; and
- 24.4.3.2. details of the relevant budget for the modification.
- 24.4.4. The SLT Member submits the report for decision by the relevant decision maker as follows:

Type of Above Threshold (Regulated) Contract	Total Contract Value (aggregated with the previous modifications and extensions)	Decision Maker
<b>Capital</b>	Services Threshold (currently £213,477 <sup>12</sup> ) to £1.5m	Chief Executive/Relevant SLT Member
<b>Capital</b>	£1.5m and above where the value of the proposed modifications is less than +/-10% of the current contract value	Chief Executive/Relevant SLT Member in consultation with the relevant Cabinet Member
<b>Capital</b>	£1.5m and above where the value of the proposed modification represents +/- 10% or more of the current contract value	Relevant Cabinet Member
<b>Revenue</b>	Services Threshold (currently £213,477) up to £0.5m	Chief Executive/Relevant SLT Member

<sup>12</sup> Enforced from 1 January 2020.



Type of Above Threshold (Regulated) Contract	Total Contract Value (aggregated with the previous modifications and extensions)	Decision Maker
Revenue	Above £0.5m where the value of the proposed modification represents +/- 10% or more of the current contract value	The relevant Cabinet Member
Revenue	Above £0.5m where the value of the proposed modification is less than +/- 10% of the current contract value	Chief Executive/Relevant SLT Member in consultation with the relevant Cabinet Member

## 24.5. Novations

- 24.5.1. A novation is where a contract is to be transferred from one provider to another. It is more common where there is business reorganisation or amalgamation within a wider group of companies. It is often the provider who approaches the Council asking for approval to a novation, and at this point legal advice should be taken immediately. Officers should not authorise invoices received from a new provider in relation to the same service until the novation has been formally approved and implemented (normally a deed of novation is required).
- 24.5.2. A novation of an Above Threshold Contract, or one that has become Above Threshold when previous modifications and extensions are taken into account, is permissible if it falls within regulation [72\(1\)\(d\)](#) of the PCR<sup>13</sup>.
- 24.5.3. Where a new provider is proposed to replace the one to which the Contract was initially awarded, the SLT Member should follow [CSO 24.3](#) or [24.4](#) as applicable to the value of the Contract as if the novation is a modification of the Contract.
- 24.5.4. All novations will require legal advice, regardless of value, the cost of which must be recovered from the party requesting the novation. An undertaking to pay the legal fees is required at the beginning of the discussions.

## 25. CONTRACT EXTENSIONS

- 25.1. All contracts (irrespective of value) where the award of contract decision referred to provision for a contract extension AND the contract terms made explicit provision for an extension shall be approved by the relevant SLT Member. All contract extensions that do not meet the criteria will be treated as contract modifications (CSO 24).
- 25.2. All contract extensions with a value over £100,000 must be considered at the Contracts Assurance Board before being submitted for approval to the relevant

<sup>13</sup> See **Error! Reference source not found.**

SLT Member.

25.3. An extension to an Above Threshold Contract, or one that has become Above Threshold when previous modifications and extensions are taken into account, is only permissible under this [CSO 25](#) if:

25.3.1. the Contract includes a clear and unambiguous extension provision to extend the contract term on the same terms and conditions and the price for the extension is either included in the Contract or the price is calculable with reference to review provisions within the Contract ([reg 72\(1\)\(a\)](#) of the Regulations), OR

25.3.2. one of the other [regulation 72](#) exemptions applies (see further [Appendix 6](#)).

In any event, legal advice must be sought as set out for modifications of Above Threshold Contracts in [CSO 24.4](#). In all cases evidence of contractor performance, Value for Money and benchmarking must accompany a request for an extension.

## 26. CONTRACT TERMINATION PROVISIONS

26.1. Where the SLT Member considers that there is a need to prematurely terminate a Contract (or part of a Contract), the advice of the Assistant Director, Legal Services must be obtained.

26.2. A report is prepared incorporating the legal advice, and the decision to terminate is taken by:

Contract Value (including previous modifications and extensions)	Authorised Person
Up to £1,500,000	SLT member in consultation with relevant Cabinet Member, the s151 Officer and Assistant Director, Legal Services
£1,500,000 up to £5,000,000	The Cabinet Member(s)
Over £5,000,000	Cabinet

## 27. CONTRACT MANAGEMENT

27.1. For all High Value Contracts or contracts which are considered high risk, a Contract Manager must be identified during the tender period and their details **must** be added to the corporate Contract Register under the entry for the relevant contract. Where the contract is considered high risk the need for a specific Contract Manager will be considered at the Contracts Assurance Board.

27.2. The Contract Manager must:

27.2.1. undertake appropriate risk assessments that have considered service continuity, health and safety, fraud and Information management risks;

27.2.2. maintain a risk register during the contract period;

27.2.3. ensure appropriate contingency measures are in place for identified risks;

27.2.4. escalate high risks to their Head of Service or Director and the relevant departmental management team;

27.2.5. formally review monthly and regularly monitor and report to the Corporate Procurement Team on:

27.2.5.1. a Contractor's performance;

- 27.2.5.2. the regularity of meetings held with the Contractor;
  - 27.2.5.3. risk management and any issues arisen (for example, reported fraud, information loss or breach of security, service continuity (credit worthiness), significant health and safety incidents) that have identified and how these are being addressed;
  - 27.2.5.4. compliance with specification and contract costs and identifying as early as possible any potential over-spends;
  - 27.2.5.5. any Best Value requirements;
  - 27.2.5.6. user satisfaction; and
  - 27.2.5.7. the data quality and supplier information ensuring that it is fit for purpose.
- 27.2.6. Budget holders must check that services, goods and works have been delivered to the required standard before goods are 'received' and invoices approved. Officers checking and approving invoices must ensure invoices are in line with agreed contracts and should challenge suppliers and contractors where necessary before any payments are made and ensure that any penalties or rebates are claimed.

### **27.3. Post-Contract Monitoring, Evaluation and Review**

All Above Threshold Contracts, or Contracts which are high risk, are subject to a post award:

- 27.3.1. audit or review at least once during the contract term; and
- 27.3.2. a review evaluating the extent to which the purchasing need and the contract objectives are met by the contract. This should be undertaken normally when the contract is completed. Where the contract is to be re-let, a provisional report should also be available early enough to inform the approach to re-letting of the subsequent contract.

## **Section G - Frameworks and Dynamic Purchasing Systems (DPS)**

### **28. FRAMEWORKS AND DPS**

#### **Calling Off from Frameworks and DPS:**

- 28.1. The availability of a Framework or DPS should be considered as early as possible in the procurement planning process, once the business need has been established.
- 28.2. A Call-Off Contract from a Framework Agreement or DPS is still a Contract governed by these CSOs and should follow the process set out in these CSOs for identifying the business need, approval of Procurement Strategy and award of contracts, unless a waiver has been granted. However, the competition process must be as set out in the relevant Framework or DPS.
- 28.3. Legal advice must be obtained in relation to any Above Threshold Contract which is proposed to be called off from a third-party Framework or DPS, to ensure that the Framework / DPS was set up in a way that is compliant with the Regulations and that its proposed use is within the scope of the Framework or DPS.

#### **Setting up a Council Framework Agreement or DPS**

- 28.4. The SLT Member may decide to establish a Framework or DPS that the Council will call off from (and from which other public bodies may be entitled to call off - i.e. the Council would be the lead authority for the Framework). Where this is proposed the SLT Member shall follow the CSOs in the same way as usual, while recognising that the Council Framework or DPS may be with a single supplier or multi-supplier.
- 28.5. In order to assess the value of the Framework or DPS for the purpose of ascertaining which procedure to follow under these CSOs, the value of the Framework or DPS shall take into account the total estimated value of all anticipated Call-Off Contracts, including by any third parties eligible to use the Council Framework Agreement/DPS.
- 28.6. A Call-Off Contract from a Council Framework Agreement or DPS is also governed by the CSOs. The SLT Member should consider what call offs are likely and as applicable seek authorisation for the awarding first Call-Off Contract, at the same time that the award decision is taken to appoint providers to the Framework Agreement.
- 28.7. If other contracting authorities may purchase through the Framework Agreement, include in the award report to appoint to the Framework /DPS an additional approval for the Council to enter into any ancillary documentation such as Access Agreements if applicable.

## Section H - Special procedures

### 29. JOINT VENTURES

- 29.1. When appointing a joint venture partner, the advice of the Assistant Director, Legal Services must be sought.
- 29.2. These CSOs must be followed for the selection of the joint venture partner and any contracts which are subsequently awarded to the joint venture. Financial Regulations must also be complied with. There is also a requirement in [part 3 of the Constitution](#) for participation in a company to be approved by Full Council.

### 30. UTILITY PROCUREMENT

- 30.1. Due to the volatility of the energy market, prices of water, diesel, electricity, gas, oil and petroleum fluctuate on a daily basis and the sums quoted by Central Purchasing Bodies in this sector require immediate acceptance. In order to achieve the best value for the Council all decisions relating to energy procurement including the Procurement Strategy, award and/or the variation of contracts may be approved jointly by the Director of Finance and the Assistant Director for Operations. All decisions relating to the award of or variation of energy related contracts will be reported to the Cabinet Member for Finance and Commercial Services for information purposes only.

### 31. APPOINTMENT OF EXTERNAL SOLICITORS, COUNSEL, EXPERTS WITHIN LEGAL PROCEEDINGS AND ARBITRATORS /ADJUDICATORS

- 31.1. The Assistant Director, Legal Services commissions all external solicitors, Counsel, experts within Legal Proceedings (actual or contemplated) and arbitrators /adjudicators.
- 31.2. The engagement of barristers, experts and adjudicators/arbitrators in construction disputes shall be subject to completion of a formal letter, contract of appointment or brief. The barrister, expert or arbitrator /adjudicator or chambers must either be named in the relevant Contract or be on an approved list maintained by the Assistant Director, Legal Services for this purpose and the appointment shall be approved by the Assistant Director, Legal Services. Where there is no approved list, then the Assistant Director, Legal Services will determine the method of selection, likely to be appointed from a list maintained by a third party.
- 31.3. The engagement of external solicitors shall be made via the London Boroughs Legal Alliance Solicitors Framework, following a mini-competition exercise. In appropriate cases the Assistant Director, Legal Services may dispense with the requirement. Appointment shall be made by formal letter or appointment contract, once approved by the Assistant Director, Legal Services. In exceptional cases the Assistant Director, Legal Services may authorise the use of external solicitors not on the London Boroughs Legal Alliance Solicitors Framework.

### 32. PARTNERSHIP WORKING AND COLLABORATIVE PROCUREMENT

- 32.1. Partnership working with other local authorities or public bodies can achieve better results in a procurement process than the Council working alone. This goes wider than using a Framework or DPS set up by another public body, but also covers the forming a joint company/ shared service (see [CSO 32.4](#) below) or conducting a Collaborative Procurement.

- 32.2. There are various models for running a Collaborative Procurement, so legal and procurement advice should be sought at the earliest opportunity. Examples include:
- 32.2.1. a common SQ stage and specification but then the procurement diverging,
  - 32.2.2. jointly establishing a Framework or DPS for the participants to use,
  - 32.2.3. another local authority conducting a procurement on behalf of a wider group and appointing a provider, so that the Council will only have a contractual relationship with the lead authority and not the provider,
  - 32.2.4. a full partnership where all the participating local authorities are jointly contracting with the chosen provider.
- 32.3. In nearly every case, the Collaborative Procurement will need to proceed with one of the participants as a lead contracting authority. In recognition of this, use of another public authority's contract procedures is a specific ground for waiving the Council's own CSOs (see [Section E](#)).
- 32.4. The Regulations at [regulation 12](#) recognise two other models under which public authorities can work together without needing to comply with the Regulations. One is the formation of a joint "in-house" company and the other a co-operation model in the public interest. Legal advice must be taken at the earliest opportunity if either of these are being considered. Where one of these exemptions applies, a waiver of the competition requirements of these CSOs may be available under the "legislative exemption" ground (see [Section E](#)).

### **33. SOCIAL CARE, SPOT/BLOCK PURCHASING OF DOMICILIARY CARE AND RESIDENTIAL AND NURSING CARE**

- 33.1. The Council has certain statutory duties to provide, or arrange to provide, practical help or care services to individuals within the community or in a residential setting. Such arrangements may be made through existing Frameworks that the Council can call-off from (sometimes called umbrella agreements), through a block Contract (where the Council has contracted to purchase a block of hours of care/bed spaces without naming the individuals) or spot purchased for a particular individual or group of individuals.
- 33.2. Block Contracts and any Hammersmith & Fulham Frameworks need to be procured in accordance with these CSOs. However, provided that the relevant value is below the Relevant Threshold, neither spot purchasing nor the placement of an individual into a setting in accordance with a block contract or Framework are covered by these CSOs and a waiver is not required. However, the placement must be recorded in writing, incorporating a care plan for the individual.
- 33.3. The Council will maintain information on home care providers and providers of supported living, residential and nursing care placements that can be used for the spot purchase of care services. Such providers, whether or not covered by a block contract or Framework, must have met the minimum national standards laid down by the Care Quality Commission and any additional standards put in place by the Council.

### **34. COUNCIL SUPPLYING GOODS OR SERVICES TO OTHER BODIES**

- 34.1. These Contract Standing Orders do not apply to the putting in place of arrangements, whereby the Council provides goods or services to other public bodies except to the limited extent set out in this [CSO 34](#). Where this is proposed,

legal advice must be taken at the earliest opportunity, particularly around the contract terms proposed by the purchaser and the risks (such as unlimited liability) that the Council is expected to take on under these terms. Financial Regulations must also be complied with.

- 34.2. Prepayment should be sought wherever possible, otherwise invoices must be raised promptly following provision of the good or service and in accordance with established payment terms. Early and prompt action must be taken to collect debts and recover any arrears in accordance with Council's Income Management policy.
- 34.3. Approval for the Council entering into the arrangement shall be taken by the SLT Member.

## Appendix 1: Glossary

Defined term	Definition/description
Above Threshold Contract	A Contract or Framework with a value above the Relevant Threshold set under the Regulations.
Access Agreement	An agreement providing access to one party to call off a Framework or DPS owned or operated by another party.
Approved List	A list of approved providers described on the e-tendering system who have expressed an interest in carrying out services, supply of goods or works. It is only permissible to use it for Low and Medium Value Contracts. An Approved List is usually set up for a specific period of time and purpose following a public advertisement. Admission to the Approved List shall be on the basis that the Council's minimum requirements in terms of finance, references, Health & Safety, diversity and environmental considerations are met. The Approved List shall not contain details of schedules of rates and admission has to be free (in accordance with section 21 of the Local Government Act 1988). Approved Lists may then be used for the purpose of inviting a Quotation or Quotations.
Assistant Director, Legal Services	The Assistant Director, Legal Services of the Council having overall responsibility for the provision of legal advice in relation to all the Council's functions or such others authorised by him/her.
Award Criteria	The evaluation criteria applied during a Tender process in order to determine the most economically advantageous tenderer, using a combination of price and quality.
Below Threshold	A Contract or Framework or DPS with a value below the Relevant Threshold set under the Regulations (see Appendix 2).
Best Value Duty	The duty on local authorities to secure continuous improvement in the way in which functions are exercised, having regard to a combination of economy, efficiency and effectiveness, as set out in the Local Government Act 1999.
Business Case	A document used to obtain management commitment and approval for investment in business change, which alters the way that suppliers are selected and goods and services are purchased, or how the Council delivers a service. It provides a framework for planning and management of this change and ongoing identification of risks. The viability of the resulting project will be judged on the contents of the Business Case.
Cabinet	The executive committee of the Council, made up of all the Cabinet Members.
Cabinet Member	A member of the Cabinet as appointed by the Leader.
Call-Off Contract	A Contract which is called off from a Framework or DPS.
Capital Contract	A Contract involving Capital Expenditure
Capital Expenditure	Expenditure incurred in acquiring, constructing or enhancing property, plant or equipment, but excludes day to day servicing, repairs and maintenance.



Defined term	Definition/description
Central Purchasing Body	As defined in the Regulations, being another contracting authority which: <ul style="list-style-type: none"> <li>• acquires goods or services intended for one or more contracting authorities;</li> <li>• awards public contracts intended for one or more contracting authorities; or</li> <li>• concludes Frameworks for work, goods or services intended for one or more contracting authorities.</li> </ul>
Code of Conduct for Members	The code regulating conduct of members of the Council forming part of the Council's constitutional document.
Code of Conduct for Officers	The code regulating conduct of officers forming part of the Council's constitutional document.
Collaborative Procurement	A procurement exercise run jointly with other public bodies and in which the Council participates.
Contract	A binding agreement made between two or more parties for the supply of goods or services or the delivery of works, which is intended to be enforceable at law, and to which these CSOs apply pursuant to CSO 2.
Contract Manager	The Council officer who manages a Contract awarded by the Council.
Contract Notice	An "advertisement" published in the Find a Tender Service (FTS) in accordance with these CSOs and the Regulations seeking Tenders or expressions of interest from candidates to tender for works, supplies or services. A Contract Notice must be published in the Find a Tender Service (FTS where the thresholds are exceeded).
Contract Officer	An officer of the Council designated by the SLT Member to deal with procurement of a specific contract.
Contract Register	A register of the contracts in place across the Council in excess of £5,000 to include an electronic copy of the Contract if valued at £10,000 or more, forming part of the e-tendering system.
Contract Standing Orders (CSO or CSOs)	This set of rules forming part of the Council's constitutional document.
Deed	The legal term for a particular form of Contract with particular requirements as to its execution (i.e. signature). The execution of a Contract as a deed extends the limitation period from 6 years to 12 years. All contracts with a value of £100,000 or more must be executed as deeds and sealed by the Council.
Dynamic Purchasing System or DPS	Defined in the Regulations as a type of Approved List. Prices have not been provided but those on the DPS have fulfilled minimum standards. Unlike a standard Approved List it can be used for High Value Call-Off Contracts. A dynamic purchasing system must remain open to new applicants to join at any time and "mini-competition" exercises have to be carried out to place specific contracts.
Estimated Value	The value of the Contract as estimated by the SLT Member in line with Appendix 3.
e-tendering system	The electronic procurement system approved for use by the Section 151 Officer for the management of all procurement activity across the Council.

<b>Defined term</b>	<b>Definition/description</b>
Financial Regulations	The financial regulations approved by the Council and issued by the Section 151 Officer forming part of the Council's constitutional document.
Framework	A contractual arrangement (let in accordance with regulation 33 of the Regulations unless the value of all purchases through the Framework is estimated to be Below Threshold) that can be up to 4 years in duration and provides a mechanism for the Council to place individual Call Off Contracts for goods, works or services.
Head of Procurement	The Officer of the Council having overall responsibility for procurement.
High Value Contract	A Contract where the estimated value (or subsequent to a procurement exercise, the actual value) is above the Services Threshold (currently £213,477).
Innovation Partnership	To be used in specific situations set out in regulation 31 of the Regulations.
Invitation to Tender	Invitation to tender documents in the form required by these CSOs or published on the Council's intranet.
Low Value Contract	A Contract where the estimated value (or subsequent to a procurement exercise, the actual value) is less than £50,000.
Medium Value Contract	A Contract where the estimated value (or subsequent to a procurement exercise, the actual value) is from £50,000 up to (but not including) the Services Threshold (currently £213,477).
Minimum Standards Questionnaire	A questionnaire used with a single-stage procurement pursuant to section 111 of the Regulations, such questionnaire is returned with the main Tender and is used to assess suitability, capability, legal status and financial standing.
Modification	An amendment to a Contract whether requiring new, additional or amended services, supplies or works.
Nominated Supplier and Nominated Subcontractor	Those persons or organisations specified by the Council in a Contract for the discharge of any part of that Contract.

Defined term	Definition/description
Non-commercial Considerations	<p>Matters designated as such under section 17 of the Local Government Act 1988, i.e.:</p> <ul style="list-style-type: none"> <li>• Whether the terms on which contractors' contract with their sub-contractors constitute, in the case of contracts with individuals, contracts for the provision by them as self-employed persons of their services only.</li> <li>• Any involvement of the business activities or interests of contractors with irrelevant fields of government policy.</li> <li>• The conduct of contractors or workers in industrial disputes between them or any involvement of the business activities of contractors in industrial disputes between other persons.</li> <li>• The country or territory of origin of supplies to, or the location in any country or territory of the business activities or interests of, contractors.</li> <li>• Any political, industrial or sectarian affiliations or interests of contractors or their directors, partners or employees.</li> <li>• Financial support or lack of financial support by contractors for any institution to or from which the authority gives or withholds support.</li> <li>• Use or non-use by contractors of technical or professional services provided by the authority under the Building Act 1984.</li> </ul> <p>Note: the duty not to have regard to non-commercial considerations is modified to the extent that the Council considers this necessary or expedient in order to comply with its duties under the Public Services (Social Value) Act and the PSED.</p>
Parent Company Guarantee	<p>A guarantee which binds the parent of a subsidiary company as follows: If the subsidiary company fails to do what it has promised under a contract with the Council, under the terms of the guarantee, can require the parent company to do so instead or pay money in lieu.</p>
PCR or Regulations	<p>The Public Contracts Regulations 2015 SI 2015/112 effective date 26 February 2015 (which implements the EU Directive 2014/24/EU into UK law) as amended or replaced including amendments introduced by the Public Procurement (Amendment etc.) (EU Exit) Regulations 2020.</p>

Defined term	Definition/description
Public Sector Equality Duty (PSED) and Protected Characteristics	<p>The Public Sector Equality Duty or PSED covers the following characteristics (known as Protected Characteristics):</p> <ul style="list-style-type: none"> <li>• Age</li> <li>• Disability</li> <li>• Gender reassignment</li> <li>• Pregnancy and maternity</li> <li>• Race</li> <li>• Religion or belief</li> <li>• Sex (gender)</li> <li>• Sexual orientation</li> <li>• Marriage and civil partnership (not always relevant to the duty)</li> </ul> <p>The Council is subject to the Public Sector Equality Duty and must, in the exercise of its functions, have due regard to the need to:</p> <ul style="list-style-type: none"> <li>• eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;</li> <li>• advance equality of opportunity between people who share a protected characteristic and those who do not; and</li> <li>• foster good relations between people who share a protected characteristic and those who do not.</li> </ul> <p>The Equality Act 2010 states that meeting different needs involves taking steps to take account of disabled people's disabilities. It describes fostering good relations as tackling prejudice and promoting understanding between people from different groups. It states that compliance with the duty may involve treating some people more favourably than others.</p>
Quotation	A quotation of a price for the provision of services, works or supplies without assessment of any quality aspects.
Quote	An invitation-only procurement route whereby the Council seeks Quotations.
Regulated Procurement	A procurement exercise for a Contract, Framework or DPS that has an estimated value that is Above Threshold and that are subject to the full extent of PCR 2015.
Regulation 84 Report	The report required under regulation 84 of the PCR.
Relevant Threshold	The relevant threshold above which the Contract is to be procured as required under the PCR, as set out in <a href="#">Appendix 2</a> ,
Service Review Team	The team established to undertake the service review of a High Value Contract (see <a href="#">CSO 17.1</a> ).
Services Threshold (currently £213,477)	The threshold for proposed contracts for services (except Social and Other Specific Services) and supplies set under the PCR, as set out in 0.
SLT Member	Officers who are a member of the Strategic Leadership Team.
Social and Other Specific Services	Are described in <a href="#">Appendix 2</a> .

Defined term	Definition/description
Social and other Specific Services Threshold (currently £663,540)	The threshold for Social and Other Specific Services set under the PCR as set out in <a href="#">Appendix 2</a> .
Standstill Period	For Above Threshold Contracts, the period of ten days set out in the PCR after notification of an award decision to Tenderers, during which the Contract must not be formally awarded.
Tender	A tenderer's proposal submitted in response to an invitation from the Council to be assessed on the basis of a combination of price and quality.
Tender Appraisal Panel (TAP)	A panel constituted to manage all Tender processes (as described in <a href="#">paragraph 39</a> of <a href="#">Appendix 8</a> ).
Unregulated Procurement	A procurement exercise for a Below Threshold Contract (or, unusually, an Above Threshold Contract for which an exemption is available) and so is not subject to the full extent of PCR.
Value for Money	Value for money is not the lowest possible price; it requires assessment of goods or services that fully meet the Council's needs, combined with the level of quality required, delivery at the time you need it, and at an appropriate price.
Works	Are described in Schedule 2 of the Regulations.
Works Threshold (currently £5,336,937)	The threshold for Works set under the PCR, as set out in Appendix 2

## Appendix 2: Relevant Thresholds

The Public Contracts Regulations 2015 and the Concession Contracts Regulations 2016 apply to Contracts when the estimated value equals or exceeds the Relevant Threshold.

The Relevant Thresholds for the purposes of the Public Contracts Regulations 2015 as of 1 January 2020 are as follows:

Contract Type	Threshold
Contracts for the supply of goods (including installation) Contracts for the provision of services	£213,477 ("Services Threshold")
Contracts for the supply of Works	£5,336,937 ("Works Threshold")
Contracts for the provision of Social and Other Specific Services the "Social and Specific Services" Threshold including: Health, social and related services Administrative social, educational, healthcare and cultural services Compulsory social security services Benefit Services Other community, social and personal services including services furnished by trade unions, political organisations, youth associations and other membership organisation services Religious services Hotel and restaurant services Legal services, to the extent not excluded by regulation 10(1)(d) Other administrative services and government services Provision of services to the community Investigation and security services International services Postal services International services; and Miscellaneous services (see schedule 3 of the PCR for more details)	£663,540

The Relevant Threshold for the purposes of the Concession Contracts Regulations 2016 as of 1 January 2020 is £5,336,937.

## **Appendix 3: Contract Value and Contracts Requirements**

### **1. TOTAL VALUE OF A CONTRACT**

- 1.1. The total value of the Contract is the whole of the value or estimated value (in money or equivalent value) excluding VAT. It should include all money to be paid whether in instalments or whether it is paid or received by the Council (though see below for concession contracts). The total value of the contract is calculated from the start date of the contract to its conclusion, including any extensions provisions.
- 1.2. The total value shall be calculated as follows:
  - 1.2.1. Where the contract is for a fixed period, by taking the total price to be paid or which might be paid during the whole of the period.
  - 1.2.2. Where the purchase involves recurrent transactions for the same type of item, by aggregating the value of those transactions over the term of the Contract this may be by assessing how many orders are likely to be placed during a 12-month period and multiplying it by the number of years of the term.
  - 1.2.3. For pilots which may be rolled out in the event of a successful pilot, the value shall be the total value of the pilot and the roll out.
  - 1.2.4. For Nominated Suppliers and Sub-contractors, the total value shall be the value of that part of the main contract to be fulfilled by the Nominated Supplier or Sub-contractor.
  - 1.2.5. Where an in-house service provider is tendering, by taking into account redundancy and similar/associated costs if they are not successful.
- 1.3. For concessions contracts, the estimated contract value must be based on the estimated turnover to be generated by the Contractor over the term of the Contract excluding VAT. This means that the value is the total estimated turnover (income) generated by the Contractor throughout the lifetime of the proposed concession contract including any potential extensions (net of value added tax). It is incorrect to use only the value of any payment made by the Council to the concessionaire to estimate the value of a concession contract.

### **2. CONTRACT REQUIREMENTS**

- 2.1. All Contracts shall be in writing and in a format approved by the Assistant Director, Legal Services. They must not include non-commercial Considerations. Irrespective of value, they must clearly specify:
  - 2.1.1. the works, goods, materials or services to be carried out, furnished or provided (description and quality),
  - 2.1.2. the price or rates to be paid, together with a statement of any discounts or other deductions (amount and timing) which apply,
  - 2.1.3. the time, or times, within which the contract is to be performed, and
  - 2.1.4. all other contractual terms, which will be based upon:
    - 2.1.4.1. the Council's standard terms & conditions; or
    - 2.1.4.2. standard terms and conditions issued by a relevant professional body (e.g. JCT or NEC in relation to construction related works);

or

2.1.4.3. bespoke terms & conditions drafted by the Assistant Director, Legal Services.

- 2.2. In addition, every Contract of purchase over £25,000 must also as a minimum state clearly:
- 2.2.1. that the contractor may not assign or sub-contract without prior written consent of a SLT Member (and where it is a “sub-contract”, written consent of a contract administrator)
  - 2.2.2. any insurance requirements
  - 2.2.3. health and safety requirements
  - 2.2.4. ombudsman requirements
  - 2.2.5. Freedom of Information Act obligations
  - 2.2.6. Civil Contingencies Act 2004 requirements
  - 2.2.7. business continuity if relevant;
  - 2.2.8. data protection requirements, if relevant
  - 2.2.9. that charter standards are to be met, if relevant
  - 2.2.10. equalities and other diversity related requirements
  - 2.2.11. (where agents are used to let contracts) that agents must comply with the Council’s CSOs relating to contracts
  - 2.2.12. Provisions which comply with CSO 7.3
  - 2.2.13. a right of access to relevant documentation and records of the contractor for monitoring and audit purposes, if relevant.
- 2.3. Where it is proposed to use a supplier’s own terms, the advice, and for high value contracts the agreement, of the Assistant Director, Legal Services must be sought in relation to any terms and conditions which differ from the Council’s standard terms.
- 2.4. Payment terms
- 2.4.1. In accordance with regulation 113 of the PCR 2015, the Council must pay undisputed invoices to contractors within 30 days. The Council must also require in its contracts that all contractors pass on to their subcontractors no less favourable payment terms than they receive from the Council.
  - 2.4.2. The Council is Living Wage Foundation accredited. The accreditation requires that all contractors/subcontractors working on Council contracts are paid in line with or above the [London Living Wage Foundation rates](#).
  - 2.4.3. Tenderers will be required to demonstrate how they will allow the Council to monitor the timescales within which they pay their subcontractors.



## Appendix 4: Summary of Approvals

The following is a summary of the approval processes for pre-procurement strategy and contract awards.

Type of contract	Value	Procurement Strategy	Award Approval
All Low Value and Medium Value contract (i.e. below Services Threshold)	Up to Services Threshold (currently £213,477)	Not required	Chief Executive/SLT Member
Revenue Contracts	From Services Threshold (currently £213,477) up to £0.5m	Chief Executive/SLT member in consultation with Cabinet Member	Chief Executive/SLT member in consultation with Cabinet Member
Revenue Contracts	£0.5m to £5m	Cabinet Member	Cabinet Member
Revenue Contracts	Over £5m	Cabinet	Cabinet Member
Capital Contracts	From Services Threshold (currently £213,477) to £1.5m	Chief Executive/SLT member in consultation with Cabinet Member	Chief Executive/SLT member in consultation with Cabinet Member
Capital Contracts	£1.5m - £5m	Cabinet Member	Cabinet Member
Capital Contracts	Over £5m	Cabinet	Cabinet Member

Note: an approval of an award of contract shall also by implication include approval for the Council to enter into the following associated documents:

1. Access Agreements where (a) the Council is the Framework owner and uses Access Agreements to enable other public bodies to join, or (b) which the Council needs to enter into in order to use a third-party Framework
2. Performance bonds and parent company guarantees
3. Collateral warranties with sub-contractors of the appointed supplier

**Table 2: Approval levels for waivers, modifications, extensions, and terminations**

The following is a summary of the approval processes for Waivers, Contract Modifications, Extensions and Terminations.

Type of contract	Value	Modifications	Extensions	Terminations	Waiver
All Low Value and Medium Value contracts	Up to Services Threshold (currently £213,477)	Chief Executive/SLT Member	Chief Executive/SLT Member	Chief Executive/SLT Member	Assistant Director procurement and commercial on recommendation of the Contracts Assurance Board
Revenue Contracts	Services Threshold (currently £213,477) to £0.5m	Chief Executive/ SLT Member	Chief Executive/ SLT Member in consultation with the Cabinet Member	SLT member in consultation with relevant Cabinet Member, the s151 Officer and Assistant Director, Legal Services	For works contracts up to £5.336,937, Assistant Director procurement and commercial on recommendation of the Contracts Assurance Board.
Revenue Contracts	£0.5m to £1.5m	Chief Executive/ SLT Member in consultation with the Cabinet Member ( <i>the total value of the contract is not modified by +/- 10% or more</i> )  Cabinet Member ( <i>the total value of the contract is modified by +/- 10% or more</i> )	The Cabinet Member	SLT member in consultation with relevant Cabinet Member, the s151 Officer and Assistant Director, Legal Services	For works contracts up to £5.336,937, Assistant Director procurement and commercial on recommendation of the Contracts Assurance Board.
Revenue Contracts	£1.5m to £5m	Chief Executive/ SLT Member in consultation with the Cabinet Member ( <i>the total value of the contract is not modified by +/- 10% or more</i> )  Cabinet Member ( <i>the total value of the contract is modified by +/- 10% or more</i> )	The Cabinet Member	The Cabinet Member(s)	For works contracts up to £5.336,937, Assistant Director procurement and commercial on recommendation of the Contracts Assurance Board.

Type of contract	Value	Modifications	Extensions	Terminations	Waiver
Revenue Contracts	Over £5m	Chief Executive/ SLT Member in consultation with the Cabinet Member <i>(the total value of the contract is not modified by +/- 10% or more)</i>  Cabinet Member <i>(the total value of the contract is modified by +/- 10% or more)</i>	The Cabinet Member	Cabinet	For works contracts up to £5,336,937, Assistant Director procurement and commercial on recommendation of the Contracts Assurance Board.  For works contracts over £5,336,937 and for all other high value contracts S151 Officer on recommendation of the Contracts Assurance Board
Capital Contracts	Services Threshold (currently £213,477) to £1.5m	Chief Executive/SLT Member	Chief Executive/SLT Member in consultation with the Cabinet Member	SLT member in consultation with relevant Cabinet Member, the s151 Officer and Assistant Director, Legal Services	S151 Officer on recommendation of the Contracts Assurance Board
Capital Contracts	£1.5m - £5m	Chief Executive/ SLT Member in consultation with the Cabinet Member (the total value of the contract is not modified by +/- 10%)  Cabinet Member (the total value of the contract is modified by +/- 10%)	The Cabinet Member	The Cabinet Member(s)	S151 Officer on recommendation of the Contracts Assurance Board

Type of contract	Value	Modifications	Extensions	Terminations	Waiver
Capital Contracts	Over £5m	<p>Chief Executive/ SLT Member in consultation with the Cabinet Member (the total value of the contract is not modified by +/- 10%)</p> <p>Cabinet Member (the total value of the contract is modified by +/- 10%)</p>	The Cabinet Member	Cabinet	S151 Officer on recommendation of the Contracts Assurance Board

## Appendix 5: SLT Members responsibilities

The SLT Member's responsibilities referred to in [CSO 5](#) are as follows:

- to ensure compliance with legislation and Council Policy;
- to ensure value for money in all procurement and contract matters;
- to ensure compliance with these CSOs and the Financial Regulations;
- to maintain a departmental register of decisions taken for contract-related activities;
- to ensure that all relevant staff are familiar with the provisions of these CSOs, Financial Regulations and the Council's e-tendering system and that they receive adequate training on their operation;
- to ensure compliance with any guidelines issued in respect of these CSOs;
- to take immediate action in the event of a breach of these CSOs or within his or her area;
- to keep proper records of all contracts, tenders, etc. including electronic data files (where electronic tendering systems are used), minutes of tender evaluation panels and other meetings;
- to keep appropriate departmental records of all contracts awarded (using the Council's e-tendering system<sup>1</sup>) where these have a total value of £5,000 and over (in keeping with the statutory requirements on transparency);
- the safekeeping of all original contracts which have been completed by signature and where the value is below £100,000. For contracts which exceed this figure an electronic copy of the sealed contractual paperwork is uploaded on the Council's Contracts Register or passed to the Procurement Team for upload in the Contracts Register (and thereafter safekeeping);
- comply with these CSOs, Financial Regulations, Codes of Conduct and with all UK and European Union binding legal requirements and must also:
  - keep the records required by [regulation 84](#) of the PCR and [CSO 18](#);
  - ensure that Tender procedures are conducted in accordance with procedures set out in the Invitation to Tender;
  - ensure that agents, consultants, and contractual partners acting on their behalf also comply; and
  - take all necessary legal, financial and professional advice.

In addition, no member or officer may accept any form of hospitality from any candidate during a procurement competition (or similar exercise). Hospitality from suppliers, service providers or contractors who have or may have in the future current contracts with the Council may only be accepted in accordance with the "Guidance on Gifts and Hospitality" which forms part of the Council's Constitution (for members) and "Policy and Procedure for: Acceptance of Gifts and Hospitality by Employees: Guidance on the receipt of gifts, benefits and hospitality" that is part of the Council's Personnel Procedures (for officers). For both members and officers the appropriate Register of Gifts and Hospitality should be completed in accordance with this guidance.

## Appendix 6: Modifications and regulation 72 of the PCR

Some modifications to Contracts are permissible if they can be said to be covered by one or more of the following safe harbours:

Regulation of the PCR	Scenario	Criteria
Reg 72(1)(a)	Where the initial documents set out that it is possible for the Council to modify the terms of the contract or Framework Agreement.	This ability to modify must be written in <u>clear, precise and unequivocal review clauses</u> in the initial documents provided that the clauses state the scope and nature of possible modifications or options and do not provide for modifications which would alter the overall nature of the Contract/Framework Agreement.
Reg 72(1)(b)	Where additional works, services and/or suppliers have become necessary for the contractor to perform its obligations under the contract/Framework Agreements.	To rely on this, it must be shown that it is not possible to change contractor because: A) economic and technical reasoning applies such as interchangeability, or interoperability with existing equipment, services or installations procured under the initial procurement <b>and</b> B) this would cause ' <u>significant inconvenience</u> ' or ' <u>substantial duplication of costs</u> ' for the Council. In addition, the value of the additional works, services and/or suppliers required cannot exceed 50% of the value of the original Contract. Finally, a notice must be published accordance with regulation 51 of the PCR.
Reg 72(1)(c)	Where an unforeseeable circumstance has arisen	This can only be relied upon where: <ul style="list-style-type: none"> <li>• where the need for the change has been brought about by circumstances which a diligent contracting authority could not have foreseen; <b>and</b></li> <li>• the modification does not change the overall nature of the contract; <b>and</b></li> <li>• any increase in price caused by this modification cannot exceed 50% of the value of the original contract.</li> </ul> Finally, a notice must be published accordance with regulation 51 of the PCR.

Regulation of the PCR	Scenario	Criteria
Reg 72(1)(d)	Where a new contractor replaces the original as a result of corporate restructuring, a takeover, merger, acquisition, or insolvency	<p>Provided that:</p> <ul style="list-style-type: none"> <li>• the contract includes an unequivocal review clause permitting the transfer; <b>and</b></li> <li>• the transfer is as a consequence of universal or partial succession into the position of the initial contractor following corporate restructuring including takeover, merger, acquisition or insolvency of another economic operator that fulfils the criteria for qualitative selection initially established; <b>and</b></li> <li>• this does not result in other substantial modifications to the contract and not aimed at circumventing the PCR.</li> </ul>
Reg 72(1)(e)	Where the modification is not substantial	<p>A substantial modification is one which:</p> <ul style="list-style-type: none"> <li>A) Renders the contract/framework materially different in character; <b>or</b></li> <li>B) Would have attracted additional bids or an alternative bid pool during the procurement process or would have meant the council could have accepted another bid; <b>or</b></li> <li>C) Makes the agreement more favourable to the contractor in a way that was not provided for in the original documentation; <b>or</b></li> <li>D) Where the scope of the contract/framework is extended considerably; <b>or</b></li> <li>E) Where a new contractor replaces the original for reasons not set out in regulation 72(1)(d) above.</li> </ul>
Reg 72(1)(f)	Low value modification	<p>Where:</p> <ul style="list-style-type: none"> <li>• the value of the modification will not exceed certain thresholds; <b>and</b></li> <li>• the modification does not exceed 10% of the original contract value for services and supplies and 15% of the original contract value for works contracts.</li> </ul> <p>Provided always that the nature of the contract is not changed.</p> <p>When considering the value any modifications made should be considered so that the cumulative value must comply with the above.</p>

## Appendix 7: Time Limits for Procurements

The following time limits apply to Above Threshold procurements.

Procedure	Minimum time limits	Days	Days if Council accepts electronic submission of tenders	Days if PIN is used (in addition to a contract notice)	Days if all reductions apply (electronic tenders and PIN)
<b>Open (Regulation 27)</b>	Minimum time for receipt of tenders from date contract notice sent	35	30	15	N/A
<b>Restricted (Regulation 28)</b>	Minimum time for receipt of requests to tender (SQ response) from the date the contract notice sent	30	N/A	N/A	N/A
<b>Restricted (Regulation 28)</b>	Minimum time for receipt of tenders from the date the invitation to tender sent	30	25	10	5
<b>Competitive negotiated (Regulation 29)</b>	Minimum time for receipt of requests to tender (SQ response) from the date the contract notice sent	30	N/A	N/A	N/A
<b>Competitive negotiated (Regulation 29)</b>	Minimum time for receipt of initial tenders from the date the invitation to tender sent	30	25	10	5
<b>Competitive dialogue and Innovation partnership (Regulation 30 and 31)</b>	Minimum time for receipt of requests to participate in dialogue or negotiate from the date the contract notice sent	30	N/A	N/A	N/A
<b>Competitive dialogue and Innovation partnership (Regulation 30 and 31)</b>	Minimum time for receipt of tenders from the date the invitation to tender sent	No minimum. Timescale determined by contracting authority.	N/A	N/A	N/A



## Appendix 8: Procurement process step by step for High Value procurements

### Glossary of specific terms

Set out below are some specific terms which apply to this Appendix.

Term	Description
Competitive Dialogue Procedure	To be used in specific situations set out in Regulation 30 of the PCR.
Competitive Procedure with Negotiation	To be used in specific situations set out in Regulation 29 of the PCR.
Negotiated Procedure without prior publication	Used in exceptional circumstances. Refer to Regulation 32 of the PCR.
SQ or Selection Questionnaire	An application form used for admission to a DPS or an Approved List or in response to an invitation to Tender where pre-qualification is being used.
Prior Information Notice	A notice that is published in Find a Tender Service (FTS) advising the market of the intention to start tendering within the next 12 months. It may be used to seek the views from interested parties on proposed packaging arrangements, or (in certain circumstances) as a call for competition.
Restricted procedure	Two stage process defined in the PCR Reg 28 that involves a pre- qualification assessment of all candidates responding to a Contract Notice prior to deciding who will be invited to tender.
Select list	A list of those to be invited to Tender compiled following expressions of interest received from external organisations who have responded by submission of an SQ to an: <ul style="list-style-type: none"> <li>• Advertisement appearing in a local newspaper and/or trade journal (if considered appropriate); and/or</li> <li>• Publication on the Council's website; and/or</li> <li>• Contracts Finder advert; and/or</li> <li>• Find a Tender Service (FTS) Contract Notice (except for non-priority [Part B] services – a Voluntary FTS Contract Notice may be considered), if the estimated value is above threshold</li> </ul>
Dynamic Purchasing System	To be used in specific situations set out in Regulation 34 of the PCR.

## 35. PRELIMINARY MARKET CONSULTATIONS (REGULATION 40 AND 41 OF THE PCR)

- 35.1. The SRT may arrange a preliminary market testing exercise where:
- 35.1.1. potential suppliers and others are consulted with prior to the issue of the Invitation to Tender in general terms about the nature, level, broad estimated value and standard of the supply, contract packaging and other relevant matters provided this does not have the effect of distorting competition and does not result in a violation of the principles of non-discrimination and transparency, and
  - 35.1.2. may, where an existing contract exists, obtain from the current service provider information on service delivery aspects.
- 35.2. Where technical advice on the preparation of contract documentation is sought from any organisation or person(s) who may have a commercial interest in bidding, arrangements must be put in place so not as to prejudice the outcome by distorting competition and/or compromising the equal treatment of all potential Candidates. Where there is potential that the process may be distorted or compromised then advice from the Head of Procurement and the Assistant Director, Legal Services must be sought.
- 35.3. You should consider the use of a PIN notice to draw the market consultation to the alteration of potential respondents. The Council's e-tendering system must be used when a Prior Information Notice (PIN) is issued.

## 36. PROCUREMENT STRATEGY

- 36.1. For High Value Contracts, the SRT shall prepare the [Procurement Strategy](#) for approval by the relevant SLT Member. Where the proposed Contract relates to a new service or initiative or the purchase or construction of a new asset, the [Procurement Strategy](#) must also include a Business Case.
- 36.2. The [Procurement Strategy](#) must cover:
- 36.2.1. **Procurement method:** consider what procurement method is most likely to achieve the purchasing objectives, including:
    - 36.2.1.1. internal provision ("make decision"); or
    - 36.2.1.2. external sourcing ("buy decision"); and/or
    - 36.2.1.3. collaboration (including a joint working arrangement between the Council and other local authorities) with other purchasers, partnering and long-term relationships; and/or
    - 36.2.1.4. the use of a DPS or Framework already let by the Council, or a DPS or Framework let by another Central Purchasing Body and which has been awarded on the basis that it can be used by others in particular the Council;
- 36.3. Where paragraph 37.2.1.4 applies, as part of its report seeking approval the SLT Member shall provide evidence that:
- 36.3.1. the Council is within the class of persons eligible to call off from the DPS or Framework;
  - 36.3.2. the goods, works or services required to be procured are within the scope of the DPS or Framework;

- 36.3.3. the call off procedures required under the rules of the DPS Framework or have been established and will be followed, and that a fair and transparent process will be used;
- 36.3.4. the Assistant Director, Legal Services has reviewed the proposed call off terms and conditions (to the extent that they are specified by the DPS or Framework) to ensure that they do not compromise the Council's interests.
- 36.4. In general, the SLT Member shall ensure that the report seeking approval for the [Procurement Strategy](#) includes:
- 36.4.1. **Contract Period:** this should include any potential extensions and/or break periods. If the Contract is a Framework Agreement then the Contract Period shall not exceed 4 years.
- 36.4.2. **Contract Value:** the estimated Contract value. Ensuring that there is an estimating process which sets out the initial Contract estimate, revised estimates and tender estimate. Such estimates must reflect current or expected market values and must not be over or under inflated as a means of avoiding the requirements of either or both the PCR or these CSOs.
- 36.4.3. **Expenditure:** appraise the need for the expenditure and its priority and identify the relevant budget and confirm that:
- 36.4.3.1. there is approval for the expenditure in accordance with Financial Regulations; and
- 36.4.3.2. for non-procurement related issues, the appropriate approvals, for example, those found in Financial Regulations have been complied with;
- 36.4.4. **Consultation:** consultation undertaken with service users (as may be appropriate) about the proposed procurement method, contract standards and also performance and user satisfaction monitoring.
- 36.4.5. **Options:** consider the needs of the business and sourcing possibilities. This includes options for extension.
- 36.4.6. **Procurement Process:** take into account any procurement guidance issued by the Head of Procurement, and/or the Chief Executive (or any other officer they nominate). Depending on whether the Contract Value is:
- 36.4.6.1. Below the Relevant Threshold for supplies/services in which case the procurement shall be an open procedure;
- 36.4.6.2. above the Relevant Threshold for supplies/services or all High Value Contracts for works in which case decide on the most appropriate process:
- open procedure; or
  - restricted procedure; or
  - light touch arrangement (applicable only to social and other specified services); or
  - only with the Head of Procurement's prior approval:
    - competitive dialogue; or
    - competitive procedure with negotiation; or
    - innovation partnership; or

- use of the negotiated procedure without prior publication (direct award) and
  - whether the procurement competition will include an electronic auction (including reverse).
- 36.4.7. **Advertising Process:** in accordance with CSO 18 agree the appropriate advertising process.
- 36.4.8. **Local and SME/VCSE provision:** For below Threshold Social and Other Specific Services and Works Contracts, in accordance with [CSO 4.9](#) to [CSO 4.13](#) assess the contract may be reserved to Local and SME/VCSE suppliers.
- 36.4.9. **Contract packaging** - consideration of whether the Contract can be divided into separate lots and if the contract is not divided reasons as to why not should be recorded in the [Regulation 84](#) Report and [Procurement Strategy](#).
- 36.4.10. **Establishing a Framework Agreement:** where the [Procurement Strategy](#) relates to the establishment of a framework for other public sector bodies to purchase through, the Strategy must show how it will ensure compliance with the Local Authorities (Goods and Services) Act 1970 and/or the Local Government Act 2003 as appropriate and must be approved by the Head of Procurement.
- 36.4.11. **Preliminary Market Consultations:** consider the outcome of any preliminary market consultations aimed at ensuring the draft specification and the terms & conditions are achievable at realistic costs to the Council.
- 36.4.12. **Tender documentation:** The SRT shall in the Procurement Strategy report:
- 36.4.12.1. detail the main provisions contained in the draft specification and ascertain what the relevant standards (may be referenced to a corresponding British standard) which apply to the subject matter of the contract. Such standards must comply with [regulation 42](#) of the PCR. The SRT must conclude those standards that are necessary properly to describe the required quality.
  - 36.4.12.2. detail how the procurement shall ensure stimulation of the market and to ensure sufficient tenders are received;
  - 36.4.12.3. define the objectives of the purchase and, where appropriate, ensure that they meet the requirements of the Council;
  - 36.4.12.4. identify any significant variations to the Council's standard terms and conditions;
  - 36.4.12.5. identify the Award Criteria to be used (not just the split between price: quality) and the reasoning for the recommendation ensuring the optimum combination of whole life cost and quality;
  - 36.4.12.6. securing wider social, economic and environmental benefits for the community for all contracts (services, works, supplies, concession etc). Including specifically for service contracts

how the proposed tender documents meet the statutory requirements contained in the Public Services (Social Value) Act 2012 and the Council's policy on social value;

36.4.12.7. consider, where it is appropriate, the Council's responsibilities under the Civil Contingency Act in terms of potential emergencies and the continuity of high priority services; and

36.4.12.8. other legislation relating to the contract.

36.4.13. **Data Protection:** The SRT should consider what personal data will be collected or processed as part of the contract. A Data Protection/ Privacy Impact Assessment should be carried out and reference should be made to the guidance provided by the Information team within the Council.

36.4.14. **Special Conditions:** The SRT shall consider special conditions relating to the performance of a contract in accordance with [regulation 70](#) of the PCR. These may include economic, innovation-related, environmental, social or employment-related considerations.

## 37. AWARD CRITERIA

37.1.1. In accordance with the PCR all award criteria and sub-criteria relating to the award must be clearly published and refer only to relevant considerations.

37.1.2. The award of all High Value Contracts must be on the basis of the most economically advantageous tender. The recommended quality:price ratio is 60:40. Deviations from this split can be proposed but justification to changes should be included in the award approval report submitted.

37.1.3. The award criteria must be published as part of the tender documentation.

37.1.4. Evaluation must only be made using the published criteria and sub-criteria. Criteria may include:

- Price
- Quality of service
- Quality of goods
- Whole-life running costs
- Whole life cycle costs
- Technical merit
- Cost effectiveness
- Quality
- Delivery date
- Long-term relationships
- Safety
- After-sales services
- Technical assistance
- Partnering arrangements
- Social value
- Relevant environmental considerations
- Aesthetic and functional characteristics (including security and control features)
- Any other relevant matter

- 37.2. Social value must form part of evaluation of the award criteria for any High Value Contract. A minimum of 10% of the overall score shall be attributed to social value in accordance with the Council's Social Value Policy.
- 37.3. Award Criteria and sub-criteria must be designed to secure an outcome giving best value for money for the Council. The Award Criteria and selection criteria must not include:
- 37.3.1. Non-commercial Considerations; or
  - 37.3.2. matters which discriminate against suppliers from or signatories to the Government Procurement Agreement.
- 37.4. The Award Criteria must be set out in the [Procurement Strategy](#).

## **38. CONTRACT PACKAGING – CONSIDERATION OF DIVIDING INTO LOTS**

- 38.1. In accordance with [regulation 46](#) of the PCR, the Council may decide to divide the procurement competition into separate lots. However, where the decision of the Council is not to subdivide into lots that decision must be recorded in:
- 38.1.1. the [Regulation 84](#) Report if the Contract is Above Threshold; and/or
  - 38.1.2. the Procurement Strategy.
- 38.2. However, the consideration must not be to enter into separate Contracts, nor select a method of calculating the total value, in order to avoid the requirements of the PCR or to minimise the application of these CSOs (otherwise known as disaggregation).

## **39. TENDER APPRAISAL PANEL**

- 39.1. The TAP may be similar in its composition to that of the SRT. It will ensure that the procurement exercise is managed in accordance with existing legislative requirements and the Procurement Strategy that has been approved by the Council. Its roles include finalising all final documentation required to undertake a procurement exercise, with appropriate legal and procurement advice it also conducts evaluations at qualification and/or award stages.
- 39.2. The TAP will be chaired by the SLT Member or his/her delegated deputy (or where there are several departments involved, in the department with the highest spend), with a senior sponsor, and include relevant stakeholders (e.g. Contract Officer). It will consult and engage relevant professional officers including but not limited to legal, finance, procurement, IT and HR. It will also commission additional expertise where this is warranted. It will be responsible for:
- 39.2.1. ensuring a contract is put in place in accordance with legal requirements,
  - 39.2.2. meeting required deadlines and service requirements,
  - 39.2.3. obtaining value for money, and
  - 39.2.4. meeting the agreed objectives set out in the Procurement Strategy.
- 39.3. In most instances the TAP will identify and appoint a Contract Officer who will be responsible for the day to day running of the procurement exercise. The Contract Officer will be a member of the TAP.
- 39.4. Before beginning the tendering process, the Contract Officer responsible for it must, in a manner commensurate with the complexity and value of the project:
- 39.4.1. act on the agreed recommendations set out in the agreed Procurement

Strategy;

- 39.4.2. take into account any procurement guidance issued;
  - 39.4.3. assess the risks associated with the procurement and how to manage them; and
  - 39.4.4. have due regard to the Council's Social Value responsibilities under the Public Services (Social Value) Act 2012 and Public Sector Equality Duty arising from the Equality Act 2010 and other relevant legislation.
- 39.5. The TAP shall appoint the appropriate professional officers (and in most instances this will include the Contract Officer) to evaluate expressions of interest or tenders received. These professional officers will individually score the submissions received and award marks (where appropriate) against the pre-published criteria set out in the Procurement Strategy. All evaluators are required to record their individual scores in the Council's e-tendering system. The TAP<sup>5</sup> will then consider these individual scores and shall arrive at and agree a consensus score for all criteria during the moderation meeting. The moderation meeting is chaired by the Head of Procurement or a delegated (procurement) officer. The TAP shall not adopt, as a methodology, an average scoring arrangement.
- 39.6. The TAP will keep accurate records of all meetings, retain appropriate documentation and maintain proper records for transparency and audit purposes as set out in [regulation 84](#) of the PCR (where applicable) and paragraph 47 below.
- 39.7. The TAP will undertake post-project reviews where required. It will implement any corporate or collaboration requirements including supporting arrangements around any agreed approval processes and participating in any audits.
- 39.8. The TAP and appropriate SLT Member shall be responsible for ensuring that all persons or bodies invited to tender for the supply of goods, services or works to the Council have been suitably assessed and meet the PCR.

#### **40. TENDER DOCUMENTATION**

- 40.1. At the point of advertising the opportunity (for single-stage tendering) or when inviting Tenders after pre-qualification, all tender documentation must be complete and available on the Council's e-tendering portal for access by all economic operators who express interest in the project. This Invitation to Tender comprises at least the following:
- 40.1.1. the specification;
  - 40.1.2. the invitation to tender containing instructions on the process;
  - 40.1.3. the draft contract;
  - 40.1.4. the form of tender;
  - 40.1.5. response requirements; and
  - 40.1.6. the Award Criteria.
- 40.2. Where an open procedure is used, the Invitation to Tender shall also include a Minimum Standards Questionnaire.
- 40.3. The TAP shall be responsible for preparing the Invitation to Tender documentation.

## **41. INVITATION TO TENDER/QUOTE**

- 41.1. High Value Contracts are awarded on the basis of the most economically advantageous tender, and tenderers must be informed of the evaluation model and award criteria in the Invitation to Tender documents. The subsequent evaluations must be carried out in accordance with them.
- 41.2. The Invitation to Tender shall state that no Tender will be considered unless it is received by the date and time stipulated in the Invitation to Tender. No Tender delivered in contravention of this clause shall be considered.
- 41.3. All Invitations to Tender instructions shall be on the Council's Standard Form.
- 41.4. All candidates invited to tender or quote must: (a) be issued with the same information, (b) at the same time and (c) subject to the same conditions. Any supplementary information must be given on the same basis.

## **42. PRE-QUALIFICATION STAGE**

- 42.1. Where a pre-qualification stage applies, the government's SQ Form shall be used, together with appropriate service-specific questions. This must be published through the e-tendering system together with a methodology for evaluating the SQ responses and a draft specification. However, if the High Value Contract is also above the Threshold, then the Award Criteria for the Tender stage(s) must also be published, together with the draft contract and method statement questions that are used to evaluate against the Award Criteria. See also paragraph 43 below for conduct of this shortlisting stage.

## **43. SHORTLISTING**

- 43.1. The shortlisting of economic operators applies where expressions of interest have been sought using either the restricted procedure, or light touch procedure, competitive procedure with negotiation, or competitive dialogue procedure.
- 43.2. The TAP is responsible for shortlisting of economic operators.
- 43.3. The form of selection questionnaire is included on the Council's e-tendering system and should not be amended. Only additional questions can be included. The selection questionnaire is backward looking and should not include any questions about the provision of the project to the Council, but instead should ask about current capacity and standing. Information sought at selection stage cannot be re-sought (or re-used) at tendering stage.
- 43.4. The TAP will agree the methodology for selecting economic operators to invite to tender and this shall be set out in the SQ Guidance documentation.
- 43.5. The TAP shall arrive at a consensus decision on which economic operators to invite to tender.
- 43.6. Where an economic operator is a subsidiary of a parent company, and:
  - 43.6.1. there is some concern about the financial stability of the economic operator; and/or
  - 43.6.2. the award of the Contract is based on an evaluation of the parent company, then the TAP must consult the Director of Finance about the use of a Parent Company Guarantee.
- 43.7. There is no requirement to obtain a bond from a candidate unless the TAP



considers it an appropriate way to mitigate risks identified during the procurement process.

#### **44. SUBMISSION, RECEIPT AND OPENING OF TENDERS:**

- 44.1. Unless otherwise agreed by the Head of Procurement, all Quotations and Tenders must be received through the Council's e-tendering system.
- 44.2. The Head of Procurement will be responsible for the verification of all tenders and quotations that have been submitted electronically through the e-tendering system.
- 44.3. Any Quotation or Tender received after the date and time for its return cannot and must not be accepted. Late tenderers will be advised that their Tender has been rejected because it was received after the date and time scheduled for its return.
- 44.4. The Contract Officer must not disclose the names of tenderers or candidates to any Council staff not involved in the procurement process.

#### **45. EVALUATION AND AWARD OF CONTRACTS**

- 45.1. The TAP will take responsibility for the evaluation of all tenders received and the arrival of the final consensus scores.
- 45.2. In accordance with statutory requirements contained in the PCR the confidentiality of Quotations, Tenders and the identity of Candidates must be preserved at all times, and information about one Candidate's response must not be given to another Candidate. Where questions are received prior to the return of tenders, then the Contract Officer shall anonymise both the question(s) and response(s) and forward to all tenderers for information, unless the questions are tenderer-specific.
- 45.3. In accordance with 41.1 above, where a Contract is to be awarded on the basis of the most economically advantageous tender received, the evaluations must be carried out in accordance with the pre-published evaluation model and award criteria.
- 45.4. [Regulation 56\(4\)](#) of the PCR provides the Council with discretion to accept Tenders that appear to be incomplete or erroneous or where specific documents are missing provided that such requests are made in full compliance with the principles of equal treatment and transparency. These omissions and or errors must be resolved in order to evaluate all Tenders on an equal and transparent basis
- 45.5. The arithmetic in compliant Tenders must be checked. If arithmetical errors are found they should be notified to the tenderer, who should be requested explain the discrepancy. Such a discrepancy may, in certain circumstances, be acceptable under [regulation 56](#) of the PCR, otherwise the tender must be required to confirm or withdraw their tender. Alternatively, if the rates in the Tender, rather than the overall price, were stated within the Invitation to Tender as being dominant, an amended Tender price may be requested to accord with the rates given by the tenderer.
- 45.6. The Council has a statutory duty under [regulation 69](#) of the PCR to investigate any tender that appears to be abnormally low.
- 45.7. Where the tender recommended for acceptance is more than 10% below the estimate, a report in accordance with these CSOs the awarding report required in accordance with these CSOs shall explain the reasons for the difference and confirm that the contractor has provided written confirmation that they are able to fulfil the contract for their tendered sum.

- 45.8. SLT Members shall ensure that submitted tender prices or rates are compared with any pre-tender estimates and that any discrepancies are examined and resolved satisfactorily. Details of correspondence needs to be kept on the project file, and this information needs to be recorded in decision award reports (to SLT Members, Cabinet Member Decisions or Cabinet Reports).
- 45.9. As soon as possible after the contract has been awarded the Council must send a contract award notice to the Find a Tender Service. In accordance with the PCR this must be done within 30 days. The only exception is any contract that is Below Threshold.

## **46. POST-TENDER**

- 46.1. Post-tender clarification must only be conducted in accordance with the guidance issued by the Head of Procurement and/or the Assistant Director, Legal Services, both of whom must be consulted wherever it is proposed to enter into such post-tender clarifications.
- 46.2. Negotiation is not permitted post tender (or final tender in the case of a CPN).
- 46.3. Where tenders are received above the approved budget, the Officer may consider adjusting the specification and **all the candidates** must be asked to re-submit based on an amended specification in order, to bring the cost within budget. However, where it is identified that there needs to be a fundamental change to the specification (or contract terms), the Contract must not be awarded but retendered in accordance with the PCR.

## **47. AWARD OF CONTRACT**

- 47.1. This shall be communicated through the e-tendering system using a formal letter of award. For Above Threshold Contracts, it must first be preceded by the standstill process referred to in paragraph 48.1.1.

## **48. RECORDS AND DEBRIEFING CANDIDATES**

### **48.1. Standstill Period and Debriefing**

- 48.1.1. The requirements of Reg 55 and Reg 86 of the PCR shall be complied with for all Above Threshold Contracts. See further paragraph 50.
- 48.1.2. For Below Threshold Contracts, debriefing may be conducted after award notification.

### **48.2. Report of procurement process**

- 48.2.1. Regulations 83 and 84 of the PCR provides a statutory framework for the retention of contract documentation and a requirement to develop a contemporaneous report detailing the decisions taken during all procurement processes above the thresholds. This must be complied with for Above Threshold Procurements.

## **49. RECORD RETENTION**

- 49.1. A Contract must be kept for six years (12 years if the Contract is a deed) after the final settlement of the Contract.
- 49.2. Documents which relate to the procurement process should be kept for a minimum period of 12 months, provided there is no dispute about the award (these may be stored electronically).

## **50. DEBRIEFING OF CANDIDATES – REGULATED PROCUREMENTS**

- 50.1. Where a tendering exercise is regulated by the provisions of the PCR, Candidates must be simultaneously notified (in writing) and as soon as possible after any decision has been made in connection with their exclusion from the process or the outcome of the award decision is known. The process is set out in [regulation 55](#) of the PCR and must be strictly adhered to. There is a similar process in the [Concession Contracts Regulations 2016](#).
- 50.2. Where the Council has applied a quality-price award criteria it has a statutory duty to inform the unsuccessful candidates of the relative advantages of the successful tenderer. This is usually carried out as part of the statutory cooling-off period after the award decision has been made. For tenders that are subject to the PCR there are strict rules that the Council must comply with and advice on their application must be sought from the Head of Procurement and/or the Assistant Director, Legal Services.
- 50.3. The process shall be communicated in writing only and at no time will any officer of the Council be engaged in a verbal debrief with the unsuccessful candidates.

## Appendix 9: Report Templates

Report templates, the procurement strategy template, and the waiver form template are available on the Council's intranet (for internal use only):

<https://officesharedservice.sharepoint.com/sites/Governance/SitePages/Reports.aspx#templates>