

Committee: General Purposes Committee

Date: 14th March 2012

Agenda item: 11

Wards: All

Subject: Contract Standing Orders – Revised Version 2012

Lead officer: Kevin Churchill

Lead member: Cllr Mark Allison

Forward Plan reference number: 1089

Contact officer: Kevin Churchill (ext 3736)

Recommendations:

- A. That the General Purposes Committee recommends to the Council that it adopts the proposed revised Contract Standing Orders as set out in Appendix 2.
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1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1. To provide a summary of the work undertaken on the Contract Standing Orders during the latter part of 2011 as part of the Finance Review.
- 1.2. To provide a summary of the main differences between the current Contract Standing Orders (2007) contained in Appendix 1 and the proposed new version (2012) contained in Appendix 2.

2 DETAILS

- 2.1. The Contract Standing Orders form part 4G of the Constitution and is the document that governs the selection, award and entry of all works, services and supplies contracts entered into by or on behalf of the Council.
- 2.2. The Contract Standing Orders were last reviewed prior to 1st February 2007 when the current version became effective.
- 2.3. As part of the 2011 Finance Review the CSOs have been reviewed and updated. In general, the latest draft brings the CSOs up to date for 2012 and beyond and provides a general refresh and restructure of the key paragraphs. The aim is to improve on the way in which the CSOs are laid out in order that they are as user-friendly as possible for staff to understand and follow and also as clear as possible for members of the public and potential suppliers to the Council.
- 2.4. The main changes are summarised in section 2.8 below.
- 2.5. Subject to agreement from General Purposes Committee and the Council, the proposed new version (Appendix 2) is to become effective from Tuesday 10th April 2012 (due to Council 10 days call-in period) and to remain in force until the next CSO review is undertaken in the future. It is recommended that the CSOs are reviewed every 3 years.

- 2.6. Following 10th April 2012 the proposed new CSOs will be monitored for a period of 12 months for any practical implications and will be revised as necessary in time for 10th April 2013. Subject to CSO 39 it is proposed that *if any* changes are subsequently required *then* the CSOs will return to Standards Committee, General Purposes Committee and Council for approval.
- 2.7. The three Appendices to this report are:
Appendix 1 – Current CSOs (1st February 2007)
Appendix 2 – Proposed new CSOs (10th April 2012)
Appendix 3 – Proposed new CSOs showing marked-up changes.
- 2.8. A summary of the main changes are described below. Members are recommended to read the complete suite of documents for a full appreciation of all of the changes.
- 2.9. In Appendix 3 the yellow text denotes new material; the ‘strikethrough’ denotes the deleted sections.

2.91 – Summary of the main changes

Council Approved Lists

- In the current version, CSO 11 refers to ‘Council Approved Lists’. It is proposed that this section is deleted and the procurement process be incorporated into the setting up a ‘Framework Agreement’ (CSO 23) as an alternative.

CSO 20 - Threshold between Quoting and Tendering raised to £100,000.

- The financial value between the need to obtain a minimum of 3 quotes (no advertisement) and undertake a public tender (advertisement required) is raised to £100,000 from £75,000 for *all* tenders. In the current CSOs a £100,000 threshold is permitted for procurement processes that use the *e-tendering system* whereas for paper based quotes/tenders, the threshold is £75,000. The proposed change removes the distinction between paper based electronic based procurement processes and recommends a limit of £100,000 for all tenders and the use of the e-tendering system will now be mandatory for all officers from 10th April 12.

CSO 21 – Contracts valued at or more than £100,000 up to the OJEU Threshold

- This section is now clearer on the process to be followed, including advertising, evaluating, selecting and excluding tenderers from a procurement process.

CSO 22 - Contract valued at greater than OJEU Threshold.

- CSO 22 is strengthened and is clearer on process, selection and award criteria.

CSO 23 – Operation of Frameworks Agreements

- This is a new section that outlines the evaluation, appointment and use of Framework Agreements and how to undertake mini- competitions once they are put in place.

CSO 24 – Contracts for Consultancy Services and Interim Professional Services

- This section is new and is added to provide clarity around how Consultancy Services and Interim Professional Services are tendered.

CSO 25 – Contracts for Concessions

- This section is added to address how contracts for concessions are to be treated.

CSO 26 – Contract Award and Standstill Period

- This section has been revised to reflect the changes to the financial limits.

CSO 27 – Contracts for the Disposal of Council Assets

- A new section to address the disposal of Council assets such as property, land and other goods/supplies.

CSO 39 – Amendment of CSO

- The proposed new draft includes a new power to vary the EU Thresholds set out in the relevant CSO's via the written approval of the Leader, Chair of Scrutiny, Chief Executive and Monitoring Officer.

2.92 – Summary of comments received from Standards Committee on 28th Feb 12

Kevin Churchill discussed the proposed draft with Members.

- Members asked that further consideration be given to the appropriate level for CSO 20 – the decision on this level should be evidence based and consider in particular the number and value of contracts awarded in the area between £75,000 and £100,000.
- It was important that consideration be given to ensuring that 3rd sector organisations and local business were not disadvantaged by Framework Agreements (CSO 23)

- Declarations of Interest needed to be clarified as to whether the declaration needed to be made on appointment to the organisation or appointment to a specific procurement project.
- In CSO 5, the same safeguards contained within CSO 13 (specifically 13.4) needs to be reflected.
- CSO7 and linked to CSO 24. Confirmation was received that the employment of consultants and Interim Professionals was subject to the same limits as apply to other types of contract (CSO 20, 21, 22).
- CSO 7 (viii) engagement of legal Counsel and the provision of external legal advice and or services is excepted from CSOs and these services are subject to Framework Agreements already.
- CSO 11 required further clarification as to the extent of what is and is not permitted, perhaps by cross reference to the standards in CSO 10.
- CSO 19 should clarify the level of officer who could act as a Responsible Officer in such 'emergency' circumstances and cross reference to other emergency planning policies.

2.93 - Resolution at Standards Committee

- The Resolution was such that the Committee recommends that the proposed revised Contract Standing Orders are adopted by the Council subject to further consideration being given to the points raised by the Committee.

3 ALTERNATIVE OPTIONS

- 3.1 The current version of the CSOs 2007 (Appendix 1) could remain unchanged.

4 CONSULTATION UNDERTAKEN OR PROPOSED

- 4.1 The proposed new draft of the CSOs (Appendix 2) has received input from the Director of Corporate Services, members of the Procurement Board, Legal Services, Commercial Services and a review by Internal Audit.

5 TIMETABLE

- 5.1 The timetable to achieve a CSO 'effective date' of 10th April 2012 is as follows:

- General Purposes Committee – 14th March 2012.
- Council – 28th March 2012.

- CSO effective date (following Call-In period) – 10th April 2012.

6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

- 6.1 The CSOs govern the way in which the Council undertakes procurement activity. The financial implications of these changes will arise as a result of staff undertaking procurement activity in accordance with the new Orders. The changes are in anticipation of savings achieved through increased tendering and savings as a result of the use of the e-tendering system, as an alternative to paper based quotes and tenders. There may be an adverse resource and cost implication of the new Orders however as per 2.6 above, the practical implications will be monitored and a review will be carried out during the first 12 months and further refinements to the CSOs will be proposed if necessary.

7 LEGAL AND STATUTORY IMPLICATIONS

- 7.1. The Constitution requires that the Council publish Contract Standing Orders

8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

- 8.1. None

9 CRIME AND DISORDER IMPLICATIONS

- 9.1. None

10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

- 10.1. None

11 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT

- Appendix 1 – Current CSOs (1st February 2007)
- Appendix 2 – Proposed new CSOs (10th April 2012)
- Appendix 3 – Proposed new CSOs showing marked-up changes.

12 BACKGROUND PAPERS

- 12.1. None

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PART 4 G

London Borough of Merton
Constitution Part 4 G
CONTRACT STANDING ORDERS
Effective 1 February 2007

Revised: April 2006 Mike Parsons

Approved: September 2006 CMT and cabinet

Mike Parsons

Director Corporate Services

CMT

Cabinet

18 September 2006

General Purposes

7 November 2006

Standards

25 January 2007

General Purposes Committee

30 January 2007

Full Council

31 January 2007

CONTENTS

CSO 1	Compliance with Contract Standing Orders	4
CSO 2	Schemes of Delegation and Management	5
CSO 3	DIRECTOR'S Responsibility	5
CSO 4	Responsible Officers' Duties	5
CSO 5	Community Representatives	6
CSO 6	Exemptions from Contract Standing Orders	7
CSO 7	Equality, Diversity and the Environment	7
CSO 8	Corporate Social Responsibility	9
CSO 9	Acceptance of Gifts and Hospitality	10
CSO 10	Unauthorised Disclosure of Information	10
CSO 11	Council Approved Lists	10
CSO 12	Health and Safety	11
CSO 13	Options Appraisal.....	11
CSO 14	Joint Procurement Arrangements with third parties	11
CSO 15	Contract Packaging and Aggregation	12
CSO 16	Contract Value Estimation	13
CSO 17	Emergency Procurement	13
CSO 18	Contracts valued at less than £75,000 (£100,000 for E-tendering)	14
CSO 19	Contracts valued at more than £75,000 (£100,000).....	15
CSO 20	Competitive Tender Process.....	15
CSO 21	Pre-Tender Market Consultation	16
CSO 22	Selection Of Tenderers	17
CSO 23	Tendering following Public Advertisement	18
CSO 24	Tender Invitation	18
CSO 25	Tender time extensions.....	19
CSO 26	Amendments or Additional Information in relation to ITT or Specification	19
CSO 27	Tender Receipt	19
CSO 28	Late Tenders.....	20
CSO 29	Single Point of Contact	20
CSO 30	Amendments to Tenders Submitted.....	21
CSO 31	Arithmetical Errors	21
CSO 32	Variant tenders.....	22
CSO 33	Tender Opening.....	22
CSO 34	Tender Evaluation.....	22
CSO 35	Contracts Not Requiring Tendering.....	23
CSO 36	Contract Negotiation	24
CSO 37	Contract Award	24
CSO 38	Contracts In Writing	25
CSO 39	Contract Specifications	25
CSO 40	Nominating Products/Providers.....	26
CSO 41	Contract Conditions	26
CSO 42	Contract Performance	27
CSO 43	Contract Variation	27
CSO 44	Electronic Procurement and E Tendering	28
CSO 45	Freedom of Information Act (FOI) 2000	28

APPENDIX 1

CSO 46 Procurement TOOLKIT	28
Appendix 1 Terms and Definitions	29
Appendix 2 Exemptions from Contract Standing Orders	31

CSO 1 Compliance with Contract Standing Orders

- 1.1 These Contract Standing Orders refer to the selection, award and entry into any contract by the Council and any person or representative of the Council on behalf of the Council or Council's partners.
- 1.2 The Director of Corporate Services will from time to time issue practical guidance as to what steps should reasonably be taken for the purposes of complying with these Contract Standing Orders. The guidance will be contained in a document called "The Procurement Toolkit".
- 1.3 Contract Standing Orders is a controlled document. It is controlled by the Director of Corporate Services. Only the Director of Corporate Services can make recommendation to Council about changes to these Standing Orders.
- 1.4 These Contract Standing Orders are not applicable to schools operating under Schemes of Financial Management; or Tenant Management Organisations;
- 1.5 Every contract made by the Council or on its behalf will comply with these standing orders and comply with:
 - i Domestic legislation, common law and EU Procurement Legislation,
 - ii Financial Regulations & Procedures of the Council,
 - iii Statutory Guidance, and
 - iv Council Policies.
- 1.6 It will be a condition of any contract between the Council and anyone who is not an Officer of the Council, but who is authorised to carry out work in relation to the grant of any contract (e.g. external consultant, other external provider), that they comply with these Contract Standing Orders.
- 1.7 The terminology and abbreviations referred to in this document are defined at Appendix 1. "Terms and Definitions".
- 1.8 These CSO's will not be a barrier to the implementation of e-procurement or e-tendering systems and processes. Where reference is made to documents, registers, communication, delivery or any other term which might imply traditional methods such as paper records, postal services etc, properly acquired and approved electronic means may be employed unless specifically excluded.
- 1.9 Failure by officers to comply with these Contract Standing Orders will be a disciplinary offence.
- 1.10 These Contract Standing Orders whether superceded or not must be retained for 20 years before being considered for destruction.

CSO 2 SCHEMES OF DELEGATION AND MANAGEMENT

- 2.1** The Chief Executive and any officers authorised by him in accordance with the Council's scheme of delegation may let contracts on behalf of the Council. Each Director may receive powers to enter into contracts on behalf of the Council to specified financial limits (including unlimited sums) in accordance with the constitution and scheme of Management authorisation. Contracts above £2,000,000 in value may only be approved by the Cabinet.
- 2.2** Each Director will compile, maintain and publish a Scheme of Management specific to their delegated functions, detailing the names and posts of staff approved for the purposes of price-testing, tendering, entering into contracts and placing orders on behalf of the Council; including the maximum contract value allocated to each member of staff for these purposes.
- 2.3** Each Director when exercising functions on behalf of the Council will supply to and agree with the Director of Corporate Services, a Scheme of Management before the commencement of each financial year, and on making any amendment.
- 2.4** The Director of Corporate Services will keep a register of all schemes of delegation and management.

CSO 3 DIRECTOR'S RESPONSIBILITY

- 3.1** Directors are responsible for ensuring that within their Departments:

 - i** These Council Standing Orders are complied with;
 - ii** schemes of delegation exist which identify which Officers have responsibility and the level of their financial delegation;
 - iii** contracts are awarded and managed in accordance with these standing orders;
 - iv** Officers undertaking procurement and commissioning have the level of competency and current knowledge appropriate to the scope of their activity in order to ensure compliance with these Standing Orders;
 - v** records and clear audit trails of all actions, decisions and approvals relating to procurement and commissioning activity, quotations, tenders, orders and contracts are maintained and made available for inspection when requested by anyone entitled to inspect these records;

CSO 4 RESPONSIBLE OFFICERS' DUTIES

- 4.1** Every Contract will have a Responsible Officer nominated by or on behalf of the Departmental Director. Detailed guidance on the role of a Responsible Officer will be provided by the Director of Corporate Resources on the Procurement Toolkit. A Responsible Officer must always

- i** seek value for money;
- ii** Carry out a robust options analysis before selecting the chosen procurement procedure, to include, options of joint procurement with other external and internal partners, and the use of framework agreements.
- iii** show no undue favour to any provider, nor discriminate against providers from other EU Member States or EFTA countries or GPA States ;
- iv** conduct purchasing or price-testing or other procurement in accordance with the highest standards of propriety, probity and proper practices to prevent fraud and corruption (including respecting the confidentiality of commercial information);
- v** comply with E.U. and U.K. law;
- vi** initiate procurements correctly, in accordance with the recognised Council policies and processes for Procurement Management.
- vii** take into account all relevant council strategies (e.g. environmental strategy; consultation; supply chain initiatives encouraging small & medium enterprises (S.M.E.'s) and black & minority ethnic enterprises (B.& M.E.E's) to tender for appropriate contracts);
- viii** fulfil the role as the Project Sponsor or appoint a Project Sponsor and Manager; under MAP (Merton's approach to projects).
- ix** Demonstrate appropriate statutory and stakeholder consultation;
- x** Clarify the "role" (if any) of community groups, voluntary sector and business community.
- xi** Ensure that the Whistleblowing procedure is included in tender documents.

CSO 5 COMMUNITY REPRESENTATIVES

- 5.1** Officers may invite community representatives to participate in the procurement process for development of specifications, assistance in selection of providers and the commentary on performance of particular contracts. The agreement of the Director of Corporate Services is required for any other type of involvement where this is not covered by law or any Council policy.
- 5.2** Community representatives (e.g. tenant representatives, but not Members) are not "Responsible Officers" for the purposes of these Standing Orders and, except where the law specifically provides otherwise, will be observers with speaking rights at the discretion of the Responsible Officer. They may advise Responsible Officers where appropriate, but all decisions will be taken by the Council within the framework of the schemes of delegation.
- 5.3** Responsible Officers will ensure community representatives give a written undertaking to treat all information confidentially throughout the tendering process, and the life of the contract and sign the appropriate declaration of interests.

CSO 6 EXEMPTIONS FROM CONTRACT STANDING ORDERS

- 6.1** Where an exemption is sought from these standing orders the exemption must be submitted in writing to the Director Corporate Services and must detail the CSO reference from which exemption is requested and the reasons for requiring the exemption and proposed alternate methodology.
- 6.2** The Director of Corporate Services is authorised to grant exemptions to these standing orders.
- 6.3** Indicative circumstances where an exemption may be granted are set out in Appendix 2.
- 6.4** No exemption may be granted:
- i** that would result in a breach of European or U.K. law
 - ii** that requires Cabinet to approve major contract variations
 - iii** that requires Cabinet to accept certain tenders
 - iv** that differs from the Scheme of Management
 - v** that removes the requirement for declaration of any Officer or Members Interests
- 6.5** The Director of Corporate Services, will maintain a register of exemptions granted by Department and contract, detailing the nature of the exemption and the value of the contract. The register will be reported bi-annually to the Procurement Board.
- 6.6** The Chief Executive will consider and where appropriate grant exemptions arising from within the Corporate Services Department
- 6.7** The Procurement Board will analyse the nature of the exemptions being applied for and those being granted and will make appropriate recommendations to the Director of Corporate Resources about the operation of the exemptions procedure.

CSO 7 EQUALITY, DIVERSITY AND THE ENVIRONMENT

- 7.1** In procuring goods, services or works Responsible Officers must have regard to the following Principles.

Equal Opportunities

- 7.2** Responsible Officers will carry out their role with due regard to the need to eliminate unlawful discrimination and to promote equality of opportunity by reference to
- (a) the selection of providers, suppliers and contractors
 - (b) the provision of goods works or services
 - (c) the specification requirements

- 7.3** Responsible Officer shall ensure that they have taken into account any Codes of Practice issued by the CRE, EOC or the DRC on how equality and diversity issues may be embedded in procurement.
- 7.4** The Director of Corporate Services shall issue a Procurement Toolkit containing such practical guidance as the Director thinks fit as to what steps Responsible Officers should reasonably take for the purpose of complying with this Standard Order.

Environmental Considerations

7.5 Environmental Management

Responsible Officers will carry out their role with due regard to the need to

- i** Influence suppliers of services and goods to reduce their environmental impact.
- ii** Quantify and monitor the environmental impacts of the Council's services and its working practices.
- iii** Integrate and promote environmental considerations and objectives in relevant Council policies, programmes and services.
- iv**
- v** Achieve continuing improvements in environmental performance, over and above regulatory and legislative requirements.

vi

- 7.6** The Director of Corporate Services shall from time to time issue a Procurement Toolkit containing such practical guidance as the Director thinks fit as to what steps Responsible Officers should reasonably take for the purpose of complying with this Standing Order.

Transport and Pollution

- i** Promote the use of public transport and alternative forms of non-polluting transportation.
- ii** Reduce Pollution and seek improvements in air quality.

Energy, Water and other natural resources consumption

- iii** Promote the conservation of sustainable use of energy, water and other natural resources.

Waste & Recycling

- iv** Prioritise minimisation of waste, followed by re-use, then recycling and composting, then energy recovery, and then sustainable disposal.

Open Environment & Biodiversity

- v** Value and protect diversity in nature and natural systems.

Urban quality

- vi To conserve, protect and enhance the quality, character and identity of the Borough's built environment and to address wider environmental issues.
- vii To protect people, their homes and the environment from crime and disorder and reduce the fear of crime.
- viii To promote good access provision for people with disabilities.

CSO 8 CORPORATE SOCIAL RESPONSIBILITY

- 8.1 Any Person involved in the procurement process or in the tendering of Council contracts should be guided by the principles of openness, transparency and legality. These ethical principles should to be implemented by all those involved and include:
- i That there should be no conflict between official duties and private interests;
 - ii That there should be no improper influence placed on any person to show favour (or disfavour) towards any tenderer.;
 - iii That at all times tenderers must be dealt with in an honest, fair open and even-handed way;
 - iv That information provided by tenderers should be regarded and treated as confidential.

CONFLICTS OF INTEREST

- 8.2 **Declaration of Conflict of Interest** Conflict of interest means conflict of private interest and public duty and /or conflict of public duty to a public body and duty to The Council. It is important that a persons judgement of the public (Council) interest is not impaired by their private interest or duty to another public body. It is not just about actual conflict but also an appearance of conflict.
- 8.3 The following will declare any interests which may affect the selection, award or management of any potential or existing contract:
- i all permanent or temporary staff;
 - ii external consultants involved in a procurement;
 - iii community representatives;
 - iv members of the Council involved in any relevant decision (executive or scrutiny).
- 8.4 The rules concerning the declaration of interests by Members are set out in full in the Merton Code of Conduct for Members.

- 8.5 The rules concerning the declaration of interests by Officers are set out in the Council's Staff Code of Conduct.
- 8.6 Directors must ensure that, consultants and community representatives appointed or agreed by them make declarations on appointment, or on any change in circumstances (and annually in the case of staff); and will either certify them as acceptable or take any necessary action in respect of potential conflicts of interest.
- 8.7 A person to whom an interest is declared has a duty to examine that declaration in the context of the proceedings in question. They then have to decide whether the interest declared would appear to an informed observer to affect the decision makers ability to judge whether the procurement decision is in the public interest.
- 8.8 A person who is assessed as having such a conflict of interest will be precluded until the conflict is removed.

CSO 9 ACCEPTANCE OF GIFTS AND HOSPITALITY

- 9.1 Acceptance of gifts and hospitality by any person involved in the procurement process could be viewed as accepting a bribe or other corrupt practice. The basic rule is that no gift or money should be accepted. The Council's rules on the receipt and registration of gifts and hospitality are set out in of the Staff code of Conduct and is the Members code of conduct.
- 9.2 Council Officers involved in tender exercises should be particularly sensitive to the timing or letting of contracts for which the provider of the hospitality is already involved or is likely to be submitting a tender for a contract in the future.
- 9.3 All offers of gifts, money or other inducements should be reported in accordance with the relevant code of conduct.

CSO 10 UNAUTHORISED DISCLOSURE OF INFORMATION

- 10.1 No officer, consultant, employee or agent of the Council is permitted to disclose to any internal or external party any information they have obtained which may reasonably and objectively be deemed to be capable of influencing the outcome of the award of a contract.

CSO 11 COUNCIL APPROVED LISTS

- 11.1 The Council may, at its discretion compile and maintain a list for contractors and consultants, or any other appropriate commodity or service list, or arrange for such a list to be compiled and maintained via an approved external provider. Such a list will be defined as a "Council Approved List".

- 11.2** Lists may be compiled without public advertisement, except where advertisement is required by law, or as set out in EU regulations procurement procedures require the contract to be advertised publicly.
- 11.3** Where a Council List exists or a framework agreement has been duly established. Chief Officers must carry out options appraisals and procurements using the established arrangements and frameworks for contract award.

CSO 12 HEALTH AND SAFETY

- 12.1** It is Council policy that any contractor or consultant (and some suppliers) who wishes to work for the Council must satisfy the Council that they comply with the statutory Health and Safety requirements or are registered with the Contractors Health & Safety (CHAS) Assessment Scheme.
- 12.2** In circumstances where a Department may need to use a non-CHAS registered contractor or consultant, the Council's Safety & Emergency Planning Manager must be consulted before they are engaged. All contracts must be subjected as appropriate, to second and third stage competency assessments to comply with the Councils (H&S) policy on the selection and control of contractors.

CSO 13 OPTIONS APPRAISAL

- 13.1** For all procurements with a potential budget of over £500,000.(five hundred thousand) there must be a robust options appraisal which examines all possible ways of structuring the deal to allow the Council to obtain the best result. As appropriate, this may include looking at partnering, market consultation, joint ventures, consortia, contracting with other public authorities and the third sector, as well as the comparative benefits of simply taking a traditional procurement path. Responsible Officers are expected to keep themselves updated with developments within their particular areas of expertise.
- 13.2** Guidance as to how to undertake a robust options appraisal is provided in the Councils Procurement Tool kit.

CSO 14 JOINT PROCUREMENT ARRANGEMENTS WITH THIRD PARTIES

- 14.1** Joint procurement arrangements with third parties should be considered if such arrangements would offer the Council better value than traditional procurement arrangements. Such third parties may include other public authorities and voluntary sector entities, and such arrangements may include membership of or use of purchasing consortia.

- 14.2** Any joint procurement arrangements of the type described in CSO 14.1 must be approved by the Director of Corporate Services or the Chief Executive prior to the commencement of any procurement or arrangement on behalf of the Council. No such approval may be given unless there has been a satisfactory appraisal of the matters set out in CSO 13.
- 14.3** In considering any and all such proposals, the Director of Corporate Services and/or the Chief Executive must be satisfied:
- i** that the proposed joint procurement does not breach any EU or UK law, or where the proposed third party is a foreign non EU national, does not breach the laws of its country of registration if a company or location if a public authority; and
 - ii** is capable of delivering value for money; and
 - iii** where an exemption is required to the Council's Contract Standing Orders,(for example because it is necessary as part of the proposed arrangements to use the proposed third party's procurement regime, or because another party will be the lead body), that the proposed third party's governing procedures are sufficiently rigorous and can deliver standards of probity and transparency reasonably comparable to those of the Council's Contract Standing Orders; and
 - iv** that adequate consideration has been given to whether the proposed third party should indemnify the Council in the event that the third party's methods of operating and ideas may turn out to be unlawful or result in LBM being subjected to challenge, judicial review, or any similar action from any party that may lead to a financial loss for the Council.
- 14.4** The Director of Corporate Services and/or Chief Executive shall take legal and financial advice, as they consider necessary.
- 14.5** At the sole discretion of either the Director of Corporate Services or the Chief Executive, the proposed joint procurement may be designated as requiring prior consent from Cabinet to proceed.

CSO 15 CONTRACT PACKAGING AND AGGREGATION

- 15.1** A contract must not be artificially packaged into two or more separate contracts, nor a valuation method selected, with the intention of avoiding the application of a specific procurement process or legislation. Care must be taken to comply with relevant EU legislation and/or any equivalent legislation or revisions to the law.
- 15.2** Contracts must be packaged to best ensure service delivery, competition value for money and the positive outcome of a Service Review.
- 15.3** Chief Officers are responsible for considering aggregation within their own Department (where applicable consider benefits obtained from joint aggregation across Departments), to ensure best value for money, and compliance with Service Reviews.

- 15.4** Chief Officers must supply to the Director of Corporate Services an estimate of their requirements for services, works and supplies for the forthcoming 12 months. This will be in the form of an extract from the annual Department business Plan. This plan will form the basis for resource planning and early OJEU notifications. Chief Officers must supply to the Director of Corporate Services at the end of each calendar year the total value of all contracts let in the previous 12 calendar months, for reporting purposes by the Council.

CSO 16 CONTRACT VALUE ESTIMATION

- 16.1** Where a service or supply contract does not stipulate a total price, the value must be estimated as follows:
- i** for fixed-term services or hire of goods contracts, the aggregate of the value of the consideration that the authority expects to pay over the nominated contract term net of Value Added Tax.
 - ii** for services or hire of goods where the term is indefinite or uncertain at the time when the contract is entered into : the monthly consideration x 48 (multiplied by 48).
- 16.2** In identifying the value of a contract the Responsible Officer must take into account the full cost of the contract including elements such as initial purchase, service and support costs and the cost of any associated additional works or services, the value of any extension of the contract term to be permitted under the contract, the need for which is predicted at the time of planning the contract and which would be most efficiently or cost effectively provided by the same supplier.
- 16.3** Where it is intended to enter into a number of contracts to fulfil a single requirement for services or goods, obtain specific advice from Corporate Procurement Unit_(who will consult with Legal Services as required) on the aggregation of value

CSO 17 EMERGENCY PROCUREMENT

- 17.1** In an emergency, it may not be possible to satisfy the principle of open and effective competition throughout the procurement process. In true cases of emergency Officers may dispense with parts of the procurement process, so that they can react quickly to unforeseen events.
- 17.2** Emergency procurement should be used **only in genuinely unforeseen emergency circumstances**. For example, poor planning, or a lack of adequate time allowance for a procurement process, or a wish to simply extend an existing contract with a current supplier **do not** justify using an emergency process.
- 17.3** Criteria that would justify enacting an Emergency Procurement may include:
- i** life, property or equipment being immediately at risk;
 - ii** standards of public health, welfare or safety having to be re-established without delay, such as in the case of disaster relief or act of terrorism.

- 17.4** In the event of any emergency procurement the Responsible Officer should attempt to contact either the Director of Corporate Services, or the Chief Executive to gain immediate approval to proceed. If neither of these contacts is available they should contact their own Director for approval.
- 17.5** In the event that the Responsible Officer is unable to contact the Director of Corporate Services or the Chief Executive, or Director then the Responsible Officer may use her/his own judgement based on the severity and urgency of the situation at hand. As soon as circumstances allow, the Responsible Officer must report in writing the contract award to the Director of Corporate Services.
- 17.6** Where the standard procurement procedures set out in the European procurement legislation would have otherwise been applicable, officers must be able to justify their decision to depart from standard procedures in the event of any external challenge. This justification should be documented and filed at the time that the decision is taken.
- 17.7** Unless circumstances make it absolutely impossible, then a letter/email setting out heads of agreement of any emergency contract must be drafted and exchanged with the contractor.

CSO 18 CONTRACTS VALUED AT LESS THAN £75,000 (£100,000 FOR E-TENDERING)

- 18.1** The use of direct purchase or quotations for securing works, supplies or services may only proceed where the Council does not have an existing contractual arrangement in place. Where a contractual arrangement does exist this must be used for the procurement.
- 18.2** Where works, supplies or services need to be procured, which have an actual/estimated value that is less than £75,000 items can be procured in the following manner.
- 18.3 Less than £10,000 - Direct Purchase**
- i Direct purchase from a single quotation or estimate is acceptable although it is advisable to seek three. These may be verbal or written but must be recorded.
- ii It must be recognised that placing an Order for less than £10,000 on the basis of a single quotation is to be treated as the exception rather than the rule. Proceeding on the basis of a single quotation should only take place where the reason can be justified as one of urgency or where there are a limited number of firms capable of carrying out the works and/or providing supplies or services.
- 18.4 Less than £75,000 (£100,000 if E tendering used) but more than £10,000 - Quotation**

- i For works, services and supplies with an estimated value of between £10,000 and £75,000 or £100,000 if E-tendering system is used written quotations may be sought rather than formal tenders.
- ii A minimum of three written quotations must be obtained. All invitations to provide written quotations shall contain instructions for their return (including a specified date and time).
- iii If fewer than three quotations are obtained, the reason for this shall be recorded and kept with the other documentation relating to the request for quotation).
- iv Responsible Officers must ensure that they are not breaching EU aggregation rules as set out in these CSO's in their methods of concluding that the valuation of a contract is under £75,000/ £100,000.
- v Any works contractors invited to submit a quotation shall be selected from the Council's Approved List. If none or insufficient are available, general market sources may be used (as an example a business directory).

- 18.5** No expenditure likely to exceed £10,000 must be incurred unless an estimate in writing has been obtained of the probable expenses of executing the works or supplying the goods, materials or services in a suitable manner and wherever appropriate the estimated annual cost of maintaining the same.

CSO 19 CONTRACTS VALUED AT MORE THAN £75,000 (£100,000)

Competitive Tender Process

- 19.1** A tendering exercise must be carried out for contracts where the estimated value is equal to, or greater than, £75,000 (or £100,000 if E-tendering system used).

OJEU Tender Process

- 19.2** Responsible Officers should seek guidance from the Director of Corporate Services in relation to all contracts that are subject to the European procurement legislation. Responsible Officers should consult the Proper Officer and Legal Services if they have doubts concerning policy decisions that need to be taken involving aggregation of any contract, and/or the basis for determining contract values.

CSO 20 COMPETITIVE TENDER PROCESS

- 20.1** If the contract falls within EU procurement regulations, these must be properly followed and the tender exercise must be undertaken in accordance with EU procurement legislation. Officers must refer to the current EU thresholds table in the Procurement tool kit, and always consult with the Proper Officer for procurements that are above these thresholds.

- 20.2** In all other cases, tenders must be invited from providers on a Council Approved List and if the estimated value of the contract is below EU thresholds by public advertisement.
- 20.3** For large value or complex contracts, a market consultation may be required (see CSO on Market Consultation).
- 20.4** The Responsible Officer must consider whether the number of tenders returned represents adequate competition. If there is any doubt that value for money has been offered, (Officers may need to consult with the Corporate Procurement) then re-tendering should be considered. A poor response may indicate that the way that the contract has been packaged or tendered is unattractive to the private sector, and a review of the procurement should be undertaken to establish the reason for lack of interest.

CSO 21 PRE-TENDER MARKET CONSULTATION

- 21.1** In planning any procurement, consideration must be given as to whether it might be helpful to the procurement's success and to consult potential suppliers. This can, for example, help the Responsible Officer to:
- i** establish whether goods, works or services the Council wishes to purchase are available, and within what price range;
 - ii** establish whether potential providers are interested in tendering;
 - iii** determine the best procurement option for the goods services or supplies and the optimum contract length;
 - iv** decide the best tendering option e.g. how to package the contract, whether partnering is a better market option than traditional procurement processes, whether the use of one standard form of contract might be preferable to another in obtaining the best outcome, etc;
 - v** obtain information on market innovations and possible confidential feedback on potential suppliers' experience in the same field with other public authorities.
- 21.2** In undertaking such a market consultation, care must be taken to ensure that:
- i** the process is fair and transparent; and
 - ii** all potential suppliers who are invited to participate are treated as potential Tenderers and the information that all receive is exactly the same;
 - iii** no information will be disclosed to one supplier which is not then disclosed to all those of which enquiries are made, or which are subsequently invited to tender or quote;
 - iv** all potential suppliers who are invited to participate are clear as to the extent of confidentiality they may expect in the use of any information that they volunteer; and
 - v** all potential suppliers who are invited to participate are clear as to the feedback they might expect at the end of the exercise; and

vi no potential supplier who is invited to participate will be led to believe that the information they offer will necessarily lead to them being invited to tender or quote, or be awarded either this contract or a future one; and

vii no potential supplier who is invited to participate will be allowed undue or excessive influence in shaping the outcome of the exercise to the extent that they will be at an advantage in responding when the matter is put out to tender, nor be allowed unduly to influence in the content of tender documents or the draft contract.

21.3 In complex procurements, it may be possible to offer potential suppliers who are willing to participate in such a market consultation a payment for their contribution if the overall exercise will result in innovations and may shape the procurement and assist the council. Always check with Legal Services before offering this.

21.4 An adequate record of the consultation, the organisations and individuals consulted and the responses obtained must be kept and filed. It must include a written record of those approached and their responses, including notes of any meetings held with names of all those present. Where possible, written responses should be encouraged. If face-to-face discussion is necessary, then the R.O should attend such a meeting accompanied by another Council representative, as the Council must strive to avoid any suspicion or risk of potential allegations about possible corruption or bribery (see C.S.O. on Fraud Bribery & Corruption).

CSO 22 SELECTION OF TENDERERS

22.1 The selection of Tenderers must be objective and unbiased. The Responsible Officer must be able to demonstrate that no Tenderer has been provided any advantage over another Tenderer in respect of their selection to be invited to present a tender.

22.2 Tenderers should be selected based on the ability to provide goods/services or skills specific to the contract being procured. Consideration must be given to specific Government and Council policies, such as 'value for money', 'sustainability', and 'environmentally responsible' solutions when selecting Tenderers.

22.3 A supplier must not be invited to tender for contracts if:

i it is bankrupt, or is being wound up, or is having its affairs administered by a court, or has entered into an arrangement with creditors, or has suspended its business activities, or is subject to court proceedings regarding any of these matters

ii it has been, or any of its current Directors have been, convicted of an offence concerning professional conduct or has been guilty of grave professional misconduct;

iii it has not fulfilled obligations relating to the payment of taxes or social security contributions;

iv it has seriously misrepresented information supplied to the Council, whether on this tender exercise or earlier; or

v it is not registered in a professional or trade register of the European state in which it is established; or

vi it has previously been found to be involved in a cartel or in price-fixing, whether on a matter concerning the Council or another organisation.

- 22.4** Where grounds exist for believing that the potential supplier has behaved in an unacceptable manner in any of its dealings with other public authorities, advice should be sought from both the Proper Officer and Legal Services as to whether or not these matters are relevant and can properly lead to the potential supplier being disregarded from invitation to tender.
- 22.5** In some circumstances, it may be possible to ask Tenderers questions relating to workforce issues and equalities policies, or specify that a percentage of local labour must make up the workforce used. Please check with Legal Services.
- 22.6** In all cases, a written record must be maintained of how the suppliers invited to tender have been selected.

CSO 23 TENDERING FOLLOWING PUBLIC ADVERTISEMENT

- 23.1** In the case of EU contracts for Works, a Prior Information Notice (PIN) should be published in the OJEU as soon as it is known that a contract may be required.
- 23.2** For all contracts requiring public advertisement, where no Council Approved List and competitive tendering needs to occur, a notice will be placed in at least one newspaper circulating in the locality and one appropriate trade journal. The notice must specify details of the contract and how tender documents may be obtained or inspected. In addition, for EU contracts, notices must be placed in the OJEU first.
- 23.3** Contracts for goods or materials will be open to all interested providers to tender except when in the opinion of the Responsible Officer the cost of inviting all suppliers would be disproportionate or because of the nature of the goods to be supplied or hired.
- 23.4** Guidance on appropriate timescales for the various stages of tendering process for complex or EU procurements, will be provided in the Procurement Toolkit.

CSO 24 TENDER INVITATION

- 24.1** Before a tender exercise commences, the Responsible Officer must decide on whether all qualifying respondents to an advertisement will be able to bid, or whether a shortlist will be drawn up of those to whom invitations to tender will be sent.
- 24.2** The Responsible Officer must set a realistic timescale for the return of tenders. Save in emergencies, suppliers must be given a minimum of 4 weeks to return tenders. For larger or complex contracts it is important to factor in sufficient time for the potential suppliers to put their bids together. Tenderers must be given a reasonable time to return tenders so as to maximise the accuracy and competitiveness of the tenders received. Where EU public procurement rules apply, EU law prescribes minimum

timescales but if the Responsible Officer considers it necessary, these can be exceeded.

CSO 25 TENDER TIME EXTENSIONS

- 25.1** In rare cases, following unforeseen complications, it may be allowable to extend the timeframe for the return of tenders. Consideration must be given as to fairness and transparency in granting such extensions. Proper Officer must be consulted prior to all such extension being granted.

CSO 26 AMENDMENTS OR ADDITIONAL INFORMATION IN RELATION TO ITT OR SPECIFICATION

- 26.1** Reasonable requests for further information relating to an invitation to tender document may be granted, provided the request enables the Council to supply the information not less than 5 days before the date specified for tenders' close (unless special circumstances apply).
- 26.2** Amendments to the tender documents are allowable however consideration must be given as to how significant the amendment is, and what affect this may have to the scope/specification contained in the original tender documents.
- 26.3** No amendments to invitation to tender documents should be issued within 5 days of the date specified for close of receipt of tenders (unless special circumstances apply).
- 26.4** In any circumstance amendments and responses must be distributed to all tenders at the same time. See CSO regarding a Single Point of Contact for detail about communicating with Tenderers.

CSO 27 TENDER RECEIPT

- 27.1** Every invitation to tender must state that a tender can only be considered if it is delivered in accordance with the instructions detailed in the invitation to tender document.
- 27.2** All invitations to tender must include all relevant information or instructions as are required to correctly lodge the tender with the Council.
- 27.3** All tenders must be delivered to a specified place by a specified time and date and in a sealed package with the correct details and labelling on the package. No details of the Tenderer must be apparent from the packaging.
- 27.4** Tenders will be deposited with the Director of Corporate Services of the Council and accepted by an appointed person. In the case of specialist and large tenders, which generate large volumes of information to be returned to Council, specific tender depositing instructions must be provided to Tenderers.

- 27.5** Arrangements must be made by officers to ensure that on receipt, all tenders received are endorsed with the time and date of receipt and kept confidentially and secure until the time specified for tender opening.
- 27.6** Tenderers must be given a receipt for tenders delivered by hand, or a confirmation fax/email must be sent to Tenderers who have delivered tenders via mail or courier.
- 27.7** The above provisions will not preclude the submission of tenders electronically, where this facility is available and appropriate controls and recording mechanisms are in place.

CSO 28 LATE TENDERS

- 28.1** The Responsible Officer must not consider any tender received by the Council after the specified closing time for the receipt of tenders for that contract.
- 28.2** A tender received late must not be opened and must be clearly marked on the tender package as a late tender "Received after deadline for receipt of tenders" and details of the time and date given and signed by the authorised officer.
- 28.3** Late tenders will be opened after the official tenders are opened only to determine the identity of the tendering party so the tender may be returned to the tendering party with a letter explaining that the tender was received too late and that accordingly it had to be rejected. The letter should give details of the time and date of receipt and give details of the official deadline.

CSO 29 SINGLE POINT OF CONTACT

- 29.1** A single point of contact must be appointed for all tenders. All tender documentation should give that person's name and contact details and make it absolutely clear that:
- i** only that person is to be contacted, or a named deputy in her/his absence.
 - ii** questions received and answers given will be documented and circulated to all other Tenderers.
 - iii** A cut off date must be given as the final opportunity for the receipt of any queries.
- 29.2** Any queries received by other officers must be redirected to that person. No other officer is permitted to deal with these matters, except a designated deputy in the absence of that person.
- 29.3** All replies must be given in writing and circulated to all other Tenderers at the same time. If because of extenuating circumstances, a response is given by telephone, all other Tenderers must be phoned on the same working day and given the same information. The details of this should then be recorded, listing the individual that was given the information and when.

- 29.4** Whilst the tender evaluation process is underway, no information relating to that tender process can be disclosed to anyone not involved directly in the tender, regardless of whether they are council officers, councillors, tax payers, journalists, other Tenderers etc.
- 29.5** During a tender evaluation process, contact with Tenderers will be strictly limited, and where it is necessary, it must be fully documented, No officer should attend any meetings with Tenderers alone. Any such contact with Tenderers should be limited to matters directly related to the tender evaluation, e.g. inspecting work processes, arranging presentations.
- 29.6** All Tenderers must be given exactly the same opportunity and all group analysis evaluations must be done by the same group of procurement personnel on behalf of the Council for every Tenderer. Particular care should be taken to avoid unnecessary social contact during this period. Officers involved in a tender evaluation exercise must be aware of the need to be seen to be fair and to avoid any allegations of bias or corruption.

CSO 30 AMENDMENTS TO TENDERS SUBMITTED

- 30.1** In legal terms a Tenderer's tender or quotation is a formal offer to the Council, which the Council may accept as it stands.
- 30.2** Other than in the case of genuine arithmetical or typing errors, if any Tenderer attempts to alter the offer after the last date for receipt of tenders or quotations, they must be informed that they have only two options:
- i** stand by their submitted tender and accept they have made an error or omission and that any contract with the Council will hold them to the information submitted by them in their tender, or
 - ii** withdraw their original tender completely.

CSO 31 ARITHMETICAL ERRORS

- 31.1** All tenders must be checked for arithmetical accuracy. Where examination of tenders reveals arithmetical errors which would affect the tender figure in an otherwise compliant tender, The Responsible Officer must write/email the Tenderer pointing out the error and enquiring whether the Tenderer wants the arithmetically correct figure to:
- i** Amend the tender to the arithmetically correct figure such that the tender remains valid at the at the new tendered sum.
 - ii** Stand by the original tendered sum, notwithstanding the arithmetical error
 - iii** Withdraw the submitted tender.
- 31.2** Any letter/email must detail the timeframe the Tenderer has to respond.

CSO 32 VARIANT TENDERS

- 32.1** It may be possible to consider variant bids provided that their submission complies with European procurement legislation. Where a Responsible Officer feels it may be beneficial to invite variant bids, then advice should be sought from the Corporate Procurement Team and Legal Services.

CSO 33 TENDER OPENING

- 33.1** No tender can be opened before the tender opening date for all tenders to be opened. If one is opened in error, advice must immediately be sought from the Corporate Procurement Team who will consult with Legal Services.
- 33.2** A time and date for the opening of the tenders received must be fixed to take place after the closing date for submission of tenders. All tenders received for a particular contract must be opened at the same time and place the day after the close of receipt, in front of the same people. No person may be present at the tender opening unless s/he is officially designated as part of the process.
- 33.3** All tenders opened must be endorsed by at least 3 persons, who must notate the time and date of receipt.
- 33.4** The officer leading the opening procedure must record the following details of each tender on the Schedule of Tenders Received:
- i** the date and time specified as the deadline for receipt of tenders for the particular contract
 - ii** the date and time that each tender was received;
 - iii** the name of the Tenderer and the amount of each tender
 - iv** the names and signatures of those present.
- 33.5** All persons present at tender opening must sign each tender immediately after it is opened. All tenders received must be signed on the:
- i** Front page of the tender submission
 - ii** Tender Price schedule
- 33.6** Where electronic tendering is employed appropriate electronic acknowledgement will be appended where the system allows, or the appropriate documents will be printed, signed and retained on file.

CSO 34 TENDER EVALUATION

- 34.1** The criteria and the methodology of evaluation of tenders for the contract must be stated in the tender documents. Where appropriate, specific procedures laid down in European procurement legislation must be followed.

- 34.2** The Tender Evaluation Team must evaluate tenders only using the pre-stated evaluation criteria in order to establish the best offer to meet the Council requirements. (This may or may not be the lowest sum offered. As above, the criteria on which the judgement will be made, and how each criterion may be weighted, must be worked out in advance, and must be stated in tender evaluation methodology.)

CSO 35 CONTRACTS NOT REQUIRING TENDERING

- 35.1** The following need not be the subject of formal tender processes:
- i** contracts valued at less than £75,000 (or £100,000 if E-tendering used) (unless required by law), but must still be purchased in accordance with the Contract Standing Orders and Council policies;
 - ii** contracts for which an exemption from tendering has been granted;
 - iii** when placing an order under a framework arrangement, of which the Council is an affiliate and that meets an EU compliant competitive process currently the Office for Government Commerce, GCAT, SCAT, LCAT or other similar arrangements within the public sector;
 - iv** placing an order through a buying consortium of which the Council is a member as part of a partnering contract that contemplates a series of contracts with a single supplier provided that the original process was EU compliant;
 - v** orders placed under corporate contracts or under term contracts
 - vi** for particular Voluntary Sector bodies where the Council is seeking to move from a grant agreement to a formal contractual relationship, and where the purpose of the contract is to establish the general conditions to support the voluntary sector body in adapting to the new arrangements.
 - vii** spot purchase of residential, nursing or domiciliary care for an individual from a provider on the Council's approved supplier list of care providers, or spot purchase of domiciliary care for an individual (where required by law to meet individual preferences) from a provider on the Council's Preferred List of Domiciliary Care Providers;
 - viii** where a significant number of users and carers of a social care service indicate a strong desire to retain an existing provider, subject to value for money criteria, the satisfaction of Head of Service and provided that there is no breach of EU procedures
 - ix** New legislation requires the Council to let a contract that otherwise would not have required tendering under these CSO's
 - x** arrangements for the engagement of Counsel and external legal advice, or the engagement of professional expert witnesses in contentious matters, or for appointing independent investigators, arbitrators, mediators, and facilitators.

CSO 36 CONTRACT NEGOTIATION

- 36.1** The Responsible Officer may negotiate the contract:
- i** where tendering produced inappropriate tenders (for example where the tender figure in an otherwise successful tender exceeds approved or budgeted expenditure, or where the sum has changed since tenders were invited) provided the terms of the contract remain substantially unaltered; or
 - ii** where tendering was discontinued because of irregular tenders, for example because tenders fail to meet the requirements specified in the contract documents or offer variations on them, or the works, supplies or goods fail to meet the technical specification.
- 36.2** The Responsible Officer will invite all who have submitted valid tenders to amend their tenders, in writing, in such matters (e.g. unit price, delivery, discounts or by removing elements of the bill of quantities) as the Responsible Officer specifies. A valid tender is one that has complied with all tendering instructions, including a response to all aspects of the specification. Such written amendments must be delivered to the Responsible Officer at fixed time and place; opened by the Responsible Officer at the same time after that deadline; initialed and dated by the Responsible Officer. Any subsequent negotiating meetings will be conducted by at least two officers of different disciplines, one being a witness. The Responsible Officer will keep a written record of all negotiations, including notes of all meetings and the names of all individuals present.
- 36.3** Where no tenders are received, the Responsible Officer will either re-tender, excluding those providers who failed to make offers on the first occasion; or if time does not permit, seek an exemption to negotiate with a suitable provider or providers.

CSO 37 CONTRACT AWARD

- 37.1** No contract may be awarded unless the expenditure involved has been included in approved revenue estimates or on the Council's capital programme or has been otherwise approved by, or on behalf, of the Council. The Responsible Officer will ensure that evidence of authority to spend, and the budget code is recorded on the contract file.
- 37.2** Provided that 37.1 is satisfied, then contracts may be awarded in accordance with the relevant scheme of delegation.
- i** by a Responsible Officer duly authorised under a Scheme of Management where the value of contract is below £10,000.
 - ii** by the Head of Service duly authorised under a Scheme of Management where the value of contract is below £75,000 (£100,000 if E-tendering used)
 - iii** by the Director duly authorised under a Scheme of Management where the value of contract is between £75,000 and £100,000 and £500,000.

iv by the Director duly authorised under a Scheme of Management and Chief Executive where the value of contract is between £500,000 and £2,000,000.

v by the Cabinet where value of the contract is £2,000,000 or greater.

- 37.3** Each Responsible Officer must arrange for the recording of the contract on the Contract Register maintained on behalf of the Director of Corporate Services and for archiving by Legal Services.
- 37.4** The Responsible Officer for the award of an EU contract must also ensure submission of a Contract Award Notice to the OJEU within 48 days of award. Advice on these may be sought from the Corporate Procurement Team_or Legal services.
- 37.5** Where a contract is awarded under European procurement law, then the Responsible Officer must allow a standstill period of 10 clear days from the date of notification to all tenderers.

CSO 38 CONTRACTS IN WRITING

- 38.1** Every contract awarded must be in writing and either under seal or signed by a person in the Council authorised to do so. Legal Services will advise when contracts should be under seal. All forms of contract must be agreed with legal service before signature.
- 38.2** Emergency contracts need not be in writing before commencement; but must be confirmed in writing as soon as possible. Nonetheless, unless circumstances make it impossible, written Heads of Agreement should be drawn up and agreed with the contractor(s).

CSO 39 CONTRACT SPECIFICATIONS

- 39.1** The Responsible Officer must ensure the contract conditions relating to the required quality, performance, safety and other matters essential to a successful performance of the contract by the contractor are stated in the specification.
- 39.2** For larger or complex contracts, a contract specification should be drafted and appended to the contract conditions. The specification may include matters such as methods of construction, design and costing, tests, testing methods, inspection and acceptance, quality assurance, packaging, marking and labelling; service level agreements, etc.
- 39.3** Contract conditions must not be mixed up in the specification.
- 39.4** Any specifications may include requirements relating to methods of construction, design and costing, tests, testing methods, inspection and acceptance, quality assurance, packaging, marking and labelling. They may also contain reference to the Council's policies such as environmental policy and equalities issues.

- 39.5** Where the Council wants to include specific technical specifications as part of the contract requirements, in order not to breach Treaty of Rome obligations, these must be compliant with the criteria set out in European procurement legislation
- 39.6** Each reference to a technical specification made must be accompanied by the words “or equivalent”.

CSO 40 NOMINATING PRODUCTS/PROVIDERS

- 40.1** The nomination of a sub-contractor or supplier to a main provider, for carrying out works or services, or supplying goods or materials requires written justification from the Responsible Officer who must discuss the implications of such a nomination with the Strategic Procurement Manager and Legal Services.
- 40.2** Where a sub-contractor or supplier is identified as part of a tender the Tenderer must demonstrate the arrangements through which control and management of the sub-contractor or supplier will be exerted to ensure performance as required by the contract is achieved.

CSO 41 CONTRACT CONDITIONS

- 41.1** Unless covered by a framework agreement or collaborative arrangements contract conditions are to be in a format agreed by the Head of Legal Services, but must comply with all current legislation including:
- i** Sex Discrimination Act 1975,
 - ii** Race Relations Act 1976,
 - iii** Disability Discrimination Act 1995,
 - iv** Race Relations Act (Amendment) 2000,
 - v** Data Protection Act 1998,
 - vi** Human Rights Act 1998
 - vii** Freedom of Information Act 2000,
 - viii** or any comparable statutory provision relating to discrimination in employment.
- The conditions must also ensure that no employees, agents and sub-providers unlawfully discriminate, and all will comply with all relevant codes of practice issued by the Commission for Racial Equality, Equal Opportunities Commission, Disability Rights Commission or comparable body and, so far as practicable, operate an equal opportunities policy which complies with the practical guidance and recommendations contained in such codes of practices.
- 41.2** Contracts involving the transfer of staff from the Council or from one contractor to another will contain conditions requiring the successful contractor to comply with TUPE legislation and any statutory guidance. In particular contract conditions must

contain “exit clauses” placing obligations on retiring contractor to cooperate with the Council during the re-tendering process.

- 41.3** Contracts will require Contractors to inform their staff and their sub-contractors of the Council’s Whistleblowing procedures.

CSO 42 CONTRACT PERFORMANCE

- 42.1** In the case of providers on any Council Approved List (e.g. Construction line), Responsible Officers will make suitable arrangements to monitor performance under the directions of the Director of Corporate Services. In cases of consistent poor performance, the Council may exclude the contractor to tender for similar contracts.
- 42.2** Additional guidance on effective contract management and performance monitoring is provided in the Procurement Tool kit.

CSO 43 CONTRACT VARIATION

- 43.1** No variation to an existing contract may be made unless it has been confirmed by the Responsible Officer that doing so will not breach European procurement legislation; and save in the event of an emergency (as defined elsewhere in these CSOs), no variation to an existing contract may be made unless it is permitted by the terms of that contract and was allowed for within the invitation to tender.
- 43.2** No variation to an existing contract may be made until approved by the Director of Corporate Services or a Director:
- i** if that variation would extend the contract period by more than three months, or 25% of the original contract period (whichever is the greater); or
 - ii** if that variation would add more than 25% to the value of the contract or would increase the contract sum from below the quotation threshold or more, or
 - iii** if the works, services or goods to be added to or deleted from the contract are substantially different in scope.
- 43.3** Variations to a contract will be considered on an individual basis. Cumulatively the total value of variations issued should not exceed 25% of the original contract sum, unless there is a significant approved scope change. Variations shall be priced on the basis that is the same or related by percentage, or otherwise to, the rates and prices contained in the existing contract.
- 43.4** No variation will be made until funding has been identified in accordance with Council’s financial procedures. Agents operating on behalf of the Council may not issue variations without the agreement of the Responsible Officer in consultation with Corporate Procurement Team and/or Legal Services.

- 43.5** In cases of urgency, an appropriately authorised Responsible Officer may approve a variation. Urgency for these purposes includes emergency works for the protection of life and property; legal requirements to pay for disputed works or services, and cases where delay would lead to significant financial loss to the Council. In these cases, Responsible Officers will include the details of such urgent variations in a retrospective Exemption Report to Director Corporate Services.

CSO 44 ELECTRONIC PROCUREMENT AND E TENDERING

- 44.1** In furtherance of the e-government initiatives, the Council has developed methods by which tenders and quotations may be invited and submitted by electronic means, having due regard to the need for security and probity. The Director of Corporate Services is responsible for these processes.
- 44.2** All electronic tendering must be done in accordance with relevant European legislation.
- 44.3** These CSO's will not be a barrier to the implementation of an e-procurement system and processes. Where reference is made to documents, registers, communication, delivery or any other term which would imply traditional procurement methods such as a paper record, postal delivery etc, properly acquired and Audit approved electronic means should be employed in accordance with Corporate Policy.

CSO 45 FREEDOM OF INFORMATION ACT (FOI) 2000

- 45.1** All procurement processes must be carried out in accordance with the Council's Freedom of Information policy.
- 45.2** Requests for information about the tender evaluation process will be dealt with by the Responsible Officer. Any response should be prepared after consulting with the Proper Officer who with Information Governance Manager will advise on responses. Under

CSO 46 PROCUREMENT TOOLKIT

- 46.1** The Director of Corporate Services may issue letters, circulars and other documents containing such practical guidance as the Director thinks fit in relation to the performance by persons of duties imposed on them by virtue of these Standing Orders.
- 46.2** Before issuing such guidance the Director shall consult the Head of Civic and Legal Services and where appropriate, the Procurement Board.

APPENDIX 1 TERMS AND DEFINITIONS

In these Contract Standing Orders and Codes of Practice, the following terms have the following meanings:

“Cabinet” means Full Cabinet, Cabinet Committee or Cabinet Portfolio holder unless the context shows otherwise

“Chief Legal Officer” is the Head of Civic and Legal Services

“Chief Officer” is a Departmental Director and for the avoidance of doubt includes the Assistant Chi

“CSO” stands for Contract Standing Order;

“Contract” means any agreement for the supply of goods, materials or services, the execution of works and the awarding of concessions;

“Community representative” means a person appointed by a tenants' voluntary group or similar Representative organisation, to represent their interests in any aspect of the contracts process (but not an elected Councillor)

“Contract file” means a record of all matters relating to a contract

“Concession” means a contract whereby a payment is received to permit a service to be provided to the public for a charge

“Corporate contract” means a contract arranged for use throughout the Council

“Council Approved List” a list of suppliers who have passed an approval process to supply goods or services to the Council.

“Director of Corporate Services” means the Director of Corporate Services or any other Chief Officer to whom responsibility for corporate procurement functions is delegated by the Chief Executive

“Director” means the appointed Head of a Department within the Council

“Disposal” the divestment of Council ownership in any asset (except land or buildings)

“EU contract” a contract covered by the full European Union public procurement regime through being of a value that exceeds one of the thresholds in the appropriate regulations.

“Exemption” a permission that all or part of these CSOs need not be complied with.

“Lowest Tender/Sum” means the lowest price offered by tender or quotation, which meets the specification

“Provider” means any contractor supplying, or offering to supply, goods, works or services (including concessions) to the Council; and includes any firm, agent, company, partnership, public authority, individual or other organisation.

“Purchaser's Agent” means anyone providing a purchaser with a service to assist them in arranging the supply of goods, works, services or concessions

“Quotation” means a written or oral offer following price-testing (but not an "estimate")

“Responsible Officer” or *“RO”* means any permanent or temporary staff member or any other person properly authorised to carry out any of the Council's contracts functions

APPENDIX 1

“Scheme of Management” or *“Scheme of Authorisation”* means the management arrangements whereby a Director may implement practically the discharge of any function for which they are responsible.

“Single Contract Threshold” that is the contract value set by the Council for that particular contractor, and is the figure generated from an ‘equifax’ report

“Tender” means a written offer following formal tendering

“Tender Evaluation Team” a team of Council Officers or advisors who collectively conduct the evaluation of a tender and make judgement to recommend a preferred supplier.

“TUPE” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended

“Value for Money” the optimum combination of whole life cost and quality(or fitness for purpose) to meet the users requirements.

“Workforce Regulations” means the Local Government Best Value (Exclusion of Non-Commercial Considerations) Order 2001/909 as amended.

“Witness” means a member of staff not directly involved in a particular contract, who participates in certain stages to ensure propriety

APPENDIX 2 EXEMPTIONS FROM CONTRACT STANDING ORDERS

Where an exemption is sought from Contract Standing Orders a report justifying the reasons for the exemption must be provided to the Director Corporate Services and will include reasons such as the following:

- a) that only one provider is able to carry out the work or service or to supply the goods for technical or artistic reasons or because of exclusive rights;
- b) that time limits required for tendering cannot be met for reasons of extreme urgency (usually emergency contracts where a risk to life, or the security or structural viability of a property can be demonstrated; or contracts where the terms of a Court order set a time limit which specifically precludes all or part of the tendering process); and which, in the case of E.U. contracts, were unforeseen and un-attributable to the Council.
- c) that additional goods, works or services are required which, through unforeseen circumstances, were not included in the original contract and which either are strictly necessary for the completion of the contract or, for technical or economic reasons, cannot be carried out separately without great inconvenience.
- d) that new goods, works or services are required which are a repetition of goods, works or services carried out under the original contract, provided they are required within 3 years of the original contract; and the contract notice and tender documents stated that a contract for new works might be awarded by negotiation;
- e) that goods are required as a partial replacement for or addition to existing goods or installations and obtaining them from another provider would result in incompatibility or disproportionate technical difficulties in operation or maintenance;
- f) that the rules of a design contest require the contract to be awarded to one of the successful candidates, provided all successful candidates are invited to negotiate;
- g) that for work carried out for other public bodies, an exemption from tendering has been requested by them in writing (provided exemption is lawful having regard to E.U. or domestic legislation);
- h) the proposed contract is an extension to or variation of the scope of an existing contract, if permitted by the public procurement legislation i.e. below the required EU limit, unless the existing contract provides for an extension;
- i) the purchase of works of art, museum artefacts, manuscripts or archive collection items;
- j) there is a need to develop and influence the market by extending the range and provision of services, provided the contract is for a fixed term of no more than three years;
- k) it is necessary to enable the continuation of a new service, development of which was initially grant-aided, provided the contract is for a fixed term of no more than three years;

- l) value for money can be demonstrated by inviting a single tender or quotation from a voluntary sector provider;
- m) value for money can be achieved by the purchase of used vehicles, plant or materials;
- n) when a grant from a public body includes a recommendation as to the supplier or is time limited;
- o) in furtherance of the Council's social enterprise policy, or other economic development aims, subject to the prevailing financial support limits for this type of activity and without breaching public procurement rules;
- p) if there are exceptional circumstances not previously identified or covered by existing policies, procedures, or the Contract Standing Orders;
- q) where the Council has agreed to collaborate with another public body and is satisfied that the contracting arrangements of the lead body (where different from the Council) do not contravene the Council's legal responsibilities in this respect.

PART 4 G

[Version 0.99 – clean final version for GP – 14th March12]

DRAFT

London Borough of Merton

Constitution Part 4 G
CONTRACT STANDING ORDERS

Effective April 10th 2012

Version 0.99

Revised: Kevin Churchill

Approved:

Director Corporate Services
Standards Committee - 28th Feb 2012
General Purposes – 14th March 2012
Full Council – 28th March 2012

CONTENTS

CSO 1	Compliance with contract standing orders	4
CSO 2	Schemes of Delegation and Management	5
CSO 3	DIRECTOR'S Responsibility	5
CSO 4	Responsible Officers' Duties	6
CSO 5	Community Representatives	7
CSO 6	Exemptions from Contract Standing Orders	8
CSO 7	EXCEPTIONS - Contracts Not Requiring Tendering	9
CSO 8	Health and Safety	10
CSO 9	Equality, Diversity and the Environment	10
CSO 10	Conflicts of interest	10
CSO 11	Acceptance of Gifts and Hospitality	11
CSO 12	Unauthorised Disclosure of Information	11
CSO 13	Pre-Tender Market Consultation	12
CSO 14	Options Appraisal	13
CSO 15	Joint Procurement Arrangements with third parties	13
CSO 16	Contract Value Estimation	14
CSO 17	Contract Packaging and Aggregation	14
CSO 18	Contract Specifications	15
CSO 19	Emergency Procurement	15
CSO 20	Contracts valued at less than £100,000	16
CSO 21	Contracts valued at OR more than £100,000 UP TO THE EU THRESHOLD.....	17
CSO 22	Contracts valued at OR GREATER than THE EU THRESHOLD	19
CSO 23	FRAMEWORK AGREEMENTS	21
CSO 24	Contracts for consultancy SERVICES OR INTERIM PROFESSIONAL SERVICES 23	
CSO 25	Contracts for CONCESSIONS	23
CSO 26	contract Award & STANDSTILL PERIOD	24
CSO 27	CONTRACTS FOR DISPOSAL OF COUNCIL ASSETS	25
CSO 28	AMENDMENTS TO INVITATION TO TENDER DOCUMENTATION	25
CSO 29	Amendments to Tenders Submitted	26
CSO 30	Arithmetical Errors	26
CSO 31	Variant tenders	26
CSO 32	Contract Negotiation	26
CSO 33	Forms of Contracts & In Writing	27
CSO 34	Nominating Products/Providers	27
CSO 35	contract conditions	28
CSO 36	Contract Performance	28
CSO 37	Contract Variation AND EXTENSIONS	29
CSO 38	Freedom of Information Act (FOI) 2000	29
CSO 39	AMENDMENT OF CSOs	30
CSO 40	PROCUREMENT TOOLKIT	30
APPENDIX 1	Terms and Definitions	31
Appendix 2	Exemptions from Contract Standing Orders	35
Appendix 3	Declaration of interest form	37
Appendix 4	FORM OF EXEMPTION REPORT	42

APPENDIX 2

Appendix 5 – GROUNDS FOR MANDATORY EXCLUSION OF ANY CANDIDATE OR TENDERER FROM SELECTION TO BID FOR OR AWARD OF ANY PUBLIC CONTRACT	44
Appendix 6 – GROUNDS FOR DISCRETIONARY EXCLUSION OF ANY CANDIDATE OR TENDERER FROM SELECTION TO BID FOR OR AWARD OF ANY PUBLIC CONTRACT	45
Appendix 7 – CODE OF PRACTICE ON CONSULTANTS	47
Appendix 8 – PROCESS FOR RECEIPT OF PAPER TENDERS	48



CSO 1 Compliance WITH CONTRACT STANDING ORDERS

- 1.1 These Contract Standing Orders govern the selection, award and entry of all works, services and supplies contracts and contracts for disposal of land where tenders are sought, entered into by the Council.
- 1.2 The Director of Corporate Services will from time to time issue practical guidance as to what steps should reasonably be taken for the purposes of complying with these Contract Standing Orders. The guidance will be contained in a document called “The Procurement Toolkit”.
- 1.3 Contract Standing Orders is a controlled document. It is controlled by the Director of Corporate Services. Only the Director of Corporate Services can make recommendation to Council about changes to these Standing Orders.
- 1.4 These Contract Standing Orders are not applicable to schools operating under Schemes of Financial Management or Tenant Management Organisations
- 1.5 Every contract made by the Council or on its behalf will comply with these standing orders and comply with:
 - i. Domestic legislation, common law and EU Procurement Law
 - ii. Financial Regulations & Procedures of the Council
 - iii. Statutory Guidance
 - iv. Council Policies
- 1.6 It will be a condition of any contract between the Council and anyone who is not an Officer of the Council, but who is authorised to carry out work in relation to the grant of any contract (e.g. external consultant, other external provider), that they comply with these Contract Standing Orders.
- 1.7 The terminology and abbreviations referred to in this document are defined at Appendix 1. “Terms and Definitions”.
- 1.8 Failure by officers to comply with these Contract Standing Orders will be a disciplinary offence.
- 1.9 These Contract Standing Orders whether superceded or not must be retained for 20 years before being considered for destruction.
- 1.10 In the Contract Standing Orders reference to a post, Director, Directorate, department, team or the like includes a reference to any re-designated post, Director, Directorate, department or team or the like who performs or substantially performs the role function or duties of that post, Director, Directorate, department, team or the like.
- 1.11 In these Contract Standing Orders reference to an Act, Regulations or Orders includes a reference to any successive Act, Regulations or Orders replacing supplementing or amending that Act, Regulation or Order.
- 1.12 Nothing contained in these Contract Standing Orders overrides domestic legislation, common law or EU Procurement Law.

CSO 2 SCHEMES OF DELEGATION AND MANAGEMENT

- 2.1 The Chief Executive and any officers authorised by him in accordance with the Council's Scheme of Management and delegation may let contracts on behalf of the Council. Each Director may receive powers to enter into contracts on behalf of the Council to specified financial limits (including unlimited sums) in accordance with the constitution and Scheme of Management authorisation.
- 2.2 Each Director will publish a Scheme of Management specific to their delegated functions set out as in part i), ii) and iii) below, detailing the names and posts of staff approved for the purposes of :-
- i) (in respect of contracts to be let) designating the Responsible Officer for the advertising of tender requirements, issuing tender documents, evaluating tender documents for contracts to be awarded, recommending award of contracts and for the operation of awarded contracts and
 - ii) the awarding of contracts and (where the contract document does not require sealing) the signing of the contract document on behalf of the Council and the placing orders on behalf of the Council; including the maximum contract value allocated to each member of staff for these purposes and.
 - iii) authorising the attachment of the Council's seal to any contract document.
- No person or post identified in part i) of the relevant Scheme of Management may be repeated in part ii) or iii) of the relevant Scheme of Management and vice versa.
- 2.3 Each Director when exercising functions on behalf of the Council will supply to and agree with the Director of Corporate Services, a Scheme of Management before the commencement of each financial year, and on making any amendment.
- 2.4 The Director of Corporate Services will keep a register of all schemes of delegation and management and make this available on the Councils intranet.

CSO 3 DIRECTOR'S RESPONSIBILITY

- 3.1 Directors are responsible for ensuring within their departments that :-
- i) These Contract Standing Orders are observed and complied with and
 - ii) Schemes of Management exist which identify those Officers having such responsibility and the level of their financial delegation and comply with CSO 2 above and;
 - iii) contracts are awarded and managed in accordance with these Contract Standing Orders;
 - iv) their officers undertaking procurement and commissioning have the ability to interpret, implement and comply with the requirements of these Contract Standing Orders;
 - v) Accurate records and clear audit trails of all actions, decisions and approvals relating to procurement and commissioning activity, are kept and maintained and made readily available for inspection for a period of retention equal to the length of the contract plus seven (7) years, when

requested by anyone so entitled. These shall include but not be exclusive to documentation and processes relating to quotations, tenders, orders and contracts.

CSO 4 RESPONSIBLE OFFICERS' DUTIES

- 4.1 Every Contract will have a Responsible Officer nominated by or on behalf of the Departmental Director. Detailed guidance on the role of a Responsible Officer will be provided by the Director of Corporate Services in the Procurement Toolkit. Where no Responsible Officer has been appointed, the Responsible Officer shall be deemed to be the budget holder of the section from which the contract is funded.
- 4.2 A Responsible Officer shall in each procurement
- i) be guided by the principles of non-discrimination, equal treatment, transparency, proportionality, mutual recognition and free movement of goods and services.
 - ii) These principles include:
 - a) That there should be no conflict between official duties and private interests;
 - b) That there should be no improper influence placed on any person to show favour (or disfavour) towards any tenderer;
 - c) That at all times tenderers must be dealt with in an honest, fair, open and transparent way;
 - d) That information provided by tenderers should be regarded and treated as confidential subject to Freedom of Information Act and Transparency Agenda.
 - iii) seek value for money and may consider social benefits to the extent that is legally permissible in tendering and recommending for award and contract management activities;
 - iv) carry out a robust procurement options analysis in accordance with CSO 14 before selecting the most appropriate commercial model for the service,
 - v) show no undue favour nor discriminate against any provider who may be legally entitled to potentially tender for Council business.
 - vi) conduct all procurement and commissioning activity in accordance with the highest possible standards of probity and integrity to prevent fraud and corruption.
 - vii) comply with relevant E.U. and U.K. law and EU Procurement Law;
 - viii) carry out tender evaluation fairly, impartially and in accordance with these CSOs against pre-determined evaluation criteria and sub-criteria that are disclosed prior to initiation to quote or tender (where applicable).
 - ix) keep full and accurate records and clear audit trails of all actions, decisions and approvals relating to the procurement and commissioning activity, are kept and maintained and made readily available for inspection for a period of retention equal to the length of the contract plus seven (7) years when requested by anyone so entitled. These shall include but not be exclusive to documentation and processes relating to quotations, tenders, orders and contracts.

APPENDIX 2

- x) ensure that for the purposes of contract award the procurement activity is recorded on the relevant Forward Plan if applicable in accordance with CSO 26.
 - xi) initiate procurements correctly, in accordance with the recognised Council procurement policies and practices.
 - xii) fulfill the role as the Project Sponsor or appoint a Project Sponsor and Project Manager where relevant;
 - xiii) adhere to Merton's Procurement Governance & Gateway Process.
 - xiv) record the contract in the Councils' Contract Register and deposit the signed contract document with Legal Services.
 - xv) take into account all relevant legislation and council strategies and policies relating to Equality, Diversity and Sustainability when tendering for contracts.
 - xvi) demonstrate appropriate statutory and stakeholder consultation;
 - xvii) clarify the "role" (if any) of community groups, voluntary sector and business community.
 - xviii) ensure that the Whistleblowing procedure is included in tender documents.
 - xix) ensure that, all permanent and temporary staff, consultants and community representatives appointed or agreed by them make declarations of interest using the form in Appendix 3, both on appointment to the organisation and or procurement project, *or on any change in circumstances* and will either certify them as acceptable or take any necessary action in respect of potential conflicts of interest, in accordance with CSO 10.
- 4.3 A Responsible Officer shall in each procurement nominate a single point of contact for tendering to whom all queries may be addressed and make clear in all tender documentation that persons name and contact details and that only that person or a named deputy in her/his absence is to be contacted during the procurement process,
- 4.4 Any queries received by other officers must be redirected to that person. No other officer is permitted to deal with these matters, except the designated deputy in the absence of that person.
- 4.5 The Responsible Officer must ensure total compliance with the Councils' Contract Standing Orders and ensure that the above requirements are properly evidenced.
- 4.6 The Responsible Officer may not delegate this duty to another officer.

CSO 5 COMMUNITY REPRESENTATIVES

- 5.1 Officers may invite community representatives to participate in the procurement process for development of specifications, assistance in selection of providers and the commentary on performance of particular contracts. The agreement of the Director of Corporate Services is required for any other type of involvement where this is not covered by law or any Council policy.
- 5.2 Community representatives (e.g. tenant representatives, but not Members) are not and may not be "Responsible Officers" for the purposes of these Standing Orders

and, except where the law specifically provides otherwise, will be observers with speaking rights at the discretion of the Responsible Officer. They may advise Responsible Officers where appropriate, but all decisions will be taken by the Council within the framework of the schemes of delegation.

- 5.3 Responsible Officers will ensure community representatives give a written undertaking to treat all information confidentially throughout the tendering process, and the life of the contract and sign the appropriate declaration of interests.
- 5.4 The Council must always avoid any suspicion or risk of potential allegation about possible bribery or corruption. An adequate record of the Community Representatives involved, consulted and the responses obtained must be kept and filed. It must include a written record of those approached and their responses, including notes of any meetings held with names of all those present. Where possible, written responses should be encouraged. If face-to-face discussion is necessary, then the Responsible Officer should attend such a meeting accompanied by another Council representative. Community representatives shall sign Appendix 3

CSO 6 EXEMPTIONS FROM CONTRACT STANDING ORDERS

- 6.1 The Director of Corporate Services is authorised to grant exemptions to these standing orders.
- 6.2 Where an exemption is sought from these standing orders the exemption must be submitted in writing to the Director of Corporate Services on the form set out at Appendix 4 and must detail the CSO reference from which exemption is requested and the reasons for requiring the exemption and proposed alternate methodology. The Director of Corporate Services will ask the Head of Commercial Services, Head of Shared Legal Services and Head of IT Service Delivery to provide comment.
- 6.3 A non-exhaustive list of indicative circumstances where an exemption may be granted is set out in Appendix 2.
- 6.4 No exemption may be granted:
 - a) that would result in a breach of European or U.K. law
 - b) that requires Cabinet to approve major contract variations
 - c) that requires Cabinet to accept certain tenders
 - d) that differs from the Scheme of Management
 - e) that removes the requirement for declaration of any Officer or Members Interests
- 6.5 The Director of Corporate Services, will maintain a register of exemptions granted by Department and contract, detailing the nature of the exemption and the value of the contract. The register will be reported bi-annually to the Procurement Board.
- 6.6 The Chief Executive will consider and where appropriate grant exemptions arising from within the Corporate Services Department.
- 6.7 The Head of Commercial Services and Head of Shared Legal Services or their nominated officers will analyse the nature of the exemptions being applied for and

those being granted and will make appropriate recommendations to the Director of Corporate Services about the operation of the exemptions procedure.

- 6.8 In exceptional circumstances if the Director of Corporate Services and/or the Chief Executive are not able to carry out their role in accordance with CSO 6 any 2 officers, from the Deputy S151 Officer, the Monitoring Officer or any of the councils remaining Directors may, acting jointly, consider and where appropriate grant exemptions.

CSO 7 EXCEPTIONS - CONTRACTS NOT REQUIRING TENDERING

- 7.1 The following need not be the subject of formal tender processes unless otherwise required by EU Procurement Law and no exemption shall be required under Appendix 2 and the following types of contract shall be treated as being excepted from the requirements of these CSOs;
- i. A contract of employment for permanent staff
 - ii. A contract for the sale or disposition of land and/or property effected by the Council Property Officer except to the extent of CSO 27
 - iii. contracts for which a specific exemption from tendering has been granted by the Director of Corporate Services.
 - iii. when placing an order under a public sector Framework Agreement in accordance with CSO 23 of which the Council is an affiliate.
 - v. orders placed under Corporate Contracts or under term contracts as described in the Procurement Toolkit
 - vi contracts for particular Voluntary Sector bodies where the Council is seeking to move from a grant agreement to a formal contractual relationship, and where the purpose of the contract is to establish the general conditions to support the voluntary sector body in adapting to the new arrangements, where the grant terminates.
 - vii contracts for the spot purchase of residential, nursing or domiciliary care for an individual from a provider on the Councils Framework Agreement for Children's Residential Care, Fostering Services, Educational Services or the Council's Accredited Approved Provider Register for Domiciliary Care Providers for Adults, Floating Support and Personal Assistance Services or the Council's Approved List of providers of Residential and Nursing Care Homes for Adults, all as described in the Procurement Toolkit.
 - viii arrangements for the engagement of Counsel and contracts for the provision of external legal advice and or services
 - ix the engagement of professional expert witnesses in contentious matters, or for appointing independent investigators, arbitrators, mediators, and facilitators

CSO 8 HEALTH AND SAFETY

- 8.1 It is Council policy that any Contractor or Consultant who wishes to work for the Council must satisfy the Council that they comply with the statutory Health and Safety requirements or are registered with an appropriate Safety Scheme in Procurement, for example the Contractors Health & Safety (CHAS) Assessment Scheme or other appropriate scheme.
- 8.2 In circumstances where a Department may need to use a non-CHAS registered contractor or consultant, the Council's Head of Safety Services must be consulted before they are engaged. All contracts must be subjected as appropriate, to second and third stage competency assessments to comply with the Councils (H&S) policy on the selection and control of contractors.

CSO 9 EQUALITY, DIVERSITY AND THE ENVIRONMENT

- 9.1 Responsible Officers shall carry out their role with due regard to the need to ensure that all procurement and commissioning activity eliminates unlawful discrimination and promotes equality of opportunity.
- 9.2 Responsible Officers shall ensure that they have taken into account any Codes of Practice issued by the Equality and Human Rights Commission on how equality and diversity issues may be embedded in procurement.
- 9.3 Responsible Officers shall assess the relevance and importance of the Councils' Sustainable Development Policy and carry out their role with due regard to it.
- 9.4 The following issues may also be considered to reduce the environmental impact of any proposed procurement;
- a) Carbon emission reduction, energy efficiency and renewable energy
 - b) Water conservation and the protection of biodiversity
 - c) Reduction and recycling waste
 - d) The boroughs' built environment
 - e) To protect people, from crime and disorder and reduce the fear of crime
 - f) To promote good access provision for people with disabilities.

CSO 10 CONFLICTS OF INTEREST

- 10.1 Conflict of Interest means conflict of private interest and public duty and or conflict of public duty to a public body and duty to the Council and or the appearance of such a conflict. It is important that a person's judgement of the public (Council) interest is not impaired or does not appear to be impaired by their private interest or duty to another public body.

- 10.2 The following will declare any interests which may affect the selection, award or management of any potential or existing contract, using the form in Appendix 3:
- a) all permanent or temporary staff;
 - b) external consultants involved in a procurement;
 - c) community representatives;
 - d) members of the Council involved in any relevant decision (executive or scrutiny).
- 10.3 The rules concerning the declaration of interests by Members are set out in full in the Merton Code of Conduct for Members. The rules concerning the declaration of interests by Officers are set out in the Council's Staff Code of Conduct.
- 10.4 A person to whom an interest is declared has a duty to examine that declaration in the context of the proceedings in question. They then have to decide whether the interest declared would appear to an informed observer to affect the decision makers ability to judge whether the procurement decision is in the public interest.
- 10.5 A person who is assessed as having such a conflict of interest will be precluded until the conflict is removed.

CSO 11 ACCEPTANCE OF GIFTS AND HOSPITALITY

- 11.1 Notwithstanding CSO 10 acceptance of gifts and hospitality by any person involved in the procurement process, including all permanent and temporary staff, external consultants involved in a procurement, community representatives, members of the council involved in any relevant decision (executive or scrutiny) could be viewed as accepting a bribe or other corrupt practice. The basic rule is that no gift or money should be accepted. The Council's rules on the receipt and registration of gifts and hospitality are set out in the Staff Code of Conduct and in the Members Code of Conduct.
- 11.2 Any person involved in tender exercises should be particularly sensitive to the timing or letting of contracts for which the provider of the hospitality is already involved or is likely to be submitting a tender for a contract in the future.
- 11.3 All offers of gifts, money or other inducements should be reported in accordance with the relevant code of conduct.

CSO 12 UNAUTHORISED DISCLOSURE OF INFORMATION

- 12.1 No officer, consultant, employee or agent of the Council is permitted to disclose to any internal or external party any information they have obtained which may reasonably and objectively be deemed to be capable of influencing the outcome of the award of a contract.

CSO 13 PRE-TENDER MARKET CONSULTATION

- 13.1 In planning any procurement, consideration must be given as to whether it might be helpful to the procurement's success to consult potential suppliers.
- 13.2 This can, for example, help the Responsible Officer to:
- a) establish whether goods, works or services the Council wishes to purchase are available, and within what price range;
 - b) ascertain whether potential providers are interested in tendering;
 - c) determine the best procurement option for development of the Options Appraisal (CSO 14) for the goods services or supplies and the optimum contract length;
 - d) decide the best tendering option e.g. how to package the contract, whether partnering is a better market option than traditional procurement processes, whether the use of one standard form of contract might be preferable to another in obtaining the best outcome, etc;
 - e) obtain information on market innovations and possible confidential feedback on potential suppliers' experience in the same field with other public authorities.
- 13.3 In undertaking such a market consultation, care must be taken to ensure that:
- a) the process is fair and transparent; and
 - b) all potential suppliers who are invited to participate are treated as potential Tenderers and that all of the information which they all receive shall be exactly the same
 - c) no information will be disclosed to one supplier which is not then disclosed to all those of which enquiries are made, or which are subsequently invited to tender or quote;
 - d) all potential suppliers who are invited to participate are clear as to the extent of confidentiality they may expect in the use of any information that they volunteer; and
 - e) all potential suppliers who are invited to participate are clear as to the feedback they might expect at the end of the exercise; and
 - f) no potential supplier who is invited to participate will be lead to believe that the information they offer will necessarily lead to them being invited to tender or quote, or be awarded either this contract or a future one; and that
 - g) no potential supplier who is invited to participate will be allowed undue or excessive influence in shaping the outcome of the exercise or subsequent specification to the extent that they will be at an advantage in responding when the matter is put out to tender, nor be allowed undue influence in the content of tender documents or the draft contract.
- 13.4 The Council must always avoid any suspicion or risk of potential allegation about possible bribery or corruption. An adequate record of the consultation, the organisations and individuals consulted and the responses obtained must be kept and filed. It must include a written record of those approached and their responses,

including notes of any meetings held with names of all those present. Where possible, written responses should be encouraged. If face-to-face discussion is necessary, then the Responsible Officer should attend such a meeting accompanied by another Council representative.

CSO 14 OPTIONS APPRAISAL

- 14.1 For all procurements with a potential budget greater than that of the OJEU Threshold for the type of Works, Supplies and Services (OJEU Thresholds can be found on the Procurement Intranet pages) there must be a robust options appraisal which examines all possible ways of structuring the procurement to allow the Council to obtain the best result. As appropriate, this may include considering joint ventures – both public and private using consortia contracts, contracting with other public authorities and the third sector, using existing or establishing new framework agreements-as well as the comparative benefits of simply taking a traditional procurement path. Responsible Officers are expected to keep themselves updated with developments within their particular areas of expertise or seek advice from officers in the Commercial Services Team.
- 14.2 Guidance as to how to undertake an options appraisal is provided in the Councils Procurement Toolkit.
- 14.3 All Options Appraisals are required to follow the Council's Procurement Governance & Gateway process for procurement as described in the Procurement Toolkit.

CSO 15 JOINT PROCUREMENT ARRANGEMENTS WITH THIRD PARTIES

- 15.1 Joint procurement arrangements with third parties should be considered if such arrangements would offer the Council better value than traditional procurement arrangements. Such third parties may include other public authorities and voluntary sector entities, and such arrangements may include membership of or use of purchasing consortia.
- 15.2 Any joint procurement arrangements of the type described in CSO 15.1 must be approved by the Director of Corporate Services or the Chief Executive prior to the commencement of any procurement or arrangement on behalf of the Council. No such approval may be given unless there has been a satisfactory appraisal of the matters set out in CSO 15.3.
- 15.3 In considering any and all such proposals, the Director of Corporate Services and/or the Chief Executive must be satisfied:
 - a) that the proposed joint procurement does not breach any EU or UK law, or where the proposed third party is a foreign non EU national, does not breach the laws of its country of registration if a company or location if a public authority; and
 - b) is capable of delivering value for money; and

- c) where an exemption is required to the Council's Contract Standing Orders, (for example because it is necessary as part of the proposed arrangements to use the proposed third party's procurement regime, or because another party will be the lead body), that the proposed third party's governing procedures are sufficiently rigorous and can deliver standards of probity and transparency reasonably comparable to those of the Council's Contract Standing Orders; and
 - d) that adequate consideration has been given to whether the proposed third party should indemnify the Council in the event that the third party's methods of operating and ideas may turn out to be unlawful or result in the Council being subjected to challenge, judicial review, or any similar action from any party that may lead to a financial loss for the Council.
 - e) That an appropriate Inter-Authority Agreement shall be entered into by the Council and the Third Party(s).
- 15.4 The Director of Corporate Services and/or Chief Executive shall take procurement, legal and financial advice as they consider necessary.
- 15.5 At the sole discretion of either the Director of Corporate Services or the Chief Executive, the proposed joint procurement may be designated as requiring prior consent from Cabinet to proceed.

CSO 16 CONTRACT VALUE ESTIMATION

- 16.1 Where a service or supply contract does not stipulate a total price, the value must be estimated as follows:
- i. for fixed-term services or hire of goods contracts, the aggregate of the value of the consideration that the authority expects to pay over the nominated contract term net of Value Added Tax.
 - ii. for services or hire of goods where the term is indefinite or uncertain at the time when the contract is entered into and for open-ended contracts already entered into : the monthly consideration x 48 (multiplied by 48).
- 16.2 In identifying the value of a contract the Responsible Officer must take into account the full cost of the contract. This shall be calculated to include the initial purchase price service and support costs and the cost of any associated additional works or service throughout the life of the contract and the value of any contract extension predicted at the time of planning the contract.
- 16.3 Where it is intended to enter into a number of contracts to fulfil a single requirement for services or goods, officers are required to obtain specific advice from the Commercial Services Team (who will consult with Legal Services as required) on the aggregation of value.

CSO 17 CONTRACT PACKAGING AND AGGREGATION

- 17.1 The use of direct purchase, quotations and or tenders for securing works, supplies or services may only proceed where the Council does not have an existing contractual

arrangement in place. Where a Corporate Contract does exist this must be used for the procurement. The Director of Corporate Services will publish a list of current Corporate Contracts on the Procurement Toolkit

- 17.2 A procurement must not be artificially packaged into two or more separate contracts, nor a valuation method selected, with the intention of avoiding the application of these CSOs, a specific procurement process or legislation. Care must be taken to comply with relevant EU legislation and/or any equivalent legislation or revisions to the law.
- 17.3 Contracts must be packaged to best ensure service delivery, competition, value for money and the positive outcome of a review of the service.
- 17.4 Responsible Officers are responsible for identifying opportunities for aggregation across all departments to ensure best value for money, and compliance with reviews of service for the Council as a whole.
- 17.5 Responsible Officers are required to justify their aggregation decision on the basis of Value for Money.
- 17.6 Responsible Officers must supply to the Director of Corporate Services an estimate of their procurement requirements for services, works and supplies for the forthcoming 12 months. This will be in the form of an extract from the relevant Service Plan.
- 17.7 Responsible Officers must supply to the Director of Corporate Services in January at the end of each preceding calendar year the total value of all contracts let in the previous 12 calendar months, for the purpose of reporting the Councils EU Statistical Return to Central Government.

CSO 18 CONTRACT SPECIFICATIONS

- 18.1 The Responsible Officer must ensure matters relating to the required quality, performance, safety and other essential criteria to the successful performance of the contract by the contractor are stated in the specification.
- 18.2 The specification may include matters such as methods of construction, design, tests and, testing methods, inspection and acceptance, quality assurance, packaging, marking and labelling and ; service level agreements.
- 18.3 Contract conditions must not be mixed up in the specification.
- 18.4 Specifications may also contain reference to the Council's policies such as sustainability and environmental policy and equalities issues.
- 18.5 Where the Council wants to include specific technical specifications as part of the contract requirements, in order not to breach Treaty of Rome obligations, these must be compliant with the criteria set out in European procurement legislation
- 18.6 Each reference to a technical specification made must be accompanied by the words "or equivalent".

CSO 19 EMERGENCY PROCUREMENT

- 19.1 In an emergency, it may not be possible to satisfy the principle of competition throughout the procurement process. In cases of real emergency, Officers may

dispense with parts of the procurement process, so that they can react quickly to unforeseen events. Emergency procurement should be used **only in genuinely unforeseen emergency circumstances**.

- 19.2 Criteria that would justify enacting an Emergency Procurement may include:
- i. life, property or equipment being immediately at risk;
 - ii. standards of public health, welfare or safety having to be re-established without delay, such as in the case of disaster relief or act of terrorism.
- 19.3 Poor planning, or a lack of adequate time allowance for a procurement process, or a wish to simply extend an existing contract with a current supplier **do not** justify using an emergency process.
- 19.4 In the event of any emergency procurement the Responsible Officer should attempt to contact either the Director of Corporate Services, or the Chief Executive to gain immediate approval to proceed, in accordance with the Council emergency planning and business continuity procedures. If neither of these contacts is available they should contact their own Director for approval.
- 19.5 In the event that the Responsible Officer is unable to contact the Director of Corporate Services or the Chief Executive, or Director then the Responsible Officer may use her/his own judgement based on the severity and urgency of the situation at hand. As soon as circumstances allow, the Responsible Officer must report in writing the contract award to the Director of Corporate Services.
- 19.6 Where the standard procurement procedures set out in the European procurement legislation would have otherwise been applicable, officers must be able to justify their decision to depart from standard procedures in the event of any external challenge. This justification should be documented and filed at the time that the decision is taken.
- 19.7 Unless circumstances make it absolutely impossible, then a letter/email setting out heads of agreement of any emergency contract must be drafted and exchanged with the contractor.

CSO 20 CONTRACTS VALUED AT LESS THAN £100,000

- 20.1 Where works, services or supplies need to be procured, which have an actual/estimated value that is less than £100,000 items can be procured in the following manner.
- 20.2 **Less than £10,000 – Best Value**
- i. An Order in this value range should be based on obtaining three written quotations via the e-tendering system however may be placed on the basis of a single quotation. Subject to 20.3ii this is to be treated as the exception rather than the rule and the single quotation must be obtained in writing and demonstrate value for money.
 - ii. Proceeding on the basis of a single quotation should only take place where the reason can be justified as one of urgency or where there are a very limited number of firms capable of carrying out the works and/or providing supplies or services.
- 20.3 **Greater than £10,000 but less than £100,000 - Quotation**

- i. For works, services and supplies with an estimated value greater than £10,000 and less than £100,000 written quotations may be sought rather than formal tenders.
 - ii. A minimum of three relevant written quotations must be invited via the e-tendering system. All invitations to provide written quotations shall contain instructions for their return (including a specified date and time).
 - iii. If fewer than three written quotations are received the reason for this shall be recorded and kept with the other documentation relating to the request for quotation).
 - iv. Responsible Officers must ensure that they are not breaching disaggregation rules as set out in these CSOs 16 and 17 their methods of concluding that the valuation of a contract is under £100,000
 - v. Where a Corporate Contract is not used, all written quotes from potential suppliers must be submitted via the e-tendering system unless an exemption from e-tendering has been approved in advance by the Director of Corporate Services (refer to Appendix 8) and the Councils Standard Terms and Conditions shall be used.
 - vi. Any works contractors invited to submit a written quotation may be selected from Constructionline or equivalent business directory and invited to submit written quotations via the e-tendering system. If none or insufficient are available, general market sources may be used (as an example a business directory).
- 20.4 All quotes must include full details of all probable expenses of executing the works or supplying the goods, materials or services in a suitable manner and wherever appropriate the estimated whole-life cost or annual cost of maintaining the same.
- 20.5 The selection of the supplier for award of contract must be objective and unbiased taking into account the quote submitted, the suppliers ability to provide goods/services within the required timescales or skills specific to the contract being procured and the price.
- 20.6 The Responsible Officer shall award the contract in accordance with CSO 26.

CSO 21 CONTRACTS VALUED AT OR MORE THAN £100,000 UP TO THE EU THRESHOLD

Competitive Tender Process

- 21.1 Subject to other relevant provisions of the CSOs for works, services and supplies with an estimated value at or above £100,000 a tender exercise must be carried out or a Framework Agreement must be accessed in accordance with CSO 23. A tender exercise requires that a public advertisement is published via the appropriate medium (designated and/or Council website, trade journal, local newspaper) in order to maximise the number of tender responses received.
- 21.2 The advertisement must specify details of the contract and how tender documents may be obtained or inspected and provide named contact details for further information.

- 21.3 The Responsible Officer must decide on whether all qualifying respondents to an advertisement will be able to bid, or whether a shortlist will be drawn up of those to whom invitations to tender will be sent.
- 21.4 The Responsible Officer must set a realistic timescale for the return of tenders. Except in emergencies, suppliers must be given a minimum of 4 weeks to return tenders.
- 21.5 For larger or complex contracts it is important to factor in sufficient time for the potential tenderers to put their bids together. Tenderers must be given a reasonable time to return tenders so as to maximise the accuracy and competitiveness of the tenders received.
- 21.6 Where a Framework Agreement is to be accessed the Responsible Officer shall adhere to CSO 23.

Evaluation Criteria, Process & Weightings

- 21.7 The evaluation criteria and weightings used to select tenderers must be contained within the invitation to tender documents at the time of issue to the tenderers.
- 21.8 The selection of Tenderers must be objective and unbiased and carried out against the evaluation criteria and weightings described in section 21.7.
- 21.9 Tenderers should be selected based on the ability to provide goods/services or works specific to the contract being procured by undertaking a comprehensive examination of costs and quality aspects over the whole life of the contract.
- 21.10 Whilst the tender evaluation process is underway, no information relating to that tender process can be disclosed to anyone not involved directly in the tender, regardless of whether they are council officers, councillors, tax payers, journalists, other Tenderers.
- 21.11 During a tender evaluation process, contact with Tenderers will be strictly limited, and where it is necessary, it must be fully documented. No officer should attend any meetings with Tenderers alone. Any such contact with Tenderers should be limited to matters directly related to the tender evaluation, e.g. inspecting work processes, arranging presentations. In the case where an incumbent contractor is also tendering, normal contract management activities may continue however care should be taken to limit the interaction to contract management activities only and the tender shall not be discussed
- 21.12 All Tenderers must be given exactly the same opportunity and all tender evaluations shall be carried out by the same group of a minimum of three (3) people and to the extent that is practically possible be independent of each other. All group analysis evaluations shall to the extent that is practically possible be done by the same group of personnel on behalf of the Council for each Tenderer. Particular care should be taken to avoid unnecessary social contact with fellow officers on the panel during this period. Officers involved in a tender evaluation exercise must be aware of the need to be seen to be fair and to avoid any allegations of bias or corruption.
- 21.13 The Responsible Officer must be able to demonstrate that no Tenderer has been provided any advantage over another Tenderer in respect of their evaluation and award of a contract.

21.14 The Responsible Officer is required to use the Councils standard Tender Documents as contained on the Procurement Toolkit and in the E-tendering system.

21.15 All tenders from potential suppliers must be submitted via the e-tendering system unless an exemption from e-tendering has been approved in advance by the Director of Corporate Services (refer to Appendix 8) and the Councils Standard Terms and Conditions shall be used.

21.16 A supplier must not be invited to tender if:

- i. it is bankrupt, or is being wound up, or is having its affairs administered by a court, or has entered into an arrangement with creditors, or has suspended its business activities, or is subject to court proceedings regarding any of these matters
- ii. It is subject to a mandatory exclusion set out in Appendix 5.

21.17 A supplier may be excluded from participation in a public contract if

- i. any of the grounds set out in Appendix 6 apply to it or (if appropriate) to its Directors or other persons who have power of representation, decision, or control of the bidder
- ii. it has been, or any of its current Directors have been, convicted of an offence concerning professional conduct or has been guilty of grave professional misconduct;
- iii. it has not fulfilled obligations relating to the payment of taxes or social security contributions;
- iv. it has seriously misrepresented information supplied to the Council, whether on this tender exercise or earlier; or
- v. it is not registered in a professional or trade register of the European state in which it is established; or
- vi. it has previously been found to be involved in a cartel or in price-fixing, whether on a matter concerning the Council or another organisation.

21.18 Where grounds exist for believing that the potential supplier has behaved in an unacceptable manner in any of its dealings with other public authorities, advice should be sought from both the Head of Commercial Services, Proper Officer and Legal Services as to whether or not these matters are relevant and can properly lead to the potential supplier being disregarded from invitation to tender or award of contract.

21.19 The Responsible Officer shall award the contract in accordance with CSO 26.

CSO 22 CONTRACTS VALUED AT OR GREATER THAN THE EU THRESHOLD

European Union Competitive Tender Process

- 22.1 Subject to other relevant provisions of the CSO for works, services and supplies with an estimated value above the relevant EU Threshold that applies at the time (OJEU Thresholds can be found on the Procurement Intranet pages) the Responsible Officer must carry out a tender process in accordance to the Public Contract Regulations 2006 and all Amending Regulations thereafter.
- 22.2 The Responsible Officer shall adopt one of the following Procedures in order to execute the tender process.
- i Open Procedure
 - ii Restricted Procedure
 - iii Competitive Dialogue Procedure
 - iv Call-Off from an Existing Framework Agreement
- 22.3 The Director of Corporate Service will publish the EU Thresholds and guidance on the application and use of these Procedures in the Procurement Toolkit.
- 22.4 Responsible Officers should seek guidance from the Director of Corporate Services in relation to all contracts that are subject to the European procurement legislation.
- 22.5 All tenders from potential suppliers must be submitted via the e-tendering system unless an exemption from e-tendering has been approved in advance by the Director of Corporate Services (refer to Appendix 8) and the Councils bespoke Terms and Conditions shall be used.

Selection and Award Criteria

- 22.6 The Responsible Officer shall adhere to the Selection and Award Criteria requirements of the Public Contract Regulations 2006 and all Amending Regulations thereafter.

Selection Criteria

- 22.7 The Responsible Officer shall select applicants to participate in a tender on the basis of:
- i) information as to economic and financial standing
 - ii) information as to technical or professional ability
 - iii) supplementary information
- 22.8 An applicant must not be invited to tender for contracts if it is subject to the mandatory exclusion set out in Appendix 5. An applicant may be excluded from participating in a public contract if it is subject to the discretionary exclusions set out in Appendix 6.

Award Criteria

- 22.9 The Responsible Officer shall award a contract on the basis of the offer which:
- i) is the most economically advantageous from the point of view of the contracting authority
- OR

- ii) offers the lowest price
- 22.10 Unless using lowest price the contracting authority shall use criteria and where necessary sub-criteria, linked to the subject matter of the contract to determine that an offer is the most economically advantageous that may include but not limited to quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost effectiveness, after sales service, technical assistance, delivery date and delivery period and period of completion.

Weightings

- 22.11 Where a contracting authority intends to award a public contract on the basis of the offer which is the most economically advantageous it shall state the criteria, sub-criteria and weightings which it gives to each of the criteria and sub criteria in the Contract Notice or in the Contract Notice documents or in the invitation to tender documents, or in the case of the competitive dialogue procedure, in the descriptive document.
- 22.12 Where the contracting authority publishes the criteria, sub-criteria and weightings in accordance with 22.11 the criteria, sub-criteria and weightings must not be changed by the contracting authority after the advertisement of the public contract.
- 22.13 The Responsible Officer shall award the contract in accordance with CSO 26.
- 22.14 CSO 21.7 through to 21.18 inclusive applies.

CSO 23 FRAMEWORK AGREEMENTS

- 23.1 Prior to accessing any Framework Agreement the Responsible Officer must firstly determine that the Framework Agreement is available for legitimate use by the Council
- 23.2 Where two or more Framework Agreements exist which are capable of fulfilling the Council's requirements, the Responsible Officer may select between them which Framework Agreement will be used in accordance with CSO 14 and the Responsible Officer shall keep a full written record of the value for money, timeliness or other relevant consideration used by the Responsible Officer to select the Framework Agreement to be used.
- 23.3 Prior to the procurement of a new or joining a pre-existing Framework Agreement or consortium arrangement, the Director of Corporate Services must be satisfied that such an approach represents the most economically advantageous solution for a service , work ,supply or utility provision with regard to the relevant EU Procurement Regulations.
- 23.4 When setting up a Framework Agreement for the Council the Responsible Officer shall use a procurement process listed in section 22.2, i, or ii
- 23.5 When procuring goods and services from an existing Framework Agreement the Responsible Officer may (subject to satisfying CSO 4.2) either –
 - 23.6 Where there is only one supplier capable of fulfilling the requirement, select that supplier, or

- 23.7 Where there is more than one supplier capable of fulfilling the requirement listed on the Framework and the original terms and conditions and requirements of the original Framework are sufficiently specific without change or additional specification of the requirement as to allow award to any one of the suppliers the Responsible Officer may select one of the suppliers for award without the need for further competition subject to demonstrating value for money or
- 23.8 Where there is a need to refine or supplement any of the requirements referred to in 23.7 above then a mini-competition inviting all those companies on the Framework who are capable of providing the goods and services must be held, such mini-competition to be held in accordance with the procedures set out below

- i) by applying the obligations set out in CSOs 4, 8, 9, 10, 11, 12, 13, 16, 17 and 18 and
- ii) in accordance with the procedures set out in CSOs 21 (save as to advertising), 26, 28, 29, 30 (save that the application or not of the standstill period shall be as provided for in this CSO 23.11) and

as if the obligations and procedures set out in the above CSOs applied to the mini-competition being held.

- 23.9 All tenders from potential suppliers on Framework Agreements must be submitted via the e-tendering system unless an exemption from e-tendering has been approved in advance by the Director of Corporate Services (refer to Appendix 8) and the Councils Standard Terms and Conditions shall be used.

- 23.10 Before establishing or entering into a Framework Agreement or consortium arrangement, the Director of Corporate Services shall be satisfied that;

- i. the term of the arrangement shall be for a period of no longer than four years
- ii. the terms and conditions of the Framework Agreement, the Access Agreement or the Inter-Authority Agreement do not compromise the Councils' contractual requirements
- iii. full open and proper competition in respect of the creation of the framework or
- iv. consortium arrangement has taken or will take place in accordance with the relevant EU Procurement Regulations and or relevant contract standing orders.

- 23.11 Prior to the award of any contract resulting from a mini competition performed under 23.8 above and where the Framework Agreement operator has sent a Contract Award Notice in the due form to the Official Journal of the European Union, a contracting authority is not required to send a Contract Award Notice where it awards a contract under the Framework Agreement however the Responsible Officer may do so and observe a Standstill Period if he thinks it is appropriate or desirable to do so due to

- i. the value of the purchase or

- ii. legal advice or
- iii. any other relevant factor.

23.12 The provisions of these CSOs shall be subject to any other relevant authority from Cabinet, Council, Director or Officer authorised under the Scheme of Delegation having been obtained apply to the advertising, tendering, seeking of quotes, evaluation and award of such Framework Call-Off Contracts as if the requirements upon the Responsible Officer contained in CSO 4.2 applied to the relevant Director or Council officer designated or permitted authorised under the Scheme of Delegation to let the Framework Agreement on behalf of the Council.

CSO 24 CONTRACTS FOR CONSULTANCY SERVICES OR INTERIM PROFESSIONAL SERVICES

- 24.1 When procuring Consultancy Services or Interim Professional Services the Responsible Officer shall adhere to one of CSO 20 or 21 or 22 that applies to the anticipated contract value determined as set out in CSO 16 and 17.
- 24.2 When procuring Consultancy Services or Interim Professional Services reference should be made to the Councils Code of Practice on procuring consultants contained in Appendix 7.
- 24.3 Contracts for Consultancy Services and/or Interim Professional Services shall be in a form approved by the Director of Corporate Services.
- 24.4 Any insurance cover required in the Contracts for Consultancy Services and/or Interim Professional Services shall as a minimum be at such level as the Council Insurance Manager shall reasonably determine in each case.
- 24.5 All providers of Consultancy Services and Interim Professional Services are required to adhere to CSO 10 Conflict of Interest.
- 24.6 The Responsible Officer shall award the contract in accordance with CSO 26.

CSO 25 CONTRACTS FOR CONCESSIONS

- 25.1 A Concession Contract is of the same type as a service contract except that the consideration (payment) for the provision of services received consists either solely in the right to exploit the service or in that right together with payment. This can include any contract or agreement in writing where a right to use or exploit a Council site, property, right or facility is granted to another person or body in return for payment or consideration of any kind other than being purely nominal to the Council.
- 25.2 The provisions of these CSOs shall subject to any other relevant authority from Cabinet, Council, Director or Officer authorised under the Scheme of Delegation having been obtained apply to the advertising, tendering, seeking of quotes, evaluation and award of such Concession Contracts as if the requirements upon the Responsible Officer contained in CSO 4.2 applied to the relevant Director or Council officer designated or permitted authorised under the Scheme of Delegation to let the Concession Contract on behalf of the Council.
- 25.3 The Responsible Officer shall award the contract in accordance with CSO 26.

CSO 26 CONTRACT AWARD & STANDSTILL PERIOD

- 26.1 No contract may be awarded unless all of the requirements of CSO 4.2 are met.
- 26.2 No contract may be awarded unless the expenditure involved has been included in approved revenue estimates or is in the capital programme or has been otherwise approved by the Director of Corporate Services.
- 26.3 The Responsible Officer will ensure that evidence of authority to begin a competitive process, to award the contract, to incur spend and the budget code is recorded on the contract file.
- 26.4 Provided that 26.1 through to 26.3 are satisfied, then contracts may be awarded in accordance with the relevant scheme of delegation and must be added to the relevant Forward Plan (where applicable).
- i. by a Responsible Officer duly authorised under a Scheme of Management where the value of contract is below £10,000.
 - ii. by the Head of Service duly authorised under a Scheme of Management where the value of contract is below £100,000
 - iii. by the Director duly authorised under a Scheme of Management where the value of contract is between £100,000 and £500,000.
 - iv. by the Director duly authorised under a Scheme of Management and Chief Executive where the value of contract is between £500,000 and £2,000,000.
 - v. by the Cabinet where value of the contract is £2,000,000 or greater.
- 26.5 No contract which is a Key Decision may be awarded for a Key Decision Call-In period of 10 calendar days from the relevant awarding body resolving an intention to award the contract
- 26.6 No contract for the provision of legal services or advice shall be awarded without the prior written consent of the Assistant Director of Corporate Governance or the Head of Shared Legal Services
- 26.7 Each Responsible Officer must arrange for the recording of the contract on the Contract Register maintained on behalf of the Director of Corporate Services and for archiving of the contract by Legal Services, in accordance with the Procurement Gateway Process.
- 26.8 Where a contract is awarded under European procurement law, then the Responsible Officer must allow an Alcatel Standstill Period of 10 clear calendar days from the date of electronic notification to all tenderers and 15 clear calendar days from the date of notification to all tenderers if given in writing otherwise than electronically.
- 26.9 The Responsible Officer for the award of a contract must ensure the contract is awarded in compliance with the Public Contract Regulations 2006 and the Public Contracts (Amendment) Regulations 2009, where applicable.
- 26.10 Subject to CSO 23.11 the Responsible Officer for the award of an EU contract must also ensure submission of a Contract Award Notice to the OJEU within 48 calendar days of award. Advice on these may be sought from the Commercial Services Team or Legal Services.

CSO 27 CONTRACTS FOR DISPOSAL OF COUNCIL ASSETS

- 27.1 Subject to clause 27.4 below the disposal of Council Assets is generally subject to the general requirements imposed by section 123 of the Local Government Act 1972 (duty to obtain best consideration reasonably obtainable). In this context 'best consideration' can, provided that it is reasonable and proportionate to do so in the circumstances, include a quantifiable or demonstrable benefit that compensates the Council for the shortfall in consideration from the disposal given to the public or community or obtained by the Council from the disposal.
- 27.2 Where the disposal of Council Assets involves the sale or disposition of land the Council Property Officer shall determine whether an auction, a tender process or a private treaty is the most appropriate method of disposal under the procedure confirmed in the Code of Practice – Disposal of Land that satisfies the Council's obligations to obtain best consideration reasonably obtainable.
- 27.3 Where the Council Property Officer determines that the most appropriate method of disposal is by a tender process then Appendix 8 of the CSOs will apply.
- 27.4 Where a disposal of Council Assets is proposed which is at less than best consideration reasonably obtainable and the Council has the power to do so no disposal shall be made without the express written agreement of the Director of Corporate Services under an appropriate Scheme of Delegation and in consultation with the Commercial Services Team and Legal Services.
- 27.5 In all cases where the disposal of Council Assets is or includes works and/or services to be performed or goods to be supplied which would be subject to EU Procurement Law then the Responsible Officer shall be responsible for ensuring such compliance to the Law.

CSO 28 AMENDMENTS TO INVITATION TO TENDER DOCUMENTATION

- 28.1 Reasonable requests for further information relating to an invitation to tender document may be granted, provided the request enables the Council to supply the information not less than 5 days before the date specified for tenders' close (unless special circumstances apply).
- 28.2 Other than where the proposed amendment to the invitation to tender documents would constitute a breach (actual or potential) of EU Procurement law an amendment may be allowable however consideration must first be given as to how significant the amendment is, and what affect this may have to the scope/specification contained in the original tender documents.
- 28.3 No amendments to invitation to tender documents should be issued within 5 days of the date specified for close of receipt of tenders (unless special circumstances apply) in which case a tender extension period should be considered.
- 28.4 In any circumstance amendments to invitation to tender documentation and responses must be distributed to all tenders at the same time.

CSO 29 AMENDMENTS TO TENDERS SUBMITTED

- 29.1 In legal terms a tender or quotation is a formal offer to the Council, which the Council may accept as it stands.
- 29.2 Subject to EU Procurement Law (where applicable) other than in the case of genuine arithmetical or typing errors, if any Tenderer attempts to alter the offer after the last date for receipt of tenders or quotations, they must be informed that they have only two options:
- i. stand by their submitted tender and accept they have made an error or omission and that any contract with the Council will hold them to the information submitted by them in their tender, or
 - ii. withdraw their original tender completely.

CSO 30 ARITHMETICAL ERRORS

- 30.1 All tenders must be checked for arithmetical accuracy. Where examination of tenders reveals arithmetical errors which would affect the tender figure in an otherwise compliant tender, subject to EU Procurement Law (where applicable) the Responsible Officer shall write/email the Tenderer pointing out the error and enquiring whether the Tenderer wants the arithmetically correct figure to:
- i. Amend the tender to the arithmetically correct figure such that the tender remains valid at the new tendered sum.
 - ii. Stand by the original tendered sum, notwithstanding the arithmetical error
 - iii. Withdraw the submitted tender.
- 30.2 Any letter/email must detail the timeframe the Tenderer has to respond.

CSO 31 VARIANT TENDERS

- 31.1 Unless precluded in the invitation to tender it may be possible to consider variant bids provided that their submission complies with European procurement legislation and had been invited when issuing the Invitation to Tender. Where a Responsible Officer feels it may be beneficial to invite variant bids, then advice should be sought from the Commercial Services Team and Legal Services.
- 31.2 No variant bid may be considered unless their provision had been provided for in the Invitation to Tender documents and the Contract Notice where applicable.
- 31.3 No variant bid may be considered unless a compliant bid has been duly received from the tenderer from whom the variant bid is received.

CSO 32 CONTRACT NEGOTIATION

- 32.1 Subject to EU Procurement Law (where applicable) the Responsible Officer may negotiate the contract:

- i. where tendering produced inappropriate tenders (for example where the tender figure in an otherwise successful tender exceeds approved or budgeted expenditure, or where the sum has changed since tenders were invited) provided the terms of the contract remain substantially unaltered; or
 - ii. where tendering was discontinued because of irregular tenders, for example because tenders fail to meet the requirements specified in the contract documents or offer variations on them, or the works, supplies or goods fail to meet the technical specification.
- 32.2 The Responsible Officer will invite all who have submitted valid tenders to amend their tenders, in writing, in such matters (e.g. unit price, delivery, discounts or by removing elements of the bill of quantities) as the Responsible Officer specifies. A valid tender is one that has complied with all tendering instructions, including a response to all aspects of the specification.
- 32.3 Such written amendments must be delivered to the Responsible Officer at fixed time and place; opened by the Responsible Officer at the same time after that deadline; initialed and dated by the Responsible Officer. Any subsequent negotiating meetings will be conducted by at least two officers of different disciplines, one being a witness. The Responsible Officer will keep a written record of all negotiations, including notes of all meetings and the names of all individuals present.
- 32.4 Where no tenders are received, the Responsible Officer will either re-tender, excluding those providers who failed to make offers on the first occasion; or if time does not permit, seek an exemption to negotiate with a suitable provider or providers.

CSO 33 FORMS OF CONTRACTS & IN WRITING

- 33.1 Notwithstanding CSO 35.2 below prior to contract award every proposed contract must be
 - a. in a form which has been approved as being suitable for the proposed purpose by Legal Services and be
 - b. in writing and then either executed under seal or signed by a person in the Council authorised to do so. Legal Services will advise when contracts should be under seal.
- 33.2 Emergency contracts need not be approved beforehand as being in a form which is suitable in accordance with CSO 33.1 a) above or in writing before commencement; but must be confirmed in writing and as suitable as soon as possible. Unless circumstances make it impossible, written Heads of Agreement should nonetheless be drawn up and agreed with the contractor(s) and such approval and writing be performed before award.

CSO 34 NOMINATING PRODUCTS/PROVIDERS

- 34.1 The nomination of a sub-contractor or supplier to a main provider, for carrying out works or services, or supplying goods or materials requires written justification from the Responsible Officer who must discuss the implications of such a nomination with the Head of Commercial Services and Legal Services.

- 34.2 Where a sub-contractor or supplier is identified as part of a tender the Tenderer must demonstrate the arrangements through which control and management of the sub-contractor or supplier will be exerted to ensure performance as required by the contract is achieved.

CSO 35 CONTRACT CONDITIONS

- 35.1 Unless covered by a framework agreement or collaborative arrangements contract conditions are to be in a form agreed by the Assistant Director of Corporate Governance or Head of Legal Services prior to any award.
- 35.2 Reference must be made to the following and all subsequent amendments and all current relevant legislation including:
- i. Equality Act 2010
 - ii. Health & Safety at Work etc Act 1974
 - iii. Data Protection Act 1998,
 - iv. Human Rights Act 1998
 - v. Freedom of Information Act 2000,
 - vi. or any comparable statutory provision relating to discrimination in employment.
 - vii. Bribery Act 2010
- 35.3 The conditions must also ensure that no employees, agents and sub-providers unlawfully discriminate, and all will comply with all relevant codes of practice issued by the Equality and Human Rights Commission.
- 35.4 Contracts involving the transfer of staff from the Council or from one contractor to another will contain conditions requiring the successful contractor to comply with TUPE legislation and any statutory guidance.
- 35.5 Notwithstanding 35.4 all contracts shall contain terms relating to transitional arrangements at the end or earlier termination of the contract which will cover work in progress and the costs of transferring ownership of assets, data and records.
- 35.6 The conditions must contain a right of access to records, information, data for the purposes of audit as and when required.
- 35.7 Contracts will require Contractors to inform their staff and their sub-contractors of the Council's Whistleblowing Procedures.

CSO 36 CONTRACT PERFORMANCE

- 36.1 The specification for the contract must contain the method by which the contract will be monitored throughout the life of the contract.
- 36.2 During the life of any contract Directors and Assistant Directors must ensure that appropriate systems are in place to manage and monitor contract performance under directions from the Director of Corporate Services.

- 36.3 In cases of consistent poor performance, the Council may terminate the contract in accordance with the provisions in the contract.
- 36.4 Additional guidance on effective contract management and performance monitoring is provided in the Procurement Toolkit.

CSO 37 CONTRACT VARIATION AND EXTENSIONS

- 37.1 No variation or extension to an existing contract may be made unless it has been confirmed by the Responsible Officer that doing so will not breach European procurement legislation; and save in the event of an emergency (as defined elsewhere in these CSOs). Variations and or extensions to a contract will be considered on an individual basis and shall be priced on the basis, of the rates contained in the existing contract. No variation and or extension will be made until funding has been identified in accordance with Council's financial procedures.
- 37.2 Subject to 37.3 below no variation or extension to an existing contract may be made unless it is permitted by the Contract Notice (if applicable), the terms of the contract and was allowed for within the invitation to tender documents and in the decision to award by the Authorising Body.
- 37.3 No variation or extension to an existing contract may be made if that variation or extension would extend the contract period by more than three months, or 25% of the original contract period (whichever is the greater); or
- i. if that variation and or extension would add more than 25% to the value of the contract or would increase the contract sum from below the quotation threshold or more, or
 - ii. if the works, services or goods to be added to or deleted from the contract are substantially different in scope; or
 - iii. be in breach of EU Procurement Law
- 37.4 Agents operating on behalf of the Council may not issue variations without the express written agreement of the Responsible Officer and the Director of Corporate Services.
- 37.5 In cases of urgency, an appropriately authorised Responsible Officer may approve a variation. Urgency for these purposes includes emergency works for the protection of life and property; legal requirements to pay for disputed works or services, and cases where delay would lead to significant financial loss to the Council. In these cases, Responsible Officers will include the details of such urgent variations in a retrospective Exemption Report to Director Corporate Services.
- 37.6 All contract extensions shall, unless otherwise provided for in the original authority to award, be approved by the same Authorising Body that gave authority for the original award of contract.

CSO 38 FREEDOM OF INFORMATION ACT (FOI) 2000

- 38.1 All procurement processes and requests for information must be carried out in accordance with the Council's Freedom of Information policy.

- 38.2 Requests for information about the tender evaluation process will be dealt with by the Responsible Officer. Any response should be prepared after consulting with the Proper Officer who with Information Governance Manager will advise on responses.
- 38.3 Requests for information about past or existing contracts shall be dealt with by the Responsible Officer for that contract or if that officer unavailable for any reason by a suitable officer nominated to perform that role in consultation with the Information Governance Manager.

CSO 39 AMENDMENT OF CSOs

- 39.1 These CSOs may be supplemented varied or amended from time to time during their currency in respect of the Thresholds set out in CSOs 20 and 21 and 22 with the written approval of the Leader, Chair of Scrutiny, Chief Executive and the Monitoring Officer and details of each such supplement variation or amendment shall then be published on the Council's internet and intranet together with the date that such supplement variation or amendment is to apply.

CSO 40 PROCUREMENT TOOLKIT

- 40.1 The Procurement Toolkit includes the guidance, information, templates, tools and techniques described on the commercial services team Intranet pages provided to assist officers in undertaking procurement and contract management activity.
- 40.2 The Director of Corporate Services may issue letters, circulars and other documents containing such practical guidance as the Director thinks fit in relation to the performance by persons of duties imposed on them by virtue of these Standing Orders.

APPENDIX 1 - TERMS AND DEFINITIONS

In these Contract Standing Orders and Codes of Practice, the following terms have the following meanings:

“*Acceptance*” is the approval of the final terms and conditions for the purchase of supplies, services or works.

“*Assistant Director*” means the deputy to the appointed Head of a Department within the Council

“*Authorisation*” is the approval required before quotations or tenders for supplies, services or works may be sought

“*Authorising Body*” means a body or individual acting under properly delegated authority empowered to award a contract on behalf of the Council.

“*Cabinet*” means Full Cabinet, Cabinet Committee or Cabinet Portfolio holder unless the context shows otherwise.

“*Call-off contract*” means a contract made following a formal tendering process to create a Framework Agreement with one or more contractors, suppliers or service providers for a defined range of works, goods or services covering terms and conditions (including price) which users 'call off' to meet their requirements. See also 'framework agreement'.

“*Chief Legal Officer*” is the Assistant Head of Corporate Governance or Head of Shared Legal Services as delegated

“*Chief Officer*” is a Departmental Director

“*CSO*” means Contract Standing Order

“*Conflict of Interest*” means conflict of private interest and public duty and or conflict of public duty to a public body and duty to the Council and or the appearance of such a conflict.

“*Community representative*” means a person appointed by a tenants' voluntary group or similar Representative organisation, to represent their interests in any aspect of the contracts process (but not an elected Councillor)

“*Concession*” is of the same type as a service contract except that the consideration (payment) for the provision of services received consists either solely in the right to exploit the service or in that right together with payment.

“*Constructionline*” means the contractor database provided by the Department of Business Innovation and Skills and Capita that is a register of pre-qualified suppliers from the construction industry.

“*Consultancy Services*” means a contract between the Council and an organisation or individual (*a Consultant*) for a specific task, consultancy advice and/or other similar consultancy services of research and report to the Council as may be required.

“*Consultant*” means a provider of Consultancy Services.

“*Contract*” means any agreement for the supply of goods, materials or services, the execution of works and the awarding of concessions;

“*Contract Award Notice*” means a Contract Award Notice published in the *Official Journal of the European Union* (OJEU) by contracting authorities, confirming award of contract(s).

APPENDIX 2

“*Contract Notice*” means a Contract Notice published in the *Official Journal of the European Union* (OJEU) by contracting authorities, seeking expressions of interest or inviting companies to tender.

“*Contractor*” means an organisation or individual who has agreed a contract to undertake works, supply goods or provide services

“*Contract File*” means a record of all matters relating to a contract.

“*Contract Register*” means a list detailing all contracts that are let by an organisation. The list is dynamic and contains information on contract value, contract manager, supplier and start and expiry dates of the contract.

“*Corporate Contract*” means a contract put in place for the benefit and use of the whole Council including contracts let by service departments intended for such use.

“*Council Insurance Manager*” means the Council officer to whom responsibility for Council Insurance matters is delegated.

“*Council Property Officer*” means the Council officer to whom responsibility for Council Property matters is delegated.

“*Council Asset*” means land and/or chattels that are in the Councils ownership

“*Director*” means the appointed Head of a Department within the Council

“*Director of Corporate Services*” means the Director of Corporate Services or any other Chief Officer to whom responsibility for corporate procurement functions is delegated by the Chief Executive

“*Disposal*” means the divestment of Council ownership in any asset including a sale or disposition of land.

“*E-tendering system*” means the Councils electronic system intended for the electronic execution of quote and tender processes from time to time.

“*EU contract*” a contract covered by the full European Union public procurement regime through being of a value that exceeds one of the thresholds in the appropriate regulations.

“*EU Procurement Law*” means the Public Procurement Regulations 2006 and the Public Contracts (Amendment) Regulations 2009 and all relevant case-law.

“*EU Procurement Regulations*” means the Public Procurement Regulations 2006 and the Public Contracts (Amendment) Regulations 2009

“*Exemption*” a permission granted in Appendix 2 or in accordance with the procedure set out there that all or part of these CSOs need not be complied with other than in respect of EU Procurement Law.

“*Exemption Report*” means an application for Exemption in the form set out in Appendix 4 below and signed by the Director of Corporate Services.

“*FOIA*” means the Freedom of Information Act 2000 and all statutory enactments, regulations guidances thereon.

“*Framework Agreement*” means an arrangement under which the Council (or another 'contracting authority') establishes in accordance with the Public Contract Regulations 2006 with a provider or providers of goods, works or services, under which contracts can be entered into, or 'called-off' (within the limits of the agreement) when particular needs arise. See also 'call-off contract'.

“*Interim Professional*” means a contract between the Council and an organisation or individual, other than one of employment, for the provision of interim or stand-in services of an officer post of the Council, or a post created for a defined period of time and may include such deliverables as may be required and specified within the contract.

APPENDIX 2

“Key Decision Call-In” means the period of 10-days following the meeting of Full Cabinet, Cabinet Committee or Cabinet Portfolio holder during which decisions from the relevant meeting can be called in.

“Legal Services” means the Council's legal services section or such other body as has been approved by Cabinet to act for that purpose.

“Lowest Tender/Sum” means the lowest price offered by tender or quotation, which meets the specification.

“Merton Code of Conduct for Members” means the relevant Code of Conduct retained on the Council Intranet updated from time to time

“Merton Code of Conduct for Council Staff” means the relevant Code of Conduct retained on the Council Intranet updated from time to time

“Options Appraisals” means an analysis of the possible ways the Council may structure a commercial arrangement and/or contract with a 3rd party in order to obtain best value for money.

“Procurement Governance & Gateway Process” means the Procurement Governance and Gateway Process as agreed by the Procurement Board and published in the procurement toolkit.

“Procurement Toolkit” means all guidance, information, templates, tools and techniques described on the commercial services team Intranet pages that will be updated from time to time.

“Proper Officer” shall mean the Councils' Head of Commercial Services or such other officer as shall be appointed from time to time to perform that role.

“Provider” means any contractor supplying, or offering to supply, goods, works or services (including concessions) to the Council; and includes any firm, agent, company, partnership, public authority, individual or other organisation.

“Purchaser's Agent” means anyone providing a purchaser with a service to assist them in arranging the supply of goods, works, services or concessions

“Quotation” means a written offer following a request for quote process

“Responsible Officer” or “RO” means any permanent or temporary staff member or any other person properly authorised to carry out any of the Council's contracts functions. Where no Responsible Officer has been appointed, the Responsible Officer shall be deemed to be the budget holder of the section from which the contract is funded.

“Scheme of Management” or *“Scheme of Authorisation”* means the management arrangements whereby a Director may implement practically the discharge of any function for which they are responsible.

“Standstill Period” means the mandatory 10-day standstill period as described in Public Contract Regulations 2006 that must be observed between notifying tenderers of intention to award a contract and confirming the award of contract.

“Tender” means a written offer following advertising and/or formal tendering

“Tender Evaluation Team” a team of Council Officers or advisors who collectively conduct the evaluation of a tender and make judgement to recommend a preferred supplier.

“TUPE” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended

“Value for Money” the optimum combination of whole life cost and quality (or fitness for purpose) to meet the users requirements.

“Workforce Regulations” means the Local Government Best Value (Exclusion of Non-Commercial Considerations) Order 2001/909 as amended.


“Whistleblowing Procedures” means the procedures set out on the Councils Internet pages

APPENDIX 2

“Witness” means a member of staff not directly involved in a particular contract, who participates in certain stages to ensure propriety.

APPENDIX 2 - EXEMPTIONS FROM CONTRACT STANDING ORDERS

- 1.0** Where an exemption is sought from all or any part of Contract Standing Orders a report justifying the reasons for granting the exemption and the CSO being exempted must be provided in writing in an Exemption Report to the Director Corporate Services (or in their absence the nominated deputy). No requested exemption shall be permitted and take effect until the Exemption Report has been signed as agreed by the Director Corporate Services (or in her absence her nominated deputy).
- 2.0** No Exemption can be granted where the request would result in a breach of EU Procurement Law.
- 3.0** A non-exhaustive list of reasons for seeking exemption are set out below and may be referred to in the Exemption Report by reference to this Appendix 2 and the relevant letter:
- a) that only one provider is able to carry out the work or service or to supply the goods for technical or artistic reasons or because of exclusive rights;
 - b) that time limits required for tendering cannot be met for reasons of extreme urgency (usually emergency contracts where a risk to life, or the security or structural viability of a property can be demonstrated; or contracts where the terms of a Court order set a time limit which specifically precludes all or part of the tendering process); and which, in the case of E.U. contracts, were unforeseen and un-attributable to the Council.
 - c) that additional goods, works or services are required which, through unforeseen circumstances, were not included in the original contract and which either are strictly necessary for the completion of the contract or, for technical or economic reasons, cannot be carried out separately without great inconvenience.
 - d) that goods are required as a partial replacement for or addition to existing goods or installations and obtaining them from another provider would result in incompatibility or disproportionate technical difficulties in operation or maintenance; that the rules of a design contest require the contract to be awarded to one of the successful candidates, provided all successful candidates are invited to negotiate
 - e) that for work carried out for other public bodies, an exemption from tendering has been requested by them in writing (provided exemption is lawful having regard to E.U. or domestic legislation);
 - f) the proposed contract is an extension to or variation of the scope of an existing contract, if permitted by the public procurement legislation i.e. below the required EU limit, unless the existing contract provides for an extension;
 - g) the purchase of works of art, museum artefacts, manuscripts or archive collection items;
 - h) there is a need to develop and influence the market by extending the range and provision of services, provided the contract is for a fixed term of no more than three years;

- i) it is necessary to enable the continuation of a new service, development of which was initially grant-aided, provided the contract is for a fixed term of no more than three years;
 - j) value for money can be demonstrated by inviting a single tender or quotation from a voluntary sector provider;
 - k) value for money can be achieved by the purchase of used vehicles, plant or materials;
 - l) when a grant from a public body includes a recommendation as to the supplier or is time limited;
 - m) in furtherance of the Council's social enterprise policy, or other economic development aims, subject to the prevailing financial support limits for this type of activity and without breaching public procurement rules;
 - n) where the Council has agreed to collaborate with another public body and is satisfied that the contracting arrangements of the lead body (where different from the Council) do not contravene the Council's legal responsibilities in this respect.
 - o) if there are exceptional circumstances not previously identified or covered by existing policies, procedures, or the Contract Standing Orders;
- 

APPENDIX 3 – DECLARATION OF INTEREST FORM

Declaration A

Name of Employee:
Department:
Post or Grade:
Permanent or Temporary:

[Please use block capitals]

I declare that I have read the attached Explanatory Notes and Declaration B and that there are no facts or circumstances that I would be required to specify if I completed Declaration B truthfully, accurately and completely.

In the event of any fact or circumstance changing this position, I agree to make Declaration B to my Chief Officer within 21 days.

Signed.....

Date.....

NOTE: This declaration must be made without amendment or qualification. If you cannot make it without amendment or qualification, you must complete Declaration B.

Chief Officer's Certificate

I have considered the above Declaration of Interests and confirm that no matters have been disclosed, and to my knowledge this is an accurate statement.

Signed.....

Date.....

GENERAL DECLARATION OF INTERESTS FOR SENIOR MANAGERS AND STAFF INVOLVED WITH CONTRACTS

Declaration B

Name of Employee:
Department:
Post or Grade:
Permanent or Temporary:

[Please use block capitals]

In this declaration the interests of your family mean the interests of:

- a) your spouse or partner;
- b) any other member of your family (whatever the relationship) when you have actual knowledge of the interests of that family member. Only the interest needs to be declared not the family connection.

I declare that I have read the attached Explanatory Notes and that to the best of my knowledge and belief the answers specified below are truthful, accurate and complete. I agree to inform my Chief Officer in writing of any change to these answers within 21 days of that change taking place.

NOTE: If declaration B is to be made and the answer to any section is that you have no interest to declare in that particular section, you should write 'None'. Do not leave sections blank.

EMPLOYMENT (other than with Merton Council)

1. I am employed by: of (address) as a:

2. I am self-employed as a: and my place(s) of business is as follows: and I trade under the following name(s):

EMPLOYMENT (other than with Merton Council)

3. I am in partnership with:
as a:
my firm's place(s) of business are as follows:
and the firm trades under the following name(s):

4. I am a consultant with or to:
and their place of business is as follows:
and they trade under the following name(s)

DIRECTORSHIPS

5. I or a member of my family hold the following Directorships in the following trading companies (give the companies' names, any names under which the companies trade, the companies' registered addresses and the names of all other directors):

SHAREHOLDINGS

6. I, my family or my or their nominees have significant shareholdings in the following companies:

Footnotes: ¹A shareholding is significant for these purposes if its size or value (either absolutely or in relation to the share capital of the

company as a whole) is such that it could give rise to the appearance of a conflict of interest if the Council were to enter into a contract with the company.

²A shareholding need not be declared if it is in a company that trades in a field wholly unrelated to your field of work for Merton Council.

PROPERTY AND LAND OWNED BY THE LONDON BOROUGH OF MERTON

7. I, or a member of my family, or my, or their nominees hold (directly or indirectly) a tenancy / leasehold interest in the following properties/land (other than my or their principal home) which are owned by Merton Council:

Address of Property(ies):

APPROVED LIST

8. I, or a member of my family, or my, or their nominees have the following connection with the following businesses on the Council's Approved List of Contractors and Consultations or my own Department's list of suppliers:

(NB: Connections which must be declared include, but are not limited to, being employed by / in partnership with/ a consultant to/ a director or/ a shareholder in a business on the Corporate or Departmental list)

SECRET ORGANISATION

9. I am/am not* a member of any organisation which administers oaths of secrecy and which has a general or particular intention of ensuring that members assist one another. [If you are a member of such an organisation, specify the name(s) or the organisation(s) and the branch(es) or section(s):

ANY OTHER CONFLICT OR INTEREST

10. I have the following interests which could give rise to a conflict of interest or to the appearance of a conflict of interest between the said interest and my duty as an employee of Merton Council:

Signed.....

Date.....

Chief Officer's Certificate

I have considered the above Declaration of Interests and am satisfied that nothing it reveals is incompatible with the duties of the employee making the Declaration.

Signed.....

Date.....

APPENDIX 4 - FORM OF EXEMPTION REPORT

CHIEF OFFICER DECISION	
-------------------------------	--

SUBJECT:

LEAD OFFICER:

LEAD MEMBER:

KEY DECISION REFERENCE NUMBER: N/A

RECOMMENDATION:

Chief Officer Decision	Approved	Not Approved
Signature	Designation Director of	Date
Chief Executive Signature (for Corporate Services Exemption Requests only)	Designation	Date

1. EXECUTIVE SUMMARY AND PURPOSE OF REPORT

2. DETAILS

3. ALTERNATIVE OPTIONS

4. FINANCIAL IMPLICATIONS

5. PROCUREMENT IMPLICATIONS

6. LEGAL IMPLICATIONS AND STATUTORY PROVISION

7. HUMAN RIGHTS AND EQUALITIES IMPLICATIONS

8. CONSULTATION UNDERTAKEN

BACKGROUND PAPERS

Council Standing Orders.

OFFICER CONTACTS:

APPENDIX 5 – GROUNDS FOR MANDATORY EXCLUSION OF ANY CANDIDATE OR TENDERER FROM SELECTION TO BID FOR OR AWARD OF ANY PUBLIC CONTRACT

The Public Procurement Directive

Appendix 5 – Grounds for Mandatory Exclusion etc

Article 45(1) of the Public Sector Procurement Directive 8-385-1357 provides that any candidate or tenderer who has been the subject of a conviction by final judgment of which the Council is aware for corruption as defined in Article 3 of the Council Act of 26th of May 1997 and Article 3(1) of the (EU) Council Joint Action 98/742/JHA respectively shall be excluded from participation in a public contract.

The definition of 'corruption' is as follows:

"...the deliberate action of whosoever promises or gives directly or through an intermediary, an advantage of any kind whatsoever to an official for himself or for a third party, for him to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties shall constitute active corruption."

Under the Council Joint Action 98/742/JHA, it is:

"the deliberate action of whosoever promises, offers or gives, directly or through an intermediary, an undue advantage of any kind whatsoever to a person, for himself or for a third party, in the course of the business activities of that person in order that the person should perform or refrain from performing an act, in breach of his duties, shall constitute active corruption in the private sector."

Responsible Officers shall consult the Head of Commercial Services and Legal Services prior to debarring any candidate or bidder on the above grounds

APPENDIX 6 – GROUNDS FOR DISCRETIONARY EXCLUSION OF ANY CANDIDATE OR TENDERER FROM SELECTION TO BID FOR OR AWARD OF ANY PUBLIC CONTRACT

The Public Procurement Directive

Article 45(2) of the Public Sector Procurement Directive provides that any economic operator who has been convicted of any offence concerning his professional conduct, or has been guilty of grave professional misconduct proven by any means which the contracting authorities can demonstrate may be excluded from participation in a public contract

The Public Contracts Regulations 2006

Regulation 23(4) of the Public Contracts Regulations implements Article 45(2) in England providing the right (but not the obligation) to contracting authorities in England to debar contractors that meet any of the requirements set out in Article 45(2).

Note

Regulation 23(4) only applies to the bidder itself.

However regulation 23(1), applies to the bidder, it's directors and any other person who has powers of representation, decision or control of the bidder and applies to any of the following offences :-

- (a) conspiracy within the meaning of section 1 of the Criminal Law Act 1977 where that conspiracy relates to participation in a criminal organisation as defined in Article 2(1) of the Council Joint Action 98/733/JHA;
 - (b) corruption within the meaning of section 1 of the Public Bodies Corrupt Practices Act 1889 or section 1 of the Prevention of Corruption Act 1906;
 - (c) the offence of bribery;
 - (d) fraud, where the offence relates to fraud affecting the financial interests of the European Communities as defined by Article 1 of the Convention relating to the protection of the financial interests of the European Union, within the meaning of-
 - (i) the offence of cheating the Revenue;
 - (ii) the offence of conspiracy to defraud;
 - (iii) fraud or theft within the meaning of the Theft Act 1968 and the Theft Act 1978;
 - (iv) fraudulent trading within the meaning of section 458 of the Companies Act 1985;
 - (v) defrauding the Customs within the meaning of the Customs and Excise Act Management Act 1979 and the Value Added Tax Act 1994;
 - (vi) an offence in connection with taxation in the European Community within the meaning of section 71 of the Criminal Justice Act 1993; or
 - (vii) destroying, defacing or concealing of documents or procuring the extension of a valuable security within the meaning of the Theft Act 1968;
 - (e) money laundering within the meaning of the Money Laundering Regulations 2003;
- or

- (f) any other offence within the meaning of Article 45(1) of the Public Sector Directive as defined by the national law of any relevant State.

Regulation 23(2) provides that in any case where an economic operator or its directors or any other person who has powers of representation, decision or control has been convicted of an offence set out above, a contracting authority may disregard the prohibition debarring them if :-

“...it is satisfied that there are overriding requirements in the general interest which justify doing so in relation to that economic operator.”

Offences under the Bribery Act 2010

Offences under sections 1, 2 and 6 meet the requirements for debarment under Regulation 23(1) and is set to be discretionary.

Responsible Officers shall consult the Head of Commercial Services and Legal Services prior to debarring or allowing to participate and bid and/or award to any candidate or bidder on the above grounds.

APPENDIX 7 – CODE OF PRACTICE ON CONSULTANTS

http://intranet/engaging_consultants

APPENDIX 8 – PROCESS FOR RECEIPT OF PAPER TENDERS

All tenders from potential suppliers must be submitted via the e-tendering system unless an exemption from e-tendering has been approved in advance by the Director of Corporate Services.

Where an exemption from e-tendering has been approved the following process for the receipt of paper tender shall be observed.

Tenders must not be received via email.

1.0 Receipt of Tenders

- a) Every paper based invitation to tender must state that a tender can only be considered if it is delivered in accordance with the instructions detailed in the invitation to tender document.
- b) All paper based invitations to tender must include all relevant information or instructions as are required to correctly lodge the tender with the Council prior to the tender deadline.
- c) All paper based tenders must be delivered to a specified place by a specified time and date and in a sealed package with the correct details and labelling on the package. No details of the Tenderer must be apparent from the packaging.
- d) Paper based tenders will be deposited with the Director of Corporate Services of the Council and accepted by an appointed person.
- e) Arrangements must be made by the Responsible Officer to ensure that on receipt, all paper based tenders received are endorsed with the time and date of receipt and kept confidentially and secure until the time specified for tender opening.
- f) Tenderers must be given a receipt for tenders delivered by hand, or a confirmation fax/email must be sent to Tenderers who have delivered tenders via mail or courier.

2.0 Late Tenders

- a) The Responsible Officer may not consider any paper based tender received by the Council after the specified closing time for the receipt of tenders for that contract.
- b) A paper based tender received late must not be opened and must be clearly marked on the tender package as a late tender “Received after deadline for receipt of tenders” and details of the time and date given and signed by the authorised officer.
- c) Late paper based tenders will be opened after the official tenders are opened only to determine the identity of the tendering party so the tender may be returned to the tendering party with a letter explaining that the tender was received too late and that accordingly it had to be rejected. The letter should give details of the time and date of receipt and give details of the official deadline.

3.0 Tender Time Extensions

- a) In rare cases, following unforeseen complications and prior to the passing of the tender deadline, it may be allowable to extend the timeframe for the return of tenders.

Consideration must be given as to fairness and transparency in granting such extensions. The Proper Officer must be consulted prior to all such extensions being granted.

b) In the event that a tender time extension is granted, the time extension must be granted to all tenderers.

4.0 Tender Opening

a) Paper based tenders must not be opened under any circumstances until the date and time for tender receipt has passed. If a tender is opened in error, advice must immediately be sought from the Commercial Services Team who will consult with Legal Services.

b) The Responsible Officer must fix a time and date for the opening of the paper based tenders received and must take place after the closing date for submission of tenders. All tenders received for a particular contract must be opened at the same time and place at an appropriate time after the close of receipt, in front of the same people. No person may be present at the tender opening unless s/he is officially designated as part of the process.

c) All paper based tenders opened must be endorsed by at least 3 persons, who must notate the time and date of receipt.

d) The officer leading the opening procedure must record the following details of each tender on the Schedule of Tenders Received:

- i. the date and time specified as the deadline for receipt of tenders for the particular contract
- ii. the date and time that each tender was received;
- iii. the name of the Tenderer and the amount of each tender
- iv. the names and signatures of those present.

e) All persons present at tender opening must sign each tender immediately after it is opened. All tenders received must be signed on the:

- i. Front page of the tender submission
- ii. Tender Price schedule

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PART 4 G

[Version 0.99 – marked up final version for GP – 14th March 12]

DRAFT

London Borough of Merton

Constitution Part 4 G
CONTRACT STANDING ORDERS

Effective April 10th 2012

Version 0.99

Revised: Kevin Churchill

Approved:

Director Corporate Services
Standards Committee - 28th Feb 2012
General Purposes – 14th March 2012
Full Council – 28th March 2012

CONTENTS

CSO 1	Compliance with contract standing orders	4
CSO 2	Schemes of Delegation and Management	5
CSO 3	DIRECTOR'S Responsibility	6
CSO 4	Responsible Officers' Duties	6
CSO 5	Community Representatives	8
CSO 6	Exemptions from Contract Standing Orders	8
CSO 7	EXCEPTIONS - Contracts Not Requiring Tendering.....	9
CSO 8	Health and Safety	10
CSO 9	Equality, Diversity and the Environment.....	11
CSO 10	Conflicts of interest.....	11
CSO 11	Acceptance of Gifts and Hospitality.....	12
CSO 12	Unauthorised Disclosure of Information	12
CSO 13	Pre-Tender Market Consultation	13
CSO 14	Options Appraisal.....	14
CSO 15	Joint Procurement Arrangements with third parties.....	14
CSO 16	Contract Value Estimation.....	15
CSO 17	Contract Packaging and Aggregation	16
CSO 18	Contract Specifications	16
CSO 19	Emergency Procurement	17
CSO 20	Contracts valued at less than £100,000	18
CSO 21	Contracts valued at OR more than £100,000 UP TO THE EU THRESHOLD.....	19
CSO 22	Contracts valued at OR GREATER than THE EU THRESHOLD	22
CSO 23	FRAMEWORK AGREEMENTS	24
CSO 22	Council Approved Lists	26
CSO 24	Contracts for consultancy SERVICES OR INTERIM PROFESSIONAL SERVICES 26	
CSO 25	Contracts for CONCESSIONS	27
CSO 26	contract Award & STANDSTILL PERIOD	27
CSO 27	CONTRACTS FOR DISPOSAL OF COUNCIL ASSETS	28
CSO 28	AMENDMENTS TO INVITATION TO TENDER DOCUMENTATION	29
CSO 29	Amendments to Tenders Submitted.....	29
CSO 30	Arithmetical Errors	30
CSO 31	Variant tenders.....	30
CSO 32	Contract Negotiation	30
CSO 33	Forms of Contracts & In Writing.....	31
CSO 34	Nominating Products/Providers.....	31
CSO 35	contract conditions	32
CSO 36	Contract Performance.....	33
CSO 37	Contract Variation AND EXTENSIONS	33
CSO 41	Electronic Procurement and E Tendering	34
CSO 38	Freedom of Information Act (FOI) 2000	34
CSO 39	AMENDMENT OF CSOs	34
CSO 40	PROCUREMENT TOOLKIT.....	35
APPENDIX 1	Terms and Definitions	35

APPENDIX 3

Appendix 2 - Exemptions from Contract Standing Orders	39
Appendix 3 - ExCePtions from Contract Standing Orders	41
Appendix 3 – Declaration of interest form	42
Appendix 4 - FORM OF EXEMPTION REPORT	47
Appendix 5 – GROUNDS FOR MANDATORY EXCLUSION OF ANY CANDIDATE OR TENDERER FROM SELECTION TO BID FOR OR AWARD OF ANY PUBLIC CONTRACT	49
Appendix 6 – GROUNDS FOR DISCRETIONARY EXCLUSION OF ANY CANDIDATE OR TENDERER FROM SELECTION TO BID FOR OR AWARD OF ANY PUBLIC CONTRACT	50
Appendix 7 – CODE OF PRACTICE ON CONSULTANTS.....	52
Appendix 8 – PROCESS FOR RECEIPT OF PAPER TENDERS	53



CSO 1 Compliance WITH CONTRACT STANDING ORDERS

- 1.1 These Contract Standing Orders govern the selection, award and entry of all works, services and supplies contracts **and contracts for disposal of land where tenders and private treaty are sought**, entered into by the Council.
- 1.2 The Director of Corporate Services will from time to time issue practical guidance as to what steps should reasonably be taken for the purposes of complying with these Contract Standing Orders. The guidance will be contained in a document called “The Procurement Toolkit”.
- 1.3 Contract Standing Orders is a controlled document. It is controlled by the Director of Corporate Services. Only the Director of Corporate Services can make recommendation to Council about changes to these Standing Orders.
- 1.4 These Contract Standing Orders are not applicable to schools operating under Schemes of Financial Management or Tenant Management Organisations ~~or the disposal of land except where the method of disposal employed is tendering~~
- 1.5 Every contract made by the Council or on its behalf will comply with these standing orders and comply with:
 - i. Domestic legislation, common law and EU Procurement Law
 - ii. Financial Regulations & Procedures of the Council
 - iii. Statutory Guidance
 - iv. Council Policies
- 1.6 It will be a condition of any contract between the Council and anyone who is not an Officer of the Council, but who is authorised to carry out work in relation to the grant of any contract (e.g. external consultant, other external provider), that they comply with these Contract Standing Orders.
- 1.7 The terminology and abbreviations referred to in this document are defined at Appendix 1. “Terms and Definitions”.
- ~~1.8 These CSOs will not be a barrier to the implementation of e-procurement or e-tendering systems and processes. Where reference is made to documents, registers, communication, delivery or any other term which might imply traditional methods such as paper records, postal services etc, properly acquired and approved electronic means may be employed unless specifically excluded.~~
- 1.8 Failure by officers to comply with these Contract Standing Orders will be a disciplinary offence.
- 1.9 These Contract Standing Orders whether superceded or not must be retained for 20 years before being considered for destruction.**
- 1.10 In the Contract Standing Orders reference to a post, Director, Directorate, department, team or the like includes a reference to any re-designated post, Director, Directorate,**

department or team or the like who performs or substantially performs the role function or duties of that post, Director, Directorate, department, team or the like.

1.11 In these Contract Standing Orders reference to an Act, Regulations or Orders includes a reference to any successive Act, Regulations or Orders replacing supplementing or amending that Act, Regulation or Order.

1.2 Nothing contained in these Contract Standing Orders overrides domestic legislation, common law or EU Procurement Law.

CSO 2 SCHEMES OF DELEGATION AND MANAGEMENT

2.1 The Chief Executive and any officers authorised by him in accordance with the Council's Scheme of Management and delegation may let contracts on behalf of the Council. Each Director may receive powers to enter into contracts on behalf of the Council to specified financial limits (including unlimited sums) in accordance with the constitution and Scheme of Management authorisation.

2.2 Each Director will publish a Scheme of Management specific to their delegated functions set out as in part i), ii) and iii) below, detailing the names and posts of staff approved for the purposes of :-

i) (in respect of contracts to be let) designating the Responsible Officer for the advertising of tender requirements, issuing tender documents, evaluating tender documents for contracts to be awarded, recommending award of contracts and for the operation of awarded contracts and

ii) the awarding of contracts and (where the contract document does not require sealing) the signing of the contract document on behalf of the Council and the placing orders on behalf of the Council; including the maximum contract value allocated to each member of staff for these purposes and.

iii) authorising the attachment of the Council's seal to any contract document.

No person or post identified in part i) of the relevant Scheme of Management may be repeated in part ii) or iii) of the relevant Scheme of Management and vice versa.

2.3 Each Director when exercising functions on behalf of the Council will supply to and agree with the Director of Corporate Services, a Scheme of Management before the commencement of each financial year, and on making any amendment.

~~2.4 Such Scheme of Management shall be updated in writing by the relevant Director from time to time as necessary and promptly notified to the Director of Corporate Services~~

2.4 The Director of Corporate Services will keep a register of all schemes of delegation and management and make this available on the Councils intranet.

CSO 3 DIRECTOR'S RESPONSIBILITY

- 3.1 Directors are responsible for ensuring within their departments that :-
- i) These Contract Standing Orders are observed and complied with and
 - ii) Schemes of Management exist which identify those Officers having such responsibility and the level of their financial delegation and comply with CSO 2 above and;
 - iii) contracts are awarded and managed in accordance with these Contract Standing Orders;
 - iv) their officers undertaking procurement and commissioning have the ability to interpret, implement and comply with the requirements of these **Contract** Standing Orders;
 - v) Accurate records and clear audit trails of all actions, decisions and approvals relating to procurement and commissioning activity, are kept and maintained and made readily available for inspection for a period of retention equal to the length of the contract plus seven (7) years, when requested by anyone so entitled. **These shall include but not be exclusive to documentation and processes relating to quotations, tenders, orders and contracts.**

CSO 4 RESPONSIBLE OFFICERS' DUTIES

- 4.1 Every Contract will have a Responsible Officer nominated by or on behalf of the Departmental Director. Detailed guidance on the role of a Responsible Officer will be provided by the Director of Corporate Services in the Procurement Toolkit. **Where no Responsible Officer has been appointed, the Responsible Officer shall be deemed to be the budget holder of the section from which the contract is funded.**
- 4.2 A Responsible Officer shall in each procurement
- i) **be guided by the principles of non-discrimination, equal treatment, transparency, proportionality, mutual recognition and free movement of goods and services.**
 - ii) **These principles include:**
 - a) **That there should be no conflict between official duties and private interests;**
 - b) **That there should be no improper influence placed on any person to show favour (or disfavour) towards any tenderer;**
 - c) **That at all times tenderers must be dealt with in an honest, fair, open and transparent way;**
 - d) **That information provided by tenderers should be regarded and treated as confidential subject to Freedom of Information Act and Transparency Agenda.**

APPENDIX 3

- iii) seek value for money and may consider social benefits to the extent that is legally permissible in tendering and recommending for award and contract management activities;
- iv) carry out a robust procurement options analysis in accordance with CSO 14 before selecting the most appropriate commercial model for the service,
- v) show no undue favour nor discriminate against any provider who may be legally entitled to potentially tender for Council business.
- vi) conduct all procurement and commissioning activity in accordance with the highest possible standards of probity and integrity to prevent fraud and corruption.
- vii) comply with relevant E.U. and U.K. law and EU Procurement Law;
- viii) carry out tender evaluation fairly, impartially and in accordance with these CSOs against pre-determined evaluation criteria and sub-criteria that are disclosed prior to initiation to quote or tender (where applicable).
- ix) keep full and accurate records and clear audit trails of all actions, decisions and approvals relating to the procurement and commissioning activity, are kept and maintained and made readily available for inspection for a period of retention equal to the length of the contract plus seven (7) years when requested by anyone so entitled. These shall include but not be exclusive to documentation and processes relating to quotations, tenders, orders and contracts.
- x) ensure that for the purposes of contract award the procurement activity is recorded on the relevant Forward Plan if applicable in accordance with CSO 26.
- xi) initiate procurements correctly, in accordance with the recognised Council procurement policies and practices.
- xii) fulfill the role as the Project Sponsor or appoint a Project Sponsor and Project Manager where relevant; ~~under MAP (Merton's Approach to Projects)~~
- xiii) adhere to Merton's Procurement Governance & Gateway Process.
- xiv) record the contract in the Councils' Contract Register and deposit the signed contract document with Legal Services.
- xv) take into account all relevant legislation and council strategies and policies relating to Equality, Diversity and Sustainability when tendering for contracts.
- xvi) demonstrate appropriate statutory and stakeholder consultation;
- xvii) clarify the "role" (if any) of community groups, voluntary sector and business community.
- xviii) ensure that the Whistleblowing procedure is included in tender documents.
- xix) ensure that, all permanent and temporary staff, consultants and community representatives appointed or agreed by them make declarations of interest using the form in Appendix 3, both on appointment to the organisation and or procurement project, or on any change in circumstances and will either certify them as acceptable or take any necessary action in respect of potential conflicts of interest, in accordance with CSO 10.

- 4.3 A Responsible Officer shall in each procurement nominate a single point of contact for tendering to whom all queries may be addressed and make clear in all tender documentation that persons name and contact details and that only that person or a named deputy in her/his absence is to be contacted during the procurement process.
- 4.4 Any queries received by other officers must be redirected to that person. No other officer is permitted to deal with these matters, except the designated deputy in the absence of that person.
- 4.5 The Responsible Officer must ensure total compliance with the Councils' Contract Standing Orders and ensure that the above requirements are properly evidenced.
- 4.6 The Responsible Officer may not delegate this duty to another officer.

CSO 5 COMMUNITY REPRESENTATIVES

- 5.1 Officers may invite community representatives to participate in the procurement process for development of specifications, assistance in selection of providers and the commentary on performance of particular contracts. The agreement of the Director of Corporate Services is required for any other type of involvement where this is not covered by law or any Council policy.
- 5.2 Community representatives (e.g. tenant representatives, but not Members) are not and may not be "Responsible Officers" for the purposes of these Standing Orders and, except where the law specifically provides otherwise, will be observers with speaking rights at the discretion of the Responsible Officer. They may advise Responsible Officers where appropriate, but all decisions will be taken by the Council within the framework of the schemes of delegation.
- 5.3 Responsible Officers will ensure community representatives give a written undertaking to treat all information confidentially throughout the tendering process, and the life of the contract and sign the appropriate declaration of interests.
- 5.4 The Council must always avoid any suspicion or risk of potential allegation about possible bribery or corruption. An adequate record of the Community Representatives involved, consulted and the responses obtained must be kept and filed. It must include a written record of those approached and their responses, including notes of any meetings held with names of all those present. Where possible, written responses should be encouraged. If face-to-face discussion is necessary, then the Responsible Officer should attend such a meeting accompanied by another Council representative. Community representatives shall sign Appendix 3.

CSO 6 EXEMPTIONS FROM CONTRACT STANDING ORDERS

- 6.1 The Director of Corporate Services is authorised to grant exemptions to these standing orders.

- 6.2 Where an exemption is sought from these standing orders the exemption must be submitted in writing to the Director of Corporate Services on the form set out at Appendix 4 and must detail the CSO reference from which exemption is requested and the reasons for requiring the exemption and proposed alternate methodology. The Director of Corporate Services will ask the Head of Commercial Services, Head of Shared Legal Services and Head of IT Service Delivery to provide comment.
- 6.3 A non-exhaustive list of indicative circumstances where an exemption may be granted is set out in Appendix 2.
- 6.4 No exemption may be granted:
- a) that would result in a breach of European or U.K. law
 - b) that requires Cabinet to approve major contract variations
 - c) that requires Cabinet to accept certain tenders
 - d) that differs from the Scheme of Management
 - e) that removes the requirement for declaration of any Officer or Members Interests
- 6.5 The Director of Corporate Services, will maintain a register of exemptions granted by Department and contract, detailing the nature of the exemption and the value of the contract. The register will be reported bi-annually to the Procurement Board.
- 6.6 The Chief Executive will consider and where appropriate grant exemptions arising from within the Corporate Services Department.
- 6.7 The Head of Commercial Services and Head of Shared Legal Services or their nominated officers will analyse the nature of the exemptions being applied for and those being granted and will make appropriate recommendations to the Director of Corporate Services about the operation of the exemptions procedure.
- 6.8 In exceptional circumstances if the Director of Corporate Services and/or the Chief Executive are not able to carry out their role in accordance with CSO 6 any 2 officers, from the Deputy S151 Officer, the Monitoring Officer or any of the councils remaining Directors may, acting jointly, consider and where appropriate grant exemptions.

CSO 7 EXCEPTIONS - CONTRACTS NOT REQUIRING TENDERING

- 7.1 The following need not be the subject of formal tender processes unless otherwise required by EU Procurement Law and no exemption shall be required under Appendix 2 and the following types of contract shall be treated as being excepted from the requirements of these CSOs:
- i. A contract of employment for permanent staff
 - ii. A contract for the sale or disposition of land and/or property effected by the Council Property Officer except to the extent of CSO 27

- iii. ~~contracts valued at less than £100,000 (unless required by law), but must still be purchased in accordance with the Contract Standing Orders and Council policies.~~
- iii. contracts for which a **specific** exemption from tendering has been granted by the Director of Corporate Services.
- iv. **when placing an order under a public sector Framework Agreement in accordance with CSO 23 of which the Council is an affiliate.**
- v. **orders placed under Corporate Contracts or under term contracts as described in the Procurement Toolkit**
- vi. **contracts** for particular Voluntary Sector bodies where the Council is seeking to move from a grant agreement to a formal contractual relationship, and where the purpose of the contract is to establish the general conditions to support the voluntary sector body in adapting to the new arrangements, **where the grant terminates.**
- vii. contracts for the spot purchase of residential, nursing or domiciliary care for an individual from a provider **on the Councils Framework Agreement for Children's Residential Care, Fostering Services, Educational Services or the Council's Accredited Approved Provider Register for Domiciliary Care Providers for Adults, Floating Support and Personal Assistance Services or the Council's Approved List of providers of Residential and Nursing Care Homes for Adults, all as described in the Procurement Toolkit**
~~where a significant number of users and carers of a social care service indicate a strong desire to retain an existing provider, subject to value for money criteria, the satisfaction of Head of Service and provided that there is no breach of EU procedures~~
- viii. arrangements for the engagement of Counsel and **contracts for the provision of external legal advice and or services**
- ix. the engagement of professional expert witnesses in contentious matters, or for appointing independent investigators, arbitrators, mediators, and facilitators

CSO 8 HEALTH AND SAFETY

- 8.1 It is Council policy that any Contractor or Consultant ~~(and some suppliers)~~ who wishes to work for the Council must satisfy the Council that they comply with the statutory Health and Safety requirements or are registered with **an appropriate Safety Scheme in Procurement**, for example the Contractors Health & Safety (CHAS) Assessment Scheme or other appropriate scheme.
- 8.2 In circumstances where a Department may need to use a non-CHAS registered contractor or consultant, the **Council's Head of Safety Services** must be consulted before they are engaged. All contracts must be subjected as appropriate, to second

and third stage competency assessments to comply with the Councils (H&S) policy on the selection and control of contractors.

CSO 9 EQUALITY, DIVERSITY AND THE ENVIRONMENT

- 9.1 Responsible Officers shall carry out their role with due regard to the need to ensure that all procurement and commissioning activity eliminates unlawful discrimination and promotes equality of opportunity.
- 9.2 Responsible Officers shall ensure that they have taken into account any Codes of Practice issued by the Equality and Human Rights Commission on how equality and diversity issues may be embedded in procurement.
- 9.3 Responsible Officers shall assess the relevance and importance of the Councils' Sustainable Development Policy and carry out their role with due regard to it.
- 9.4 The following issues may also be considered to reduce the environmental impact of any proposed procurement;
- a) Carbon emission reduction, energy efficiency and renewable energy
 - b) Water conservation and the protection of biodiversity
 - c) Reduction and recycling waste
 - d) The boroughs' built environment
 - e) To protect people, from crime and disorder and reduce the fear of crime
 - f) To promote good access provision for people with disabilities.

CSO 10 CONFLICTS OF INTEREST

- 10.1 ~~Declaration of~~ Conflict of Interest means conflict of private interest and public duty and /or conflict of public duty to a public body and duty to the Council and/or the appearance of such a conflict. It is important that a person's judgement of the public (Council) interest is not impaired or does not appear to be impaired by their private interest or duty to another public body.
- 10.2 The following will declare any interests which may affect the selection, award or management of any potential or existing contract using the form in Appendix 3:
- a) all permanent or temporary staff;
 - b) external consultants involved in a procurement;
 - c) community representatives;
 - d) members of the Council involved in any relevant decision (executive or scrutiny).

- 10.3 The rules concerning the declaration of interests by Members are set out in full in the Merton Code of Conduct for Members. The rules concerning the declaration of interests by Officers are set out in the Council's Staff Code of Conduct.
- ~~10.4 The Responsible Officer must ensure that, consultants and community representatives appointed or agreed by them make declarations on appointment, or on any change in circumstances (and annually in the case of staff); and will either certify them as acceptable or take any necessary action in respect of potential conflicts of interest.~~
- 10.4 A person to whom an interest is declared has a duty to examine that declaration in the context of the proceedings in question. They then have to decide whether the interest declared would appear to an informed observer to affect the decision makers ability to judge whether the procurement decision is in the public interest.
- 10.5 A person who is assessed as having such a conflict of interest will be precluded until the conflict is removed.

CSO 11 ACCEPTANCE OF GIFTS AND HOSPITALITY

- 11.1 **Notwithstanding CSO 10** acceptance of gifts and hospitality by any person involved in the procurement process, **including all permanent and temporary staff, external consultants involved in a procurement, community representatives, members of the council involved in any relevant decision (executive or scrutiny)** could be viewed as accepting a bribe or other corrupt practice. The basic rule is that no gift or money should be accepted. The Council's rules on the receipt and registration of gifts and hospitality are set out in the Staff Code of Conduct and in the Members Code of Conduct.
- 11.2 ~~Council Officers~~ **Any person** involved in tender exercises should be particularly sensitive to the timing or letting of contracts for which the provider of the hospitality is already involved or is likely to be submitting a tender for a contract in the future.
- 11.3 All offers of gifts, money or other inducements should be reported in accordance with the relevant code of conduct.

CSO 12 UNAUTHORISED DISCLOSURE OF INFORMATION

- 12.1 No officer, consultant, employee or agent of the Council is permitted to disclose to any internal or external party any information they have obtained which may reasonably and objectively be deemed to be capable of influencing the outcome of the award of a contract.

CSO 13 PRE-TENDER MARKET CONSULTATION

- 13.1 In planning any procurement, consideration must be given as to whether it might be helpful to the procurement's success to consult potential suppliers.
- 13.2 This can, for example, help the Responsible Officer to:
- a) establish whether goods, works or services the Council wishes to purchase are available, and within what price range;
 - b) ascertain whether potential providers are interested in tendering;
 - c) determine the best procurement option for development of the Options Appraisal (CSO 14) for the goods services or supplies and the optimum contract length;
 - d) decide the best tendering option e.g. how to package the contract, whether partnering is a better market option than traditional procurement processes, whether the use of one standard form of contract might be preferable to another in obtaining the best outcome, etc;
 - e) obtain information on market innovations and possible confidential feedback on potential suppliers' experience in the same field with other public authorities.
- 13.3 In undertaking such a market consultation, care must be taken to ensure that:
- a) the process is fair and transparent; and
 - b) all potential suppliers who are invited to participate are treated as potential Tenderers and that all of the information which they all receive shall be exactly the same
 - c) no information will be disclosed to one supplier which is not then disclosed to all those of which enquiries are made, or which are subsequently invited to tender or quote;
 - d) all potential suppliers who are invited to participate are clear as to the extent of confidentiality they may expect in the use of any information that they volunteer; and
 - e) all potential suppliers who are invited to participate are clear as to the feedback they might expect at the end of the exercise; and
 - f) no potential supplier who is invited to participate will be lead to believe that the information they offer will necessarily lead to them being invited to tender or quote, or be awarded either this contract or a future one; and that
 - g) no potential supplier who is invited to participate will be allowed undue or excessive influence in shaping the outcome of the exercise or subsequent specification to the extent that they will be at an advantage in responding when the matter is put out to tender, nor be allowed undue influence in the content of tender documents or the draft contract.

- 13.4 The Council must always avoid any suspicion or risk of potential allegation about possible bribery or corruption. An adequate record of the consultation, the organisations and individuals consulted and the responses obtained must be kept and filed. It must include a written record of those approached and their responses, including notes of any meetings held with names of all those present. Where possible, written responses should be encouraged. If face-to-face discussion is necessary, then the Responsible Officer should attend such a meeting accompanied by another Council representative.

CSO 14 OPTIONS APPRAISAL

- 14.1 For all procurements with a potential budget greater than that of the OJEU Threshold for the type of Works, Supplies and Services (OJEU Thresholds can be found on the Procurement Intranet pages) there must be a robust options appraisal which examines all possible ways of structuring the procurement to allow the Council to obtain the best result. As appropriate, this may include considering joint ventures – both public and private using consortia contracts, contracting with other public authorities and the third sector, using existing or establishing new framework agreements-as well as the comparative benefits of simply taking a traditional procurement path. Responsible Officers are expected to keep themselves updated with developments within their particular areas of expertise or seek advice from officers in the Commercial Services Team.
- 14.2 Guidance as to how to undertake an options appraisal is provided in the Councils Procurement Toolkit.
- 14.3 All Options Appraisals are required to follow the Council's Procurement Governance & Gateway process for procurement as described in the Procurement Toolkit.

CSO 15 JOINT PROCUREMENT ARRANGEMENTS WITH THIRD PARTIES

- 15.1 Joint procurement arrangements with third parties should be considered if such arrangements would offer the Council better value than traditional procurement arrangements. Such third parties may include other public authorities and voluntary sector entities, and such arrangements may include membership of or use of purchasing consortia.
- 15.2 Any joint procurement arrangements of the type described in CSO 15.1 must be approved by the Director of Corporate Services or the Chief Executive prior to the commencement of any procurement or arrangement on behalf of the Council. No such approval may be given unless there has been a satisfactory appraisal of the matters set out in CSO 15.3.

- 15.3 In considering any and all such proposals, the Director of Corporate Services and/or the Chief Executive must be satisfied:
- a) that the proposed joint procurement does not breach any EU or UK law, or where the proposed third party is a foreign non EU national, does not breach the laws of its country of registration if a company or location if a public authority; and
 - b) is capable of delivering value for money; and
 - c) where an exemption is required to the Council's Contract Standing Orders, (for example because it is necessary as part of the proposed arrangements to use the proposed third party's procurement regime, or because another party will be the lead body), that the proposed third party's governing procedures are sufficiently rigorous and can deliver standards of probity and transparency reasonably comparable to those of the Council's Contract Standing Orders; and
 - d) that adequate consideration has been given to whether the proposed third party should indemnify the Council in the event that the third party's methods of operating and ideas may turn out to be unlawful or result in the Council being subjected to challenge, judicial review, or any similar action from any party that may lead to a financial loss for the Council.
 - e) That an appropriate Inter-Authority Agreement shall be entered into by the Council and the Third Party(s).
- 15.4 The Director of Corporate Services and/or Chief Executive shall take procurement, legal and financial advice as they consider necessary.
- 15.5 At the sole discretion of either the Director of Corporate Services or the Chief Executive, the proposed joint procurement may be designated as requiring prior consent from Cabinet to proceed.

CSO 16 CONTRACT VALUE ESTIMATION

- 16.1 Where a service or supply contract does not stipulate a total price, the value must be estimated as follows:
- i. for fixed-term services or hire of goods contracts, the aggregate of the value of the consideration that the authority expects to pay over the nominated contract term net of Value Added Tax.
 - ii. for services or hire of goods where the term is indefinite or uncertain at the time when the contract is entered into and for open-ended contracts already entered into : the monthly consideration x 48 (multiplied by 48).
- 16.2 In identifying the value of a contract the Responsible Officer must take into account the full cost of the contract. This shall be calculated to include the initial purchase price service and support costs and the cost of any associated additional works or service

throughout the life of the contract and the value of any contract extension predicted at the time of planning the contract.

- 16.3 Where it is intended to enter into a number of contracts to fulfil a single requirement for services or goods, **officers are required to** obtain specific advice from the Commercial Services Team (who will consult with Legal Services as required) on the aggregation of value.

CSO 17 CONTRACT PACKAGING AND AGGREGATION

- 17.1 The use of direct purchase, quotations and or tenders for securing works, supplies or services may only proceed where the Council does not have an existing contractual arrangement in place. Where a Corporate Contract does exist this must be used for the procurement. The Director of Corporate Services will publish a list of current Corporate Contracts on the Procurement Toolkit
- 17.2 A procurement must not be artificially packaged into two or more separate contracts, nor a valuation method selected, with the intention of avoiding the application of these CSOs, a specific procurement process or legislation. Care must be taken to comply with relevant EU legislation and/or any equivalent legislation or revisions to the law.
- 17.3 Contracts must be packaged to best ensure service delivery, competition, value for money and the positive outcome of **a review of the service.**
- 17.4 Responsible Officers are responsible for identifying opportunities for aggregation across all departments to ensure best value for money, and compliance with **reviews of service** for the Council as a whole.
- 17.5 **Responsible Officers are required to justify their aggregation decision on the basis of Value for Money.**
- 17.6 Responsible Officers must supply to the Director of Corporate Services an estimate of their **procurement** requirements for services, works and supplies for the forthcoming 12 months. This will be in the form of an extract from the **relevant Service Plan**. ~~This plan will form the basis for resource planning and early OJEU PIN notifications.~~
- 17.7 Responsible Officers must supply to the Director of Corporate Services in January at the end of each preceding calendar year the total value of all contracts let in the previous 12 calendar months, for the purpose of reporting the Councils EU Statistical Return to Central Government.

CSO 18 CONTRACT SPECIFICATIONS

- 18.1 The Responsible Officer must ensure matters relating to the required quality, performance, safety and other essential criteria to the successful performance of the contract by the contractor are stated in the specification.

- 18.2 The specification may include matters such as methods of construction, design, tests and, testing methods, inspection and acceptance, quality assurance, packaging, marking and labelling and ; service level agreements.
- 18.3 Contract conditions must not be mixed up in the specification.
- 18.4 Specifications may also contain reference to the Council's policies such as sustainability and environmental policy and equalities issues.
- 18.5 Where the Council wants to include specific technical specifications as part of the contract requirements, in order not to breach Treaty of Rome obligations, these must be compliant with the criteria set out in European procurement legislation
- 18.6 Each reference to a technical specification made must be accompanied by the words "or equivalent".

CSO 19 EMERGENCY PROCUREMENT

- 19.1 In an emergency, it may not be possible to satisfy the principle of competition throughout the procurement process. In cases of real emergency, Officers may dispense with parts of the procurement process, so that they can react quickly to unforeseen events. Emergency procurement should be used **only in genuinely unforeseen emergency circumstances**.
- 19.2 Criteria that would justify enacting an Emergency Procurement may include:
 - i. life, property or equipment being immediately at risk;
 - ii. standards of public health, welfare or safety having to be re-established without delay, such as in the case of disaster relief or act of terrorism.
 - iii. ~~The nature of the market for the work to be carried out or service to be provided has been investigated and is demonstrated to be such that a departure from the requirements of Contract Standing Orders is justified.~~
- 19.3 Poor planning, or a lack of adequate time allowance for a procurement process, or a wish to simply extend an existing contract with a current supplier **do not** justify using an emergency process.
- 19.4 In the event of any emergency procurement the Responsible Officer should attempt to contact either the Director of Corporate Services, or the Chief Executive to gain immediate approval to proceed **in accordance with the Council emergency planning and business continuity procedures**. If neither of these contacts is available they should contact their own Director for approval.
- 19.5 In the event that the Responsible Officer is unable to contact the Director of Corporate Services or the Chief Executive, or Director then the Responsible Officer may use her/his own judgement based on the severity and urgency of the situation at hand. As soon as circumstances allow, the Responsible Officer must report in writing the contract award to the Director of Corporate Services.

- 19.6 Where the standard procurement procedures set out in the European procurement legislation would have otherwise been applicable, officers must be able to justify their decision to depart from standard procedures in the event of any external challenge. This justification should be documented and filed at the time that the decision is taken.
- 19.7 Unless circumstances make it absolutely impossible, then a letter/email setting out heads of agreement of any emergency contract must be drafted and exchanged with the contractor.

CSO 20 CONTRACTS VALUED AT LESS THAN £100,000

~~The use of direct purchase or quotations for securing works, supplies or services may only proceed where the Council does not have an existing contractual arrangement in place. Where a Corporate Contract does exist this must be used for the procurement. The Director of Corporate Services will publish a list of current Corporate Contracts on the Procurement Toolkit.~~

- 20.1 Where works, services or supplies need to be procured, which have an actual/estimated value that is less than £100,000 items can be procured in the following manner.
- 20.2 **Less than £10,000 – Best Value**
- i. An Order in this value range should be based on obtaining three written quotations via the e-tendering system however may be placed on the basis of a single quotation. Subject to 20.3ii this is to be treated as the exception rather than the rule and the single quotation must be obtained in writing and demonstrate value for money.
 - ii. Proceeding on the basis of a single quotation should only take place where the reason can be justified as one of urgency or where there are a very limited number of firms capable of carrying out the works and/or providing supplies or services.
- 20.3 **Greater than £10,000 but less than £100,000 - Quotation**
- i. For works, services and supplies with an estimated value greater than £10,000 and less than £100,000 written quotations may be sought rather than formal tenders.
 - ii. A minimum of three relevant written quotations must be invited obtained via the e-tendering system. All invitations to provide written quotations shall contain instructions for their return (including a specified date and time).
 - iii. If fewer than three written quotations are received obtained, the reason for this shall be recorded and kept with the other documentation relating to the request for quotation).
 - iv. Responsible Officers must ensure that they are not breaching disaggregation rules as set out in these CSOs 16 and 17 their methods of concluding that the valuation of a contract is under £100,000

- v. Where a Corporate Contract is not used, all written quotes from potential suppliers must be submitted via the e-tendering system unless an exemption from e-tendering has been approved in advance by the Director of Corporate Services (refer to Appendix 8) and the Councils Standard Terms and Conditions shall be used.
- vi. Any works contractors invited to submit a written quotation may be selected from Constructionline or equivalent business directory ~~the Council's Approved List~~ and invited to submit written quotations via the e-tendering system. If none or insufficient are available, general market sources may be used (as an example a business directory).

20.4 All quotes must include full details of all probable expenses of executing the works or supplying the goods, materials or services in a suitable manner and wherever appropriate the estimated whole-life cost or annual cost of maintaining the same.

20.5 The selection of the supplier for award of contract must be objective and unbiased taking into account the quote submitted, the suppliers ability to provide goods/services within the required timescales or skills specific to the contract being procured and the price.

20.6 The Responsible Officer shall award the contract in accordance with CSO 26.

CSO 21 CONTRACTS VALUED AT OR MORE THAN £100,000 UP TO THE EU THRESHOLD

Competitive Tender Process

21.1 Subject to other relevant provisions of the CSOs for works, services and supplies with an estimated value at or above £100,000 a tender exercise must be carried out OR a Framework Agreement must be accessed in accordance with CSO 23. A tender exercise requires that a public advertisement is published via the appropriate medium (designated and/or Council website, trade journal, local newspaper) in order to maximise the number of tender responses received.

21.2 The advertisement must specify details of the contract and how tender documents may be obtained or inspected and provide named contact details for further information.

21.3 The Responsible Officer must decide on whether all qualifying respondents to an advertisement will be able to bid, or whether a shortlist will be drawn up of those to whom invitations to tender will be sent.

21.4 The Responsible Officer must set a realistic timescale for the return of tenders. Except in emergencies, suppliers must be given a minimum of 4 weeks to return tenders.

21.5 For larger or complex contracts it is important to factor in sufficient time for the potential tenderers to put their bids together. Tenderers must be given a reasonable time to return tenders so as to maximise the accuracy and competitiveness of the tenders received.

21.6 Where a Framework Agreement is to be accessed the Responsible Officer shall adhere to CSO 23.

Evaluation Criteria, Process & Weightings

21.7 The evaluation criteria and weightings used to select tenderers must be contained within the invitation to tender documents at the time of issue to the tenderers.

21.8 The selection of Tenderers must be objective and unbiased and carried out against the evaluation criteria and weightings described in section 21.7.

21.9 Tenderers should be selected based on the ability to provide goods/services or works specific to the contract being procured by undertaking a comprehensive examination of costs and quality aspects over the whole life of the contract. ~~Consideration must be given to specific Government and Council policies, such as 'value for money', 'sustainability', and 'environmentally responsible' solutions when selecting Tenderers.~~

21.10 Whilst the tender evaluation process is underway, no information relating to that tender process can be disclosed to anyone not involved directly in the tender, regardless of whether they are council officers, councillors, tax payers, journalists, other Tenderers.

21.11 During a tender evaluation process, contact with Tenderers will be strictly limited, and where it is necessary, it must be fully documented. No officer should attend any meetings with Tenderers alone. Any such contact with Tenderers should be limited to matters directly related to the tender evaluation, e.g. inspecting work processes, arranging presentations. In the case where an incumbent contractor is also tendering, normal contract management activities may continue however care should be taken to limit the interaction to contract management activities only and the tender shall not be discussed

21.12 All Tenderers must be given exactly the same opportunity and all tender evaluations shall be carried out by the same group of a minimum of three (3) people and to the extent that is practically possible be independent of each other. All group analysis evaluations shall to the extent that is practically possible be done by the same group of personnel on behalf of the Council for each Tenderer. Particular care should be taken to avoid unnecessary social contact with fellow officers on the panel during this period. Officers involved in a tender evaluation exercise must be aware of the need to be seen to be fair and to avoid any allegations of bias or corruption.

21.13 The Responsible Officer must be able to demonstrate that no Tenderer has been provided any advantage over another Tenderer in respect of their evaluation and award of a contract.

~~21.14 In all cases, a written record must be maintained of how the suppliers invited to tender have been selected.~~

21.14 The Responsible Officer is required to use the Councils standard Tender Documents as contained on the Procurement Toolkit and in the E-tendering system.

21.15 All tenders from potential suppliers must be submitted via the e-tendering system unless an exemption from e-tendering has been approved in advance by the Director

of Corporate Services (refer to Appendix 8) and the Councils Standard Terms and Conditions shall be used.

21.16 A supplier must not be invited to tender if:

- i. it is bankrupt, or is being wound up, or is having its affairs administered by a court, or has entered into an arrangement with creditors, or has suspended its business activities, or is subject to court proceedings regarding any of these matters
- ii. It is subject to a mandatory exclusion set out in Appendix 5.

21.17 A supplier may be excluded from participation in a public contract if

- i. any of the grounds set out in Appendix 6 apply to it or (if appropriate) to its Directors or other persons who have power of representation, decision, or control of the bidder
- ii. it has been, or any of its current Directors have been, convicted of an offence concerning professional conduct or has been guilty of grave professional misconduct;
- iii. it has not fulfilled obligations relating to the payment of taxes or social security contributions;
- iv. it has seriously misrepresented information supplied to the Council, whether on this tender exercise or earlier; or
- v. it is not registered in a professional or trade register of the European state in which it is established; or
- vi. it has previously been found to be involved in a cartel or in price-fixing, whether on a matter concerning the Council or another organisation.

21.18 Where grounds exist for believing that the potential supplier has behaved in an unacceptable manner in any of its dealings with other public authorities, advice should be sought from both the Head of Commercial Services, Proper Officer and Legal Services as to whether or not these matters are relevant and can properly lead to the potential supplier being disregarded from invitation to tender or award of contract.

~~21.19 In some circumstances, it may be possible to ask Tenderers questions relating to workforce issues and equalities policies, or specify that a percentage of local labour must make up the workforce used. Please check with Legal Services.~~

21.20 The Responsible Officer shall award the contract in accordance with CSO 26.

CSO 22 CONTRACTS VALUED AT OR GREATER THAN THE EU THRESHOLD

European Union Competitive Tender Process

- 23.8 Subject to other relevant provisions in the CSOs for works, services and supplies with an estimated value above the relevant EU Threshold that applies at the time (OJEU Thresholds can be found on the Procurement Intranet pages) the Responsible Officer must carry out a tender process in accordance to the Public Contract Regulations 2006 and all Amending Regulations thereafter.
- 23.9 The Responsible Officer shall adopt one of the following Procedures in order to execute the tender process.
- i Open Procedure
 - ii Restricted Procedure
 - iii Competitive Dialogue Procedure
 - iv Call-Off from an Existing Framework Agreement
- 23.10 The Director of Corporate Service will publish the EU Thresholds and guidance on the application and use of these Procedures in the Procurement Toolkit.
- 23.11 Responsible Officers should seek guidance from the Director of Corporate Services in relation to all contracts that are subject to the European procurement legislation.
- 23.12 ~~Responsible Officers should consult the Head of Commercial Services and Legal Services if they have doubts concerning policy decisions that need to be taken involving aggregation of any contract, and/or the basis for determining contract values.~~
- 22.5 All tenders from potential suppliers must be submitted via the e-tendering system unless an exemption from e-tendering has been approved in advance by the Director of Corporate Services (refer to Appendix 8) and the Councils bespoke Terms and Conditions shall be used.

Selection and Award Criteria

- 23.13 ~~For works and services and supplies with an estimated value above the relevant EU Threshold that applies at the time, The Responsible Officer shall adhere to the Selection and Award Criteria requirements of the Public Contract Regulations 2006 and all Amending Regulations thereafter.~~

Selection Criteria

- 22.7 The Responsible Officer shall select applicants to participate in a tender on the basis of:
- i) information as to economic and financial standing
 - ii) information as to technical or professional ability

iii) supplementary information

22.8 An applicant must not be invited to tender for contracts if it is subject to the mandatory exclusion set out in Appendix 5. An applicant may be excluded from participating in a public contract if it is subject to the discretionary exclusions set out in Appendix 6.

22.10 The Council is obliged to exclude from selection to bid or award to of its contracts to any candidate or tenderer who has been subject of a final judgment of which the Council is aware for corruption as defined in Appendix 5.

21.11 The Council may exclude if it considers it proper to do so

Award Criteria

22.9 The Responsible Officer shall award a public contract on the basis of the offer which:

i) is the most economically advantageous from the point of view of the contracting authority

OR

ii) offers the lowest price

22.10 Unless using lowest price the contracting authority shall use criteria and where necessary sub-criteria, linked to the subject matter of the contract to determine that an offer is the most economically advantageous that may include but not limited to quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost effectiveness, after sales service, technical assistance, delivery date and delivery period and period of completion.

Weightings

22.11 Where a contracting authority intends to award a public contract on the basis of the offer which is the most economically advantageous it shall state the criteria, sub-criteria and weightings which it gives to each of the criteria and sub criteria in the Contract Notice or in the Contract Notice documents or in the invitation to tender documents, or in the case of the competitive dialogue procedure, in the descriptive document.

22.12 Where the contracting authority publishes the criteria, sub-criteria and weightings in accordance with 22.11 the criteria, sub-criteria and weightings must not be changed by the contracting authority after the advertisement of the public contract.

22.13 The Responsible Officer shall award the contract in accordance with CSO 26.

22.14 CSO 21.7 through to 21.18 inclusive applies.

CSO 23 FRAMEWORK AGREEMENTS

- 23.1 Prior to accessing any Framework Agreement the Responsible Officer must firstly determine that the Framework Agreement is available for legitimate use by the Council
- 23.2 Where two or more Framework Agreements exist which are capable of fulfilling the Council's requirements, the Responsible Officer may select between them which Framework Agreement will be used in accordance with CSO 14 and the Responsible Officer shall keep a full written record of the value for money, timeliness or other relevant consideration used by the Responsible Officer to select the Framework Agreement to be used.
- 23.3 Prior to the procurement of a new or joining a pre-existing Framework Agreement or consortium arrangement, the Director of Corporate Services must be satisfied that such an approach represents the most economically advantageous solution for a service , work ,supply or utility provision with regard to the relevant EU Procurement Regulations.
- 23.4 When setting up a Framework Agreement for the Council the Responsible Officer shall use a procurement process listed in section 22.2, i, or ii
- 23.5 When procuring goods and services from an existing Framework Agreement the Responsible Officer may (subject to satisfying CSO 4.2) either –
- 23.6 Where there is only one supplier capable of fulfilling the requirement, select that supplier, or
- 23.7 Where there is more than one supplier capable of fulfilling the requirement listed on the Framework and the original terms and conditions and requirements of the original Framework are sufficiently specific without change or additional specification of the requirement as to allow award to any one of the suppliers the Responsible Officer may select one of the suppliers for award without the need for further competition subject to demonstrating value for money or
- 23.8 Where there is a need to refine or supplement any of the requirements referred to in 23.7 above then a mini-competition inviting all those companies on the Framework who are capable of providing the goods and services must be held, such mini-competition to be held in accordance with the procedures set out below in CSO 21.4 and 21.5.
- ~~21.11 Where there is a need to refine or supplement any of the requirements referred to in 21.6 above then a mini-competition inviting all those companies on the Framework who are capable of providing the goods and services must be held.~~
- ~~Such mini-competitions are to be carried out by:~~
- i) by applying the obligations set out in CSOs 4, 8, 9, 10, 11, 12, 13, 16, 17 and 18 and

ii) in accordance with the procedures set out in CSOs 21 (save as to advertising), 23, 24, 26, 28, 29, 30 and 32 (save that the application or not of the standstill period shall be as provided for in this CSO 23.11) and

as if the obligations and procedures set out in the above CSOs applied to the mini-competition being held.

23.9 All tenders from potential suppliers on Framework Agreements must be submitted via the e-tendering system unless an exemption from e-tendering has been approved in advance by the Director of Corporate Services (refer to Appendix 8) and the Councils Standard Terms and Conditions shall be used.

23.10 Before establishing or entering into a Framework Agreement or consortium arrangement, the Director of Corporate Services shall be satisfied that;

- i. the term of the arrangement shall be for a period of no longer than four years
- ii. the terms and conditions of the Framework Agreement, the Access Agreement or the Inter-Authority Agreement do not compromise the Councils' contractual requirements
- iii. full open and proper competition in respect of the creation of the framework or
- iv. consortium arrangement has taken or will take place in accordance with the relevant EU Procurement Regulations and or relevant contract standing orders.

23.11 Prior to the award of any contract resulting from a mini competition performed under 23.8 above and where the Framework Agreement operator has sent a Contract Award Notice in the due form to the Official Journal of the European Union, a contracting authority is not required to send a Contract Award Notice where it awards a contract under the Framework Agreement however the Responsible Officer may do so and observe a Standstill Period if he thinks it is appropriate or desirable to do so due to

i. the value of the purchase or

ii. legal advice or

iii. any other relevant factor.

23.12 The provisions of these CSOs shall be subject to any other relevant authority from Cabinet, Council, Director or Officer authorised under the Scheme of Delegation having been obtained apply to the advertising, tendering, seeking of quotes, evaluation and award of such Framework Call-Off Contracts as if the requirements upon the Responsible Officer contained in CSO 4.2 applied to the relevant Director or Council officer designated or permitted authorised under the Scheme of Delegation to let the Framework Agreement on behalf of the Council.

CSO 22 COUNCIL APPROVED LISTS

- 22.1** The Council may, at its discretion compile and maintain a list for contractors and consultants, or any other appropriate commodity or service list, or arrange for such a list to be compiled and maintained via an approved external provider. Such a list will be defined as a "Council Approved List".
- 22.2** Except where public advertisement is required by these CSOs, by law, the EU Procurement Regulations or where the Council's own procedures require the contract to be advertised publicly a Council Approved List may be compiled without public advertisement where it is appropriate to do so and the Responsible Officer can reasonably demonstrate if required that the general requirements of openness, equality and transparency have been achieved.
- 22.3** Where a Council Approved List exists the list will be open and accessible to new suppliers from time to time and likewise will permit the delisting of existing suppliers from time to time so as the Council Approved List operates in a manner not to restrict competition
- 22.4** Where a Council Approved List exists or a Framework Agreement has been duly established Chief Officers must carry out options appraisals in accordance with CSO 13 and procurements using the established arrangements and frameworks for contract award.
- 22.5** No Council Approved List shall be used where these CSOs or EU Procurement Law require a publicly advertised tendering exercise to be performed.

CSO 24 CONTRACTS FOR CONSULTANCY SERVICES OR INTERIM PROFESSIONAL SERVICES

- 24.1** When procuring Consultancy Services or Interim Professional Services the Responsible Officer shall adhere to one of CSO 20 or 21 or 22 that applies to the anticipated contract value determined as set out in CSO 16 and 17.
- 24.2** When procuring Consultancy Support reference should be made to the Councils Code of Practice on procuring consultants contained in Appendix 7.
- 24.3** Contracts for Consultancy Services and/or or Interim Professional Services shall be in a form approved by the Director of Corporate Services.
- 24.4** Any insurance cover required in the Contracts for Consultancy Services and/or or Interim Professional Services shall as a minimum be at such level as the Council Insurance Manager shall reasonably determine in each case.
- 24.5** All providers of Consultancy Services and or Interim Professional Services are required to adhere to CSO 10 Conflict of Interest.
- 24.6** The Responsible Officer shall award the contract in accordance with CSO 26.

CSO 25 CONTRACTS FOR CONCESSIONS

- 25.1 A Concession Contract is of the same type as a service contract except that the consideration (payment) for the provision of services received consists either solely in the right to exploit the service or in that right together with payment.” This can include any contract or agreement in writing where a right to use or exploit a Council site, property, right or facility is granted to another person or body in return for payment or consideration of any kind other than being purely nominal to the Council.
- 25.2 The provisions of these CSOs shall subject to any other relevant authority from Cabinet, Council, Director or Officer authorised under the Scheme of Delegation having been obtained apply to the advertising, tendering, seeking of quotes, evaluation and award of such Concession Contracts as if the requirements upon the Responsible Officer contained in CSO 4.2 applied to the relevant Director or Council officer designated or permitted authorised under the Scheme of Delegation to let the Concession Contract on behalf of the Council.
- 25.3 The Responsible Officer shall award the contract in accordance with CSO 26.

CSO 26 CONTRACT AWARD & STANDSTILL PERIOD

- 26.1 No contract may be awarded unless all of the requirements of CSO 4.2 are met.
- 26.2 No contract may be awarded unless the expenditure involved has been included in approved revenue estimates or is in the capital programme or has been otherwise approved by the Director of Corporate Services.
- 26.3 The Responsible Officer will ensure that evidence of authority to begin a competitive process, to award the contract, to incur spend and the budget code is recorded on the contract file.
- 26.4 Provided that 26.1 through to 26.3 are satisfied, then contracts may be awarded in accordance with the relevant scheme of delegation and must be added to the relevant Forward Plan (where applicable).
- i. by a Responsible Officer duly authorised under a Scheme of Management where the value of contract is below £10,000.
 - ii. by the Head of Service duly authorised under a Scheme of Management where the value of contract is below ~~£75,000~~ £100,000
 - iii. by the Director duly authorised under a Scheme of Management where the value of contract is between ~~£75,000 and~~ £100,000 and £500,000.
 - iv. by the Director duly authorised under a Scheme of Management and Chief Executive where the value of contract is between £500,000 and £2,000,000.
 - v. by the Cabinet where value of the contract is £2,000,000 or greater.

- 26.5 No contract which is a Key Decision requires Cabinet approval for award may be awarded for a standstill Key Decision Call-In period of 10 calendar days from the relevant awarding body resolving an intention to award the contract
- 26.6 No contract for the provision of legal services or advice shall be awarded without the prior written consent of the Assistant Director of Corporate Governance or Head of Shared Legal Services
- 26.7 Each Responsible Officer must arrange for the recording of the contract on the Contract Register maintained on behalf of the Director of Corporate Services and for archiving of the contract by Legal Services, in accordance with the Procurement Gateway Process.
- 26.8 Where a contract is awarded under European procurement law, then the Responsible Officer must allow an Alcatel Standstill Period of 10 clear calendar days from the date of electronic notification to all tenderers and 15 clear calendar days from the date of notification to all tenderers if given in writing otherwise than electronically.
- 26.9 The Responsible Officer for the award of a contract under the Public Contract Regulations 2006 and all amending legislation must ensure the contract is awarded in compliance with the Public Contract Regulations 2006 and the Public Contracts (Amendment) Regulations 2009, where applicable.
- 26.10 Subject to CSO 23.11 the Responsible Officer for the award of an EU contract must also ensure submission of a Contract Award Notice to the OJEU within 48 calendar days of award. Advice on these may be sought from the Commercial Services Team or Legal Services.

CSO 27 CONTRACTS FOR DISPOSAL OF COUNCIL ASSETS

- 27.1 Subject to clause 27.4 below the disposal of Council Assets is generally subject to the general requirements imposed by section 123 of the Local Government Act 1972 (duty to obtain best consideration reasonably obtainable). In this context 'best consideration' can, provided that it is reasonable and proportionate to do so in the circumstances, include a quantifiable or demonstrable benefit that compensates the Council for the shortfall in consideration from the disposal given to the public or community or obtained by the Council from the disposal.
- 27.2 Where the disposal of Council Assets involves the sale or disposition of land the Council Property Officer shall determine whether an auction, a tender process or a private treaty is the most appropriate method of disposal under the procedure confirmed in the Code of Practice – Disposal of Land, that satisfies the Councils obligations to obtain best consideration reasonably obtainable.
- 27.3 Where the Council Property Officer determines that the most appropriate method of disposal is by a tender process then Appendix 8 of the CSOs will apply.

27.4 Where a disposal of Council Assets is proposed which is at less than best consideration reasonably obtainable and the Council has the power to do so no disposal shall be made without the express written agreement of the Director of Corporate Services under an appropriate Scheme of Delegation and in consultation with the Commercial Services Team and Legal Services.

~~26.5 Notwithstanding CSO 26.1 and 26.2 the Council Property Officer will, subject to CSO 20.1 above disposal of Council Assets may be made by invitation to public tender or private treaty subject to the value quotes in accordance with the procedures and values set out in CSOs 19, 20, 21, 27, 28, 29, 30, 31, 32, {check these} and/or Appendix 2 as if they referred to a disposal of Council Assets.~~

27.5 In all cases where the disposal of Council Assets is or includes works and/or services to be performed or goods to be supplied which would be subject to EU Procurement Law then the Responsible Officer shall be responsible for ensuring such compliance to the Law.

CSO 28 AMENDMENTS TO INVITATION TO TENDER DOCUMENTATION

28.1 Reasonable requests for further information relating to an invitation to tender document may be granted, provided the request enables the Council to supply the information not less than 5 days before the date specified for tenders' close (unless special circumstances apply).

28.2 Other than where the proposed amendment to the invitation to tender documents would constitute a breach (actual or potential) of EU Procurement law an amendment may be allowable however consideration must first be given as to how significant the amendment is, and what affect this may have to the scope/specification contained in the original tender documents.

28.3 No amendments to invitation to tender documents should be issued within 5 days of the date specified for close of receipt of tenders (unless special circumstances apply) in which case a tender extension period should be considered.

28.4 In any circumstance amendments to invitation to tender documentation and responses must be distributed to all tenders at the same time.

CSO 29 AMENDMENTS TO TENDERS SUBMITTED

29.1 In legal terms a tender or quotation is a formal offer to the Council, which the Council may accept as it stands.

29.2 Subject to EU Procurement Law (where applicable) other than in the case of genuine arithmetical or typing errors, if any Tenderer attempts to alter the offer after the last

date for receipt of tenders or quotations, they must be informed that they have only two options:

- i. stand by their submitted tender and accept they have made an error or omission and that any contract with the Council will hold them to the information submitted by them in their tender, or
- ii. withdraw their original tender completely.

CSO 30 ARITHMETICAL ERRORS

30.1 All tenders must be checked for arithmetical accuracy. Where examination of tenders reveals arithmetical errors which would affect the tender figure in an otherwise compliant tender, **subject to EU Procurement Law (where applicable)** the Responsible Officer must write/email the Tenderer pointing out the error and enquiring whether the Tenderer wants the arithmetically correct figure to:

- i. Amend the tender to the arithmetically correct figure such that the tender remains valid at the new tendered sum.
- ii. Stand by the original tendered sum, notwithstanding the arithmetical error
- iii. Withdraw the submitted tender.

30.2 Any letter/email must detail the timeframe the Tenderer has to respond.

CSO 31 VARIANT TENDERS

31.1 Unless precluded in the invitation to tender it may be possible to consider variant bids provided that their submission complies with European procurement legislation and had been invited when issuing the Invitation to Tender. Where a Responsible Officer feels it may be beneficial to invite variant bids, then advice should be sought from the Commercial Services Team and Legal Services.

31.2 **No variant bid may be considered unless their provision had been provided for in the Invitation to Tender documents and the Contract Notice where applicable.**

31.3 **No variant bid may be considered unless a compliant bid has been duly received from the tenderer from whom the variant bid is received.**

CSO 32 CONTRACT NEGOTIATION

32.1 **Subject to EU Procurement Law (where applicable)** the Responsible Officer may negotiate the contract:

- i. where tendering produced inappropriate tenders (for example where the tender figure in an otherwise successful tender exceeds approved or

- budgeted expenditure, or where the sum has changed since tenders were invited) provided the terms of the contract remain substantially unaltered; or
- ii. where tendering was discontinued because of irregular tenders, for example because tenders fail to meet the requirements specified in the contract documents or offer variations on them, or the works, supplies or goods fail to meet the technical specification.
- 32.2 The Responsible Officer will invite all who have submitted valid tenders to amend their tenders, in writing, in such matters (e.g. unit price, delivery, discounts or by removing elements of the bill of quantities) as the Responsible Officer specifies. A valid tender is one that has complied with all tendering instructions, including a response to all aspects of the specification.
- 32.3 Such written amendments must be delivered to the Responsible Officer at fixed time and place; opened by the Responsible Officer at the same time after that deadline; initialed and dated by the Responsible Officer. Any subsequent negotiating meetings will be conducted by at least two officers of different disciplines, one being a witness. The Responsible Officer will keep a written record of all negotiations, including notes of all meetings and the names of all individuals present.
- 32.4 Where no tenders are received, the Responsible Officer will either re-tender, excluding those providers who failed to make offers on the first occasion; or if time does not permit, seek an exemption to negotiate with a suitable provider or providers.

CSO 33 FORMS OF CONTRACTS & IN WRITING

- 33.1 Notwithstanding CSO 35.2 below prior to contract award every proposed contract must be
- a in a form which has been approved as being suitable for the proposed purpose by Legal Services and be
 - b. in writing and then either executed under seal or signed by a person in the Council authorised to do so. Legal Services will advise when contracts should be under seal.
- 33.2 Emergency contracts need not be approved beforehand as being in a form which is suitable in accordance with CSO 33.1 a) above or in writing before commencement; but must be confirmed in writing and as suitable as soon as possible. Unless circumstances make it impossible, written Heads of Agreement should nonetheless be drawn up and agreed with the contractor(s) and such approval and writing be performed before award.

CSO 34 NOMINATING PRODUCTS/PROVIDERS

- 34.1 The nomination of a sub-contractor or supplier to a main provider, for carrying out works or services, or supplying goods or materials requires written justification from the

Responsible Officer who must discuss the implications of such a nomination with the Head of Commercial Services and Legal Services.

- 34.2 Where a sub-contractor or supplier is identified as part of a tender the Tenderer must demonstrate the arrangements through which control and management of the sub-contractor or supplier will be exerted to ensure performance as required by the contract is achieved.

CSO 35 CONTRACT CONDITIONS

- 35.1 Unless covered by a framework agreement or collaborative arrangements contract conditions are to be in a form agreed by the Assistant Director of Corporate Governance or Head of Legal Services prior to any award.
- 35.2 Reference must be made to the following and all subsequent amendments and all current relevant legislation including:
- i. Equality Act 2010
 - ii. Health & Safety at Work etc Act 1974
 - iii. ~~Sex Discrimination Act 1975,~~
 - iv. ~~Race Relations Act 1976,~~
 - v. ~~Disability Discrimination Act 1995,~~
 - vi. ~~Race Relations Act (Amendment) 2000,~~
 - vii. Data Protection Act 1998,
 - viii. Human Rights Act 1998
 - ix. Freedom of Information Act 2000,
 - x. or any comparable statutory provision relating to discrimination in employment.
 - xi. Bribery Act 2010
- 35.3 The conditions must also ensure that no employees, agents and sub-providers unlawfully discriminate, and all will comply with all relevant codes of practice issued by the Equality and Human Rights Commission.
- 35.4 Contracts involving the transfer of staff from the Council or from one contractor to another will contain conditions requiring the successful contractor to comply with TUPE legislation and any statutory guidance.
- 35.5 Notwithstanding 35.4 all contracts shall contain terms relating to transitional arrangements at the end or earlier termination of the contract which will cover work in progress and the costs of transferring ownership of assets, data and records.
- 35.6 The conditions must contain a right of access to records, information, data for the purposes of audit as and when required.

35.7 Contracts will require Contractors to inform their staff and their sub-contractors of the Council's Whistleblowing Procedures.

CSO 36 CONTRACT PERFORMANCE

- 36.1 The specification for the contract must contain the method by which the contract will be monitored throughout the life of the contract.
- 36.2 During the life of any contract Directors and Assistant Directors must ensure that appropriate systems are in place to manage and monitor contract performance under directions from the Director of Corporate Services.
- 36.3 In cases of consistent poor performance, the Council may terminate the contract in accordance with the provisions in the contract. ~~and/or exclude the contractor to tender for future similar contracts.~~
- 36.4 Additional guidance on effective contract management and performance monitoring is provided in the Procurement Toolkit.

CSO 37 CONTRACT VARIATION AND EXTENSIONS

- 37.1 No variation or extension to an existing contract may be made unless it has been confirmed by the Responsible Officer that doing so will not breach European procurement legislation; and save in the event of an emergency (as defined elsewhere in these CSOs). Variations and or extensions to a contract will be considered on an individual basis and shall be priced on the basis, of the rates contained in the existing contract. No variation and or extension will be made until funding has been identified in accordance with Council's financial procedures.
- 37.2 Subject to 37.3 below no variation or extension to an existing contract may be made unless it is permitted by the Contract Notice (if applicable), the terms of the contract and was allowed for within the invitation to tender documents and in the decision to award by the Authorising Body.
- 37.3 No variation or extension to an existing contract may be made if that variation or extension would extend the contract period by more than three months, or 25% of the original contract period (whichever is the greater); or
- i. if that variation and or extension would add more than 25% to the value of the contract or would increase the contract sum from below the quotation threshold or more, or
 - ii. if the works, services or goods to be added to or deleted from the contract are substantially different in scope; or
 - iii. be in breach of EU Procurement Law
- 37.4 Agents operating on behalf of the Council may not issue variations without the express written agreement of the Responsible Officer and the Director of Corporate Services.

37.5 In cases of urgency, an appropriately authorised Responsible Officer may approve a variation. Urgency for these purposes includes emergency works for the protection of life and property; legal requirements to pay for disputed works or services, and cases where delay would lead to significant financial loss to the Council. In these cases, Responsible Officers will include the details of such urgent variations in a retrospective Exemption Report to Director Corporate Services.

37.6 All contract extensions shall, unless otherwise provided for in the original authority to award, be approved by the same Authorising Body that gave authority for the original award of contract. ~~Director of Corporate Services in accordance with the Procurement Gateway process.~~

CSO 41 ELECTRONIC PROCUREMENT AND E TENDERING

~~41.1 Wherever possible, tenders and quotations shall be invited and submitted by electronic means, having due regard to the need for security and probity. The Director of Corporate Services is responsible for implementing electronic procurement throughout the Council.~~

~~41.2 All electronic tendering must be done in accordance with relevant European legislation and EU Procurement Law.~~

~~41.3 These CSOs will not be a barrier to the implementation of an e-procurement system and processes. Where reference is made to documents, registers, communication, delivery or any other term which would imply traditional procurement methods such as a paper record, postal delivery etc, properly acquired and Audit approved electronic means should be employed in accordance with Corporate Policy.~~

CSO 38 FREEDOM OF INFORMATION ACT (FOI) 2000

38.1 All procurement processes and requests for information must be carried out in accordance with the Council's Freedom of Information policy.

38.2 Requests for information about the tender evaluation process will be dealt with by the Responsible Officer. Any response should be prepared after consulting with the Proper Officer who with Information Governance Manager will advise on responses.

38.3 Requests for information about past or existing contracts shall be dealt with by the Responsible Officer for that contract or if that officer unavailable for any reason by a suitable officer nominated to perform that role in consultation with the Information Governance Manager.

CSO 39 AMENDMENT OF CSOs

39.1 These CSOs may be supplemented varied or amended from time to time during their currency in respect of the Thresholds set out in CSOs 20 and 21 and 22 with the

written approval of the Leader, Chair of Scrutiny, Chief Executive and the Monitoring Officer in consultation with the Leader of the Council and details of each such supplement variation or amendment shall then be published on the Council's internet and intranet together with the date that such supplement variation or amendment is to apply.

CSO 40 PROCUREMENT TOOLKIT

- 40.1 The Procurement Toolkit includes the guidance, information, templates, tools and techniques described on the commercial services team Intranet pages provided to assist officers in undertaking procurement and contract management activity.
- 40.2 The Director of Corporate Services may issue letters, circulars and other documents containing such practical guidance as the Director thinks fit in relation to the performance by persons of duties imposed on them by virtue of these Standing Orders.
- ~~43.1 Before issuing such guidance the Director shall consult the Head of Civic and Legal Services and where appropriate, the Procurement Board.~~

APPENDIX 1 - TERMS AND DEFINITIONS

In these Contract Standing Orders and Codes of Practice, the following terms have the following meanings:

“*Acceptance*” is the approval of the final terms and conditions for the purchase of supplies, services or works.

“*Assistant Director*” means the deputy to the appointed Head of a Department within the Council

“*Authorisation*” is the approval required before quotations or tenders for supplies, services or works may be sought

“*Authorising Body*” means a body or individual acting under properly delegated authority empowered to award a contract on behalf of the Council.

“*Cabinet*” means Full Cabinet, Cabinet Committee or Cabinet Portfolio holder unless the context shows otherwise.

APPENDIX 3

“*Call-off contract*” means a contract made following a formal tendering process to create a Framework Agreement with one or more contractors, suppliers or service providers for a defined range of works, goods or services covering terms and conditions (including price) which users 'call off' to meet their requirements. See also 'framework agreement'.

“*Chief Legal Officer*” is the Assistant Head of Corporate Governance or Head of Shared Legal Services as delegated

“*Chief Officer*” is a Departmental Director

“*CSO*” means Contract Standing Order;

“*Corporate Contract*” means a contract put in place for the benefit and use of the whole Council including contracts let by service departments intended for such use.

“*Conflict of Interest*” means conflict of private interest and public duty and or conflict of public duty to a public body and duty to the Council and or the appearance of such a conflict.

“*Contract*” means any agreement for the supply of goods, materials or services, the execution of works and the awarding of concessions;

“*Contract Notice*” means a Contract Notice published in the *Official Journal of the European Union* (OJEU) by contracting authorities, seeking expressions of interest or inviting companies to tender.

“*Contract Award Notice*” means a Contract Award Notice published in the *Official Journal of the European Union* (OJEU) by contracting authorities, confirming award of contract(s).

“*Community representative*” means a person appointed by a tenants' voluntary group or similar Representative organisation, to represent their interests in any aspect of the contracts process (but not an elected Councillor)

“*Consultancy Services*” means a contract between the Council and an organisation or individual (a *Consultant*) for a specific task, consultancy advice and/or other similar consultancy services of research and report to the Council as may be required.

“*Consultant*” means a provider of Consultancy Services.

“*Contractor*” means an organisation or individual who has agreed a contract to undertake works, supply goods or provide services

“*Contract File*” means a record of all matters relating to a contract.

“*Contract Register*” means a list detailing all contracts that are let by an organisation. The list is dynamic and contains information on contract value, contract manager, supplier and start and expiry dates of the contract.

“*Concession*” is of the same type as a service contract except that the consideration (payment) for the provision of services received consists either solely in the right to exploit the service or in that right together with payment.

“*Constructionline*” means the contractor database provided by the Department of Business Innovation and Skills and Capita that is a register of pre-qualified suppliers from the construction industry.

“*Corporate contract*” means a contract arranged for use by all Departments throughout the Council

“*Council Approved List*” a list of suppliers who have passed a (pre-) approval process to supply goods or services to the Council before a final tender/award process is carried out.

APPENDIX 3

“*Council Insurance Manager*” means the Council officer to whom responsibility for Council Insurance matters is delegated.

“*Council Property Officer*” means the Council officer to whom responsibility for Council Property matters is delegated.

“*Council Asset*” means land and/or chattels that are in the Councils ownership

“*Director of Corporate Services*” means the Director of Corporate Services or any other Chief Officer to whom responsibility for corporate procurement functions is delegated by the Chief Executive

“*Director*” means the appointed Head of a Department within the Council

“*Disposal*” means the divestment of Council ownership in any asset including a sale or disposition of land ~~(except land or buildings)~~

“*E-tendering system*” means the Councils electronic system intended for the electronic execution of quote and tender processes from time to time.

“*EU contract*” a contract covered by the full European Union public procurement regime through being of a value that exceeds one of the thresholds in the appropriate regulations.

“*EU Procurement Law*” means the Public Procurement Regulations 2006 and the Public Contracts (Amendment) Regulations 2009 and all relevant case-law.

“*EU Procurement Regulations*” means the Public Procurement Regulations 2006 and the Public Contracts (Amendment) Regulations 2009

“*Exemption*” a permission granted in Appendix 2 or in accordance with the procedure set out there that all or part of these CSOs need not be complied with other than in respect of EU Procurement Law.

“*Exemption Report*” means an application for Exemption in the form set out in Appendix 4 below and signed by the Director of Corporate Services.

“*FOIA*” means the Freedom of Information Act 2000 and all statutory enactments, regulations guidances thereon.

“*Framework Agreement*” means an arrangement under which the Council (or another 'contracting authority') establishes in accordance with the Public Contract Regulations 2006 with a provider or providers of goods, works or services, under which contracts can be entered into, or 'called-off' (within the limits of the agreement) when particular needs arise. See also 'call-off contract'.

“*Interim Professional*” means a contract between the Council and an organisation or individual, other than one of employment, for the provision of interim or stand-in services of an officer post of the Council, or a post created for a defined period of time and may include such deliverables as may be required and specified within the contract.

“*Key Decision Call-In*” means the period of 10-days following the meeting of Full Cabinet, Cabinet Committee or Cabinet Portfolio holder during which decisions from the relevant meeting can be called in.

“*Legal Services*” means the Council’s legal services section or such other body as has been approved by Cabinet to act for that purpose.

“*Lowest Tender/Sum*” means the lowest price offered by tender or quotation, which meets the specification.

“*Merton Code of Conduct for Members*” means the relevant Code of Conduct retained on the Council Intranet updated from time to time

APPENDIX 3

“Merton Code of Conduct for Council Staff” means the relevant Code of Conduct retained on the Council Intranet updated from time to time

“Options Appraisals” means an analysis of the possible ways the Council may structure a commercial arrangement and/or contract with a 3rd party in order to obtain best value for money.

“Procurement Governance & Gateway Process” means the Procurement Governance and Gateway Process as agreed by the Procurement Board and published in the procurement toolkit.

“Procurement Toolkit” means all guidance, information, templates, tools and techniques described on the commercial services team Intranet pages that will be updated from time to time.

“Proper Officer” shall mean the Councils’ Head of Commercial Services or such other officer as shall be appointed from time to time to perform that role.

“Provider” means any contractor supplying, or offering to supply, goods, works or services (including concessions) to the Council; and includes any firm, agent, company, partnership, public authority, individual or other organisation.

“Purchaser’s Agent” means anyone providing a purchaser with a service to assist them in arranging the supply of goods, works, services or concessions

“Quotation” means a written offer following a request for quote process

“Responsible Officer” or “RO” means any permanent or temporary staff member or any other person properly authorised to carry out any of the Council's contracts functions. **Where no Responsible Officer has been appointed, the Responsible Officer shall be deemed to be the budget holder of the section from which the contract is funded.**

“Scheme of Management” or *“Scheme of Authorisation”* means the management arrangements whereby a Director may implement practically the discharge of any function for which they are responsible.

“Single Contract Threshold” that is the contract value set by the Council for that particular contractor, and is the figure generated from an ‘equifax’ report

“Standstill Period” means the mandatory 10-day standstill period as described in Public Contract Regulations 2006 that must be observed between notifying tenderers of intention to award a contract and confirming the award of contract.

“Tender” means a written offer following advertising and/or formal tendering

“Tender Evaluation Team” a team of Council Officers or advisors who collectively conduct the evaluation of a tender and make judgement to recommend a preferred supplier.

“TUPE” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended

“Value for Money” the optimum combination of whole life cost and quality (or fitness for purpose) to meet the users requirements.

“Workforce Regulations” means the Local Government Best Value (Exclusion of Non-Commercial Considerations) Order 2001/909 as amended.

“Whistleblowing Procedures” means the procedures set out on the Councils Internet pages

“Witness” means a member of staff not directly involved in a particular contract, who participates in certain stages to ensure propriety

APPENDIX 2 - EXEMPTIONS FROM CONTRACT STANDING ORDERS

- 1.0** Where an exemption is sought from all or any part of Contract Standing Orders a report justifying the reasons for granting the exemption and the CSO being exempted must be provided in writing in an Exemption Report to the Director Corporate Services (or in their absence the nominated deputy). No requested exemption shall be permitted and take effect until the Exemption Report has been signed as agreed by the Director Corporate Services (or in her absence her nominated deputy).
- 2.0** No Exemption can be granted where the request would result in a breach of EU Procurement Law.
- 3.0** A non-exhaustive list of reasons for seeking exemption are set out below and may be referred to in the Exemption Report by reference to this Appendix 2 and the relevant letter:
- a) that only one provider is able to carry out the work or service or to supply the goods for technical or artistic reasons or because of exclusive rights;
 - b) that time limits required for tendering cannot be met for reasons of extreme urgency (usually emergency contracts where a risk to life, or the security or structural viability of a property can be demonstrated; or contracts where the terms of a Court order set a time limit which specifically precludes all or part of the tendering process); and which, in the case of E.U. contracts, were unforeseen and un-attributable to the Council.
 - c) that additional goods, works or services are required which, through unforeseen circumstances, were not included in the original contract and which either are strictly necessary for the completion of the contract or, for technical or economic reasons, cannot be carried out separately without great inconvenience.
 - ~~d) that new goods, works or services are required which are a repetition of goods, works or services carried out under the original contract, provided they are required within 3 years of the original contract; and the contract notice and tender documents stated that a contract for new works might be awarded by negotiation;~~
 - d) that goods are required as a partial replacement for or addition to existing goods or installations and obtaining them from another provider would result in incompatibility or disproportionate technical difficulties in operation or maintenance;
 - e) that the rules of a design contest require the contract to be awarded to one of the successful candidates, provided all successful candidates are invited to negotiate;

- f) that for work carried out for other public bodies, an exemption from tendering has been requested by them in writing (provided exemption is lawful having regard to E.U. or domestic legislation);
- g) the proposed contract is an extension to or variation of the scope of an existing contract, if permitted by the public procurement legislation i.e. below the required EU limit, unless the existing contract provides for an extension;
- h) the purchase of works of art, museum artefacts, manuscripts or archive collection items;
- i) there is a need to develop and influence the market by extending the range and provision of services, provided the contract is for a fixed term of no more than three years;
- j) it is necessary to enable the continuation of a new service, development of which was initially grant-aided, provided the contract is for a fixed term of no more than three years;
- k) value for money can be demonstrated by inviting a single tender or quotation from a voluntary sector provider;
- l) value for money can be achieved by the purchase of used vehicles, plant or materials;
- m) when a grant from a public body includes a recommendation as to the supplier or is time limited;
- n) in furtherance of the Council's social enterprise policy, or other economic development aims, subject to the prevailing financial support limits for this type of activity and without breaching public procurement rules;
- o) where the Council has agreed to collaborate with another public body and is satisfied that the contracting arrangements of the lead body (where different from the Council) do not contravene the Council's legal responsibilities in this respect.
- p) if there are exceptional circumstances not previously identified or covered by existing policies, procedures, or the Contract Standing Orders;

APPENDIX 3 - EXCEPTIONS FROM CONTRACT STANDING ORDERS

Where the contract is in respect of :-

- a) legal advice or services to the Council and has been obtained by Legal Services in consultation with the relevant Director or Officer under a Framework or otherwise and without breaching EU Procurement Law or
- b) is for the sale or disposition of land and/or property and has been effected by Council Property Officer in consultation with the relevant Director or Officer of the Council under a Framework, scheme of delegation or otherwise and without breaching EU Procurement Law or
- c) a contract of employment then

no exemption shall be required under Appendix 2 above and the contract shall be treated as being excepted from the requirements of these CSOs.

APPENDIX 3 – DECLARATION OF INTEREST FORM

Declaration A

Name of Employee:
Department:
Post or Grade:
Permanent or Temporary:

[Please use block capitals]

I declare that I have read the attached Explanatory Notes and Declaration B and that there are no facts or circumstances that I would be required to specify if I completed Declaration B truthfully, accurately and completely.

In the event of any fact or circumstance changing this position, I agree to make Declaration B to my Chief Officer within 21 days.

Signed.....

Date.....

NOTE: This declaration must be made without amendment or qualification. If you cannot make it without amendment or qualification, you must complete Declaration B.

Chief Officer's Certificate

I have considered the above Declaration of Interests and confirm that no matters have been disclosed, and to my knowledge this is an accurate statement.

Signed.....

Date.....

GENERAL DECLARATION OF INTERESTS FOR SENIOR MANAGERS AND STAFF INVOLVED WITH CONTRACTS

Declaration B

Name of Employee:
Department:
Post or Grade:
Permanent or Temporary:

[Please use block capitals]

In this declaration the interests of your family mean the interests of:

- a) your spouse or partner;
- b) any other member of your family (whatever the relationship) when you have actual knowledge of the interests of that family member. Only the interest needs to be declared not the family connection.

I declare that I have read the attached Explanatory Notes and that to the best of my knowledge and belief the answers specified below are truthful, accurate and complete. I agree to inform my Chief Officer in writing of any change to these answers within 21 days of that change taking place.

NOTE: If declaration B is to be made and the answer to any section is that you have no interest to declare in that particular section, you should write 'None'. Do not leave sections blank.

EMPLOYMENT (other than with Merton Council)

1. I am employed by: of (address) as a:

2. I am self-employed as a: and my place(s) of business is as follows: and I trade under the following name(s):

EMPLOYMENT (other than with Merton Council)

3. I am in partnership with:
as a:
my firm's place(s) of business are as follows:
and the firm trades under the following name(s):

4. I am a consultant with or to:
and their place of business is as follows:
and they trade under the following name(s)

DIRECTORSHIPS

5. I or a member of my family hold the following Directorships in the following trading companies (give the companies' names, any names under which the companies trade, the companies' registered addresses and the names of all other directors):

SHAREHOLDINGS

6. I, my family or my or their nominees have significant shareholdings in the following companies:

Footnotes: ¹A shareholding is significant for these purposes if its size or value (either absolutely or in relation to the share capital of the

company as a whole) is such that it could give rise to the appearance of a conflict of interest if the Council were to enter into a contract with the company.

²A shareholding need not be declared if it is in a company that trades in a field wholly unrelated to your field of work for Merton Council.

PROPERTY AND LAND OWNED BY THE LONDON BOROUGH OF MERTON

7. I, or a member of my family, or my, or their nominees hold (directly or indirectly) a tenancy / leasehold interest in the following properties/land (other than my or their principal home) which are owned by Merton Council:

Address of Property(ies):

APPROVED LIST

8. I, or a member of my family, or my, or their nominees have the following connection with the following businesses on the Council's Approved List of Contractors and Consultations or my own Department's list of suppliers:

(NB: Connections which must be declared include, but are not limited to, being employed by / in partnership with/ a consultant to/ a director or/ a shareholder in a business on the Corporate or Departmental list)

SECRET ORGANISATION

9. I am/am not* a member of any organisation which administers oaths of secrecy and which has a general or particular intention of ensuring that members assist one another. [If you are a member of such an organisation, specify the name(s) or the organisation(s) and the branch(es) or section(s):

ANY OTHER CONFLICT OR INTEREST

10. I have the following interests which could give rise to a conflict of interest or to the appearance of a conflict of interest between the said interest and my duty as an employee of Merton Council:

Signed.....

Date.....

Chief Officer's Certificate

I have considered the above Declaration of Interests and am satisfied that nothing it reveals is incompatible with the duties of the employee making the Declaration.

Signed.....

Date.....

APPENDIX 4 - FORM OF EXEMPTION REPORT

CHIEF OFFICER DECISION	
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SUBJECT:

LEAD OFFICER:

LEAD MEMBER:

KEY DECISION REFERENCE NUMBER: N/A

RECOMMENDATION:

Chief Officer Decision	Approved	Not Approved
Signature	Designation Director of	Date
Chief Executive Signature (for Corporate Services Exemption Requests only)	Designation	Date

1. EXECUTIVE SUMMARY AND PURPOSE OF REPORT

2. DETAILS

3. ALTERNATIVE OPTIONS

4. FINANCIAL IMPLICATIONS

5. PROCUREMENT IMPLICATIONS

6. LEGAL IMPLICATIONS AND STATUTORY PROVISION

7. HUMAN RIGHTS AND EQUALITIES IMPLICATIONS

8. CONSULTATION UNDERTAKEN

BACKGROUND PAPERS

Council Standing Orders.

OFFICER CONTACTS:

APPENDIX 5 – GROUNDS FOR MANDATORY EXCLUSION OF ANY CANDIDATE OR TENDERER FROM SELECTION TO BID FOR OR AWARD OF ANY PUBLIC CONTRACT

The Public Procurement Directive

Appendix 5 – Grounds for Mandatory Exclusion etc

Article 45(1) of the Public Sector Procurement Directive 8-385-1357 provides that any candidate or tenderer who has been the subject of a conviction by final judgment of which the Council is aware for corruption as defined in Article 3 of the Council Act of 26th of May 1997 and Article 3(1) of the (EU) Council Joint Action 98/742/JHA respectively shall be excluded from participation in a public contract.

The definition of 'corruption' is as follows:

"...the deliberate action of whosoever promises or gives directly or through an intermediary, an advantage of any kind whatsoever to an official for himself or for a third party, for him to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties shall constitute active corruption."

Under the Council Joint Action 98/742/JHA, it is:

"the deliberate action of whosoever promises, offers or gives, directly or through an intermediary, an undue advantage of any kind whatsoever to a person, for himself or for a third party, in the course of the business activities of that person in order that the person should perform or refrain from performing an act, in breach of his duties, shall constitute active corruption in the private sector."

Responsible Officers shall consult the Head of Commercial Services and Legal Services prior to debarring any candidate or bidder on the above grounds

APPENDIX 6 – GROUNDS FOR DISCRETIONARY EXCLUSION OF ANY CANDIDATE OR TENDERER FROM SELECTION TO BID FOR OR AWARD OF ANY PUBLIC CONTRACT

The Public Procurement Directive

Article 45(2) of the Public Sector Procurement Directive provides that any economic operator who has been convicted of any offence concerning his professional conduct, or has been guilty of grave professional misconduct proven by any means which the contracting authorities can demonstrate may be excluded from participation in a public contract

The Public Contracts Regulations 2006

Regulation 23(4) of the Public Contracts Regulations implements Article 45(2) in England providing the right (but not the obligation) to contracting authorities in England to debar contractors that meet any of the requirements set out in Article 45(2).

Note

Regulation 23(4) only applies to the bidder itself.

However regulation 23(1), applies to the bidder, it's directors and any other person who has powers of representation, decision or control of the bidder and applies to any of the following offences :-

- (a) conspiracy within the meaning of section 1 of the Criminal Law Act 1977 where that conspiracy relates to participation in a criminal organisation as defined in Article 2(1) of the Council Joint Action 98/733/JHA;
- (b) corruption within the meaning of section 1 of the Public Bodies Corrupt Practices Act 1889 or section 1 of the Prevention of Corruption Act 1906;
- (c) the offence of bribery;
- (d) fraud, where the offence relates to fraud affecting the financial interests of the European Communities as defined by Article 1 of the Convention relating to the protection of the financial interests of the European Union, within the meaning of-
 - (i) the offence of cheating the Revenue;
 - (ii) the offence of conspiracy to defraud;
 - (iii) fraud or theft within the meaning of the Theft Act 1968 and the Theft Act 1978;
 - (iv) fraudulent trading within the meaning of section 458 of the Companies Act 1985;
 - (v) defrauding the Customs within the meaning of the Customs and Excise Act Management Act 1979 and the Value Added Tax Act 1994;

- (vi) an offence in connection with taxation in the European Community within the meaning of section 71 of the Criminal Justice Act 1993; or
- (vii) destroying, defacing or concealing of documents or procuring the extension of a valuable security within the meaning of the Theft Act 1968;
- (e) money laundering within the meaning of the Money Laundering Regulations 2003; or
- (f) any other offence within the meaning of Article 45(1) of the Public Sector Directive as defined by the national law of any relevant State.

Regulation 23(2) provides that in any case where an economic operator or its directors or any other person who has powers of representation, decision or control has been convicted of an offence set out above, a contracting authority may disregard the prohibition debaring them if :-
“...it is satisfied that there are overriding requirements in the general interest which justify doing so in relation to that economic operator.”

Offences under the Bribery Act 2010

Offences under sections 1, 2 and 6 meet the requirements for debarment under Regulation 23(1) and is set to be discretionary.

Responsible Officers shall consult the Head of Commercial Services and Legal Services prior to debaring or allowing to participate and bid and/or award to any candidate or bidder on the above grounds.

**APPENDIX 7 – CODE OF PRACTICE ON
CONSULTANTS**

http://intranet/engaging_consultants

APPENDIX 8 – PROCESS FOR RECEIPT OF PAPER TENDERS

All tenders from potential suppliers must be submitted via the e-tendering system unless an exemption from e-tendering has been approved in advance by the Director of Corporate Services.

Where an exemption from e-tendering has been approved the following process for the receipt of paper tender shall be observed.

Tenders must not be received via email.

1.0 Receipt of Tenders

- a) Every paper based invitation to tender must state that a tender can only be considered if it is delivered in accordance with the instructions detailed in the invitation to tender document.
- b) All paper based invitations to tender must include all relevant information or instructions as are required to correctly lodge the tender with the Council prior to the tender deadline.
- c) All paper based tenders must be delivered to a specified place by a specified time and date and in a sealed package with the correct details and labelling on the package. No details of the Tenderer must be apparent from the packaging.
- d) Paper based tenders will be deposited with the Director of Corporate Services of the Council and accepted by an appointed person.
- e) Arrangements must be made by the Responsible Officer to ensure that on receipt, all paper based tenders received are endorsed with the time and date of receipt and kept confidentially and secure until the time specified for tender opening.
- f) Tenderers must be given a receipt for tenders delivered by hand, or a confirmation fax/email must be sent to Tenderers who have delivered tenders via mail or courier.

~~The above provisions will not preclude the submission of tenders electronically, where this facility is available and appropriate controls and recording mechanisms are in place. Where submitting tenders electronically all tenders must be submitted using the secure, locked e-tendering system as described in the Procurement Toolkit.~~

2.0 Late Tenders

- a) The Responsible Officer may not consider any paper based tender received by the Council after the specified closing time for the receipt of tenders for that contract.
- b) A paper based tender received late must not be opened and must be clearly marked on the tender package as a late tender "Received after

deadline for receipt of tenders” and details of the time and date given and signed by the authorised officer.

c) Late paper based tenders will be opened after the official tenders are opened only to determine the identity of the tendering party so the tender may be returned to the tendering party with a letter explaining that the tender was received too late and that accordingly it had to be rejected. The letter should give details of the time and date of receipt and give details of the official deadline.

3.0 Tender Time Extensions

a) In rare cases, following unforeseen complications and prior to the passing of the tender deadline, it may be allowable to extend the timeframe for the return of tenders. Consideration must be given as to fairness and transparency in granting such extensions. The Proper Officer must be consulted prior to all such extensions being granted.

b) In the event that a tender time extension is granted, the time extension must be granted to all tenderers.

4.0 Tender Opening

a) Paper based tenders must not be opened under any circumstances until the date and time for tender receipt has passed. If a tender is opened in error, advice must immediately be sought from the Commercial Services Team who will consult with Legal Services.

b) The Responsible Officer must fix a time and date for the opening of the paper based tenders received and must take place after the closing date for submission of tenders. All tenders received for a particular contract must be opened at the same time and place at an appropriate time after the close of receipt, in front of the same people. No person may be present at the tender opening unless s/he is officially designated as part of the process.

c) All paper based tenders opened must be endorsed by at least 3 persons, who must notate the time and date of receipt.

d) The officer leading the opening procedure must record the following details of each tender on the Schedule of Tenders Received:

- i. the date and time specified as the deadline for receipt of tenders for the particular contract
- ii. the date and time that each tender was received;
- iii. the name of the Tenderer and the amount of each tender
- iv. the names and signatures of those present.

e) All persons present at tender opening must sign each tender immediately after it is opened. All tenders received must be signed on the:

- i. Front page of the tender submission
- ii. Tender Price schedule

~~29.1 Where the secure, locked electronic tendering system is employed appropriate electronic acknowledgement will be appended where the system permits, or the appropriate documents will be printed, signed and retained on file.~~

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