

Merton Council

Standards Committee

21 October 2015

Supplementary agenda

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CSO 1 CONTRACT STANDING ORDERS, COMPLIANCE AND TERMINOLOGY

- 1.1 These Contract Standing Orders must be complied with unless an Exemption is obtained in accordance with CSO 8 (Exemptions from Contract Standing Orders)
- 1.2 Failure by Officers to comply with these Contract Standing Orders is a disciplinary offence.
- 1.3 Subject to CSO 9, 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 on behalf of the Council in relation to any Contract or Land Agreement (e.g. Consultant) that they comply with these Contract Standing Orders.
- 1.4 These Contract Standing Orders govern the procurement of all Contracts for works, services and supplies and (where expressly stated) Land Agreements.
- 1.5 These Contract Standing Orders do not apply to schools that operate under Schemes of Financial Management unless otherwise stated in the [Scheme for Financing Schools or Tenant Management Organisations.]
- 1.6 Land Agreements are dealt with at CSO 55 (Contracts for the Disposal of Council Assets). Unless otherwise stated to the contrary, the remainder of these Contract Standing Orders deal with Contracts for works, services and supplies.
- 1.7 Every Contract must comply with:
 - 1.7.1 all applicable Laws;
 - 1.7.2 EU Procurement Law;
 - 1.7.3 Financial Regulations;
 - 1.7.4 relevant Council Policies.
- 1.8 Nothing contained in these Contract Standing Orders shall override any Law, including EU Procurement Law. For the avoidance of doubt, where there is a change in EU Procurement Law after the publication of these Contract Standing Orders, the rules and procedures set out in the (new) EU Procurement Law shall apply to the procurement of Contracts. Where the rules and procedures set out in the (new) EU Procurement Law are not consistent with these Contract Standing Orders, these Contract Standing Orders shall not apply.
- 1.9 These Contract Standing Orders are a controlled document and only the Director of Corporate Services can make recommendation to change them. Changes to these Contract Standing Orders, other than changes in legislation may, only be made by Full Council.
- 1.10 These Contract Standing Orders (whether superseded or not) shall be retained for 20 years from the date of publication before being considered for destruction.

- 1.11 The Director of Corporate Services may from time to time issue practical guidance as to the steps to be taken to comply with these Contract Standing Orders. The guidance relevant to Contracts is contained in the Procurement Toolkit (see CSO 3).
- 1.12 In these 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, team or the like who performs or substantially performs the role, function or duties of that post, Director, Directorate, department, team or the like.
- 1.13 All references in these Contract Standing Orders to Contracts are, unless otherwise stated to the contrary, references to works, services and supplies contracts.
- 1.14 Unless stated otherwise, all references in these Contract Standing Orders to Contracts include Framework Agreements, although in addition, there are particular references to Framework Agreements only.
- 1.15 Terminology and abbreviations referred to in these Contract Standing Orders are set out at Appendix 1.
- 1.16 All references in these Contract Standing Orders to one gender shall include a reference to other genders.

CSO 2 AMENDMENT OF CONTRACT STANDING ORDERS

- 2.1 These Contract Standing Orders may be supplemented, varied or amended from time to time during their currency in respect of the thresholds set out at CSOs 20 and 21 and 22 with the written approval of the Leader, Chair of Scrutiny, Chief Executive and the Monitoring Officer.
- 2.2 Each such supplement, variation or amendment shall be published on the Council's internet and intranet together with the date from which such supplement, variation and/or amendment is to apply.

CSO 3 PROCUREMENT TOOLKIT

- 3.1 The Procurement Toolkit contains guidance, information, templates, tools and techniques to assist Officers in undertaking procurement and contract management activity generally and in accordance with these Contract Standing Orders.

CSO 4 SCHEMES OF MANAGEMENT

- 4.1 The Chief Executive and any Officers authorised by him in accordance with the relevant Scheme of Management may Authorise the entry into Contracts [and Land Agreements] by the Council.

- 4.2 Each Director will, before the commencement of each financial year and on making any amendment, supply to and agree with the Director of Corporate Services, a Scheme of Management for their department specific to their delegated functions.
- 4.3 The agreed Scheme of Management for each department shall set out:
- 4.3.1 the names and posts of Officers approved for the purposes of:
- 4.3.1.1 the conduct of the procurement/Disposal (e.g. advertising of Contract and Land Agreement opportunities, setting tender requirements, issuing Tender Documents, evaluating tenders received, recommending award of Contracts and the entry into of Land Agreements) and for the operation of awarded Contracts;
- 4.3.1.2 Authorising:
- (a) the award and, where relevant, the sealing of Contracts and entry into of Land Agreements on behalf of the Council;
- (b) the award and, where relevant, the signing of Contracts or Land Agreements on behalf of the Council; and
- (c) the placing of Orders on behalf of the Council;
- 4.3.2 in the case of CSO 4.3.1.2, the maximum financial threshold (which may be an unlimited sum) up to which each relevant Officer has approval to Authorise.
- 4.4 No person or post identified in CSO 4.3.1.1 of the relevant Scheme of Management shall be the same as a person identified in CSO 4.3.1.2(a), (b) or (c) of the relevant Scheme of Management and vice versa.
- 4.5 The Director of Corporate Services shall keep a register of all Schemes of Management and make this available on the Council's intranet.

CSO 5 DIRECTOR'S RESPONSIBILITY

- 5.1 Directors are responsible for ensuring within their department that:
- 5.1.1 these Contract Standing Contract Standing Orders are observed and complied with;
- 5.1.2 Schemes of Management exist which comply with CSO 4;
- 5.1.3 Contracts and Land Agreements are awarded/entered into and managed in accordance with these Contract Standing Orders;
- 5.1.4 Responsible Officers within their department responsible for carrying out procurement and commissioning have the appropriate level of ability and experience to interpret, implement and comply with these Contract Standing Orders;
- 5.1.5 accurate records and clear audit trails of all actions, decisions and Authorities relating to all Contracts and Land Agreements, are maintained and are available for inspection. Such records and audit trails shall include, without limitation, documentation and a record of processes undertaken relating to Quotations, Tenders, Orders, Contracts and Land Agreements;
- 5.1.6 the records and audit trails referred to in CSO 5.1.5 shall be kept for a period of retention equal to the length of the relevant Contract or (where relevant) Land

Agreement plus seven (7) years.

CSO 6 RESPONSIBLE OFFICER'S DUTIES

- 6.1 Every Contract [and Land Agreement] will have a Responsible Officer nominated by or on behalf of the departmental Director. Where no Responsible Officer has been appointed, the Responsible Officer shall be deemed to be the budget holder of the department from which the Contract is funded [or Land Agreement is handled].
- 6.2 Detailed guidance on the role of Responsible Officers in respect of Contracts is set out in the Procurement Toolkit.
- 6.3 Notwithstanding any provision set out elsewhere in these Contract Standing Orders, the Responsible Officer shall be responsible for carrying out the activities set out in CSO 6.4 or ensuring that such activities are carried out.
- 6.4 Responsible Officers shall in carrying out any procurement:
 - 6.4.1 before selecting the most appropriate procurement route, carry out a robust options analysis in accordance with CSO 14;
 - 6.4.2 seek value for money and may, to the extent relevant, proportionate and permitted by the EU Procurement Regulations consider social benefits of the Contract;
 - 6.4.3 at all times comply with:
 - 6.4.3.1 these Contract Standing Orders; and
 - 6.4.3.2 all relevant Laws, including EU Procurement Law;
 - 6.4.4 at all times adhere to the principles of non-discrimination, equal treatment, transparency, proportionality, mutual recognition and free movement of goods and services. These principles mean that:
 - 6.4.4.1 there should be no conflict between official duties and private interests;
 - 6.4.4.2 there should be no improper influence placed on any person to show favour (or disfavour) towards any tenderer;
 - 6.4.4.3 at all times tenderers must be dealt with in an honest, fair, open and transparent way;
 - 6.4.4.4 information provided by tenderers should be regarded and treated as confidential subject to the FOIA, EIRs and the Transparency Regulations;
 - 6.4.5 not favour or discriminate against any tenderer;
 - 6.4.6 conduct all activity in accordance with the highest standards of probity and integrity to prevent fraud and corruption;
 - 6.4.7 carry out tender evaluation fairly, impartially and in accordance with these Contract Standing Orders, including in accordance with evaluation methodology and Award Criteria that have been disclosed to tenderers in advance;
 - 6.4.8 keep all records and audit trails as required by CSO 5.1.5 and 5.1.6;
 - 6.4.9 any Contract awarded is recorded in the relevant Forward Plan in accordance with CSO [#];
 - 6.4.10 initiate all Contract procurements correctly and in accordance with the Council's procurement policies and practices;

- 6.4.11 fulfill the role as the project sponsor or appoint a project sponsor and appoint a project manager where relevant;
- 6.4.12 adhere to the Council's Procurement Governance and Gateway Process set out at [INSERT LINK];
- 6.4.13 where a Contract is awarded, record the Contract in the Council's Contract Register and deposit the signed Contract with Legal Services;
- 6.4.14 take into account all relevant Laws and Council strategies and policies relating to equality, diversity and sustainability when tendering for Contracts;
- 6.4.15 carry out and demonstrate that s/he has carried out appropriate statutory and stakeholder consultation;
- 6.4.16 clarify the role (if any) of community groups, the voluntary sector and the business community;
- 6.4.17 ensure that the Council's whistleblowing procedure is included in all Tender Documents;
- 6.4.18 ensure that, all permanent and temporary staff, consultants and Community Representatives involved in a procurement complete the form of declaration of interest set out in Appendix 3. This declaration should be made both on appointment to the Council and on appointment to a particular procurement shall certify such person as either acceptable to the relevant appointment or take any necessary action in respect of potential Conflicts of Interest, in accordance with CSO [#].

- 6.1 The Responsible Officer for each procurement shall ensure that the Tender Documents clearly set out how tenderers may contact the Council with any queries. This should be via the Council's e-tendering system and tenderers should be advised that they should not contact individual Officers directly.
- 6.2 Any queries received by Officers directly must not be responded to in detail and in such circumstances, a nominated Officer should advise the tenderer how to raise the query so that CSO 6.3 is complied with.
- 6.3 The Responsible Officer shall ensure that the requirements set out in this CSO 6 are complied with and such compliance is properly evidenced. The Responsible Officer may not delegate this duty to another Officer.

CSO 7 COMMUNITY REPRESENTATIVES

- 7.1 Officers may invite Community Representatives (e.g. tenant representatives, service users) to participate in the procurement/Disposal process in order to assist in the development of specifications and selection of Providers and may also invite them to comment on a Provider's performance under a particular Contract. The agreement of the Director of Corporate Services is required for any other type of involvement where this is a requirement of any Law or Council policy.
- 7.2 Community Representatives (excluding Members) are not and may not be Officers or Responsible Officers and they may be involved in a procurement/Disposal or provide comment only in accordance with CSO 7.1. For the avoidance of doubt, all decisions will be taken by the Council within the framework of the relevant Scheme of Management.

- 7.3 The Council must always avoid any perception, suspicion or risk of potential allegation of bribery or corruption. Accordingly, the Responsible Officer shall ensure adequate records of any Community Representatives involved in any of the activities set out in CSO 7.1 are kept. Such records must include the names of the Community Representatives, dates, the extent of their involvement, any written responses, reports, etc. they have provided and notes of any meetings attended. Where possible, written responses from Community Representatives are preferred to discussions. If discussions are necessary, then these should be face to face and the Responsible Officer should attend, accompanied by another Council Officer.
- 7.4 Responsible Officers shall ensure Community Representatives complete the Declaration of Interest and Confidentiality Undertaking set out in Appendix 3.

CSO 8 EXEMPTIONS FROM CONTRACT STANDING ORDERS

- 8.1 The Chief Executive will consider and where appropriate grant Exemptions to these Contract Standing Orders requested by Officers within the Corporate Services Department.
- 8.2 For all other departments, the Director of Corporate Services is authorised to grant Exemptions to these Contract Standing Orders and the following procedure shall apply:
- 8.2.1 an Exemption report must be submitted in writing to the Director of Corporate Services on the form set out at Appendix 4 and must include:
- 8.2.1.1 the Contract Standing Order number from which Exemption is requested;
- 8.2.1.2 the reasons for requiring the Exemption; and
- 8.2.1.3 the alternatives available if the Exemption is not granted;
- 8.2.2 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.
- 8.3 A non-exhaustive list of indicative circumstances where an Exemption may be granted is set out in Appendix 2.
- 8.4 No Exemption may be granted:
- 8.4.1 that would result in a breach of Law, including EU Procurement Law;
- 8.4.2 that requires Cabinet to accept a tender that has not been identified as the successful tender following evaluation;
- 8.4.3 that differs from the Scheme of Management;
- 8.4.4 that removes the requirement for a Declaration of Interest by any Officer or Members
- 8.5 The Director of Corporate Services shall maintain a register of Exemptions granted by department which shall refer to the relevant Contract/Land Agreement and set out the nature of the Exemption and the value of the Contract/Land Agreement and include the Exemption report. The Director of Corporate Services shall report Exemptions bi-annually

to the Procurement Board.

- 8.6 The Head of Commercial Services and Head of Shared Legal Services or their nominated Officers shall on a regular basis analyse the nature of the Exemptions requested and those granted and shall make appropriate recommendations to the Director of Corporate Services about the operation of the Exemptions procedure.
- 8.7 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 this CSO 8, any two Officers, from the Deputy S151 Officer, the Monitoring Officer or any of the Council' remaining Directors may, acting jointly, consider and where appropriate grant Exemptions.

CSO 9 EXCEPTIONS – LAND AGREEMENTS AND CONTRACTS NOT REQUIRING TENDERING

- 9.1 The following are not required to be tendered in accordance with these Contract Standing Orders unless otherwise required by Law and no Exemption shall be required under CSO 8:
 - 9.1.1 Contracts of employment for permanent staff;
 - 9.1.2 Land Agreements and/or property Disposals effected by the Council's Property Officer except to the extent of CSO 27;
 - 9.1.3 Contracts for which a specific Exemption from tendering has been granted pursuant to CSO 8;
 - 9.1.4 Call-off Contracts (provided they are in accordance with CSO [#]);
 - 9.1.5 Orders placed under Corporate Contracts, Dynamic Purchasing Systems or E-Auctions (provided they are in accordance with CSO [#]);
 - 9.1.6 Contracts for the spot purchase of residential, nursing or domiciliary care for an individual from a Provider on one of the Council's Framework Agreements, Accredited Provider Registers or Approved Lists for such Providers as the same are in place from time to time, [in accordance with the procedures set out in the Procurement Toolkit];
 - 9.1.7 arrangements for the engagement of counsel;
 - 9.1.8 certain legal services (as defined in Regulation 10 of the PCR);
 - 9.1.9 the engagement of professional expert witnesses in contentious matters;
 - 9.1.10 appointment of independent investigators, arbitrators, mediators, and facilitators; and
 - 9.1.11 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.

CSO 10 HEALTH AND SAFETY

- 10.1 Any Provider that wishes to work for the Council must comply with the Council's health and safety policy and, where appropriate to the Contract, be registered with an

appropriate safety scheme in procurement, for example the Contractors Health and Safety Assessment Scheme (CHAS) or other appropriate scheme.

- 10.2 In circumstances where it would be appropriate for the Provider to be registered with a safety scheme, if a department may need to appoint a non registered Provider, the Council's Head of Safety Services must be approve the appointment (from a health and safety perspective only).
- 10.3 All Contracts must be subjected as appropriate, to second and third stage competency assessments to comply with the Council's health and safety policy on the selection and control of Providers.

CSO 11 EQUALITY AND DIVERSITY

- 11.1 Responsible Officers shall carry out their role with due regard to the need to ensure that all procurement activity eliminates unlawful discrimination and promotes equality of opportunity.
- 11.2 Responsible Officers shall ensure that they have taken into account all codes of practice issued by the Equality and Human Rights Commission on how equality and diversity issues may be embedded in procurement.

CSO 12 SOCIAL, ENVIRONMENTAL AND ECONOMIC MATTERS

- 12.1 Before commencing the procurement for any Contract meeting the criteria set out in CSO 12.2, Officers must consider whether the Public Services (Social Value) Act 2012 (the "Act") applies to the subject matter of the Contract.
- 12.2 Contracts to which CSO 12.1 applies are those Contracts for:
- 12.2.1 services; or
 - 12.2.2 services together with goods or works, in each case, with a value at or above £25,000.
- 12.3 Whilst the Act applies only to those Contracts meeting the criteria set out in CSO 12.2, as a matter of best practice Officers should consider social, environmental and economic matters before commencing any procurement.
- 12.4 Where the Act applies Officers must (at the pre-procurement stage) consider:
- 12.4.1 how what is proposed to be procured might improve the economic, social and environmental well-being of the Council's area;
 - 12.4.2 how, in conducting a procurement process, the Council might act with a view to securing that improvement; and
 - 12.4.3 whether to undertake a consultation on these matters.
- 12.5 Examples of matters that may be considered under the Act:

- 12.5.1 carbon emission reduction;
- 12.5.2 promotion of energy efficiency and renewable energy;
- 12.5.3 water conservation and the protection of biodiversity;
- 12.5.4 reduction and promotion of recycling of waste;
- 12.5.5 the borough's built environment;
- 12.5.6 protection from crime and disorder and reduction in the fear of crime;
- 12.5.7 promotion of access for people with disabilities; and
- 12.5.8 promoting employment.

12.6 In considering these matters, Officers must only consider matters that are relevant to the subject matter of the Contract and that are proportionate.

12.7 Where appropriate and always subject to the PCR, the appropriate Officer should ensure requests for Tenders or Quotations are framed in such a way to encourage local suppliers, SMEs and third sector organisations such as social enterprises to bid.

CSO 13 CONFLICTS OF INTEREST

13.1 It is at all times important that an Officer's, Member's or any other person's recommendation, advice, action, etc. in relation to the Council's interest is not impaired (or does not appear to be impaired) by a Conflict of Interest with their private interest or duty to another entity.

13.2 It is also important that there is no perception of a Conflict of Interest.

13.3 In order to ensure actual or perceived Conflicts of Interest are identified and appropriate steps taken to ensure the Council's interest is not impaired, the following people are required to declare any interests which may affect the procurement process for a Contract or the management of any Contract or Land Agreement:

- 13.3.1 all permanent or temporary staff;
- 13.3.2 all Consultants involved in a procurement;
- 13.3.3 all Community Representatives;
- 13.3.4 all Members of the Council involved in any relevant decision (executive or scrutiny) relating to a Contract or Land Agreement.

This should be done by those persons completing the declaration of interest form at Appendix 3.

13.4 The rules concerning the declaration of interests by Members are set out in full in the Council's 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. Both of these documents can be found [on the Council's intranet at INSERT LINK].

13.5 The Officer to whom an interest is declared has a duty to examine that declaration in the context of the Contract or Land Agreement in question. In doing so they have to decide whether the interest declared would (or would appear to an informed observer to) affect the person's ability to represent the Council's sole interest if they participate or make

any decision (or be involved in the making of any decision) in the procurement or management of the Contract or Land Agreement.

- 13.6 A person who is considered to have a Conflict of Interest will be precluded from participating in the procurement and/or the decision and/or management of the Contract or Land Agreement until the Conflict of Interest is removed.

CSO 14 ACCEPTANCE OF GIFTS AND HOSPITALITY

- 14.1 Acceptance of gifts, money, hospitality and other inducements by any Officer, Member or other person (for example, temporary staff, Consultants and Community Representatives) involved in the procurement and/or the management of and/or any decision relating to a Contract or Land Agreement, could be viewed as accepting a bribe or corrupt practice. The general rule is that no gift, money, hospitality or other inducement should be accepted by such persons. The Council's rules on the receipt and registration of gifts, money, hospitality and other inducements are set out in the Staff Code of Conduct and in the Members Code of Conduct which can be found on the Council's intranet at [INSERT LINK].
- 14.2 Any Officer, Member or other person involved in the procurement process for a Contract or Land Agreement should be particularly sensitive to their involvement in that procurement where a person or organisation that has offered or given them a gift, money, hospitality or other inducement is involved in that procurement or may submit a tender for that Contract or Land Agreement in the future.
- 14.3 All offers of gifts, money, hospitality or other inducement should be reported in accordance with the relevant Code of Conduct referred to at CSO 14.1.

CSO 15 UNAUTHORISED DISCLOSURE OF INFORMATION

- 15.1 No Officer, Member or Consultant 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 or Land Agreement.

CSO 16 PRE-TENDER MARKET CONSULTATION

- 16.1 Prior to commencing a procurement process, Officers may consider whether it is appropriate to carry out a market consultation with a view to preparing the procurement and informing potential Tenderers of the Council's procurement plans and requirements.
- 16.2 Information obtained during market consultation may be helpful in the planning and conduct of the procurement, subject to the exercise being conducted in accordance with this CSO 16 and may be helpful, for example, to:

- 16.2.1 establish whether the goods, works or services that the Council wishes to purchase are available and within what price range;
 - 16.2.2 ascertain whether organisations are interested in tendering;
 - 16.2.3 determine the best procurement option for the Contract and the optimum Contract length;
 - 16.2.4 decide the best contractual structure, for example, how to package the Contract, and whether the use of one particular standard form of contract might be more suitable than another to secure the best outcome for the Council;
 - 16.2.5 obtain information about market innovations and feedback on the market's experience of providing similar services to other public authorities.
- 16.3 In conducting a market consultation exercise, Officers may consult with independent experts or organisations from within the relevant market.
- 16.4 When carrying out a market consultation, care must be taken to ensure that:
- 16.4.1 when consulting with the market, a range of organisations are invited to participate (for example, SMEs, larger organisations, voluntary sector where relevant);
 - 16.4.2 the subsequent procurement and the Council's requirements are not influenced by a particular organisation(s) such that the organisation(s) will be at an advantage in tendering;
 - 16.4.3 the process is fair and transparent and does not favour or disfavour particular organisations;
 - 16.4.4 all organisations that are invited to participate are treated equally and receive the same information from the Council;
 - 16.4.5 it is made clear to all organisations that are invited to participate:
 - 16.4.5.1 the extent of confidentiality they may expect in the use of any information that they provide; and
 - 16.4.5.2 the extent of the feedback they might expect at the end of the exercise; and
 - 16.4.5.3 that by participating, there is no commitment by the Council to proceed with any procurement and that if it does so, a robust procurement exercise will be undertaken which may mean that particular organisations may not be invited to submit a Tender or be awarded a Contract.
- 16.5 The Council must always avoid any suspicion or risk of allegation of bribery, corruption or bias. A detailed record must be kept of the market consultation, the organisations and individuals consulted and the responses obtained, including notes of any meetings held with names of all those present.
- 16.6 Where face-to-face meetings are carried out, the Responsible Officer should attend such a meeting accompanied by at least one other Officer.

CSO 17 OPTIONS APPRAISAL

- 17.1 For all procurements with a potential budget above the relevant Threshold the Responsible Officer must carry out a robust Options Appraisal which examines all possible ways of structuring the procurement to allow the Council to obtain the best outcome for the Council.
- 17.2 The Options Appraisal should take into account both the procurement route (for example, the use of an existing Framework Agreement, partnering with another authority or procuring a new Framework Agreement or stand alone Contract) and the procurement procedure (for example which of the procedures available under PCR 2015 are most suitable).
- 17.3 Responsible Officers should keep themselves updated with developments within their particular departmental areas or seek advice from Officers in the Commercial Services Team.
- 17.4 Guidance as to how to undertake an Options Appraisal is provided in the Procurement Toolkit and should follow the Council's Procurement Governance and Gateway Process.

CSO 18 JOINT PROCUREMENT ARRANGEMENTS WITH THIRD PARTIES

- 18.1 Joint procurement arrangements with other public bodies should be considered if such arrangements would offer the Council better Value for Money than traditional procurement arrangements. Examples of joint procurement arrangements are the use of existing Framework Agreements or Dynamic Purchasing Systems set up by another authority or the procurement of a new jointly commissioned Contract where the Provider enters into a Contract with two local authorities to provide services to each of them under the same Contract.
- 18.2 Any proposal for joint procurement must be Authorised by the appropriate Officer in the relevant Scheme of Management with approval for the relevant level of expenditure to be incurred by the Council. In considering the matter the appropriate Officer must take into account matters such as:
- 18.2.1 the lawfulness of the proposal;
 - 18.2.2 whether the Council's interests are adequately protected; and
 - 18.2.3 whether it offers Value for Money for the Council.

CSO 19 CONTRACT VALUE ESTIMATION

- 19.1 Before commencing a procurement, Officers must estimate the total value of the Contract to be procured. This will determine which Contract Standing Orders and parts of the EU Procurement Regulations apply.
- 19.2 In estimating the total value of the Contract, this must be based on the total amount

payable net of VAT and in all cases must include the value of any optional extensions.

- 19.3 A Contract must not be divided into smaller linked Contracts (disaggregated) with the intention to avoid the application of the EU Procurement Regulations or these Contract Standing Orders and where Contracts are disaggregated, the total value of all of the Contracts must be taken into account in determining the value of the Contract.
- 19.4 In the case of Framework Agreements and Dynamic Purchasing Systems, the value to be taken into account shall be the maximum estimated value of all of the Contracts envisaged to be awarded under the relevant Contract for the total period of the Framework Agreement or Dynamic Purchasing System.
- 19.5 In the case of Innovation Partnerships, the value to be taken into account shall be the estimated value of all of the research and development activities together with the supplies, services or works to be carried out at the end of the Innovation Partnership.
- 19.6 In the case of works Contracts, the estimate must take account of both the cost of the works and the value of the supplies and services necessary for executing the works that are made available to the Provider by the Council.
- 19.7 In the case of supply or services Contracts, the following rules apply:
- 19.7.1 in the case of regular supply or services Contracts or those that are intended to be renewed over a given period, either:
- 19.7.1.1 the total actual value of all of the Contracts entered into within the preceding 12 month period, adjusted to take into account estimated changes in quantity or value expected during the first 12 months after the award of the initial Contract; or
- 19.7.1.2 the total estimated value of the Contracts to be entered into in the 12 month period after the award of the initial Contract or during the financial year where that is longer than 12 months;
- 19.7.2 in the case of services Contracts:
- 19.7.2.1 where the contract period is fixed and is less than or equal to 48 months, the total of the value of the Contract over its life;
- 19.7.2.2 without a fixed term or with a term greater than 48 months, the monthly anticipated value multiplied by 48.
- 19.8 Lots
- 19.8.1 Where a Contract is divided into smaller Contracts of separate lots, the estimated value should take account of the value of all of the lot Contracts and CSO 19.8.3 applies.
- 19.8.2 In determining which of the regimes set out in the Public Procurement Regulations apply, this is based on the total value of all of the lot Contracts.
- 19.8.3 A Contract for an individual lot may be awarded without aggregating its value with other related lot Contracts where:
- 19.8.3.1 the value of that individual lot Contract is below the Lot Threshold; and
- 19.8.3.2 the total value of all related lot Contracts entered into pursuant to CSO

19.8.3.1 is less than 20% of the total value of all the relevant associated lot Contracts.

19.9 Specific rules apply to the valuation of Concession Contracts, where the Contract may have a nil value. New rules on Concession Contracts are anticipated to apply from 1 April 2016 and Officers should seek advice from the Commercial Services or Legal Services Teams if considering procuring a Concession Contract.

CSO 20 CONTRACT PACKAGING AND AGGREGATION

- 20.1 New Contracts may only proceed where the Council does not have an existing suitable Corporate Contract in place. The Director of Corporate Services will publish a list of current Corporate Contracts in the Procurement Toolkit.
- 20.2 CSO 19.3 applies with regard to disaggregating Contracts.
- 20.3 Contracts must be packaged to best ensure they provide Value for Money for the Council.
- 20.4 Responsible Officers should identify opportunities for aggregation of Contracts across all departments to ensure best Value for Money for the Council and to comply with reviews of service for the Council as a whole. Responsible Officers are required to justify their decision with regard to aggregation of Contracts on the basis of Value for Money.
- 20.5 Responsible Officers must [x weeks prior to the beginning of each financial year] provide the Director of Corporate Services with an estimate of their procurement requirements for all Contracts for the forthcoming 12 months. This will be in the form of an extract from the relevant Service Plan.
- 20.6 In order to enable the Council to provide its annual EU Statistical Return to Central Government, Responsible Officers must, in January of each year, provide the Director of Corporate Services with details of the total value of all Contracts let in the previous 12 calendar months.

CSO 21 EMERGENCY PROCUREMENT

- 21.1 In an emergency, it may not be possible to comply with the procurement procedures set out in these Contract Standing Orders (particularly in relation to advertising Contract opportunities) and in such cases, an Officer identified in CSO 21.3 may authorise an Officer to carry out an emergency procurement.
- 21.2 In an emergency procurement, Officers may carry out a procurement that is not (either in whole or in part, depending on the circumstances) in accordance with these Contract

Standing Orders.

21.3 Officers with authority to Authorise an emergency procurement are:

21.3.1 the Chief Executive;

21.3.2 the Director of Corporate Services;

21.3.3 the Director of the relevant department.

21.4 In the event that the persons set out at CSO 21.3 are not available, the Responsible Officer may use his/her own judgement based on the severity and urgency of the situation to make a decision as to whether the situation justifies an emergency procurement.

21.5 The decision as to whether a situation justifies an emergency procurement shall be made by Officers in accordance with the Council's emergency planning and business continuity procedures.

21.6 Unless the circumstances make it absolutely impossible, then a letter/email setting out heads of agreement of any emergency Contract must be signed by the Provider.

21.7 As soon as circumstances allow, the Responsible Officer must notify (in writing) the Director of Corporate Services of any Contract awarded based on the emergency procedure.

21.8 An emergency procurement should only be undertaken in **genuinely unforeseen emergency circumstances**, for example where:

21.8.1 life, property or equipment are immediately at risk;

21.8.2 standards of public health, welfare or safety are required to be re-established without delay, such as in the case of disaster relief or an act of terrorism.

21.9 Poor planning, lack of adequate time allowance for a procurement process or a wish to simply extend an existing Contract with a current Provider do not justify an emergency procurement.

21.10 Where an emergency procurement is carried out, Officers must be able to justify the decision to carry out an emergency procurement in the event of an challenge that the Council is in breach of the EU Procurement Regulations. This justification should be recorded and filed at the time that the decision is taken.

CSO 22 TENDER DOCUMENTS

22.1 Officers must ensure that all Tender Documents, including the specification and conditions of contract, is available at the point the Contract opportunity is advertised. The documentation should be uploaded onto the Council's e-tendering system and access made available immediately to potential tenderers.

22.2 The Tender Documents must include the evaluation criteria (and sub-criteria) and their

weightings and clearly explain the basis of the evaluation, making clear how the evaluation criteria will be applied, how weightings will be distributed and how the different criteria will be scored.

CSO 23 CONTRACT SPECIFICATIONS

- 23.1 The Responsible Officer must ensure all of the matters relating to the required quality, performance, industry standards, health and safety, social value (to the extent permitted by the Public Contract Regulations), monitoring the Provider's performance and other essential criteria to the successful performance of the Contract are clearly set out in the specification.
- 23.2 The specification may include matters such as methods of construction, design, tests and testing methods, inspection and acceptance criteria, quality assurance, packaging, marking and labelling and service level agreements. Specific technical specifications must be compliant with Regulations 42 and 43 of the Public Contract Regulations 2015.
- 23.3 All references to a UK standard or qualification must be accompanied by the words "or equivalent".
- 23.4 The specification should, where relevant, contain reference to appropriate Council's policies and procedures.
- 23.5 The specification will be a contractual document and should set out clearly what the Provider is required to do.

CSO 24 THE COUNCIL'S E-TENDERING SYSTEM

- 24.1 Subject to CSO 24.2, all procurements for Contracts [and Land Agreements] regardless of their value must be conducted using the Council's e-tendering system. This would include placing advertisements, requesting Quotations, issuing invitations to tender and publishing Tender Documents, communicating with tenderers in writing and submitting Tenders.
- 24.2 At certain times in complex procurements using the Competitive Procedure with Negotiation, the Competitive Dialogue or Innovation Partnership, it may be appropriate to communicate with tenderers by email or other means. In such circumstances the [Responsible Officer] will make such a decision based on the particular circumstances, including the nature of the communication and stage at which the procurement process is at. The Responsible Officer must ensure probity at all times and that records of all such communication are maintained and kept for a period of [INSERT].

CSO 25 ADVERTISING REQUIREMENTS

- 25.1 This CSO 25 sets out the advertising requirements for all Contracts.

25.2 The value of the relevant Contract should be calculated in accordance with CSO 19.

25.3 Contracts with a value below £25,000

25.3.1 For Contracts with a value below £25,000, there is no requirement to advertise the Contract opportunity publically unless a Responsible Officer decides that advertising would provide better Value for Money for the Council.

25.3.2 If a Contract opportunity is advertised, there is no requirement to also place an advertisement on Contracts Finder.

25.3.3 The procurement must be conducted in accordance with CSO 26.

25.4 Contracts with a value at or above £25,000 and below £100,000

25.4.1 For Contracts with a value at or above £25,000 and below £100,000, the Contract may be procured by any of the following means:

25.4.1.1 using an existing Corporate Contract or Framework Agreement;

25.4.1.2 seeking Quotations directly from organisations without advertising; or

25.4.1.3 advertising the Contract publically.

25.4.2 If a Contract opportunity is advertised publically or in any other way brought to the attention of a wide group of Providers, information about the contract opportunity must be placed on Contracts Finder within 24 hours of that advertisement or publication.

25.4.3 For the purposes of CSO 25.4.2, a Contract opportunity may be brought to the attention of a wide group of Providers by, for example, publishing a PIN or a notice or advertisement on the Council's website or through the e-tendering system.

25.4.4 The procurement must be conducted in accordance with CSO 27.

25.5 Contracts with a value at or above £100,000

25.5.1 For Contracts with a value at or above £100,000, there is a requirement to advertise the Contract opportunity unless an exemption to these Contract Standing Orders is obtained.

Contracts below the EU Threshold

25.5.2 Where the Contract is at or above £100,000 but below the relevant EU Threshold, there is no requirement to place a Contract Notice in the OJEU and an advertisement may be placed via the Council's e-tendering system and in addition by any other means (for example, in a trade journal).

25.5.3 Details of the Contract opportunity must also be published on Contracts Finder within 24 hours of the advertisement referred to in CSO 25.5.2.

25.5.4 The procurement must be conducted in accordance with CSO 27.

Contracts at or above the EU Threshold

25.5.5 Where the Contract is at or above the relevant EU Threshold, the Public Contracts Regulations apply and the Contract must be advertised in compliance with the requirements of the PCR 2015.

25.5.6 In order to comply with CSO 25.5.4:

25.5.6.1 subject to CSO 25.5.6, the Contract opportunity must be advertised by

way of publication of a Contract Notice in the OJEU; and

- 25.5.6.2 information about the Contract opportunity must also be published on Contracts Finder within 24 hours of sending the Contract Notice to the OJEU.

In addition, Contract opportunities may also be advertised elsewhere, though this must not be before the Contract Notice or information on Contracts Finder have been published.

- 25.5.7 When the procurement procedure to be followed is the Restricted Procedure or the Competitive Procedure with Negotiation, a PIN may be published in the OJEU instead of a Contract Notice. This may help to reduce the time taken for the procurement, but any PIN must contain all of the information set out in the PCR 2015.

- 25.5.8 The procurement must be conducted in accordance with CSO 27.

25.6 Particular rules for Framework Agreements

- 25.6.1 When advertising a Framework Agreement, the advertisement must indicate:

- 25.6.1.1 that it is a Framework Agreement that is being tendered;
- 25.6.1.2 the duration of the Framework Agreement and any justification where the term is to exceed 4 years (a Framework Agreement shall not exceed 4 years unless there are exceptional circumstances which can be justified, in particular by the subject matter of the Framework Agreement);
- 25.6.1.3 the expected maximum number of Providers to be appointed to the Framework Agreement;
- 25.6.1.4 details of any other authorities (or public bodies) that it is proposed may use the Framework Agreement (where possible, these should be named but in any event must be clearly identified);
- 25.6.1.5 the estimated total value of the Call-off Contracts to be awarded under the Framework Agreement.

- 25.6.2 The procurement must be conducted in accordance with CSO [Framework Agreements].

25.7 Information to be included on Contracts Finder

- 25.7.1 In all cases, the information to be included on Contracts Finder shall specify as a minimum:

- 25.7.1.1 the internet address at which the Tender Documents may be found;
- 25.7.1.2 a time limit by which interested parties must express an interest in quoting / tendering for the contract, which must be sufficient to allow the interested parties to respond;
- 25.7.1.3 how and to whom interested parties are to respond; and
- 25.7.1.4 any other requirements for participating in the procurement.

- 25.7.2 Information may be placed on Contracts Finder via the Council's e-tendering system or directly with Contracts Finder at [INSERT LINK].

CSO 26 PROCUREMENT PROCEDURE FOR CONTRACTS VALUED AT LESS THAN £25,000

- 26.1 This CSO 26 applies to all Contracts with an estimated value of less than £25,000.
- 26.2 The procurement may be carried out using an existing Corporate Contract or Framework Agreement but otherwise must be carried out in accordance with this CSO 26.
- 26.3 For Contracts with a value of less than £25,000, there is no requirement to advertise the Contract opportunity and Quotations may be sought directly from Tenderers (see CSO 25.3).
- 26.4 Quotations must be sought from at least three Tenderers, although Officers may seek a single Quotation in accordance with CSO 26.5.
- 26.5 Proceeding on the basis of a single Quotation should only take place where this can be demonstrated by the Responsible Officer that there is only one supplier capable of performing the Contract.
- 26.6 All Quotations must be in writing (including where CSO 26.4 applies) and must include details of:
- 26.6.1 the goods, services or works to be supplied;
 - 26.6.2 where and when they are to be supplied;
 - 26.6.3 the value of the Contract, which must include the whole life cost; and
 - 26.6.4 the terms and conditions including payment terms or a confirmation that the Provider accepts the Council's terms and conditions of contract.
- 26.7 There is no requirement to publish a Contract Award Notice.
- 26.8 The provisions relating to evaluation, Contract award, Authorisation process and notification to Tenderers, at CSOs 33 (Evaluation of Tenders, Award criteria and Probity in evaluation of Tenders), 34 (Contract Award and Authorisation Process) and 35 (Notification to Tenderers and Standstill Period) shall apply.

CSO 27 PROCUREMENT PROCEDURE FOR CONTRACTS VALUED AT BETWEEN £25,000 AND THE RELEVANT EU THRESHOLD

- 27.1 This CSO 27 applies to all Contracts with an estimated value of between £25,000 and the relevant EU Threshold.
- 27.2 The procurement may be carried out using an existing Corporate Contract or Framework Agreement but otherwise must be carried out in accordance with this CSO 27.
- 27.3 These Contracts fall into two categories:

- 27.3.1 those below £100,000; and
- 27.3.2 those above £100,000.

Contracts with a value below £100,000

- 27.4 For Contract opportunities with a value below £100,000 there is no requirement to advertise and Quotations may be sought directly from Tenderers although the Responsible Officer may decide it is appropriate to advertise the Contract opportunity (in such circumstances CSO 25.4 applies).
- 27.5 Where Quotations are sought:
 - 26.1.1 a Request for Quotations must be sent to at least three tenderers. A template RfQ can be found in the Procurement Toolkit which sets out:
 - 26.1.1.1 the rules of the procurement, such as rules for submission of Tenders, how to raise queries regarding the procurement and instructions for return of Quotations;
 - 26.1.1.2 areas to be completed by Officers, such as the Council's requirements/specification and a specified date and time for return of Tenders;
 - 26.1.2 Officers must ensure that all of information required to be set out in the RfQ template is completed;
 - 26.1.3 if fewer than three written Quotations are received the reason for this must be recorded and kept with the other documentation relating to the RfQ;
 - 26.1.4 where the Contract is for works, tenderers may be selected from Constructionline or an equivalent business directory.

Contracts with a value at or above £100,000

- 27.6 For Contracts opportunities with a value at or above £100,000, these must be advertised in accordance with CSOs 25.5, 25.6 and 25.7.
- 27.7 In all circumstances (i.e. whether advertised or not), the procurement will fall within the category of a "below EU Threshold" procurement and must comply with Regulations 109, 110, 111 and 112 of the PCR 2015 (the "Below Threshold Regime").

The Below Threshold Regime

- 27.8 The main features of the Below Threshold Regime relate to:
 - 27.8.1 advertising (see CSOs 27.4 and 27.6);
 - 27.8.2 there being a prohibition on shortlisting tenderers using a Pre-Qualification Questionnaires for all Contracts with a value below the EU Threshold for services and supplies (see CSO 27.12 below);
 - 27.8.3 the requirement to publish a Contract Award Notice on Contracts Finder (see CSO 27.12 below);
 - 27.8.4 the requirement to include particular terms in the Contract relating to payment of invoices within thirty days and to publishing data relating to compliance with

these terms (see CSO [#]).

27.9 Other than those matters set out at CSO 27.8, there are no constraints on the procurement procedures where the Contract is governed by the Below Threshold Regime, provided that:

27.9.1 the procedure complies with the EU Treaty Principles of transparency, non discrimination and equal treatment; and

27.9.2 the procedure used follows the procedure set out in the Tender Documents.

As such, the procurement may follow one of the procedures that apply to Contracts with a value at or above the relevant EU Threshold (see CSO 28) or alternative and/or amended procedures may be used.

27.10 In order to comply with the EU Treaty Principles and these Contract Standing Orders:

27.10.1 the Award Criteria and evaluation methodology to apply must be published (see CSO 27.12 below);

27.10.2 a reasonable and realistic timescale must be set for the return of Tenders and except in emergencies, Tenderers must be given a minimum of four weeks to submit their tenders (although this may be longer where the Contract is more complex or larger).

27.11 There is no requirement to operate a Standstill Period, although in certain circumstances the Responsible Officer may decide it is prudent to do so.

27.12 The provisions relating to PQQs/Suitability Questions, evaluation, Contract award, Authorisation process and notification to Tenderers at CSOs 32 (Shortlisting Tenderers – Pre-Qualification Questionnaires and Suitability Questions), 33 (Evaluation of Tenders, Award criteria and Probity in evaluation of Tenders), 34 (Contract Award and Authorisation Process) and 35 (Notification to Tenderers and Standstill Period) shall apply to all Contracts subject to this CSO 27.

CSO 28 PROCUREMENT PROCEDURE FOR CONTRACTS VALUED ABOVE THE RELEVANT EU THRESHOLD

28.1 This CSO 28 applies to all Contracts with an estimated value above the relevant EU Threshold.

28.2 The procurement may be carried out using an existing Corporate Contract or Framework Agreement but otherwise must be carried out in accordance with this CSO 28.

28.3 Contract opportunities with a value above the EU Threshold must be advertised in accordance with CSOs 25.5.5, 25.5.6 and 25.5.7.

28.4 The procurement must be conducted in accordance with the PCR 2015 and follow one of the following procedures (the relevant Regulations are included for reference):

28.4.1 Open Procedure (Regulation 27);

- 28.4.2 Restricted Procedure (Regulation 28);
- 28.4.3 Competitive Procedure with Negotiation (Regulation 29);
- 28.4.4 Competitive Dialogue (Regulation 30);
- 28.4.5 Innovation Partnership (Regulation 31).

28.5 A Pre-Qualification Questionnaire may be used in any of the procedures set out at CSO 28.5 to shortlist tenderers (see CSO 28.7 below).

28.5.1 The Award Criteria and evaluation methodology to apply must be published (see CSO 28.7 below).

28.5.2 A Contract Award Notice must be published (see CSO 28.7 below).

28.5.3 CSO [#] applies with respect to the requirement to include certain terms within the Contract.

28.6 The Responsible Officer should seek guidance from Commercial Services prior to using any of the procedures set out in this CSO 28.

28.7 The provisions relating to PQQs/Suitability Questions, evaluation, Contract award, Authorisation process, notification to Tenderers, Call-in period, Standstill Period at CSOs 32 (Shortlisting Tenderers – Pre-Qualification Questionnaires and Suitability Questions), 33 (Evaluation of Tenders, Award criteria and Probity in evaluation of Tenders), 34 (Contract Award and Authorisation Process) and 35 (Notification to Tenderers and Standstill Period) shall apply.

CSO 29 FRAMEWORK AGREEMENTS

Accessing an existing Framework Agreement

29.1 A Framework Agreement is an agreement which establishes the terms to apply to contracts to be awarded under the Framework Agreement in accordance with those terms. The contracts to be awarded under the Framework Agreement are referred to as Call-off Contracts. A Framework Agreement set up by other authorities or organisations may be set up in such a way that the Council is able to access it.

29.2 Where two or more Framework Agreements exist which are capable of fulfilling the Council's requirements, the Responsible Officer shall carry out an options appraisal in accordance with CSO 17 to select which Framework Agreement is to be used. The Responsible Officer shall keep a full written record of the Value for Money, timeliness or other relevant consideration used to select the chosen Framework Agreement.

29.3 Prior to accessing an existing Framework Agreement, the Responsible Officer must first seek confirmation from Legal Services that it is lawful for the Council to access the Framework Agreement.

- 29.4 A Call-off Contract may be awarded following a mini-competition between organisations that have been appointed to the Framework Agreement or by direct award without any further competition. In all circumstances, the procurement process to award the Call-off Contract must follow the procedure and rules set out in the Framework Agreement, particularly in relation to the award criteria to apply to any mini-competition.
- 29.5 The terms and conditions to apply to the Call-off Contract must be substantially the same as those stated in the Framework Agreement to apply. This means that there can be no major amendment to the Call-off Contract, including to the scope of the works, goods or services available. If substantial amendment is required, then it is unlikely that the particular Framework Agreement is suitable.
- 29.6 Call-off Contracts must not be of an unusual length as the Framework Agreement nears its expiry date – i.e. Officers must not enter into lengthy Call-off Contracts to avoid a new procurement.
- 29.7 Prior to accessing an existing Framework Agreement, Authority must be obtained in accordance with CSO [#]. Once Authority has been obtained to access the Framework Agreement, further Authority to enter into the Call-off Contract envisaged to be entered into at the time the Authority is given is not required. Authority will be necessary to enter into subsequent Call-off Contracts unless at the time of giving Authority to access the Framework Agreement, Authority is also given to enter into a number of Call-off Contracts under that Framework Agreement.
- 29.8 There is no requirement under the [EU Procurement Rules] or these Contract Standing Orders to publish a Contract Award Notice or provide for a Standstill Period after entering into a Call-off Contract. However, in certain circumstances it may be prudent to do so and advice from Legal Services should be sought.

Setting up a new Framework Agreement

- 29.9 When setting up a new Framework Agreement for the Council the Responsible Officer shall determine the estimated value of the Framework Agreement in accordance with CSO [#] and shall use the appropriate procurement process set out in these Contract Standing Orders based on that value.
- 29.10 All potential contracting authorities that may wish to use the Framework Agreement must be named in the Contract Notice and/or Tender Documents.
- 29.11 A Framework Agreement shall not operate for more than four years except in duly justified and exceptional circumstances, although Call-off Contracts may extend beyond the expiry of the Framework Agreement.
- 29.12 Call-off Contracts must not be of an unusual length as the Framework Agreement nears its expiry date – i.e. Officers must not enter into lengthy Call-off Contracts to avoid a new procurement.
- 29.13 Where the Framework Agreement is above the EU Threshold, there is a requirement to

publish a Contract Award Notice and to operate a Standstill Period (see CSO 29.14 below).

Particular CSOs to apply

29.14 The provisions relating to PQQs/Suitability Questions, evaluation, Contract award, Authorisation process, notification to Tenderers, Call-in period, Standstill Period at CSOs 32 (Shortlisting Tenderers – Pre-Qualification Questionnaires and Suitability Questions), 33 (Evaluation of Tenders, Award criteria and Probity in evaluation of Tenders), 34 (Contract Award and Authorisation Process) and 35 (Notification to Tenderers and Standstill Period) shall apply.

CSO 30 DYNAMIC PURCHASING SYSTEMS

- 30.1 Dynamic Purchasing Systems are used to purchase goods, works or services that are commonly available in the market.
- 30.2 As with a Framework Agreement, Officers should follow the procedure set out for the particular Dynamic Purchasing System.
- 30.3 Prior to accessing a Dynamic Purchasing System, the Responsible Officer must first seek confirmation from Legal Services that it is lawful for the Council to access the Dynamic Purchasing System.
- 30.4 When setting up a Dynamic Purchasing System, this must be in accordance with the procedure set out in the Public Contracts Regulations and the Responsible Officer should seek advice from Legal Services.

CSO 31 E-AUCTIONS

- 31.1 E-auctions may be used where permitted by the Public Contract Regulations and in circumstances where this approach will provide the Council with Value for Money.
- 31.2 E-auctions may only be used where the goods, services or works do not involve intellectual performance (such as the design of works).
- 31.3 Before entering into an E-Auction, advice and guidance must be sought from the Procurement Officer, who will liaise with the Commercial Services team as appropriate.

CSO 32 SHORTLISTING TENDERERS - PRE-QUALIFICATION QUESTIONNAIRES AND SUITABILITY QUESTIONS

- 32.1 Pre-Qualification Questionnaires (PQQs) consist of a series of questions used to reduce the number of tenderers interested in tendering for a Contract into a shortlist to be invited to submit Tenders. These are often referred to as “selection” criteria and they differ from Award Criteria in that they look at the tenderer and not at its proposal to deliver the Contract. They are also often referred to as “backward looking” (i.e. looking

at experience), rather than forward looking.

- 32.2 Evaluation criteria for assessing PQQ responses must be transparent and clear, particularly whether a question is being assessed on a pass/fail basis or is being scored/weighted. The evaluation criteria must be made available to tenderers in advance.
- 32.3 The rules relating to PQQs are different depending on whether the Contract is:
- 32.3.1 below the PQQ Threshold;
 - 32.3.2 above the PQQ Threshold (excluding Schedule 3 Services);
 - 32.3.3 for Schedule 3 services above the PQQ Threshold.
- 32.4 For all Contracts, irrespective of the rules set out in the remainder of this CSO 32:
- 32.4.1 a tenderer **must not** be invited to tender if:
 - 32.4.1.1 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; or
 - 32.4.1.2 it is subject to a mandatory exclusion set out in Appendix 5.
 - 32.4.2 a tenderer **may** be excluded from participation in a tendering process if:
 - 32.4.2.1 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 tenderer;
 - 32.4.2.2 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;
 - 32.4.2.3 it has not fulfilled obligations relating to the payment of taxes or social security contributions;
 - 32.4.2.4 it has seriously misrepresented information supplied to the Council, whether in this tender exercise or earlier; or
 - 32.4.2.5 it is not registered in a professional or trade register of the European state in which it is established; or
 - 32.4.2.6 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.
- 32.5 Where the Responsible Officer considers that any of grounds set out at CSO 32.4 may exist for excluding a tenderer from participating in a procurement, advice should be sought from the Head of Commercial Services (or the Proper Officer, if different) and Legal Services as to whether the tenderer should be excluded.
- 32.6 A summary of the rules are set out below, but Officers must use the relevant templates set out in the Procurement Toolkit and cannot deviate from those templates unless this is approved by Commercial Services.

Contracts below the PQQ Threshold

- 32.7 Under the Public Contracts Regulations, PQQs cannot be used for Contracts that fall

below the PQQ Threshold. This PQQ Threshold is not the same as the EU Threshold and is a lower threshold in some cases:

32.7.1 for services and supplies Contracts, the PQQ Threshold is the same as the EU Threshold;

32.7.2 for works and Schedule 3 services, the PQQ Threshold is set at the same level as the EU Threshold for services and supplies (and not the higher level for works and Schedule 3).

32.8 For those Contracts below the PQQ Threshold, certain “Suitability Questions” may be asked in order to shortlist tenderers, but there are limitations:

32.8.1 Suitability Questions must be relevant to the subject matter of the Contract and be proportionate; and

32.8.2 Suitability Questions cannot be asked at a preliminary stage before inviting Tenders and must be incorporated into a single stage tendering process. This means that the Tender Documents must be structured so that the Tender is submitted in two parts and the responses to Suitability Questions are assessed first and the Tenders of only those Tenderers that pass this first stage are opened and evaluated.

32.9 The Tender Documents must set out the minimum number of tenderers that will be invited to tender in the event that more than that number pass the PQQ. The minimum number can be no less than:

32.9.1 five for procurements using the Restricted Procedure;

32.9.2 three for procurements using the Competitive Dialogue Procedure, Competitive Procedure with Negotiation and the Innovation Partnership.

32.10 Where there will be a limit on the number of tenderers to be invited to tender, this must also be set out in the Tender Documents.

32.11 The Procurement Toolkit contains a series of appropriate Suitability Questions and a template Invitation to Tender (ITT) that structures the Tender requirements to meet the requirements of CSOs 32.6.2, 32.7 and 32.8.

Contracts above the PQQ Threshold (excluding Schedule 3 Services)

32.12 PQQs are permissible, although not compulsory.

32.13 PQQs may be incorporated into a single stage process using the Open Procedure, as described at CSO 32.5.2 for Contracts below the PQQ Threshold.

32.14 Compulsory use of Standardised PQQs

32.14.1 Officers must have regard to the statutory guidance and Standardised PQQs published by the Crown Commercial Service.

32.14.2 Officers may select appropriate questions from the bank of questions set out in the Standardised PQQ.

32.14.3 Further questions relating to tenderers’ technical and professional ability

may be added to the Standardised PQQs provided they are relevant and proportionate to the Contract.

- 32.14.4 The wording of the Standardised PQQs may only be changed where absolutely necessary and where this is approved by Commercial Services.

Contracts for Schedule 3 Services above the PQQ Threshold

32.15 Contracts for Schedule 3 Services are subject to the Light Touch Regime set out at CSO [#].

32.16 PQQs are permissible, although are not compulsory.

32.17 PQQs may be incorporated into a single stage process using the Open Procedure, as described at CSO 32.5.2 for Contracts below the PQQ Threshold.

32.18 There may be more flexibility in the questions to be included in the PQQ but at the time of publication of these Contract Standing Orders Officers should follow Cabinet Commercial Service guidance and use the Standardised PQQ to the extent relevant. Again, additional questions may be added where these are relevant and proportionate to the Contract.

CSO 33 EVALUATION OF TENDERS, AWARD CRITERIA AND PROBITY IN EVALUATION OF TENDERS

33.1 In this CSO 33, all references to Tenders includes Quotations and references to Award Criteria include sub-criteria of any level.

Award Criteria and evaluation process

33.2 Evaluation of Tenders is carried out by applying Award Criteria.

33.3 The Award Criteria to apply, together with their relative weightings and the methodology used to evaluate Tenders must be contained within the Tender Documents issued to tenderers at the commencement of the procurement.

33.4 Evaluation of Tenders must be open, transparent and not discriminate or favour a particular tenderer and must be carried out by applying the published Award Criteria in accordance with the published evaluation methodology.

33.5 Award Criteria must be developed in such a way that for all Contracts the successful Tender will be the one that is the most economically advantageous to the Council, where both price and quality elements are considered.

33.6 In considering price and quality, this may involve:

33.6.1 100% assessment of quality to a fixed budget;

33.6.2 100% assessment of price where a minimum quality threshold is set; or

33.6.3 any percentage split between price and quality.

- 33.7 The evaluation of price/cost must use a cost-effectiveness approach such as life-cycle costing, which provides for an assessment of the whole life cost of the Tender (for example, including (where such costs fall to the Council) maintenance costs, end of life costs, energy costs). Regulation 68 of the PCR 2015 provides more details of life-cycle costing. Advice may also be sought from Commercial Services.
- 33.8 The evaluation of quality must be based on criteria, such as qualitative, environmental and/or social aspects, that are linked to the subject matter of the Contract. This means the quality criterion must be further defined by reference to relevant quality sub-criteria. Regulation 67 of the PCR 2015 provides more details how quality may be evaluated. Advice may also be sought from Commercial Services.
- 33.9 In the Competitive Dialogue and Competitive Procedure, discussions with Tenderers may take place in successive stages and the Council may reduce the number of Tenderers participating in those discussions by applying the Award Criteria at successive stages during the procurement. Where a procurement is conducted in this way, at the final stage of the procurement, the number of tenderers invited shall be sufficient to ensure genuine competition (in so far as there are enough tenderers or Tenders).

Probity and conduct of the evaluation process

- 33.10 Whilst the Tender evaluation process is in progress, Officers, Members and any other person having information relating to that process must not disclose information relating to any Tender or to that Tender process to anybody not directly involved in the process, regardless of whether they are Council Officers, Members, residents of the borough, members of the press or Tenderers (this includes not disclosing to a tenderer information about its own Tender evaluation).
- 33.11 During the Tender evaluation process, contact with Tenderers must be strictly limited, and where contact is necessary, it must be fully documented. Contact with tenderers must be limited to matters directly related to the Tender evaluation and must be fair and transparent. Examples of where contact may be necessary are to raise clarifications or to arrange presentation meetings. Where an incumbent Provider has submitted a Tender, normal Contract management activities may continue, however care should be taken to limit the interaction to Contract management activities only and the incumbent's (or any other tenderer's) Tender and the procurement/evaluation process shall not be discussed.
- 33.12 Officers should not meet with Tenderers (including an incumbent tenderer that has submitted a relevant Tender) without another Officer being present.
- 33.13 All tenderers must be given exactly the same opportunity and evaluation of Tenders

should be carried out by the same group of people (being at least three (3)) and, to the extent that is practically possible, such persons should be independent of each other. All group analysis evaluations shall, to the extent that is practically possible, be carried out by the same group of people for each Tenderer. Particular care should be taken to avoid unnecessary social contact with fellow Officers on the evaluation panel during the Tender evaluation 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.

33.14 The Responsible Officer must be able to demonstrate that no tenderer has been given any advantage over another tenderer in respect of the evaluation of their Tender and award of a Contract.

CSO 34 CONTRACT AWARD AND AUTHORISATION PROCESS

34.1 No contract may be awarded unless:

34.1.1 all of the requirements of CSO 6.4 have been met; and

34.1.2 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.

34.2 The Responsible Officer must ensure that evidence of Authority to commence the procurement process, to award the Contract, to incur the expenditure and the budget code is recorded on the Contract file.

34.3 Provided that CSOs 34.1 and 34.2 have been complied with, Contracts may be Authorised for award by Authorised Bodies as follows:

34.3.1 where the value of Contract is below £25,000, by a Responsible Officer duly authorised under the relevant Scheme of Management;

34.3.2 where the value of the Contract is below £100,000, by the Head of Service duly authorised under the relevant Scheme of Management;

34.3.3 where the value of Contract is between £100,000 and £500,000, by the Director of the relevant department duly authorised under the relevant Scheme of Management;

34.3.4 where the value of the Contract is between £500,000 and £2,000,000, jointly by the Director of the relevant department, duly authorised under the relevant Scheme of Management together with the Chief Executive;

34.3.5 where value of the Contract is £2,000,000 or greater, by Cabinet.

34.4 Contract variations (including extensions) shall, unless otherwise provided for in the original Authority to award the Contract or the value of the variation exceeds the Authorising Body's approval to Authorise, be Authorised by the same Authorising Body that provided Authority for the original award of the Contract.

34.5 Where Authority is required for entry into a Framework Agreement, in determining who can Authorise entry into the Framework Agreement, the value of the Contract for the purposes of CSO 34.3 is the value of the Call-off Contract (or all of them where there is more than one) proposed to be entered into pursuant to the relevant Framework

Agreement.

- 34.6 Contracts for the provision of legal services or advice may not be awarded without the prior written consent of the Assistant Director of Corporate Governance or the Head of Shared Legal Services.

CSO 35 NOTIFICATION TO TENDERERS AND STANDSTILL PERIOD

- 35.1 Subject to CSO 35.2, this CSO 35 shall apply to all Contracts with a value at or above £25,000.
- 35.2 CSO 35.3 shall apply to all Contracts, irrespective of their value.
- 35.3 The Responsible Officer shall notify all tenderers that submitted a PQQ, responses to Suitability Questions, tender or Quotation in relation to any Contract of the decisions made concerning the procurement of that Contract. This includes decisions relating to the outcome of the assessment of their PQQ or responses to Suitability Questions and the evaluation of their tenders/Quotations and also decisions to not award a Contract or to recommence a procedure.
- 35.4 All tenderers should be notified of the decision in writing as soon as possible. This should be done via the Councils e-tendering system or by email. Save where the decision is to award a Contract and there is a requirement to operate a Standstill Period (in which case CSO 35.5 applies), all tenderers shall be notified of a decision in relation to any Contract in simultaneously.

Notification of award of Contract

- 35.5 Where the decision to be notified is a decision to award a Contract and there is a requirement to operate a Standstill Period (or a decision is made to do so), the notification to the successful Tenderer shall not be sent until after the expiry of the Standstill Period and provided that no challenge has been received prior to the expiry of the Standstill Period in relation to the decision.
- 35.6 The notification must be sent to any tenderer that submitted a PQQ or responses to Suitability Questions (even if they were not short-listed) as well as tenderers that submitted a tender.
- 35.7 The notification must comply with the Public Contracts Regulations and must include, where the notice is sent to a tenderer that submitted a tender:
- 35.7.1 the award criteria;
 - 35.7.2 the reasons for the decision, including the characteristics and relative advantages of the successful tenderer, the score (if relevant) of the unsuccessful tenderer and the winning tenderer and (if relevant) the reason the tenderer did not meet the technical specifications;
 - 35.7.3 the name of the winning tenderer;

35.7.4 details of the Standstill Period.

- 35.8 Where the notice is sent to a tenderer that submitted a PQQ or responses to Suitability Questions but did not subsequently submit a tender or Quotation, the notice must include the reasons why the tenderer was unsuccessful and the information at CSO 35.7 but without the “relevant advantages” referred to at CSO 37.5.2.
- 35.9 If a Tenderer requests in writing, a further debrief in relation to the award of the Contract, the Officer must give the appropriate information (not already given pursuant to CSO 35.7) within fifteen (15) days of the written request.

Call-In and Standstill Period

- 35.10 Any Contract which requires a Key Decision to be made must not be entered into for a call-In period of ten (10) calendar days from date of the Key Decision being made to award the Contract.
- 35.11 Subject to CSO 35.12, where a Contract has been awarded that has a value above the EU Threshold, the Contract may not be entered into until the expiry of the Standstill Period. The Standstill Period allows unsuccessful tenderers the opportunity to challenge the decision to award a Contract before the contract is signed.
- 35.12 Where a decision is made to award a Call-off Contract with a value above the EU Threshold, there is no requirement to operate a Standstill Period provided that the decision to enter into the Framework Agreement itself was previously subject to a Standstill Period. However, in particular circumstances the Responsible Officer may decide that it is prudent to do so (taking into account the value and nature of the Call-off Contract and any other relevant factors).
- 35.13 Where the notification of the decision to award a Contract is sent:
- 35.13.1 by facsimile or electronic means to unsuccessful tenderers, the Standstill Period ends at midnight at the end of the 10th day after sending the notification (not counting the day the notice is sent);
 - 35.13.2 by other means, the Standstill Period ends on the earlier of midnight at the end of the 15th day after sending and midnight at the end of the 10th day after the date on which the last of the unsuccessful tenderers to receive the notice receives it (not counting the day the notice is sent).

CSO 36 CONTRACT AWARD NOTICES

- 36.1 This CSO 36 applies to all Contracts with a value at or above £25,000.
- 36.2 For all Contracts (including Call-off Contracts) with a value below the relevant EU Threshold:

- 36.2.1 information about the award of the Contract must be published on Contracts Finder;
- 36.2.2 a Contract Award Notice is not required.
- 36.3 For all Contracts (excluding Call-off Contracts) with a value at or above the relevant EU Threshold:
 - 36.3.1 a Contract Award Notice is required;
 - 36.3.2 information about the award of the Contract must also be published on Contracts Finder.
- 36.4 Contract Award Notices must be sent for publication no less than thirty (30) days after the decision to award a Contract has been made.
- 36.5 Where information about the award of the Contract is required to be published on Contracts Finder, this shall be done within a reasonable time. The details should include at the very least:
 - 36.5.1 the name of the successful Provider;
 - 36.5.2 the date the Contract was entered into;
 - 36.5.3 the value of the Contract; and
 - 36.5.4 whether the Provider is an SME or a VCSE.

CSO 37 INVITATIONS TO TENDER AND REQUESTS FOR QUOTATIONS

- 37.1 This CSO 40 shall apply (as relevant) to all Contracts.
- 37.2 Where a Contract is to be procured by inviting Quotations from particular tenderers, the Responsible Officer shall invite Quotations using the template RFQ contained in the Procurement Toolkit.
- 37.3 Where a Contract is to be procured by advertising the Contract opportunity, the Responsible Officer shall use the invitation document relevant to the particular procurement procedure contained in the Procurement Toolkit. Usually this document will be an Invitation to Tender (and all references in this CSO 40 to "Invitation to Tender" shall include reference to any other relevant document that may be used to commence the procurement process).
- 37.4 The Responsible Officer shall amend the template RfQ and the Invitation to Tender to suit the particular circumstances of the Contract being procured, provided that the following provisions shall not be removed:
 - 37.4.1 that the Council is not bound to accept the lowest price or any Quotation/Tender;
 - 37.4.2 that late submissions may be rejected;
 - 37.4.3 that at its discretion, the Council may either waive or insist on strict compliance with any requirement set out in the relevant document;
 - 37.4.4 that the Council may amend any timetable or deadline included in the relevant

document;

37.4.5 that no Tender or Quotation will be considered unless it is submitted in accordance with the instructions set out in the relevant document and that this shall, in all cases, be via the Councils e-tendering system;

37.4.6 that the Council is subject to the FOIA, the EIRs and the Transparency Regulations.

37.5 The Responsible Officer shall complete the relevant sections set out in the Invitation to Tender or RfQ, specifying:

37.5.1 the latest date and time for submission of Tenders or Quotations;

37.5.2 the electronic address to which the Tenders or Quotations must to be submitted;

37.5.3 the electronic address for submission of questions and requests for clarification;

37.5.4 the Council's requirements in terms of the goods, services and/or works in sufficient detail to enable the submission of robust and competitive Tenders;

37.5.5 the award criteria (including sub-criteria), their weightings and the evaluation methodology to apply.

37.6 The Invitation to Tender or Quotation must include the all of the Tender Documents relevant to the Contract (for example, the specification and the terms and conditions of contract).

CSO 38 CLARIFICATION PROCEDURES

38.1 The Council is permitted to provide responses to clarifications raised by Tenderers.

38.2 In order to enable Tenderers to prepare their Tenders and to submit them on time, the date for submission of clarifications by Tenderers should (unless the Responsible Officer considers there are justifiable circumstances to do otherwise) be set so as to enable the Council to respond to the clarification by not less than five (5) days before the date specified for submission of Tenders.

38.3 When responding to clarifications, subject to CSO 38.4, the Responsible Officer shall respond to the clarification by responding to all Tenderers involved in the relevant procurement simultaneously in writing and provide all Tenderers with the same information.

38.4 Where a Tenderer is of the opinion that a clarification they have submitted is confidential, the Responsible Officer shall consider the relevant clarification and either agree that it is confidential or, where the Council does not agree that the clarification is confidential, give the bidder the opportunity to either withdraw the clarification or to confirm that the clarification is not confidential and accordingly that it and the response may be provided to all Tenderers.

38.5 Discussions with Tenderers after submission of a Tender and before the evaluation of the Tender with a view to clarifying ambiguities or minor errors or omissions in the Tender are permitted provided this does not discriminate against or favour a particular Tenderer and an audit trail is kept.

- 38.6 All discussions and dialogue with Tenderers during a procurement process before the award of a Contract must comply with the Public Contracts Regulations.
- 38.7 Where post-tender clarification results in a fundamental change to the Contract (for example to the nature or scope of the goods, services or works being procured or to the terms and conditions of contract), this may be in breach of the Public Contracts Regulations and the Contract must not be awarded without [legal advice].

CSO 39 AMENDMENTS TO TENDER DOCUMENTS

- 39.1 Other than where the proposed amendment to the Tender Documents would constitute a breach (actual or potential) of EU Procurement law an amendment to Tender Documents may be allowable. A breach of EU Procurement Law may arise, for example, where an amendment discriminates against or favours a particular Tenderer.
- 39.2 Before making any amendment to Tender Documents, consideration must first be given as to how significant the amendment is and what affect this may have on the scope/specification contained in the original Tender Documents, including any Contract Notice.
- 39.3 Tender Documents should not be amended less than five (5) days before the date specified for submission of Tenders (unless the Responsible Officer considers there are justifiable circumstances to do otherwise). In any event, consideration should be given as to whether to extend the deadline for submission of Tenders.
- 39.4 Amended Tender Documents must be distributed to all Tenderers simultaneously.

CSO 40 AMENDMENTS TO TENDERS SUBMITTED

- 40.1 In legal terms a Tender or Quotation is a formal offer to the Council, which the Council may accept as it stands unless the offer is withdrawn before it is accepted. The Tender Documents will usually specify that the Tender must remain open for acceptance by the Council for a set period of time – this would mean that the Tenderer could not withdraw its Tender.
- 40.2 Save where it may be permissible under EU Procurement Law (if relevant), other than in the case of genuine arithmetical or typing errors, if any Tenderer requests to alter its submitted Tender after the last date for submission of Tenders, they must be informed that they may either:
- 40.2.1 stand by their submitted Tender and accept the error or omission in their Tender and agree that any contract with the Council will reflect their submitted Tender; or
 - 40.2.2 withdraw their Tender completely (without the opportunity to submit a revised Tender).

CSO41 ARITHMETICAL ERRORS

- 41.1 All Tenders must be checked for arithmetical accuracy.
- 41.2 Where the examination of a Tender reveals an arithmetical error that would affect the price of the Contract in an otherwise compliant Tender, the Responsible Officer shall, subject to EU Procurement Law (if relevant), notify the Tenderer in writing of the error and invite the Tenderer to select one of the following options::
- 41.2.1 to amend its Tender to the arithmetically correct figure, such that the Tender remains valid at the new tendered price;
 - 41.2.2 to stand by the original tendered sum, notwithstanding the arithmetical error;
 - 41.2.3 to withdraw the submitted Tender.
- 41.3 Any notification to the Tenderer must set out the date and time by which the Tenderer must respond.

CSO 42 VARIANT TENDERS

- 42.1 Where appropriate to the nature of the Contract and subject always to the EU Procurement Rules, Variant Tenders may be invited.
- 42.2 If Variant Tenders are to be invited, this must be set out in the Contract Notice and the relevant Tender Document and the rules for submission of Variant Tenders must be clearly set out. No variant Tender may be invited or considered unless this has been provided for in the relevant Tender Documents.
- 42.3 If Variant Tenders are to be invited, the Responsible Officer must be satisfied that such Tenders will be capable of evaluation against the same evaluation criteria and using the same evaluation methodology as for standard Tenders.
- 42.4 If the Responsible Officer considers it may be beneficial to invite Variant Tenders, advice should be sought from the Commercial Services Team and Legal Services.

CSO 43 PROBLEMATIC PROCUREMENTS

- 43.1 In certain limited circumstances and subject always to EU Procurement Law, it is possible to enter into Contract negotiations or dialogue with Tenderers where an advertisement has not been published in advance.
- 43.2 The choice of procedure (Negotiated, Competitive Procedure with Negotiation or a Competitive Dialogue) and the different circumstances in which each may be used is set out in detail in the Public Contracts Regulations, but some examples are set out below:
- 43.2.1 where the Council has conducted an Open Procedure or a Restricted Procedure and no Tenders or no suitable Tenders or only irregular or unacceptable Tenders

have been submitted;

43.2.2 where the works, goods or services can only be supplied by a particular economic operator for reasons related to artistic or technical reasons or rights such as intellectual property rights, but generally this must be where no reasonable alternative exists and the absence of competition is not due to artificially narrowing of the scope of the procurement (for example, to suit a particular organisation);

43.2.3 in so far as is strictly necessary in extreme urgency brought about by unforeseen events (such events must not be attributable to the Council).

43.3 The Public Contracts Regulations set out detailed rules about the conduct of the procedure to be followed and which Tenderers must be invited to take part and the Responsible Officer should not conduct or continue a procurement envisaged by this CSO 43 without consulting Legal Services.

43.4 Notwithstanding CSO 43, any procurement conducted in circumstances envisaged by this CSO shall be conducted transparently and fairly and shall not discriminate against or favour any particular Tenderer.

CSO 44 FORMS OF CONTRACTS AND IN WRITING

44.1 Subject to CSO 44.3 below and CSO 46.1 (Contract Conditions), before any Contract is awarded, it must be:

44.1.1 in a form which has been approved by the Assistant Director of Corporate Governance or the Head of Legal Services as being suitable for the proposed purpose of the Contract; and

44.1.2 in writing.

44.2 The Contract must then either be executed under seal or signed by a person in the Council authorised under the relevant Scheme of Management to do so. Legal Services shall advise whether a Contract should be executed under seal or signed by hand.

44.3 Contracts required to be entered into in an emergency do not need be approved beforehand as being in a form which is suitable in accordance with CSO 44.1.1. They do, however, need to be confirmed both as suitable and in writing as soon as possible after the commencement of the Contract. Where possible, prior to the commencement of the Contract, written heads of agreement should be drawn up, approved by Legal Services as suitable and signed by the Council and the Provider.

CSO 45 SUB-CONTRACTORS

Council nominated sub-contractors

45.1 The nomination of a sub-contractor or supplier by the Council to a main Provider for carrying out works or services or supplying goods or materials may be unlawful under the Public Contracts Regulations and shall require written justification from the

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

Tenderer nominated sub-contractors and suppliers

45.2 Where a Tenderer proposes in its Tender to sub-contract part of the relevant works or services or supply of goods, the Tenderer shall be required to demonstrate to the Responsible Officer the arrangements through which control and management of the sub-contractor or supplier will be exerted to ensure the performance required under the Contract is achieved.

CSO 46 CONTRACT CONDITIONS

46.1 Unless the relevant Contract is a Call-off Contract under an existing non-Council procured Framework Agreement the form of Contract shall be in a form agreed by the Assistant Director of Corporate Governance or Head of Legal Services prior to any award and it must include the matters set out in this CSO 46.2.

46.2 All Contracts entered into by the Council shall:

46.2.1 require the Provider to comply with relevant obligations relating to the following Laws:

- (a) the Health and Safety at Work etc. Act 1974;
- (b) the Equality Act 2010;
- (c) the Data Protection Act 1998;
- (d) the Human Rights Act 1998;
- (e) the Freedom of Information Act 2000;
- (f) the Bribery Act 2010

or any comparable Law relating to the matters covered by such Laws;

46.2.2 contain provisions requiring the Provider to ensure that its employees, agents and sub-contractors do not unlawfully discriminate and comply with all relevant codes of practice issued by the Equality and Human Rights Commission;

46.2.3 where they involve the transfer of staff from the Council to the Provider or from one Provider to another Provider, contain provisions requiring the Provider to comply with TUPE legislation and any statutory guidance;

46.2.4 notwithstanding CSO 46.2.3 above, contain provisions relating to transitional arrangements to apply on the expiry or earlier termination of the Contract which deal with work in progress and the costs of transferring assets, data and records;

46.2.5 contain a right of access to records, information, data for the purposes of audit as and when required;

46.2.6 contain provisions requiring the Provider to inform its staff and sub-contractor's of the Council's Whistleblowing Policy and procedures;

46.2.7 contain provisions requiring the Provider to obtain appropriate insurances, which shall be determined by the Council's insurance manager.

46.3 Where appropriate, the Contract may require the Provider to provide a performance bond or parent company guarantee and the Responsible Officer should contact Commercial Services to discuss whether this is necessary (and if so, the requirement

should be set out in the Tender Documents).

- 46.4 All Contracts above £25,000 must contain provisions that:
- 46.4.1 require any payment due from the Council to the Provider under the Contract to be made no later than the end of a period of 30 days from the date on which the relevant invoice is regarded as valid and undisputed;
 - 46.4.2 any invoices for payment submitted by the Provider are considered and verified by the Council in a timely fashion and that undue delay in doing so is not to be sufficient justification for failing to regard an invoice as valid and undisputed; and
 - 46.4.3 any sub-contract awarded by the Provider contains suitable provisions to impose (as between the parties to the sub-contract):
 - (a) requirements to the same effect as those which CSO 46.4.1 and 46.4.2 above require to be imposed as between the Council and the Provider; and
 - (b) a requirement for the sub-contractor to include in any sub-contract which it in turn awards suitable similar provisions between the parties to that sub-contract.
- 46.5 All Contracts above the EU Thresholds must contain provisions enabling the Council to terminate the Contract in the following circumstances:
- 46.5.1 where the Contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with the Public Contracts Regulations;
 - 46.5.2 where the Provider was, at the time of Contract award, in one of the situations set out in the Public Contract Regulations (regulation 57(1) and 57(2)) that would have required it to be excluded from the procurement process; or
 - 46.5.3 the Contract should not have been awarded to the Provider in view of a serious infringement of the Public Contracts Regulations (see regulation 73(c) for detailed wording).
- 46.6 Those provisions to be included in Contracts pursuant to CSO 46.5 above may address the basis on which the power to terminate is to be exercisable, for example by providing for notice of termination to be given and by addressing consequential matters that will or might arise from the termination.

CSO 47 INTERNAL ADMINISTRATIVE MATTERS FOLLOWING AWARD OF CONTRACT

- 47.1 All Contracts awarded must be added to the relevant Forward Plan (where applicable).
- 47.2 Each Responsible Officer shall be responsible for:
- 47.2.1 recording details of the Contract on the Contract Register (maintained on behalf of the Director of Corporate Services); and
 - 47.2.2 archiving of the Contract by Legal Services,
- in each case in accordance with the Procurement Gateway Process.

CSO 48 RECORD KEEPING

- 48.1 For all Contracts and Dynamic Purchasing Systems with a value at or above the relevant EU Threshold the Responsible Officer shall draw up a written report which shall comply with the Public Contracts Regulations and include at least the following:
- 40.1.1 the name and address of the Council (including the name of other authorities in a joint procurement), the subject-matter and value of the Contract or Dynamic Purchasing System;
 - 40.1.2 where the Responsible Officer has limited the number of tenderers invited to tender:
 - 40.1.3 the names of the selected tenderers and the reasons for their selection;
 - 40.1.4 the names of the rejected tenderers and the reasons for their rejection;
 - 40.1.5 the reasons for the rejection of tenders found to be abnormally low;
 - 40.1.6 the name of the successful tenderer and the reasons why its tender was selected and, where known:
 - 40.1.7 the share (if any) of the Contract which the successful tenderer intends to sub-contract to third parties, and
 - 40.1.8 the names of the main Provider's sub-contractors (if any);
 - 40.1.9 for competitive procedures with negotiation and competitive dialogues, the circumstances (as set out in Regulation 26 of the Public Contracts Regulations) which justify the use of those procedures;
 - 40.1.10 for negotiated procedures without prior publication, the circumstances (as set out in Regulation 32 of the Public Contracts Regulations) which justify the use of this procedure;
 - 40.1.11 where applicable, the reasons why the Council has decided not to award a Contract or to establish a Dynamic Purchasing System;
 - 40.1.12 where applicable, the reasons why means of communication other than electronic means have been used for the submission of tenders;
 - 40.1.13 where applicable, Conflicts of Interests detected and subsequent measures taken.
- 48.2 These reports will not be required in respect of Call-off Contracts based on previously procured Framework Agreements.
- 48.3 Where some of the information set out at CSO 38.1 is included in the Contract Award Notice, this does not need to be repeated in the report but reference should be made to the information being in the Contract Award Notice.
- 48.4 The Responsible Officer shall document the progress of all procurement procedures and shall keep sufficient documentation to justify decisions taken in all stages of the procurement procedure, such as documentation relating to:
- 48.4.1 communications with tenderers and internal deliberations,
 - 48.4.2 preparation of the Tender Documents,
 - 48.4.3 dialogue or negotiation if any,
 - 48.4.4 selection of tenderers and award of the Contract.
- 48.5 The documentation shall be kept for a period of at least x years from the date of award

of the Contract.

CSO 49 CONTRACTS FOR CONSULTANCY SERVICES OR INTERIM PROFESSIONAL SERVICES

- 49.1 This CSO 39 shall apply to all Contracts for Consultancy Services or Interim Professional Services.
- 49.2 The Responsible Officer shall determine the value of the Contract in accordance with CSO 19 and shall adopt the relevant procurement procedure set out in these CSOs based on that value.
- 49.3 The Responsible Officer shall comply with the Council's Code of Practice on procuring Consultants contained in Appendix 7.
- 49.4 Contracts shall be in a form approved by the Director of Corporate Services.
- 49.5 The Council's insurance manager shall determine the minimum insurance levels required of the providers of Consultancy Services and Professional Services.
- 49.6 All providers of Consultancy Services and Interim Professional Services shall comply with CSO 13 in respect of Conflict of Interests and CSO 14 in respect of the acceptance of gifts and hospitality.
- 49.7 The Responsible Officer shall award the contract in accordance with CSO 34.

CSO 50 CONCESSION CONTRACTS

- 50.1 This CSO 50 shall apply to Concession Contracts.
- 50.2 A Concession Contract is similar to any other Contract except that the "payment" by the Council to the Provider includes a right for the Provider to exploit the Contract commercially. This right may be the sole form of payment by the Council or there may also be a financial payment. Examples of Concession Contracts are where the Provider has the right to exploit a Council owned asset, for example a leisure centre or library.
- 50.3 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.

- 50.4 Specific rules apply to the valuation and procurement of Concession Contracts and new rules on Concession Contracts are anticipated to apply from 1 April 2016. Officers should seek advice from the Commercial Services or Legal Services Teams if considering procuring a Concession Contract.
- 50.5 The Responsible Officer shall award the contract in accordance with CSO 35.

CSO 51 CONTRACT PERFORMANCE

- 51.1 Each Contract must have a named Responsible Officer appointed for the entirety of the Contract period and that Responsible Officer shall be responsible for the application of this CSO 51.
- 51.2 During the life of a Contract the Responsible Officer must ensure that appropriate systems are in place to manage and monitor Contract performance under directions from the Director of Corporate Services.
- 51.3 The specification for the Contract must contain the method by which the Contract will be monitored throughout the life of the Contract and, where appropriate, a mechanism to incentivise the Provider to perform to the standard required by the Contract.
- 51.4 In cases of poor performance, appropriate action should be taken to ensure matters are dealt with as soon as possible. This would include, where a mechanism is included in the Contract to incentivise the Provider (for example, warning notices and/or service credits), operating the mechanism.
- 51.5 Where a Contract is high risk or high value or considered to be business critical, the Responsible Officer shall:
- 51.5.1 maintain a risk register during the Contract period;
 - 51.5.2 undertake appropriate risk assessments and for identified risks ensure contingency measures are in place.
- 51.6 Additional guidance on effective Contract management and performance monitoring is provided in the Procurement Toolkit.

Termination

- 51.7 In cases of significant or persistent poor performance, the Officer should consider the rights of the Council to terminate the Contract in accordance with the provisions in the Contract and should liaise with Legal Services.
- 51.8 Contracts should be terminated by Legal Services on instructions from the Head of Service.

Assigning and novating Contracts

- 51.9 Assigning or novating a Contract allows a different Provider to take the place of the incumbent Provider and perform the obligations of the incumbent Provider under the Contract.

51.10 A Contract may only be assigned or novated with the approval of the Responsible Officer and Head of Service.

CSO 52 CONTRACT VARIATIONS AND EXTENSION

- 52.1 This CSO 52 shall apply to all Contracts with a value at or above £25,000.
- 52.2 Contract variations and extensions should, wherever possible, be priced on the basis of rates contained in the Contract.
- 52.3 In an emergency, a Contract variation or extension may be permissible pursuant to CSO 21 (Emergency Procurement). In the event of an emergency variation, the Responsible Officer shall set out details of the variation in a retrospective Exemption Report to the Director Corporate Services.
- 52.4 In certain circumstances, a Contract Award Notice may need to be published following a variation or extension to a Contract and the Responsible Officers should liaise with Commercial Services.
- 52.5 A Contract shall not be varied or extended until funding has been identified in accordance with Council's financial procedures and the variation shall require the Authorisation of the relevant Authorising Body in accordance with CSO 34 (Contract Award and Authorisation Process).
- 52.6 Contract variations and extensions must be recorded in writing and signed/sealed (as appropriate) by both the Council and the Provider.

Contract variations

- 52.7 When drafting the terms and conditions of the Contract, the Responsible Officer should consider whether a provision ought to be included to allow that Contract to be lawfully amended in the future. Such provisions must be clear, precise and unequivocal and may include price revision clauses or options, provided the scope and nature are clearly set out and the amendments would not alter the overall nature of the Contract.
- 52.8 A variation to a Contract may, for example involve a change in the requirements of the Council or an extension to the Contract period.
- 52.9 Where a variation to a Contract is proposed, that variation may be permitted without a new procurement in certain circumstances. Some examples are set out below and an exhaustive list is set out in Regulation 72 of the Public Procurement Regulations:
- 52.9.1 the Contract contains provisions that comply with CSO 52.7 above; or
- 52.9.2 the variation is not "substantial". This means that the variation must not:
- (a) render the Contract materially different in character than it was previously;

- (b) introduce conditions which, had they been part of the initial procurement procedure would have allowed or attracted other Tenderers to tender or resulted in a different Tenderer being awarded the Contract;
- (c) change the economic balance of the Contract in favour of the Provider in a manner not provided for in the Contract at the outset;
- (d) extend the scope of the Contract considerably; or
- (e) replace the original Provider (unless this was as a result of a corporate restructuring and the replacement Provider passes any PQQ or Suitability Questions or this was provided for in the Contract at the outset pursuant to CSO 52.7 above);

52.9.3 the variation is of “low value”. This means that the variation must be:

- (a) both below the relevant EU Threshold; and
- (b) below 10% of the original Contract value for goods and services and below 15% for works,

provided that the variation does not alter the overall nature of the Contract.

Contract Extensions

52.10 A Contract shall not be extended unless explicitly allowed for within the Contract Notice and the Contract.

52.11 Responsible Officers must be able to demonstrate that the extension of a Contract will offer best value to the Council and that the Contract will continue to meet the Council’s business needs.

CSO 53 FREEDOM OF INFORMATION ACT 2000, EIRs AND TRANSPARENCY REGULATIONS

53.1 The Council is subject to the FOIA, the EIRs and the Transparency Regulations and the Council may be required to disclose certain information pursuant to the FOIA, the EIRs and/or the Transparency Regulations.

53.2 In accordance with CSO 6.4.4.4 (Responsible Officer’s Duties), all information provided by tenderers should be regarded and treated as confidential subject to the FOIA, the EIRs and the Transparency Regulations.

53.3 All procurement and Contract management activities shall be carried out in accordance with the Council’s Freedom of Information Policy and Responsible Officers shall ensure that all Tenderers and Providers are aware of this (this is included in the template Tender Documents in the Procurement Toolkit).

53.4 Requests for information about the procurement process shall be dealt with by the Responsible Officer for that Contract or, if that Officer is unavailable, by a suitable Officer nominated to perform that role. Any response to the request for information should be prepared by the Responsible Officer after consulting with the Proper Officer and the information governance manager. It may also be necessary for the Officers to liaise with Legal Services, particularly where the procurement process is still in progress.

CSO 54 SERVICES COVERED BY THE LIGHT TOUCH REGIME

- 54.1 The Public Contracts Regulations list, at Schedule 3, the social and other specific services to be covered by the new Light Touch Regime (“LTR”).
- 54.2 The LTR has a much higher EU Threshold than applies for other service contracts (see Appendix 2 for the relevant EU Threshold).
- 54.3 The full list of services included in the LTR is available from Commercial Services (or at Schedule 3 of the Public Contracts Regulations) but the categories of services and some examples are set out below:
- 52.11.1 health, social and related services – e.g. domestic help, nursing staff, medical staff, staff for households, home helps, domestic services, social work services, guidance and counselling services;
 - 52.11.2 administrative social, educational, healthcare and cultural services – e.g. education and training services, organisation services for cultural events (excludes leisure services);
 - compulsory social security services;
 - 52.11.3 benefit services;
 - 52.11.4 other community, social and personal services including services furnished by trade unions, political organisations, youth associations and other membership organisation services;
 - 52.11.5 religious services;
 - 52.11.6 hotel and restaurant services – e.g. catering, meals on wheels, canteen and cafeteria services (includes school meals service);
 - 52.11.7 legal services (to the extent not excluded from the Public Contracts Regulations, although exclusions are limited);
 - 52.11.8 other administrative and government services – e.g. administrative services relating to education, healthcare, housing, etc.;
 - 52.11.9 provision of services to the community (generally central government services, foreign and diplomatic services, defence etc., rather than local government services);
 - 52.11.10 prison related services, public security services, rescue services (to the extent not excluded from the Public Contracts Regulations);
 - 52.11.11 investigation and security services – e.g. alarm monitoring services, guard services, surveillance services, patrol services (excludes CCTV services);
 - 52.11.12 international services;
 - 52.11.13 postal services; and
 - 52.11.14 other services e.g. tyre re-moulding services, blacksmiths services.
- 54.4 Services falling within the LTR are covered by Regulations 74, 75, 76 and 77 and are not subject to the full Public Contracts Regulations. This means that the Responsible Officer may determine the procedure to apply to the award of the Contract provided that it complies with the following:

- 52.11.15 a Contract Notice or PIN must be published in the OJEU;
 - 52.11.16 the procurement procedure must comply with the principles of transparency and equal treatment of Tenderers; and
 - 52.11.17 the procedure adopted must comply with the conditions for participation, procedure and time limits set out in the Contract Notice;
 - 52.11.18 all time limits imposed on Tenderers must be reasonable and proportionate.
- 54.5 The provisions relating to PQQs/Suitability Questions, evaluation, Contract award, Authorisation process, notification to Tenderers, Call-in period, Standstill Period at CSOs 32 (Shortlisting Tenderers – Pre-Qualification Questionnaires and Suitability Questions), 33 (Evaluation of Tenders, Award criteria and Probity in evaluation of Tenders), 34 (Contract Award and Authorisation Process) and 35 (Notification to Tenderers and Standstill Period) shall apply.

CSO 55 CONTRACTS FOR DISPOSAL OF COUNCIL ASSETS

- 55.1 Subject to CSO 55.4 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 in the circumstances, include a quantifiable or demonstrable benefit to the public, the community or the Council that compensates the Council for the shortfall in financial compensation it receives from the Disposal.
- 55.2 Where the Disposal of Council Assets involves a Land Agreement, 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.
- 55.3 Where the Council Property Officer determines that the most appropriate method of Disposal is by a tender process then Appendix 8 of these Contract Standing Orders shall apply.
- 55.4 Where a Disposal of Council Assets is proposed which is at less than best consideration reasonably obtainable and where 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.
- 55.5 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 liaise with Legal Services and shall be responsible for ensuring compliance with EU Procurement Law.

APPENDIX 1 - TERMS AND DEFINITIONS

In these Contract Standing Orders, the following terms have the following meanings:

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

“Authorisation” is the approval required before Quotations or Tenders may be sought or Contracts may be entered into (and “Authority” and any other derivatives shall be construed accordingly).

“Authorising Body” means a body or individual acting under properly delegated authority empowered to Authorise the 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 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 Officer” is a departmental Director

“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 Contract” is a Contract where the consideration (payment) by the Council to the Provider under the Contract includes a right for the Provider to exploit the Contract commercially. This right may be the sole form of payment by the Council or there may also be a financial 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.

“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 Standing Orders” means the rules and requirements relating to Contracts and Land Contracts set out in this document or referred to herein.

“Consultancy Services” means services relating to a specific task, advice and/or other similar services which may involve the carrying out of research and/or provision of reports to the Council.

“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).

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

“*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 for Contracts.

“*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.

“*Contracts Finder*”

“*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

“*CSO*” means Contract Standing Order.

“*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.

“*Dynamic Purchasing System*”

“*E-Auction*”

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

“*EIRs*” means the Environmental Information Regulations 2004.

“*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

“*EU Threshold(s)*” means the various thresholds used to determine the extent to which the EU Procurement Regulations apply.

“*Exemption*” a permission granted in accordance with the procedure set out at CSO 8 that all or part of these Council Standing Orders 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.

“*Forward Plan*”

“*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 an organisation or individual other than an employee of the Council providing interim or stand-in services which may also involve consultancy services.

"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.

"Land Contract"

"Laws"

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

"Lots"

"Lot Threshold"

"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

"Officer"

"OJEU"

"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.

"Order(s)"

"PCR 2015"

"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 organisation or individual supplying, or offering to supply, goods, works or services (including under a Concession Contract) 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

"Request for Quotation"

"RfQ"

"Quotation" means a written offer following a request for quote process

"Regulation"

"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.

“Suitability Questions”

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

“Tender Documents”

“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.

“Tenderer”

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

“Variant Tender”

“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) Contract Standing 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.

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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).

PLEASE NOTE AN EXEMPTION CAN ONLY BE GRANTED IN EXCEPTIONAL CIRCUMSTANCES.

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 is 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, for example, the purchase of works or art, museum artefacts, manuscripts or archive collection items;
- 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;
- 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 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 and demonstrates value for money i.e. below the required EU threshold, unless the existing contract provides for an extension;

- g) when a grant from a public body includes a recommendation as to the supplier or is time limited;
- h) 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;
- i) 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.
- j) if there are exceptional circumstances not previously identified or covered by existing policies, procedures, or the Contract Standing Orders;
- k) Purchase is to be made by auction (including online auctions) or at any public fairs or markets;
- l) Collaborative/Joint Purchasing – Where another authority/public body is acting as 'lead buyer' and provided that person(s) awarding the contract can demonstrate the arrangements comply with the requirements of value for money and other applicable legislation including, where relevant, the EU Procurement Directives. This includes any recognised wider public sector agreements including, for example, Crown Commercial Services or contracts.

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

Director of Corporate Services Decision <i>(Chief Executive if a Corporate Services decision)</i>	Approved / Not Approved	Signature	Date

SUBJECT:

LEAD OFFICER:

KEY DECISION REFERENCE NUMBER: N/A

RECOMMENDATION:

Head of Commercial Services Recommendation	Approve / Not Approve	Signature	Date

Guidance For Officers

- Where the text is in brackets [] and / or **highlighted in yellow** relevant text needs to be inserted or deleted as appropriate.
- Where the text is **written in green**, follow the instructions then delete them.

PLEASE ENSURE THAT ALL TEXT IS REVERTED TO BLACK AND HIGHLIGHTING IS REMOVED

1. EXECUTIVE SUMMARY AND PURPOSE OF REPORT

Why is this request to exclude the application of the Council's Contract Standing Orders to the process of awarding this contract being made and what is the business case to support this request? Please provide all relevant detail.

PLEASE NOTE AN EXEMPTION CAN ONLY BE GRANTED IN EXCEPTIONAL CIRCUMSTANCES

A non-exhaustive list of reasons for seeking exemption is set out in the Contract Standing Orders - Appendix 2 and must be referred to in the Exemption Report by reference to the relevant wording.

http://intranet/contract_standing_orders_-_1st_april_2012.pdf

[Insert wording]

2. DETAILS

Description of Contract: [Insert]

What are you buying - Goods/Works/Services?

What are the volume/quantities?

Current Supplier(s) (if applicable): [Insert]

Proposed Contract period -

From: [Insert]

To: [Insert]

Total Contract Value £[Insert]

3. ALTERNATIVE OPTIONS

Please describe what alternative options to an exemption have been considered, for example:

- do nothing
- or undertaking a compliant procurement exercise

[Insert wording]

4. FINANCIAL IMPLICATIONS

Please provide a breakdown of cost by financial year

[Insert wording]

Please describe how costs will be controlled over the duration of the contract

[Insert wording]

5. BUDGET SIGN OFF

Name of Budget Holder	Budget Approved	Signature	Date

6. PROCUREMENT IMPLICATIONS

Please describe how:

- value for money will be achieved over the duration of the contract, including contract management
- social value will be considered

[Insert wording]

7. LEGAL IMPLICATIONS AND STATUTORY PROVISION

Is there a statutory requirement to deliver this provision? **Yes / No**

8. HUMAN RIGHTS AND EQUALITIES IMPLICATIONS

Will this contract impact on the Councils Human Right and Equalities strategic objectives?

'Equalities Merton' aims for full and equal access to learning, employment, services and cultural life and the celebration of diversity.

[Insert wording]

9. CONSULTATION UNDERTAKEN

Please set out which Service Area and Officer have been consulted in the preparation of this report. As a minimum please ensure you have consulted with Commercial Services who will advise if further consultation is required.

Department	Comments	Date	Signed
Commercial Services	[x]	[x]	[x]
Insert details of other departments consulted	[x]	[x]	[x]
	[x]	[x]	[x]

BACKGROUND PAPERS

Council Standing Orders

[Insert other papers if required]

OFFICER CONTACTS:

[Insert details]

6. LEGAL IMPLICATIONS AND STATUTORY PROVISION

7. HUMAN RIGHTS AND EQUALITIES IMPLICATIONS

8. CONSULTATION UNDERTAKEN

BACKGROUND PAPERS

Council Standing Contract Standing Orders.

OFFICER CONTACTS:

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APPENDIX 5 – GROUNDS FOR MANDATORY EXCLUSION OF ANY CANDIDATE OR TENDERER FROM SELECTION TO TENDER 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 Tenderer on the above grounds

APPENDIX 6 – GROUNDS FOR DISCRETIONARY EXCLUSION OF ANY CANDIDATE OR TENDERER FROM SELECTION TO TENDER 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 Providers that meet any of the requirements set out in Article 45(2).

Note

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

However regulation 23(1), applies to the Tenderer, it's directors and any other person who has powers of representation, decision or control of the Tenderer 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 submit a tender and/or award to any candidate or Tenderer on the above grounds.

APPENDIX 7 – CODE OF PRACTICE ON CONSULTANTS

http://intranet/engaging_consultants

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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