

LONDON BOROUGH OF MERTON

CONSTITUTION - PART 4G CONTRACT STANDING ORDERS

Effective: 25th November 2024¹ (TBC)

Version: 4.0

Revised by: Dawn Jolley – Head of Commercial Services

Approved by: Executive Director of Finance & Digital
(July 2024)
Standards and General Purposes Committee
(TBC 7th November 2024)
Full Council (TBC 20th November 2024)

¹ Full Council approved version 3.0 on 07 July 2021

CSOs are to be reviewed and revised every three years (unless a need arises to review sooner).

CONTENTS

CSO 1.	CONTRACT STANDING ORDERS - COMPLIANCE AND TERMINOLOGY	4
CSO 2.	AMENDMENT OF CONTRACT STANDING ORDERS	6
CSO 3.	PROCUREMENT TOOLKIT	6
CSO 4.	SCHEMES OF MANAGEMENT	6
CSO 5.	EXECUTIVE DIRECTOR'S RESPONSIBILITY	7
CSO 6.	RESPONSIBLE OFFICER'S DUTIES	7
CSO 7.	SEEKING A WAIVER FROM CONTRACT STANDING ORDERS	9
CSO 8.	EXCEPTIONS TO CONTRACT STANDING ORDERS	11
CSO 9.	OPTIONS APPRAISAL	12
CSO 10.	CONTRACT VALUE ESTIMATION AND AUTHORISATION TO COMMENCE THE PROCUREMENT	12
CSO 11.	CONTRACT PACKAGING AND AGGREGATION	13
CSO 12.	FRAMEWORK AGREEMENTS	14
CSO 13.	GENERAL PROVISIONS, THE E-TENDERING SYSTEM AND COMMUNICATION WITH BIDDERS	16
CSO 14.	CONSULTANTS	18
CSO 15.	SERVICES COVERED BY THE LIGHT TOUCH REGIME	18
CSO 16.	SERVICES COVERED BY THE PROVIDER SELECTION REGIME (PSR)	19
CSO 17.	CONTRACTS UP TO £5,000	20
CSO 18.	CONTRACTS ABOVE £5,001 UP TO £25,000	21
CSO 19.	CONTRACTS ABOVE £25,001 - £170,000	21
CSO 20.	CONTRACTS ABOVE £170,001	22
CSO 21.	CONTRACT AWARD NOTICES AND PUBLISHING AWARD DETAILS	23
CSO 22.	EMERGENCY PROCUREMENT	25
CSO 23.	SHORTLISTING BIDDERS – STANDARD SELECTION QUESTIONNAIRES (SQS) AND SUITABILITY QUESTIONS	25
CSO 24.	EVALUATION OF BIDS AND AWARD CRITERIA	27
CSO 25.	CONTRACT AWARD AND AUTHORISATION PROCESS	28
CSO 26.	FORMS OF CONTRACTS AND IN WRITING	29
CSO 27.	CONTRACT CONDITIONS	30
CSO 28.	CONTRACT VARIATIONS, EXTENSION AND NOVATIONS	30
CSO 29.	CONTRACTS FOR THE DISPOSAL OF COUNCIL ASSETS	32
CSO 30.	CONFLICTS OF INTEREST	33
CSO 31.	ACCEPTANCE OF GIFTS AND HOSPITALITY	34
CSO 32.	UNAUTHORISED DISCLOSURE OF INFORMATION	34
CSO 33.	INTERNAL ADMINISTRATIVE MATTERS FOLLOWING AWARD OF CONTRACT	35
	APPENDIX 1 - DEFINITIONS	36
	APPENDIX 2 - WAIVERS FROM CONTRACT STANDING ORDERS	45
	WAIVER REPORT	47
	APPENDIX 3– UK PROCUREMENT THRESHOLDS	50

APPENDIX 4 – MERTON THRESHOLDS	52
APPENDIX 5 - RETENTION PERIODS FOR CONTRACT DOCUMENTS	53
APPENDIX 6 CODE OF PRACTICE FOR THE APPOINTMENT OF CONSULTANTS	54
APPENDIX 7 – JOINT PROCUREMENT ARRANGEMENTS WITH THIRD PARTIES	56
APPENDIX 8 – PROCEDURE FOR ACCEPTING AND OPENING PAPER BIDS	57
APPENDIX 9 – COMPLYING WITH THE UK’S INTERNATIONAL OBLIGATIONS ON SUBSIDY CONTROL	58
APPENDIX 10 – MERTON PROCUREMENT / DEMOCRATIC GOVERNANCE	61
APPENDIX 11 – GUIDANCE NOTE ON SEALING CONTRACTS	64
APPENDIX 12 – PROCUREMENT CARDS (P-CARDS)	65
APPENDIX 13 – PUBLIC SECTOR PROCUREMENT FROM OCTOBER 2024	66
APPENDIX 14 – FLOWCHART OF NOTICES UNDER THE PROCUREMENT ACT	68

DRAFT

CSO 1. CONTRACT STANDING ORDERS - COMPLIANCE AND TERMINOLOGY

- 1.1 Contract Standing Orders (“CSOs”) form part of the Constitution of the London Borough of Merton (“the Council”) and govern contracts as described below.
- 1.2 The Council is obliged under Section 135 of the Local Government Act 1972 to have standing orders that include provisions for securing competition in the award of contracts and for regulating the way tenders are invited. The Council also has an obligation to consult representatives with an interest in the Council.
- 1.3 These Orders are based on the following key principles, in line with the objectives of the Procurement Act 2023:
 - To ensure that the Council meets its statutory duty to deliver Best Value for Money, and creates healthy competition and markets for the Goods, Services and Works purchased.
 - To maximise public benefit by supporting climate, sustainability and social value objectives, and deliver our public sector equality duties, for the wider benefit of Merton’s residents and businesses.
 - To be transparent with our residents and potential suppliers about how the Council spends public money and to understand our procurement policies and decisions.
 - To ensure that public money is spent legally and fairly, and for all those involved in such spending decisions to act with integrity.
- 1.4 Under the Procurement Act 2023, the Council must have regard to the National Procurement Policy Statement (NPPS) as amended periodically by the Cabinet Office. The NPPS sets out the Government’s priorities for public procurement and applies to Local Authorities. The national priorities relate to social value, commercial and procurement delivery, and skills and capability for procurement. The Council is compliant with these priorities within our Social Value Policy, Procurement Strategy and these CSOs.
- 1.5 Each department must keep, maintain, and adhere to a Scheme of Management. The Scheme of Management will set out what level of financial authority officers in each Department have and therefore the values of procurement decisions that Officers may authorise and the values of contracts they may enter into.
- 1.6 Officers must comply with these CSOs unless a Waiver from CSOs is obtained, in advance, in accordance with [CSO 7 \(Waivers to CSOs\)](#).
- 1.7 A list of Exceptions to these CSOs are to be found [under CSO 8 \(Exceptions to Contract Standing Orders\)](#).
- 1.8 Failure by Officers to comply with these CSOs is a disciplinary offence.
- 1.9 These CSOs apply to all contracts awarded by the Council for works, services and/or supplies, regardless of the source of funding for the contract, and to the award of concession contracts and those relating to income generation. They apply equally to contracts awarded by any person, firm or body acting on the Council’s behalf subject to CSO 1.7.

- 1.10 In certain cases, the Council may enter into joint procurement arrangements, partnership agreements or shared services with other parties, including other councils.
- 1.10.1 Such agreements may contain delegations to either individual officers, joint committees or other Councils to authorise procurement strategies and/or contract awards in compliance with a third party's contract standing orders.
- 1.10.2 Procurement Board must approve any partnership agreement and/or shared services arrangement, at the outset, before being authorised by the Section 151 Officer and/or the Chief Executive.
- 1.10.3 At the sole discretion of either the Section 151 Officer or the Chief Executive, the proposed joint arrangement may be designated as requiring prior consent from Cabinet to proceed. Please see [Appendix 7](#).
- 1.11 When entering into any agreement to engage a Consultant (to carry out work on behalf of the Council) in relation to any Disposal, Contract or Property Agreement (or proposed Disposal, Contract or Property Agreement) - the appointing and/or Responsible Officer must ensure that such Consultant agrees to, and actively complies with, these CSOs.
- 1.12 Disposals and Property Agreements are dealt with specifically at [CSO 28 \(Contracts for the Disposal of Council Assets\)](#) and unless otherwise stated to the contrary, the provisions stated to apply specifically to Contracts do not apply to Disposals or Property Agreements.
- 1.13 Every Contract, Disposal and Property Agreement must comply with:
- All applicable UK and associated Laws
 - Financial Regulations. and
 - Relevant Council Policies.
- 1.14 These CSOs (whether amended or superseded or not) shall be retained for twelve (12) years from the date of publication before being considered for destruction.
- 1.15 The Section 151 Officer may from time-to-time issue practical guidance and governance as to the steps to be taken to comply with these CSOs.
- 1.16 In these CSOs reference to a post, director, department, team or the like, includes a reference to any re-designated post, director, department, team or the like from time to time who performs or substantially performs the role, function or duties of that post, director, department, team or the like, or the manager of these posts.
- 1.17 Any wholly or partly owned Merton Council company must ensure that they set up their own, specific governance arrangements, in consultation with and approved by their relevant appropriate Board.
- 1.18 Terminology and abbreviations referred to in these CSOs are set out at [Appendix 1](#).
- 1.19 These CSOs are to be read in conjunction with the Council's Procurement Toolkit that sets out operational guidance on the application of these principles and compliance with these CSOs as well as suggested templates for use during a procurement. The Toolkit is located on the Merton Hub (intranet) and is updated on

a regular basis in consultation with the Procurement Board and Departmental Procurement Groups.

1.20 Advice should also be sought from both Commercial Services and Legal Services.

1.21 In the event of any conflict between these CSOs and relevant legislation, legislation will always take precedence over the CSOs (and the Procurement Toolkit).

CSO 2. AMENDMENT OF CONTRACT STANDING ORDERS

2.1 Except to the extent permitted under CSO 2.2, these CSOs may only be amended following a recommendation of the Section 151 Officer and approval by a meeting of the full Council.

2.2 These CSOs may be supplemented, varied, or amended from time to time in respect of the Council Thresholds, the Authorisation Thresholds and to reflect the requirements of any amendments to or additional UK and/or associated Procurement Laws or other Laws with the written approval of the Leader of the Council, the Chair of Scrutiny, the Chief Executive and the Monitoring Officer. Authorisation to approve amended appendices within the CSOs, subject to the approval of the Monitoring Officer, was granted by Full Council in July 2021.

CSO 3. PROCUREMENT TOOLKIT

3.1 The Procurement Toolkit contains guidance, information, templates, tools and techniques to assist officers in undertaking Contract procurement and management activity generally and in complying with these CSOs and any relevant UK / associated Procurement Laws relating to public procurement.

3.2 In the event of any conflict between these CSOs and the Procurement Toolkit, these CSOs shall take precedence over the Procurement Toolkit.

3.3 The latest version of the Procurement Toolkit can be found on the Merton Hub.

CSO 4. SCHEMES OF MANAGEMENT

4.1 The Chief Executive and any officers authorised by the Chief Executive in accordance with the relevant Scheme of Management may authorise the entry into Contracts and Property Agreements by the Council.

4.2 The Section 151 Officer shall keep a register of all Schemes of Management and make this available on the Council's intranet.

4.3 Financial limits for authorising the awards of contracts (including variations and/or extensions) - post approval by either the relevant Departmental Procurement Group (DPG) and/or Procurement Board - are as follows:

Over £3 million	Cabinet
Above £500,000 <i>Key Decisions</i>	Chief Executive and Section 151 Officer
Up to £500,000 <i>Non-key Decisions</i>	Level 1 Managers

Up to £250,000	Level 2 Managers + named exceptions
Up to £50,000	Level 3 Managers + named exceptions
Up to £20,000	Level 4 Managers + named exceptions
Up to £10,000	Level 5 Managers + named exceptions

- 4.4 Some variation may occur from department to department. Each Departmental Scheme of Management can be found on the Council's intranet, Merton Hub. It is the responsibility of each Department to ensure that their respective Scheme of Management is reviewed regularly and kept up to date.

CSO 5. EXECUTIVE DIRECTOR'S RESPONSIBILITY

- 5.1 Executive Directors are responsible for ensuring within their department that:
- 5.1.1 these CSOs are observed and complied with.
 - 5.1.2 a Scheme of Management exists for their department which sets out which Officers may authorise entering into a Contract and/or Property Agreement.
 - 5.1.3 Contracts and Property Agreements are (as relevant) awarded/entered into and managed in accordance with these CSOs.
 - 5.1.4 documentation, accurate records, clear audit trails relating to all Disposals, Contract procurements and actions, decisions and Authorisations relating to all Contracts and Property Agreements are maintained and are available for inspection.
 - 5.1.5 the documentation, records and audit trails referred to in CSO 5.1.4 shall be retained for the periods set out in [Appendix 5 \(Retention Periods for Documents\)](#).

CSO 6. RESPONSIBLE OFFICER'S DUTIES

- 6.1 The departmental Executive Director (or alternative Officer on their behalf) shall appoint a Responsible Officer to be responsible for every proposed or actual Contract, Disposal and Property Agreement. Where no Responsible Officer has been directly appointed, the Responsible Officer shall be deemed the Budget Holder of the department from which the Contract is funded, income received (e.g. Concession Contracts, etc.) or Disposal/Property Agreement is handled.
- 6.2 The Responsible Officer shall be responsible for ensuring that the procurement of the Contract or Disposal is conducted in accordance with these CSOs. This includes where the procurement is undertaken by a consultant on behalf of the Council.
- 6.3 Without prejudice to the general requirement at CSO 6.2, the Responsible Officers shall:
- 6.3.1 before selecting the most appropriate procurement route for a Contract, carry out a robust Options Appraisal.
 - 6.3.2 Seek Value for Money and, in the procurement of a Contract and to the extent relevant, proportionate, and permitted by UK and/or any associated Procurement Law, consider the social benefits of the Contract.
 - 6.3.2.1 The Public Services (Social Value) Act 2012 places an obligation on the Council to consider the economic, social and

environmental well-being of our local area when we award contracts over Regulatory Thresholds. See further guidance within the Procurement Toolkit and the Social Value Charter.

- 6.3.3 Give due consideration to the Council's commitment to the Climate Emergency and how the Council can reduce its carbon footprint through the tenders that it lets.
 - 6.3.4 Conduct all activity in accordance with the highest standards of probity and integrity to prevent fraud and corruption.
 - 6.3.5 Fulfil the role as the project sponsor or appoint a project sponsor and appoint a project manager where relevant.
 - 6.3.6 In relation to any Contract, adhere to the Council's Procurement Governance and Gateway Process as stipulated by the Section 151 Officer and/or the Council's Monitoring Officer (see Appendix [10](#)).
 - 6.3.7 Take into account all relevant Laws and Council strategies, policies and procedures relating to equality, diversity, health & safety, Modern Slavery, Real Living Wage, social value and sustainability and their application to a procurement project.
 - 6.3.8 Be responsible for ensuring and demonstrating that appropriate statutory and stakeholder consultation has been carried out.
 - 6.3.9 Clarify the role (if any) of community groups, the voluntary sector and the business community.
 - 6.3.10 Ensure that either on appointment or engagement or (if not already done so) prior to commencing any relevant activities, all Officers, Contractors and Consultants, involved in the procurement of a Contract or a Disposal, complete a Declaration of Interest in line with the Council's Declaration of Interest policy (on the Merton Hub). This applies equally to any Community Representatives that may participate in any way in a procurement process. This is an addition to the Conflicts of Interest process which must be followed for every covered procurement as prescribed by the Procurement Act 2023. ([see CSO 29 on Conflicts of Interest](#)).
 - 6.3.11 Take into account all relevant requirements under the Local Government Transparency Code and General Data Protection Regulations (GDPR) (and any subsequent amendments or replacements to these pieces of legislation).
- 6.4 The Responsible Officer may not delegate their duty under CSO 6.2 and 6.3 and shall ensure that compliance is properly evidenced.
 - 6.5 Officers may invite community representatives to participate in the procurement process for development of specifications, assistance in selection of providers and the commentary on performance of particular contracts. The agreement of the Section 151 Officer is required for any other type of involvement where this is not covered by law or any Council policy.
 - 6.5.1 Community representatives (e.g. school representatives, but not Members) are not and may not be "Responsible Officers" for the purposes of these Standing Orders and, except where the law specifically provides otherwise, will be observers with speaking rights at the discretion of the Responsible Officer. They may advise Responsible Officers where appropriate, but all decisions will be taken by the Council within the framework of the schemes

of delegation.

- 6.5.2 Responsible Officers will ensure community representatives give a written undertaking to treat all information confidentially throughout the tendering process, and the life of the contract and sign the appropriate declaration of interests.
- 6.5.3 The Council must always avoid any suspicion or risk of potential allegation about possible bribery or corruption. An adequate record of the Community Representatives involved, consulted and the responses obtained must be kept and filed. It must include a written record of those approached and their responses, including notes of any meetings held with names of all those present. Where possible, written responses should be encouraged. If face-to-face discussion is necessary, then the Responsible Officer should attend such a meeting accompanied by another Council representative.
- 6.6 Contracts must be awarded on the basis of the Most Advantageous Tender (MAT), quotation or proposal, as determined by such criteria as are relevant to the type of goods, works or services. This will cover the optimum combination of whole life costs and benefits, including such factors as quality, Social Value, initial price, running costs and disposal costs. In short, this does not require the tender to be awarded to the lowest priced bidder.

CSO 7. SEEKING A WAIVER FROM CONTRACT STANDING ORDERS

- 7.1 For all Departments other than Finance & Digital, the Section 151 Officer (Executive Director of Finance & Digital) is authorised to grant waivers to these CSOs.
- 7.2 For Finance & Digital, the Chief Executive will consider and may grant a Waiver, where appropriate, to these CSOs when requested by those Officers.
- 7.3 The grounds for granting waivers are as follows. No waiver to these CSOs may be permitted unless the authoriser can be satisfied that:
- the circumstances of the proposed waiver are permitted under UK Procurement and associated laws, if the contract is over the relevant public procurement Threshold. and
 - there are exceptional circumstances that have led to a need to depart from the CSOs and evidence has been provided which demonstrates the waiver is necessary to achieve the Council's objectives. and
 - the nature of the market for the works to be carried out, or the services or supplies to be provided, has been investigated and it has been demonstrated that due to a lack of competition in the market, a departure from the requirements of CSOs is justifiable. or
 - the contract is for works, services, or supplies that are required in circumstances of extreme urgency and as such could not reasonably have been foreseen.
- 7.4 Where a waiver is requested, a Waiver Request must first be reviewed by the relevant Category Manager, the relevant Service Financial Adviser (SFA) and the Council's Legal Services, for comment and sign-off. The report is then to be submitted to the Head of Commercial Services (for review and approval) prior to the

request being submitted to either the Section 151 Officer, or the Chief Executive (as relevant) and must include:

- a) the Contract Standing Order number/s from which the waiver is requested.
- b) the reasons for requesting the waiver.
- c) the alternatives available if the waiver is not granted.
- d) total value of the waiver being requested (including the total of any previous waivers already granted for the provision).
- e) any potential legal implications associated with the waiver request.
- f) the financial implications of the waiver request.

7.5 No requested waiver shall be permitted to take effect until the Waiver Request has been signed as agreed by the Section 151 Officer or Chief Executive (as relevant).

7.6 A template and non-exhaustive list of circumstances where a waiver may be granted is set out in [Appendix 2](#).

7.7 No waiver may be granted that:

- is retrospective in seeking an approval to award a contract.
- requests the continued use of a contract that has ended or terminated.
- would result in a breach of UK / associated Procurement Law(s).
- requires Cabinet to approve significant contract variations.
- removes the right for Members to scrutinise the award of certain contracts.
- deviates from the Scheme of Management.
- removes the requirement for declaration of interests by any Officer or Members.

7.8 The Section 151 Officer shall maintain a register of waivers granted by department that shall refer to the relevant Contract, Disposal or Property Agreement and set out the nature of the waiver and the value of the Contract, Disposal or Property Agreement as well as include the Waiver Request. The Section 151 Officer shall report waivers monthly to the Procurement Board.

7.9 In exceptional circumstances - if the Section 151 Officer and/or the Chief Executive are not able to grant a waiver - any two (2) Officers selected from the Deputy Section 151 Officer, the Monitoring Officer or any of the Council's remaining Executive Directors may, acting jointly, consider and where appropriate, grant a waiver. Executive Directors may not sign off a waiver request for their own department.

7.10 In circumstances where a Contract has reached its natural end and the Responsible Officer requires an existing supplier to continue providing said provision, advice must be sought from Commercial Services in the first instance to follow an alternative and compliant route to market.

CSO 8. EXCEPTIONS TO CONTRACT STANDING ORDERS**DISPOSALS AND CONTRACTS NOT REQUIRING PROCUREMENT IN ACCORDANCE WITH THESE CONTRACT STANDING ORDERS**

8.1 The following are not required to be procured in accordance with these CSOs unless otherwise required by Law and no waiver shall be required under [CSO 7 \(Waivers from CSOs\)](#):

- Contracts of employment for staff.
- Contracts with agencies for the provision of individual temporary staff where the Head Human Resources, (after liaison with the Head of Commercial Services) agree that use of the vendor-managed service is not appropriate.
- Land Transactions (which solely relate to interest in land).
- Arrangements for the engagement of counsel for particular instructions, and certain other legal services (subject always to UK and/or associated Procurement Law), where the Monitoring Officer considers the instructions do not require a procurement exercise and can be commissioned outside of any current framework agreement for those services. Such instructions are to be reported by Legal Services to Procurement Board on a quarterly basis.
- 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.
- Contracts entered into by school governing bodies that operate under the relevant Scheme of Management, unless otherwise stated in the relevant Scheme of Management.
- Orders placed under Existing Contracts or existing Dynamic Purchasing Systems, Dynamic Markets or Electronic Auctions (provided they are placed in accordance with the requirements set out or otherwise referred to in those Contracts).
- Contracts for the provision of packages of social care, educational and welfare, services to individual clients, where the aggregate value of such contracts does not exceed the UK Public Procurement Threshold for Social and other specific services. (see [APPENDIX 3](#))
- Contracts that ensure continuity of care of vulnerable persons in accordance with the Care Act 2014, Children Act 1989 and any superseding legislation.
- where the provider has signed a pre-placement agreement with the Council for residential or nursing care.
- the engagement of professional expert witnesses in contentious matters. and
- the appointment of independent investigators, arbitrators, mediators, and facilitators.

8.1.1 Entering into a grant agreement may not be subject to these CSOs in full and advice should be sought from Commercial Services and Legal Services.

8.1.2 None of the exceptions above may be utilised unless the Officer has Authority in accordance with the scheme of delegation.

8.2 Disposals of Property Assets shall be carried out in accordance with [CSO 28](#)

[\(Contracts for the Disposal of Council Assets\).](#)

CSO 9. OPTIONS APPRAISAL

- 9.1 Prior to the procurement of any Contract (be it for the provision of Goods, Services or Works) with a value above the Upper Threshold, the Responsible Officer must carry out an Options Appraisal to determine the best way of structuring the procurement to achieve the best outcome for the Council and the most appropriate procurement process. Guidance on how to undertake the Options Appraisal can be found in the Procurement Toolkit.
- 9.2 This should be presented, in the form of a “Gateway 1” report, if applicable or as an appendix and/or background paper to the Corporate Decision Report. The report will then be reviewed by the appropriate Departmental Procurement Group (DPG) (for contracts between £170,000 - £3 million and regarded as low risk) and/or Procurement Board (for contracts with a value of £3 million or greater. or those projects regarded as having a high risk) for approval.

CSO 10. CONTRACT VALUE ESTIMATION AND AUTHORISATION TO COMMENCE THE PROCUREMENT

- 10.1 Before commencing any procurement, Officers must estimate the total value of the Contract to be procured (excluding VAT). Also See [CSO 11 \(Contract Packaging and Aggregation\)](#).
- 10.2 The total value of the Contract must be based on the total amount payable (excluding VAT), over the full life of the Contract to the provider (regardless of where the funding is coming from, or whether or not it is a joint contract with another contracting authority). In all cases, it must include the value of any possible extensions during the period of the Contract. The relevant rate of VAT to be applied needs to be highlighted as this will be factored into public procurement Thresholds and Notices.
- 10.3 In the case of contracts without a fixed term, the estimated value shall be the monthly value, multiplied by 48 (excluding VAT). Additional guidance is to be sought from both Commercial Services and Legal Services to ensure compliance with UK and/or associated Procurement Laws.
- 10.4 A Contract is not to be divided into smaller related Contracts (disaggregated) with the intention to avoid the application of UK and/or associated Procurement Laws or particular CSOs. Where Contracts are disaggregated into Lots, the total value of all of the Contracts must be taken into account in determining the value of the Contract.
- 10.5 In the case of setting up a Framework Agreement, or Contracts to set up Dynamic Purchasing Systems (DPS) under the Procurement Contracts Regulations 2015 and prior to the commencement of the Procurement Act 2023, 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 Framework Agreement / DPS for the total period of the Framework Agreement / DPS.
- 10.5.1 Officers must consult the Head of Commercial Services and the Head of Law – Procurement and Information Governance, prior to seeking to set up any Framework Agreement or DPS. Please also refer to [CSO 12](#).

FRAMEWORK AGREEMENTS

10.6 Lots

- 10.6.1 Where a Contract is (or may be) divided into smaller Contracts (Lots), the estimated value should take account of the value of all of the separate Lots, although in certain circumstances relevant Procurement Laws may permit a different methodology.
- 10.6.2 Where a Contract's estimated value is likely to be below the relevant public procurement Threshold, Officers may consider the use of Lots in a contract to allow for small and medium-sized enterprises and/or local suppliers to bid for such contracts.
- 10.6.3 Officers must seek advice from Commercial Services and Legal Services when seeking to procure a Contract comprising of Lots.

10.7 Concession Contracts (and Contracts with nil value to the Council)

- 10.7.1 Specific rules apply to the valuation of Concession Contracts, where the Contract may have a nil value in terms of how much the Council pays the Provider, but this may not be a nil value when considered under the rules of the Procurement Act 2023. The value of concession contracts shall therefore be the estimated total turnover of the concession generated over the duration of the contract, exclusive of VAT. Also see [Appendix 9 \(Complying with the UK's International Obligations on Subsidy Control\)](#)
- 10.7.2 A contract will be considered to be a Concession Contract where:
- at least part of the consideration for that supply is a right for the supplier to exploit the works or services, and/or
 - under the contract the supplier is exposed to a real operating risk.
- 10.7.3 Officers should seek advice from both Commercial Services and Legal Services, as well as requiring approval from Procurement Board, when considering procuring and prior to awarding a Concession Contract.

10.8 Council's Commitment to Carbon Reduction

- 10.8.1 On 10 July 2019, the London Borough of Merton passed a motion to declare a climate emergency and set an ambitious carbon reduction target to make Merton the Council carbon neutral by 2030 and Merton the borough carbon neutral by 2050.
- 10.8.2 Officers should seek approval from Procurement Board when considering procuring any contract that has any carbon implications/impacts, irrespective of the value of the contract.

CSO 11. CONTRACT PACKAGING AND AGGREGATION

- 11.1 A procurement process for a new Contract may only proceed where the Council does not have a suitable existing Contract in place. Commercial Services will, in conjunction with Responsible Officers, publish (and periodically update) via the Council's e-Tendering System, a Contracts Register.

- 11.2 Contracts must be packaged to ensure they provide Best Value for Money for the Council. Schedule 3 of The Procurement Act requires the Council to estimate the value of each contract, including the value of all lots within any overarching contract.
- 11.3 Responsible Officers, in conjunction with Category Managers, should consider whether Aggregation of Contracts across departments offers Best Value for Money for the Council and comply with service reviews for the Council as a whole. Responsible Officers are required to explain their decision regarding Aggregation or Disaggregation of Contracts across departments on the basis of Best Value for Money. This must be contained within the procurement strategy report.
- 11.4 **Aggregation:**
- 11.4.1 Responsible Officers must aggregate contracts which have similar characteristics or are intended for renewal within a given time period, in the following way:
- Contracts of the same type*
- 11.4.2 The calculation of the estimated contract value should be based on the total value of successive contracts (including variations and extensions) of the same type, awarded anytime during the course of the preceding 48 months. This should be adjusted, where possible, to take account of changes in quantity or value which could occur in the course of 12 months following the award of a new contract.
- Contracts for renewal within a certain time period*
- 11.4.3 The calculation of the estimated contract value should be based on the total estimated value of successive contracts (including variations and extensions) awarded during the preceding 48 months (following the first delivery of the renewal).
- Works contracts*
- 11.4.4 In relation to a Works project the values of any services and supplies contracts, which are necessary for the completion of the works, must be included in the calculation of the estimated contract value.
- 11.5 If it is not possible to estimate the value of a contract in accordance with the requirements in Schedule 3 of the Procurement Act, (for example because the duration of the contract is unknown), then it would be considered that the value of the contract is more than the relevant public procurement Threshold amount for that type of contract.

CSO 12. FRAMEWORK AGREEMENTS

12.1 A Framework Agreement is a form of Contract and as a rule, these CSOs shall apply (as appropriate) to accessing any existing Framework Agreement (be it let nationally, regionally, or locally) and to the establishment of any new Framework Agreement by Merton Council. The Procurement Act also introduces a new type of Framework called an 'Open Framework' as set out in CSO 12.6.

12.2 Accessing an existing Framework Agreement

A Contract of any value may be procured using a suitable existing Framework Agreement

(set up by the Council or another Contracting Authority) - provided that the Framework Agreement has been procured in accordance with UK and/or associated Procurement Law - and it is lawful and appropriate (in respect of scope, value, terms and eligibility to access) for the Council to use it. Responsible Officers should seek advice from Commercial Services, and if necessary, Legal Services.

12.2.2 Prior to utilising an existing Framework Agreement:

- the Head of Commercial Services (or their nominee) shall approve using such Framework Agreement. and
- the Responsible Officer must seek written confirmation from Commercial Services that it is permitted and appropriate for the Council to access the Framework Agreement.
- Commercial Services will keep an up-to-date list of all current and past framework agreements reviewed and approved for use by Merton Council.

12.3 Setting up a new Framework Agreement

12.3.1 When considering 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 10 \(Contract Value Estimation and Authorisation to Commence the Procurement\)](#) and must seek advice from both Commercial Services and Legal Services, as well as approval from Procurement Board.

12.3.2 Responsible Officers may wish to consider permitting other contracting authorities to use the Framework Agreement and if so will need to ensure the Tender Documents and Framework Agreement are structured to enable this.

12.3.3 All Framework Agreements (and their Call-off Contracts) must comply with UK / associated Procurement Law.

12.4 Call-off Contracts

12.4.1 Call-off Contracts to be entered into pursuant to a Framework Agreement must be awarded in accordance with the rules set out in the Tender Documents and/or the Framework Agreement (as relevant). This includes in relation to the Terms and Conditions to apply.

12.5 Dynamic Purchasing Systems

- 12.5.1 A Dynamic Purchasing System (DPS) may not be established after the implementation date of the Procurement Act 2023.
- 12.5.2 Before the operational date of the Procurement Act, a DPS may not be established without the prior approval of Procurement Board and the expressed authorisation of the Head of Commercial Services and the Monitoring Officer and/or the Head of Law – Procurement and Information Governance or nominated officers.
- 12.5.3 Any DPS in use prior to the implementation date of the Procurement Act may continue until they reach the end of their term but no longer than 23rd February 2029.

12.6 Open Frameworks

- 12.6.1 An Open Framework is a scheme of successive frameworks that together make up an Open Framework. It allows new suppliers to be added at set times during its lifetime. This is new under the Procurement Act and Officers must refer to Commercial Services if they wish to include this in the Procurement Strategy for their procurement. Further guidance can be found in the Procurement Toolkit.

12.7 Dynamic Markets

- 12.7.1 Under the Procurement Act 2023, the Council is permitted to establish arrangements for the purpose of awarding public contracts by reference to suppliers' participation in the arrangements. Officers must seek advice from Commercial Services if they wish to include this in their procurement strategy during a procurement project. Further guidance can be found in the Procurement Toolkit.

CSO 13. GENERAL PROVISIONS, THE E-TENDERING SYSTEM AND COMMUNICATION WITH BIDDERS

- 13.1 The procurement of Contracts of any value and the Disposal of Council Assets shall at all times, be subject to the relevant Law.
- 13.2 In addition to the general principle at CSO 13.1, public Contracts with a value at or above £30,000 (including VAT) are subject to UK and/or associated Procurement Laws with which Officers must comply. This includes Concession Contracts. Please see "Regulated Below-Threshold Contracts" definition and refer to the Procurement Toolkit for further information.
- 13.3 The Council Thresholds and the public procurement Thresholds are set out in [Appendix 3 \(UK Procurement Thresholds and SQ Thresholds\)](#) and [Appendix 4 \(Council Thresholds\)](#).
- 13.4 Save with respect to Contracts excluded from CSOs in line with [CSO 08](#):
- 13.4.1 all Contracts above £5,000 (excluding VAT) must be procured using the e-Tendering System.

- 13.4.2 the completed Contract must be added to the Existing Contracts Register.
- 13.4.3 [CSO 27 \(Contract Conditions\)](#) applies with respect to the requirement to include certain Terms and Conditions.
- 13.5 Subject to CSO 13.4 and [CSO 28](#), all procurements for Contracts and Disposals of Property Assets regardless of their value must be conducted using the e-Tendering System. This includes placing advertisements, requesting bids, issuing Invitations to Tender (and or Requests for Quotes) and publishing other Tender Documents, communicating with Bidders and the submitting bids.
- 13.6 Unless specified elsewhere within these CSOs, all bids must be submitted to the Council via the e-Tendering System. In a very limited number of circumstances, it may be appropriate to require Bidders (in addition to submitting their bids via the e-Tendering System) to submit their bids or offers in hard copy (see [Appendix 8](#)).
- Under no circumstances may a late tender be accepted or opened without the written authorisation of the Head of Commercial Services or the Monitoring Officer or the Head of Law – Procurement and Information Governance or nominated officers.
 - Where genuine technical difficulties arise and the fault lies with the e-Tendering System, Bidders may be asked to submit their bid via the messaging section of the e-Tendering portal and/or a designated email address, once prior agreement has been sought by the Head of Commercial Services or the Monitoring Officer or the Head of Law – Procurement and Information Governance or nominated deputy Officers.
 - If the e-Tendering System is unavailable and the process described above is to be used, all bids must be opened in the presence of 2 (two) officers and a record made of the exact time and date each bid was opened. An audit trail must be sought from the system provider as to the nature of the technical difficulty. Under no circumstances may bids be sent to Officer email accounts without the prior written authorisation of either the Head of Commercial Services or Monitoring Officer or the Head of Law – Procurement and Information Governance or nominated deputy Officers.
 - In the unlikely event that the e-Tendering portal is not accessible at all:
 - Where the system is not accessible for one day or less, an extension to the deadline for the receipt of quotes and/or tenders is to be granted and notification issued to all providers via a designated email address. Details of the extension are to be later added onto the portal for audit purposes.
 - Where the system is not accessible for a period of more than one day, an alternative arrangement will be set up by the Head of Commercial Services in conjunction and agreement with the Head of IT Service Delivery and notification issued to all providers via a designated email address. Details of the extension are to be later added onto the portal for audit purposes.
- 13.7 In certain complex procurements or Disposals and/or following an award decision (but prior to formal entry into the Contract), it may be necessary to communicate

with Bidders. Such communications must be recorded in writing (preferably via the e-Tendering system) and/or minuted. and the decision to do so must be made by the Responsible Officer post discussion with the Head of Commercial Services and/or the Head of Law – Procurement & Information Governance. Officers must not meet with Bidders in person unless at least one other Officer is present.

CSO 14. CONSULTANTS

- 14.1 Where the Contract is for the appointment of a Consultant, these CSOs shall always apply. This includes (without limitation) that the procurement procedure to be followed shall be as set out at [CSO 16 \(Contracts up to £5,000\)](#), [CSO 17 \(Contracts above £5,001 up to £25,000\)](#), [CSO 18 \(Contracts above £25,001 up to £170,000\)](#) or [CSO 19 \(Contracts above £170,001\)](#) as appropriate, depending on the estimated value of the Contract.
- 14.2 Without prejudice to the general provision at CSO 14.1, the Responsible Officer shall ensure that:
- 14.2.1 the procurement complies with the Council's Code of Practice on procuring Consultants ([Appendix 6](#)).
 - 14.2.2 the Contract is in a form approved by the Head of Commercial Services (and [CSO 26.1.1 \(Forms of Contract and in Writing\)](#) shall not necessarily apply). that the Consultant complies with IR35 legislation and, where necessary, on a case-by-case basis, the Responsible Officer must seek guidance from the Head of HR with regards to whether or not the 'off-payroll working rules' apply.
 - 14.2.3 the Council's Officer responsible for insurance matters shall determine the minimum insurance levels required. and
 - 14.2.4 any Contract with the Consultant shall require the Consultant to comply with [CSO 29 \(Conflicts of Interest\)](#), [CSO 31 \(Acceptance of Gifts and Hospitality\)](#) and any other relevant policies which must be specified in the [contract](#).
- 14.3 Where the Council has an arrangement in place for professional services and / or consultancy, this must be used in the first instance. If neither a procurement process nor the Council's arrangement for professional services is deemed appropriate for the nature of the professional services / consultancy required, a waiver of CSOs will be required [CSO 7 \(Waivers from Contract Standing Orders\)](#).

CSO 15. SERVICES COVERED BY THE LIGHT TOUCH REGIME

- 15.1 The Procurement Act 2023 defines a 'Light Touch Contract' as a contract that is wholly or mainly for the supply of services whereby suppliers from outside the United Kingdom are unlikely to want to compete for these contracts. the services are supplied for the benefit of individuals (for example, health or social care services) or the community generally. the proximity between the supplier and the recipient of the services is necessary or expedient for the effective and efficient

supply of the services.

- 15.2 A list of relevant CPV codes that determine the types of contracts eligible for Light Touch Regime (LTR), must be referred to by the Responsible Officer. Guidance must be sought by Commercial Services if this type of contract is to be selected.
- 15.3 The LTR has a much higher UK Public Procurement Threshold than applies for other service contracts (See [Appendix 3](#) for current thresholds).
- 15.4 A Contract for services that fall within the LTR is still a Contract and as such these CSOs apply (as appropriate) to entering into any Contract for such services.

CSO 16. SERVICES COVERED BY THE PROVIDER SELECTION REGIME (PSR)

16.1 The Health and Care Act 2022 introduced a new procurement regime for selecting providers of health care services in England: The Provider Selection Regime (PSR). The Regime came into force 1st January 2024 and replaces:

- The Public Contracts Regulations 2015, when procuring healthcare services
- The National Health Service (Procurement, Patient Choice and Competition) Regulations 2013.

16.2 The PSR must be used by the Council when procuring healthcare services. Healthcare services that are in scope of the PSR are those that:

- Provide treatment, diagnosis or prevention of physical or mental health conditions such as hospital, community, mental health, primary health care, palliative care, ambulance and patient transport.
- Substance use treatment services, sexual and reproductive health, and health visitors arranged by the Council.

Goods, works and services that are not in scope are:

- Goods / medical or healthcare equipment
- Social care services
- Non-health care services (capital works, business consultancy etc).

16.3 The PSR allows the Council to award a contract comprising of a mixture of in-scope healthcare services and out-of-scope goods, services and works. The regime applies when the in-scope healthcare services are in England and the healthcare element is greater than 50% of the contract value (there is no contract value threshold) and the Council is of the view that the out-of-scope goods or services could not reasonably be supplied under a separate contract.

16.4 There are five (5) processes that can be utilised under the PSR (three (3) of which are Direct Award processes, the most suitable provider process, and the competitive process). Responsible Officers should seek guidance from Commercial Services when designing the Options Appraisal if the PSR is to be used.

- 16.5 Officers are reminded that whilst the PSR provides greater flexibility and allows relevant authorities to award contracts without using a competitive process, where appropriate, it therefore requires greater transparency to ensure this flexibility is used appropriately. Further guidance can be sought from Commercial Services and Legal Services.
- 16.6 Responsible Officers are responsible for keeping robust record keeping: detailed justifications for decisions especially on the Direct Award processes, filing relevant documents, recording and documenting evaluations and outcomes. Conflict of Interest assessments must also be conducted throughout the process. A list of all contracts that were procured using PSR and which process was used, must be published annually. Commercial Services will do this in conjunction with Responsible Officers.

CSO 17. CONTRACTS UP TO £5,000

- 17.1 This CSO applies to all Contracts with an estimated value of up to £5,000 (excluding VAT). Please also see [CSO 10.7](#) (Concession Contracts (and Contracts with nil value to the Council)) with regards to estimating the value of such contracts.
- 17.2 For all such Contracts:
- 17.2.1 the procurement may (where it is lawful to do so) be carried out using a suitable Existing Framework Agreement but otherwise must be carried out in accordance with this CSO.
- 17.2.2 there is no requirement to advertise the Contract opportunity publicly unless a Responsible Officer decides that advertising would provide better Value for Money for the Council.
- 17.2.3 Responsible Officers may issue either a Quick Quote or a Request for Quote (RFQ) inviting Bids from any number of Bidders but preferably three (3). Where deemed appropriate, the Responsible Officer may directly award the Contract by approaching a single (1) Bidder. If a decision is made to directly award the Contract, the Responsible Officer must be satisfied (and keep a record) that this demonstrates Best Value for Money for the Council and provide justification for why only 1 quote could be sought.
- 17.2.4 where possible, the Responsible Officer should seek a Quote from a local supplier (i.e. an organisation based in the Borough of Merton) who meets due diligence requirements.
- 17.2.5 all Bids or Quotes must be submitted in writing via email using an authorised Merton council email account.
- 17.2.6 the Council's Purchase Order (PO) Terms and Conditions must be used as the minimum basis for the agreement (refer to the Procurement Toolkit for the latest copy of these terms).
- 17.2.7 all documents related to the Quick Quote or Bid must be stored in an appropriately named section of the relevant team or department's SharePoint site.

- 17.2.8 if quotes come in above £5,000 (excluding VAT), the process in CSO 18 and CSO 19 must be followed as per the Contract Standing Orders (i.e. the request for quote will need to be advertised and published on the London Tenders Portal) and the process of quotes by email must be abandoned, with any Bidders appropriately notified. Further guidance can be found in the Procurement Toolkit.

CSO 18. CONTRACTS ABOVE £5,001 UP TO £25,000

- 18.1 This CSO applies to all Contracts with an estimated value above £5,000 up to £25,000 (excluding VAT). Please also see [CSO 10.7](#) (Concession Contracts (and Contracts with nil value to the Council)) with regards to estimating the value of such contracts.
- 18.2 For all Contracts:
- 18.2.1 the procurement may (where it is lawful to do so) be carried out using a suitable Existing Framework Agreement but otherwise must be carried out in accordance with this CSO.
 - 18.2.2 Bids should, as best practice, be sought by issuing either a Quick Quote or a Request for Quote (RFQ) to at least three (3) Bidders, where possible, at least one (1) quote from a local provider/ SME who meets due diligence requirements, where appropriate. Officers may approach a single (1) Bidder in accordance with CSO 18.3.
 - 18.2.2 all Bids must be submitted in writing via the Council's e-Tendering portal (including where CSO 18.3 applies).
 - 18.2.2 Once awarded, the details of the Contract must be published on the Council's Contracts Register in-line with the Local Government Transparency Code 2015 (and any subsequent amendments or replacement legislation).
- 18.3 The Responsible Officer may approach a single (1) Bidder provided the Responsible Officer can demonstrate (and keeps a record of the fact) that there is only one Provider capable of performing the Contract.

CSO 19. CONTRACTS ABOVE £25,001 - £170,000

- 19.1 This CSO applies to all Contracts with an estimated value above £25,000 up to and including £170,000 (excluding VAT). Please also see [CSO 10.7](#) (Concession Contracts (and Contracts with nil value to the Council)) with regards to estimating the value of such contracts.
- 19.2 For all Contracts:
- 19.2.1 the procurement may (where it is lawful to do so) be carried out using an Existing Framework Agreement but otherwise must be carried out in accordance with this CSO.
 - 19.2.2 the procurement must be conducted in accordance with UK and/or associated Procurement Laws.
 - 19.2.3 selection of Providers using a Selection Questionnaire (SQ) is not permitted.
 - 19.2.4 where the Contract is for works and falls below £170,000, Bidders may

- be selected from a nationally accredited provider directory.
- 19.2.5 there is no requirement to advertise the Contract (although the Responsible Officer may choose to do so) and a Request for Quotation (RFQ) may be issued to Bidders without advertising.
- 19.2.6 if the Contract is not advertised, RFQs must be issued to at least three (3) Bidders, and where possible, one (1) of these three (3) should be a local supplier (i.e. an organisation based in the Borough of Merton) who meets the appropriate due diligence requirements.
- 19.2.7 where the Contract is advertised, the relevant procurement notice must also be published on the Government's online procurement platform (Find a Tender Service) (via the Council's e-Procurement System).
- 19.2.8 all Bids must be submitted in writing via the Council's e-Tendering portal.
- 19.2.9 If fewer than three (3) written Bids are received the reason for this must be recorded and retained.
- 19.2.10 Once awarded, the details of the Contract must be published on both the Council's Existing Contracts Register in-line with the Local Government Transparency Code 2015 (and any subsequent amendments), as well as the Government's online procurement platform (Find a Tender Service) in line with UK procurement legislation requirements.

CSO 20. CONTRACTS ABOVE £170,001

- 20.1 This CSO applies to all Contracts with an estimated value above the Upper Threshold of £170,001. Please also see [CSO 10.7](#) (Concession Contracts (and Contracts with nil value to the Council)) with regard to estimating the value of such contracts.
- 20.2 For all Contracts:
- 20.2.1 the procurement may (where it is lawful to do so) be carried out using a suitable Existing Framework Agreement but otherwise must be carried out in accordance with this CSO.
- 20.2.2 the procurement must be conducted in accordance with relevant UK and/or associated Procurement Laws.
- 20.2.3 all Contracts must be advertised as detailed below.
- 20.2.4 Once awarded, the details of the Contract must be published on both the Council's Contracts Register as well as the Government's online procurement platform (Find a Tender Service or any other subsequent replacement) as required by the Procurement Act 2023 and the Procurement Regulations 2024.

Contracts below the relevant UK Procurement Threshold

- 20.3 Where the value of the Contract is below the relevant UK Procurement Threshold:
- 20.3.1 An advertisement must be placed on the Council's e-Tendering System (a published Notice may be required during the tender, please refer to the Procurement Toolkit for further details) and on the Government's online procurement platform (Find a Tender Service) if it is a Regulated

Below-Threshold Contract:

- 20.3.2 Selection of Providers using a Selection Questionnaire (SQ) is not permitted.
- 20.3.3 A construction industry specific selection questionnaire may be used (the Common Assessment Standard) instead of the Cabinet Office's Standard SQ for construction or works Contracts.
- 20.3.4 For more straightforward works Contracts and Below Threshold Contracts, a simple approach based on the standard SQ may be used.

Contracts above the relevant UK Public Procurement Thresholds

20.4 Where the value of the Contract is at or above the relevant UK Procurement Threshold:

- 20.4.2 selection of Providers using the Standard SQ is permitted.
- 20.4.2 save where the Contract is for services that fall into the LTR category, the procurement must follow one of the procedures set out in the Procurement Act 2023 or if commenced prior to the operational date of that Act, then a procedure set out in the Public Contracts Regulations 2015.

The Responsible Officer must seek advice from Commercial Services and/or Legal Services prior to determining which route to follow.

20.5 The process under the Procurement Act 2023 regarding Assessment Summaries, notices and standstill periods must be observed. The Council's own process regarding call-in must also be observed. For further detail, see Appendix 10.

CSO 21 CONTRACT AWARD NOTICES AND PUBLISHING AWARD DETAILS

21.1 The requirements for publishing Notices relating to the award of Contracts is dependent on the legal framework used to procure the Contract. Record keeping is paramount to determine when the procurement started as this will dictate which regime the Contract is under and therefore which notices need to be published.

Contracts at or above the UK public procurement Thresholds, procured under the Public Contracts Regulations 2015:

- Prior Information Notice (PIN) (optional)
- Contract Notice (mandatory)
- Award Notice (mandatory)
- Regulation 84 Report (mandatory)

Contracts at or above the UK public procurement Thresholds, procured under the Procurement Act 2023:

- Pipeline Notice (mandatory)
- Preliminary Market Engagement Notice (mandatory)
- Planned Procurement Notice (optional)
- Tender or Transparency Notice (mandatory)
- Contract Details Notice (mandatory)
- Contract Award Notice (mandatory)
- Dynamic Markets Notice (mandatory)
- Procurement Termination (mandatory)
- Contract Payment (mandatory for individual payments over £30k)
- Contract Performance (mandatory for Contracts over £5m or supplier breach)
- Contract Change (mandatory)
- Contract Termination Notice (mandatory)
- Payment Compliance (mandatory)

Regulated Below-Threshold Contracts procured under the Procurement Act:

- Planned Procurement Notice (optional)
- Preliminary Market Engagement Notice (optional)
- Tender Notice (mandatory)
- Contract Award Notice (optional)
- Contract Details Notice (mandatory)
- Contract Change Notice (mandatory if applicable)
- Contract Termination Notice (optional)

21.2 There is a legal obligation on the Council to ensure record keeping is maintained for every procurement over the relevant public procurement Threshold. This is required to explain a material decision made for the purpose of awarding or

entering into a public contract and must be kept until a Notice is published to say there is no award, or three (3) years after the contract award.

- 21.3 Under the Procurement Act 2023, all public contracts over £5 million (total contract value, including VAT) will need to have all (but at least three (3)) Key Performance Indicators (KPIs) published, as well as a copy of the contract redacted where required.
- 21.4 Where information about the award of the Contract is required to be published on the Government's centralised procurement platform, (i.e. for all contracts over £30,000 including VAT), this must be done within the timeframes required for that Notice by the relevant legislation.

CSO 22. EMERGENCY PROCUREMENT

- 22.1 In an Emergency, it may not be possible to comply with the procurement procedures set out in these CSOs and in such circumstances, senior Officers may authorise the procurement of Contract or a Disposal to be carried out without the need for such compliance.
- 22.2 Senior Officers with authority to Authorise a procurement of a Contract or a Disposal in an Emergency are:
- the Chief Executive.
 - the Section 151 Officer (Executive Director of Finance & Digital) or
 - the Executive Director of the relevant department in conjunction with one other Executive Director.
- 22.3 In the event that the persons set out at CSO 21.2 are not available, the Responsible Officer may use their own judgement based on the severity and urgency of the situation to make a decision as to whether the relevant situation is an Emergency. Written justification must be made and retained on file for audit purposes.
- 22.4 The decision as to whether a situation is an Emergency shall be made by those Officers referred to at CSO 21.2 and CSO 21.3 in accordance with the Council's emergency planning and business continuity procedures set out on the Council's intranet. The Procurement Toolkit contains guidance on when an Emergency procurement for a Contract may be appropriate.

CSO 23. CONDITIONS OF PARTICIPATION & EXCLUSION GROUNDS

- 23.1 Prior to awarding a Contract, Responsible Officers may set down Conditions of Participation for bidders for above Threshold Contracts if it can be satisfied that the conditions are a proportionate means of ensuring that suppliers have:
- 23.1.1 the legal and financial capacity to perform the contract, or
 - 23.1.2 the technical ability to perform the contract.
- 23.2 Section 22 of the Procurement Act 2023 sets out the detail on what is required regarding Conditions of Participation. This must be followed as set out by law. Further guidance can be found in the Procurement Toolkit.

- 23.3 Suppliers will upload their information such as name, contact details, exclusion grounds, some economic and financial standing information, details of connected persons and ownership into the Government's online procurement platform (Find a Tender Service) once only and then use this for all bids. The Conditions of Participation will be captured separately.
- 23.4 Responsible Officers must obtain from the Bidders confirmation before awarding a contract that:
- 23.4.1 the Bidder has registered on the Government's online procurement platform (Find a Tender Service). and
 - 23.4.2 they have submitted any necessary updates or corrections to the platform. and
 - 23.4.3 any updates or corrections have been shared with the Council.
- 23.5 Where a Contract is valued below Threshold, Suitability Questions are still permitted, provided these are relevant to the subject matter of the Contract, are proportionate, and do not involve a separate stage in the procurement process (i.e. there can be no shortlisting of Bidders prior to requiring them to submit a Bid). The Procurement Toolkit contains a set of appropriate Suitability Questions that may be used. Officers may omit questions from the Suitability Questions if these are not relevant.
- 23.6 A Bidder must pass the Exclusion Grounds in order to have their tender assessed in an Open Procedure, participate or progress in a Competitive Flexible Procedure, or be awarded a Contract by Direct Award.
- 23.7 There are mandatory and discretionary exclusions set out in the Procurement Act 2023. Suppliers on the Debarment List may be excluded (if there is a published mandatory exclusion) or can be considered to be an excludable supplier at the Council's discretion (if there is a published discretionary exclusion). The Responsible Officer must ensure the Bidder/s are checked against the Debarment List. The Procurement Toolkit contains guidance on when these apply and what should be done if they do.
- 23.8 If an Officer believes that a Bidder / Supplier should be excluded based on a mandatory or discretionary ground which is not published on the Debarment List, the Officer should present evidence for such to the Head of Commercial Services or their nominated representative. If the exclusion is agreed, this will need to be notified to the Procurement Review Unit within 30 days.
- 23.9 Grounds for Exclusion can apply to Suppliers, their sub-contractors, their associated persons, and their connected persons as set out in Part 3 of the Procurement Act 2023.
- 23.10 Award Criteria for assessing responses to the Conditions of Participation must comply with UK / associated Procurement Law. The assessment of responses to the Conditions of Participation and/or Suitability Questions must be carried out by applying the Selection Criteria as set out in the Tender Documents.
- 23.11 The Award Criteria, together with the relative weightings and methodology to be used to assess responses to Suitability Questions must be made available to

Bidders in advance of them submitting their responses.

CSO 24. EVALUATION OF BIDS AND AWARD CRITERIA

- 24.1 In this CSO, all references to Award Criteria include sub-criteria of any level.
- 24.2 Save where the Council has invited only one (1) Bid (where permitted by these CSOs and/or relevant UK and associated Laws), the evaluation of Bids shall be carried out by applying an Award Criteria.
- 24.3 The Award Criteria to apply, together with their relative weightings and/or ranking and the methodology used to evaluate Bids, must be contained in the Tender Documents or the Request for Quote (RfQ), or the Quick Quote (as relevant) issued to Bidders at the commencement of the procurement process.
- 24.4 The Award Criteria must:
- relate to the subject-matter of the contract.
 - be sufficiently clear, measurable and specific.
 - not break the rules on technical specifications in section 56 of the Procurement Act, and
 - be a proportionate means of assessing tenders, having regard to the nature, complexity and cost of the contract.
- 24.5 In setting Award Criteria for the assessment of tenders by reference to Lots, the number of Lots that may be awarded to any one Bidder may be limited, and in doing so, Officers must provide an objective mechanism for supplier selection in circumstances where a supplier would otherwise exceed the limit.
- 24.6 Evaluation of Bids must be open, transparent and not discriminate or favour a particular Bidder and must be carried out by applying the published Award Criteria in accordance with the published evaluation methodology.
- 24.7 The Bid evaluation process should be designed specifically for each procurement process. The Procurement Toolkit contains guidance on evaluation of Bids and the updated rules under the Procurement Act 2023.
- 24.8 Bids are to be evaluated by at least three (3) Officers where the contact value is equal to or greater than £25,000 (excluding VAT) and all Officers involved in evaluating bids must have completed a Declaration of Interests – Procurement Form and/or a Conflicts Assessment prior to evaluating the bids, in accordance with the requirements of these CSOs (CSO 29) and the Procurement Act 2023
- 24.9 For contracts above £170,000, the financial element of highest scoring bidder should be reviewed by the respective Service Financial Advisor (SFA). This includes the Bidder's financial standing.
- 24.10 The evaluation of bids received for contracts above the Public Procurement Thresholds are to be moderated by a member of the Commercial Services team.
- 24.11 Whilst the Bid evaluation process is in progress, Officers and Members must not

disclose information relating to any Bid or the procurement process to anybody not directly involved in the process - regardless of whether they are Officers, Members, residents of the borough, members of the press or Bidders. (This includes not disclosing to a Bidder information about its own Bid evaluation).

- 24.12 Subject to CSO 23.12 below, during the Bid evaluation process, contact with Bidders must be strictly limited, and where contact is necessary, it must be fully documented, and wherever possible, be carried out via the e-Tendering System.
- 24.13 Subject to CSO 23.12 below, contact with Bidders must be limited to matters directly related to the Bid evaluation and must be fair and transparent. Examples of where contact may be necessary are:
- to raise clarifications, or
 - to arrange presentation meetings.
- 24.14 Where an incumbent Provider has submitted a Bid, normal contract management activities may continue, however close attention should be taken to limit the interaction to contract management activities only and Officers must not discuss any Bid, including that submitted by the incumbent Provider or any aspect of the procurement or evaluation process.
- 24.15 Officers must not meet with any Bidder (including an incumbent Provider that has submitted a Bid for the new Contract) without at least one other Officer being present. In the instance of any doubt, Officers may consult with Commercial Services for advice.

CSO 25. CONTRACT AWARD AND AUTHORISATION PROCESS

- 25.1 A decision taken by the Council may either be a non-key Decision or a Key Decision. Key Decisions must be included on the Council's Forward Plan, and published. Non-key Decisions do not require inclusion on the Forward Plan, however the decision and report must be published in line with the The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012. (See the Council's Constitution as well as [Appendix 10](#)).
- 25.2 A Contract (including those in relation to income generation) may only be awarded and (save with respect to CSO 24.2.2 below) a Property Agreement may only be entered into when:
- 25.2.1 all of the requirements of these CSOs have been met. and
 - 25.2.2 the expenditure and/or income involved has been included in approved revenue estimates, or is in the capital programme, or has been otherwise approved by the Executive Director of Finance & Digital.
 - 25.2.3 Authorisation has been obtained from the relevant body or person as set out in the Scheme of Management. and
 - 25.2.4 (If relevant) the Call-in Period and/or Standstill period has expired.
- 25.3 Contract or Property Agreement variations (including extensions), not provided for in the original contract shall, unless otherwise provided for in the original Authorisation to award the Contract or enter into the Property Agreement, be

Authorised by:

- 25.3.1 in the case of Contracts or Property Agreements being procured or proposed by Finance & Digital - and with a total contract value equal to or greater than £170k, but less than £3m and/or which result in a 100% increase in contract value - by the Chief Executive.
 - 25.3.2 in the case of all other departments and with a total contract value equal to or greater than £100k but less than £2m and/or which result in a 100% increase in contract value, by the Executive Director of Finance & Digital.
 - 25.3.3 in the case of Contracts or Property Agreements with a total contract value equal to or greater than £3m, by Cabinet.
 - 25.3.4 in the case of Contracts or Property Agreements with a total contract value below £170k, in line with the Departmental scheme of management.
- 25.4 Where Authorisation is required to enter into a new Framework Agreement - to be established by the Council - the value of the Contract is the value of all of the Call-off Contracts proposed to be entered into (by the Council or any other body able to access the Framework Agreement) including VAT.
- 25.4.1 Where the Council has established its own Framework Agreement, provided that correct Authority has been given to enter into the Framework Agreement, no further Authority is required to enter into any Call-off Contract under that Framework Agreement (unless otherwise stated in that Authority).
- 25.5 Where Authorisation is required to enter into a Call-off Contract for a framework agreement not established by the Council – in determining who the Authorising Body is, the value of the Contract is the value of all of the Call-off Contracts proposed to be entered into by Merton Council including VAT. Unless otherwise stated in the Authorisation, further Authorisation is required to enter into any additional Call-off Contract under that Framework Agreement.
- 25.6 Contracts for the provision of legal services or legal advice may not be awarded without the prior written consent of the Monitoring Officer and/or the Head of Law – Procurement and Information Governance or nominated officer.

CSO 26. FORMS OF CONTRACTS AND IN WRITING

- 26.1 Subject to CSO 25.3 below, before any Contract is awarded, it must be:
- 26.1.1 in a form which has been approved by the Monitoring Officer and/or Head of Law – Procurement and Information Governance, or nominated officer as being suitable for the proposed purpose of the Contract. and
 - 26.1.2 in writing.
- 26.2 Contracts must either be executed under seal by an authorised signatory of Legal Services. or signed by an appropriate Officer in line with the Scheme of Management. Legal Services shall advise whether a Contract should be executed under seal or signed by hand / electronically. (Please see [Appendix 11](#))

- 26.3 Contracts required to be entered into in an Emergency do not need to comply with CSO 25.1 before they are entered into. They do, however, need to be confirmed as meeting the requirements of CSO 26.1 as soon as possible after the commencement of the Contract.
- 26.4 Where possible, prior to the commencement of the Contract, written terms of agreement should be drawn up, approved by Legal Services, and signed by the Authorised Signatory based on the Council Scheme of Management and the Provider.

CSO 27. CONTRACT CONDITIONS

- 27.1 The presumption is that except in limited circumstances, Legal Services will be preparing the terms and conditions of contracts. In circumstances where the contract is of an extremely low value and very low risk, template contracts set up by Legal Services may be used by Officers. However, Officers should first consult Legal Services if they intend to use the templates themselves to ensure this is appropriate in the circumstances.
- 27.2 When calling off a Framework, Officers must use the Contract conditions as set out in that Framework which must be on the approved list of Frameworks held by Commercial Services.

CSO 28. CONTRACT MODIFICATIONS, EXTENSIONS AND NOVATIONS

- 28.1 This CSO shall apply to all Council Contracts.
- 28.2 Contracts may be modified or extended, if any such changes are provided for within the terms of the Contract and /or allowed within relevant UK and/or associated Procurement Laws. If in doubt as to whether a Change is permissible, advice must be sought from both Commercial Services and Legal Services before any changes are approved and executed. Modifications of Contracts must comply with Section 74-75 of the Procurement Act if the Contracts were procured under the Procurement Act 2023.
- 28.3 Contract modifications and extensions should be based on the same terms and conditions set out in the original Contract as a minimum, although where appropriate an improved position for the Council with regard to price and or T&Cs may be sought providing the scope of the contract is not substantially altered.
- 28.4 Total Contract Value (aggregation) must be taken into consideration regarding the value of the Contract.
- 28.5 Under the Procurement Act 2023, a Contract may be modified if:
- 28.5.1 the modification is a permitted modification under Schedule 8 (permitted modifications) of the Procurement Act 2023,
 - 28.5.2 is not a substantial modification, or
 - 28.5.3 is a below-threshold modification.

- 28.6 If the Contract was procured under the Procurement Act 2023, a Contract Change Notice may need to be published before a variation or extension to the Contract is made, unless the change does not warrant the publication of such Notice according to s.75 of the Procurement Act 2023. The Responsible Officer must liaise with Commercial Services before publishing this Notice. If the Total Contract Value of the Contract is over £5m (including VAT), a copy of the change to be made must also be published, redacted where appropriate.
- 28.7 If the Contract was procured under the Public Contracts Regulations 2015, a Voluntary Transparency Notice (or VEAT) notice may be required to be published. Further guidance can be sought from Commercial Services if this is required. The modification or extension shall require the Authorisation of the relevant Authorising Body in accordance with [CSO 24 \(Contract Award and Authorisation Process\)](#), taking into account the revised Total Contract Value.
- 28.8 Contract modifications and extensions must be recorded in writing and signed/sealed (as appropriate) by both the Council and the Provider.
- 28.9 Responsible Officers must be able to demonstrate that a modification and/or extension of a Contract will offer Value for Money to the Council and that the Contract will continue to meet the Council's requirements.
- 28.10 In an Emergency, a Contract modification or extension may be permissible pursuant to [CSO 21 \(Emergency Procurement\)](#) and Schedule 8 of the Procurement Act 2023
- 28.11 The Responsible Officer must ensure that the Corporate Contracts Register is updated accordingly.
- 28.12 Contract variations and extensions shall at all times be subject to UK / associated Procurement Law.
- 28.13 Contract Extensions**
- 28.13.1 As a rule, a contract shall not be extended unless expressly allowed for within the relevant published procurement Notice and the Contract.
- 28.13.2 However, depending on certain criteria, a contract may be varied to accommodate an extension to either the term and/or the value. Advice must be sought from Commercial Services and Legal Services prior to any contract variation being drafted and agreed to.
- 28.13.3 An 'extension' of contract not expressly allowed for within the relevant published Notice and the Contract, or which cannot be legally accommodated via a variation, and/or a Direct Award through a compliant Framework Agreement, will require a Waiver of these CSOs.
- 28.13.4 A Contract shall not be modified or extended (beyond the term and/or contract value originally approved) until funding has been identified in accordance with Council's financial procedures and approval obtained by either the relevant Departmental Procurement Group (DPG) and/or Procurement Board.

- 28.13.5 The financial standing of the new company must be verified by the relevant Service Finance Advisor (SFA) prior to any agreement to extend a contract being entered into.

28.14 Contract Novation

- 28.14.1 A Responsible Officer may agree the novation (transfer) of any contract subject to UK / associated Procurement Law.
- 28.14.2 Legal advice must be sought, and any relevant UK Procurement Law adhered to.
- 28.14.3 A contract novation must be approved as per the thresholds referenced in the Council's Scheme of Management.
- 28.14.4 The financial standing of the new company must be verified by the Service Finance Advisor (SFA) prior to any agreement to novate a contract being entered into.

CSO 29. CONTRACTS FOR THE DISPOSAL OF COUNCIL ASSETS

- 29.1 This Contract Standing Order sets out specific requirements relevant to the Disposal of Council Assets.
- 29.2 Subject to CSO 28.4 below, any Disposal of Council Assets must be for best consideration reasonably obtainable. In respect of Property Assets, the duty to obtain best consideration reasonably obtainable is set out in section 123 of the Local Government Act 1972 ("Section 123"). In the context of Property Assets "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 any shortfall in financial compensation it receives from the Disposal.
- 29.3 Where the Disposal involves a Property Asset, the Executive Director of Housing & Sustainable Development shall determine whether an auction, a Bid process or a private treaty is the most appropriate method of Disposal taking into account the procedure set out in the Code of Practice – Disposal of Property. The Executive Director of Housing & Sustainable Development must be able to demonstrate that the Disposal satisfies the Council's obligation to comply with Section 123.
- 29.4 Where a Disposal of a Council Asset is proposed which is at less than best consideration reasonably obtainable (determined by the market or a qualified Valuer). and where the Council has the power to do so, no Disposal shall be made without the express written approval of the Executive Director of Finance & Digital and the appropriate Authorising Body, in consultation with Commercial Services and Legal Services.
- 29.5 The Executive Director of Housing & Sustainable Development shall seek approval of the Asset and Property Board prior to initiating any disposal. Where it is determined that a Bid process is the most appropriate, this must be undertaken via the Council's e-tendering portal.

- 29.6 In all cases where the Disposal of a Council Asset is or includes works and/or services to be performed or goods to be supplied which may result in the transaction being subject to UK / associated Procurement Law then the Responsible Officer shall liaise with Legal Services and shall be responsible for ensuring compliance with UK / associated Procurement Law.
- 29.7 Subject to CSO 29.6, where the Executive Director of Housing & Sustainable Development determines, in advance, that the most appropriate means of communication with the market and Bidders in relation to the Disposal of Property Assets is via means other than the e-Tendering System, this shall require prior approval of the Executive Director of Finance & Digital. Where the Executive Director of Housing & Sustainable Development determines that the most appropriate method of Disposal is by submission of paper Bids:
- 29.6.1 Bidders must be advised not to include any markings that would identify them on the outside of their Bid. and
- 29.6.2 The procedure set out in [Appendix 8](#) shall apply.
- 29.8 Where the proposed Property Agreement is a lease for rent, the e-Tendering System need not be used.

CSO 30. CONFLICTS OF INTEREST & CONFLICTS ASSESSMENTS

- 30.1 All Officers and Members must ensure that in carrying out their duties and functions for or on behalf of the Council, their decisions and actions are not impaired by a Conflict of Interest with their private interest.
- 30.2 The obligation to ensure that there is no Conflict of Interest extends to ensuring that there is no perception of a Conflict of Interest. The Council has a statutory duty to take all reasonable steps to identify, investigate and review actual, potential or perceived Conflicts of Interest, as well as a duty to take all reasonable steps to ensure a Conflict of Interest does not put a supplier at an unfair advantage or disadvantage.
- 30.3 The Council is required under the Procurement Act 2023, to prepare a Conflicts Assessment prior to publishing a tender that is subject to the Act. prior to publishing a procurement Notice. and prior to establishing a Dynamic Market.
- 30.4 In order to ensure actual, potential or perceived Conflicts of Interest are identified and appropriate steps taken to ensure these are mitigated, the following people are required to declare any interests which may affect a Disposal or the procurement process for a Contract or the appointment of a consultant or the management of any Contract or Property Agreement:
- 29.4.1 all Officers.
- 29.4.2 all Members involved in any relevant decision (at executive or scrutiny level) relating to a Disposal, Contract or Property Agreement.
- 29.4.3 All Consultants / interim members of staff and third-party agents who may be working on a procurement or able to influence the outcome of a procurement.

This should be done by those persons by completing a Declaration of Interest for Procurement form and/or a Conflicts Assessment that meets the requirements of the Procurement Act 2023.

- 30.5 Members are required to comply with the Members' Code of Conduct. Officers are required to comply with the Staff Code of Conduct.
- 30.6 Any Officer to whom a professional, personal or financial interest is declared has a duty to examine that declaration in the context of the Contract, Disposal or Property Agreement in question. The Officer must decide whether the interest declared would affect (or would appear to affect) the relevant person's ability to represent the Council's sole interest if they (in each case) participate in or carry out any action or make any decision in the Disposal or procurement process for a Contract or the management of the relevant Contract or Property Agreement.
- 30.7 A person who is considered to have a Conflict of Interest will be precluded from (in each case) participating in or taking any action and/or making any decision in relation to the relevant Contract, Disposal or Property Agreement until the Conflict of Interest no longer exists.
- 30.8 In the event of a Conflict of Interest giving an unfair advantage to a supplier in relation to the award of the contract, the requirements set out in Part 5 of the Procurement Act 2023 must be followed.

CSO 31. ACCEPTANCE OF GIFTS AND HOSPITALITY

- 31.1 Acceptance of gifts, money, hospitality and other inducements by any Officer or Member involved in a Disposal and/or the procurement of a Contract and/or the management of and/or any decision relating to a Contract or Property 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 Officers or Members. All Officers and Members must comply with the Council's rules on the receipt and registration of gifts, money, hospitality and other inducements set out in the Staff Code of Conduct and in the Members' Code of Conduct.
- 31.2 Any Officer or Member involved in a Disposal or the procurement process for a Contract should be particularly sensitive to their involvement in that Disposal or procurement process where a person or organisation that has offered or given them a gift, money, hospitality or other inducement is involved in that Disposal or procurement or may submit a Bid for that Contract or Property Agreement in the future.
- 31.3 All offers of gifts, money, hospitality or other inducement should be reported in accordance with the Staff Code of Conduct or the Members' Code of Conduct (as appropriate).

CSO 32. UNAUTHORISED DISCLOSURE OF INFORMATION

- 32.1 No Officer or Member is permitted to disclose to any internal or external party any information they have obtained which may reasonably be considered to be capable of influencing the outcome of the award of a Contract or a Disposal.

32.2 No Officer or Member is permitted to disclose to any internal or external party any information that may be regarded as commercial confidential. This includes but is not limited to the pricing methodology of a current contract.

CSO 33. INTERNAL ADMINISTRATIVE MATTERS FOLLOWING AWARD OF CONTRACT

33.1 Following the entering into of any Contract, each Responsible Officer shall be responsible for:

- recording details of the Contract on the Council's Contracts Register for any contracts below the Low Value Threshold. and
- arranging for the archiving of the original signed Contract by Legal Services (Responsible Officers are required to retain an electronic local copy of the signed Contract).
- Where a Contract is over the relevant UK Procurement threshold and has been procured under the Public Contracts Regulations 2015, to prepare a Regulation 84 report if this is relevant.
- Completing the relevant procurement Notice for all contracts below £170,000.
- Follow the requirements of the Procurement Act 2023 in relation to the Award of Contracts (particularly in relation to publishing Notices) that are required by law post-contract award and during the life of the contract.

APPENDIX 1 - DEFINITIONS

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

“Aggregation” means entering into multiple contracts to fulfil a single requirement, if this happens then the value of those contracts should, under the Public Contracts Regulations 2006, be aggregated to decide whether the purchase is above the threshold. The Regulations explicitly say that a contracting authority should not enter into separate contracts or exercise a choice under a valuation method with the intention of avoiding the application of the Regulations. The effect of the aggregation rule is that if there are lots of separate contracts for the same type of goods/services/works which in the aggregate exceed the relevant threshold then those individual contracts still need to be advertised even though individually they are below the threshold. The Procurement Act requires a contracting authority to aggregate the value of all contracts for the supply of goods, services or works which could reasonably be supplied under one contract.

“Authorisation” means the approval given by the appropriate Authorising Body before Contracts or Property Agreements 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 with power, up to the relevant Authorisation Threshold, to Authorise the award of a Contract or entering into of a Property Agreements on behalf of the Council.

“Authorisation Threshold” means the threshold referred to as such in Appendix 4 (Council Thresholds and Authorisation Thresholds), as the same may be amended from time to time pursuant to CSO 2 (Amendment of Contract Standing Orders)

“Authorised Signatory” means the Officer/s responsible for the decision being taken that is relative to the nature and value of the decision / contracts. This should be in line with the Scheme of Management but in case of any doubt, please refer to Commercial Services.

“Award Criteria” means the criteria, including sub-criteria, determined by the Council upon which the evaluation of tenders and quotes is based.

“Best Value for Money” means the optimum combination of whole-life cost and quality (or fitness for purpose to meet the authority’s requirement. It is often defined as achieving the right balance between ‘economy’, ‘efficiency’ and ‘effectiveness’. There is a legal requirement for authorities to demonstrate that the way they use public resources provide good value for money.

“Bid” means an offer submitted in response to an Invitation to Tender and/or an RfQ and/or in relation to the Disposal of a Council Asset.

“Bidder” means an individual or organisation that may or has submitted a Bid, including in each case a consultant.

“Cabinet” means the body of Members responsible for making most of the executive decisions of the Council and which may delegate such decision-making responsibility to relevant Officers.

“Call-off Contract” means an agreement entered into pursuant to a Framework Agreement pursuant to which the Provider is required to provide goods, services or works.

“Call-In Period” means the period of ten (10) days following the date on which a Key Decision is made and during which time such decision may be called-in for reconsideration by Cabinet.

“Chair of Scrutiny” means the chairperson of the Council’s Overview and Scrutiny Commission.

“Chief Executive” means the most senior Officer of the Council and the statutory Head of Paid Service.

“Code of Practice – Disposal of Property” means the Council’s code of practice on the disposal of property from time to time in place. The current code of practice is set out in the Asset Management Plan.

“Code of Practice on procuring Consultants” means the Council’s code of practice on procuring Consultants from time to time in place. The current code of practice is set out at [Appendix 6](#)

“Commercial Services” means the Council’s Commercial Services team (within Finance & Digital) or such other body as has been approved by Cabinet to perform its functions.

“Concession Contract” means a Contract where the consideration (payment) paid 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 income received by the Provider or there may also be a financial payment by the Council. These contracts are governed by Section 8 of the Procurement Act 2023 and The Concession Contracts Regulations 2016, whichever is relevant to the Contract at the time.

“Conflict of Interest” means a situation in which a person has an or multiple interests which could possibly corrupt the motivation of that person. In the context of the Council, this is likely to be a situation where a person’s duty to the Council conflicts with a private interest they have or where a person has a duty to both the Council and to another public or other body and those duties conflict and in all cases includes the appearance of such a conflict.

“Conflicts Assessment” means an assessment under the Procurement Act 2023 which must include details of conflicts or potential conflicts of interest identified in accordance with the duty to identify under the Act and any steps the Council has or will take for the purposes of the duty to mitigate. It may also include details of steps taken or to be taken that demonstrate no such conflict or potential conflict exists.

“Consultant” means an individual or organisation providing specialised skills and expertise that is not available within the Council and who is appointed on a clearly specified and time limited basis to carry out a specific task or to provide specialist or strategic advice and/or other similar services. Consultants do not include temporary staff such as casual and contract staff and interim managers. The term “Consultancy” shall be construed accordingly.

“Contract” means any agreement for the provision of goods, services or works, including agreements with Consultants, Framework Agreements and Concession Contracts but excluding Call-off Contracts. Contract documentation is to include the Invitation to Tender documentation and any clarification questions and answers relevant to that specific bid. Contracts do not include the evaluation documents. These are however to be kept separately in line with the Council’s retention policy.

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

“Contracts Finder” means the online database administered by central Government setting out details of public sector Contracts opportunities and information relating to award of Contracts. It will remain in place until the end of 2025 for reference only to view notices for contracts awarded under the PCR 2015.

“Council Asset” means assets and/or chattels that are in the Council’s ownership or control, including Property Assets.

“Council Policies” means the policies of the Council from time to time relevant to the Contract or Disposal or as required by these Contract Standing Orders.

“Council Thresholds” means the Lower Threshold and the Upper Threshold.

“Council’s Contracts Register” means a list setting out all of the Existing Contracts, as updated from time to time and containing details of the Contract value, Contract Manager, Provider and commencement and expiry dates of the Contract.

“CSO” means a Contract Standing Order.

“Declaration of Interest” means the form of declaration of interest as published on the Council’s intranet.

“Director” means the appointed head Officer of a department within the Council.

“Disposal” means the divestment of Council ownership in any Council Asset including a sale or other disposition of a Property Asset.

“Dual Regime Period” means the period as to which both the PCR 2015 and the Procurement Act 2023 are running in tandem and apply to different procurements depending on whether the procurement started before or after the operational date of the Procurement Act. Further guidance as to which legislation applies must be sought from Commercial Services and/or SLLP.

“Dynamic Markets” means an arrangement for the purpose of a contracting authority awarding public contracts by reference to the suppliers’ participation in the arrangements as set out in Section 34(8), Section 35(1) of the Procurement Act 2023. A “Dynamic Market” is a means of pre-qualifying suppliers who can then later be invited to tender for specific contracts. It allows for key participation requirements to be assessed in advance, in theory providing for a quicker tender process later on. To establish a Dynamic Market, the Council will need to publish a specific form of “Dynamic Market Notice”, this notice would include the “Conditions for Membership” which will be of a pass / fail type.

“Dynamic Purchasing System” means an electronic purchasing system for Contracts for works, services and goods commonly available in the market as described in Regulation 34 under the PCR 2015. A DPS cannot be set up after the implementation date of the new Procurement Act 2023.

“e-Tendering System” means the Council’s electronic procurement system as amended or updated from time to time.

“Electronic Auction” means an online auction for Contracts for works, services and goods as

described in PCR Regulation 35 and the Procurement Regulations 2024.

“Emergency” means a genuinely unforeseen emergency situation which has significant and unforeseen consequences, for example where:

- life, property or equipment are immediately at risk. and/or
- 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.

“Executive Director” means the appointed head Officer of a department within the Council. This person may often be the Senior Responsible Owner for a procurement project.

“Executive Director of Finance & Digital” means the Executive Director with Section 151 responsibilities, in charge of Finance & Digital or any other Executive Director with Section 151 responsibilities.

“Existing Contract” means an unexpired Contract entered into by the Council and a Provider for works, services and/or goods.

“Existing Contracts Register” means a list setting out all of the Existing Contracts, as updated from time to time and containing details of the Contract value, Contract Manager, Provider and commencement and expiry dates of the Contract.

“Finance & Digital” means the Council’s Finance & Digital department or such other body as has been approved by Cabinet to perform its functions. The Commercial Services team sits within this department.

“Financial Regulations” means the regulations setting out the financial policies of the Council from time to time in place.

“Find a Tender Service (FTS)” means the Governments e-notification service for publishing public sector procurement notices as of 1 January 2021. This will be enhanced by the new online procurement platform which has been referred to in PA23 as the central digital platform. The new FTS must be used by all public sector bodies to publish procurement notices, details of public sector Contracts opportunities and information relating to Contracts as prescribed by the Procurement Act 2023 and Procurement Regulations 2024. It also refers to any subsequent replacement or successor of the platform.

“FOIA” means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time, together with any regulations, guidance and/or codes of practice issued by the Information Commissioner or relevant central Government department from time to time in relation to such legislation.

“Forward Plan” means the Council’s published document which sets out the Key Decisions to be taken within the Council’s governance process and by elected Members of the Council.

“Framework Agreement” means an over-arching agreement between one or more contracting authorities (which may include the Council) and one or more providers, the purpose of which is to establish the terms governing Call-off Contracts to be awarded during a given period.

“Invitation to Tender” means, where a Contract opportunity has been advertised, the document

sent by the Council to Bidders inviting them to participate in the Competitive Tendering Procedure for that Contract, together with any other relevant documentation issued with that document or referred to in that document as forming a part of it. For the purpose of these CSOs, an invitation to tender means any document inviting Bids (for example, an invitation to submit a tender as part of a permitted procurement procedure or competitive tendering process) but excluding an RfQ and (for the avoidance of doubt) a SQ.

“Key Decision” means a decision made by Cabinet or a decision made under delegation to a Member or an Executive Director that falls into one of the following categories:

- Type (a) - incurring expenditure or making savings which are significant having regard to the budget for the service or function to which the decision relates.
- Type (b) - significant in terms of its effects on communities and groups of service users living or working in an area comprising one or more wards or electoral divisions in the Council.
- Type (c) - amending the agreed budget and/or the policy framework.
- Type (d) - expenditure of £500,000 or more.

For the avoidance of doubt, changes to these CSOs are a Key Decision.

“Key Decision Contract” means a Contract proposed to be awarded where the decision to award the Contract will be a Key Decision.

“Key Performance Indicators (KPIs)” means the quantifiable measure of performance over time for a specific objective in a contract. Examples and best practice KPIs can be found in the Contract Management Toolkit available on the Commercial Services intranet pages.

“Laws” means any relevant law, statute, subordinate legislation, byelaw, enforceable right, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, directive or requirement of any regulatory body as it is in each case in force from time to time, taking account of any amendment, extension or re-enactment.

“Leader” means the Member elected as leader of the Council.

“Legal Services” means the Council’s legal services department or such other body as has been approved by Cabinet to perform its functions.

“Light Touch Regime” means the regime described at Section 9 of the Procurement Act 2023 from the effective date of this Act, or Section 7 of the PCR 2015 applying to those social and other specific services set out at schedule 3 to the PCR 2015, whichever is applicable.

“Lots” means small, related Contracts that may be entered into with the same or a number of separate Providers following the division of a larger Contract into smaller but related parts. Lots have a separate Threshold under procurement law, please refer to Appendix 4 for reference.

“Lower Threshold” means the sum set out in Appendix 4 (Council Thresholds and Authorisation Thresholds) as being the lower threshold, as the same may be amended from time to time pursuant to CSO 2 (Amendment of Contract Standing Orders)

“Member” means an elected member of the Council.

“Members’ Code of Conduct” means the Council’s code of conduct from time to time applying to

Members. The current code of conduct is set on the Council's intranet.

"Monitoring Officer" means the Officer appointed by the Council under s5 Local Government and Housing Act 1989 responsible for reporting to the Council where it appears to that person that the Council has done, or is about to do, something which would contravene the Law or which would constitute maladministration.

"Most Advantageous Tender (MAT)" means the principle used in public procurement decision making of choosing the best overall offer, considering all factors including financial and non-financial factors such as price, quality, benefit to Public Values.

"Notice" means any publication of notice/s required by the relevant procurement legislation at different stages of a tender including contract management. The Procurement Act 2023, The Procurement Regulations 2024 and the Provider Selection Regime require new and additional notices for decisions taken regarding public contracts. These changes should be considered by Responsible Officers as they may be required even for Low Value Threshold contracts. Refer to the Procurement Toolkit for details of such Notices.

"Officer" means an employee or officer of the Council or any temporary staff (such as casual and contract staff and interim managers) or Consultant in each case appointed by the Council to carry out procurement or associated activities in relation to any Disposal, Contract or Property Agreement (including the Responsible Officer and any Director).

"Open Frameworks" means a scheme of frameworks that provides for the award of successive frameworks on substantially the same terms" under the Procurement Act 2023. These Frameworks can consist of a duration of up to 8 years instead of the usual 4 years, provided you appoint multiple suppliers. If you choose the option of awarding an Open Framework, you must re-award the whole Framework at least once during the first three years from the establishment of the Framework and re-award the whole Framework at least one more time during each five-year period after the first re-opening. When an Open Framework is re-awarded during its 8-year lifetime, this process is essentially a re-run of the original tender exercise used to establish the Framework, except that suppliers which were already on the Framework may automatically be re-admitted if the Council chooses. The award of each successive Open Framework must be done using an advertised, competitive process – you must not use a Direct Award process to refresh the Open Framework.

"Options Appraisals" means a formal and documented analysis of the possible ways the Council may structure a procurement in order to obtain Best Value for Money.

"Overview and Scrutiny Commission" means the body of the Council responsible for (inter alia) monitoring Council decisions.

"PCR 2015" means the 2015 Public Contract Regulations (SI 2015/102) as amended from time to time. **Please also see PPR2020**

"PPR2020" means The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020 as amended from time to time or superseded by any other relevant legislation.

"Procurement Board" means the body within the Council with responsibility (inter alia) for overseeing Contract procurement activities.

"Procurement, Governance and Gateway Process" means the Council's processes and

procedures for conducting, monitoring and reviewing its procurement activities and where guidance and suggested templates for these can be found in the Procurement Toolkit.

“Procurement Toolkit” means the guidance, information, templates, external links to Government and best practice guidance to assist Officers in carrying out a procurement process for a Contract as set out on the Commercial Services’ intranet pages as amended from time to time.

“Procurement Regulations 2024” means the forthcoming regulations that set out the transparency requirements under the Procurement Act in relation to publishing information and notices related to public procurement.

“Property Agreement” means an agreement relating to land and/or buildings, including a purchase or sale agreement, where the Council is seeking a capital receipt or benefit (i.e. nominations)..

“Property Asset” means any interest in land or property in the ownership or control the Council.

“Provider” means any organisation or individual providing goods, works or services (including under a Concession Contract) to the Council, which may include a Consultant, sometimes also referred to as supplier.

“Public Value” mean the total well-being of the UK public as a whole. This covers all the economic, social and environmental impacts of a proposal. See Social Value.

“Regulated Below-Threshold Contracts” means a contract that is regulated by the Procurement Act 2023 but is below the public procurement thresholds. Some rules will apply where it is advertised publicly. Further details can be found in the Procurement Toolkit.

“Regulation” means, unless stated otherwise, a regulation of the PCR 2015 in conjunction with the PPR2020.

“Regulation 84 Report” means the report required under the Public Contracts Regulation 2015 for any procurement above the Public Procurement Thresholds (previously referred to as the thresholds above which a notice would be required to be published in the Official Journal of the European Union (OJEU)). This is only applicable for contracts procured and awarded under the PCRs.

“Responsible Officer” means any Officer properly authorised under the Scheme of Management to carry out any of the Council’s functions in connection with a Disposal, Contract or Property Agreement entered (or proposed to be entered) into by the Council.

“RFQ (Request for Quotation)” means where a Contract opportunity has not been advertised (as permitted by these CSOs), the document issued to Bidders inviting them to submit a Bid, together with any other relevant documentation issued with that document or referred to in it as being part of it.

“Selection Criteria” means the criteria, including sub-criteria, determined by the Council upon which the assessment of responses to SQs and Suitability Questions is based.

“Scheme of Management” means the management arrangements for a department setting out

the delegated authority of Officers within that department.

“Section 151 Officer” means the Officer responsible for the proper administration of the Council’s affairs appointed under Section 151 of the Local Government Act 1972, currently being the Executive Director of Finance & Digital or any other Director to whom such responsibility is delegated by the Chief Executive from time to time.

“SME” means an enterprise falling within the category of micro, small and medium-sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises.

“Social Value” means the economic, social and environmental benefits to a local area aiming to create lasting value for society, due to benefits generated by public procurement activity beyond that which is being procured,

“Social Value Toolkit” means the guidance and information to assist Officers in securing Social Value through a procurement as set out on the Commercial Services’ intranet pages as amended from time to time.

“South London Legal Partnership (SLLP)” means the Council’s legal services.

“Specification” means the document setting out the Council’s requirements for the Contract to be procured.

“SQ/SSQ (Standard Selection Questionnaire)” means a set of questions to be completed by Bidders to assess their suitability to be invited to the next stage of a procurement process for a Contract. SQs cannot be used for below threshold procurements. The SQ will be replaced by the Government’s online procurement platform (Find A Tender Service).

“SQ Threshold” means the various thresholds from time to time used to determine the extent to which the Council is permitted by UK Procurement Law to use a SQ. The current SQ Thresholds are set out in [Appendix 3](#).

“Staff Code of Conduct” means the Council’s code of professional conduct from time to time applying to Officers. The current code of professional conduct is set out on the Merton Hub

“Standstill Period” means the mandatory standstill period as described in Chapter 5 of the Procurement Act that must be observed between notifying Bidders of the Council’s intention to award a Contract and confirming the award of that Contract.

“Suitability Question” means in a procurement procedure that is below the SQ Threshold a question relating to information or evidence which the Council requires for the purpose of assessing whether Bidders meet requirements or minimum standards of suitability, capability, legal status or financial standing.

“Tender Documents” means all documents relating to the procurement process for a Contract including (as relevant), any relevant Notices, Specification, Invitation to Tender, Terms and Conditions and any other relevant documents.

“Terms and Conditions” means the actual or proposed terms and conditions of a Contract.

“Transparency Agenda” means any requirement placed on the Council or any Government policy, guidelines, codes of practice and the like relating to transparency in procurement and public contracts.

“TUPE” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).

“UK and/or associated Procurement Law” means the Public Contract Regulations 2015 and the PPR 2020 (as these will continue to apply to any contract procured prior to the operational date of the Procurement Act), the Procurement Act 2023 and the Procurement Regulations 2024, and any other legislation, statutory instrument or regulation that is released by the Government to regulate public procurement law, all relevant case law and guidance published by central Government and/or other relevant bodies from time to time.

“UK Procurement Thresholds” means the various thresholds set by Government from time to time in place and used to determine the extent to which UK Procurement Law applies. The current UK Procurement Thresholds relevant to the Council are set out in [Appendix 3 \(UK Procurement Thresholds\)](#). These are also known as GPA Thresholds.

“Upper Threshold” means the sum set out in Appendix 4 as being the upper threshold, as the same may be amended from time to time pursuant to CSO 2 (Amendment of Contract Standing Orders).

“VCSE” means a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives.

“Waiver” means a waiver from the requirement to comply with all or part of these Contract Standing Orders.

“Waiver Report” means the report (in the form report set out at [Appendix 2 \(Waiver Report\)](#)) to be completed when a Waiver is requested.

“Written” to also include receipt by email.

“Whistleblowing Procedures” means the Council’s whistleblowing procedure from time to time in place. The Council’s current whistleblowing procedure can be found on the intranet.

APPENDIX 2 - WAIVERS FROM CONTRACT STANDING ORDERS

- A. Where an waiver is requested, an Waiver Report must first be reviewed by the relevant Category Manager, the relevant Service Financial Adviser (SFA) and the Council's Legal Services (the South London Legal Partnership (SLLP)), all for comment and sign-off. The report is then to be submitted to the Head of Commercial Services (for review and approval) prior to it being submitted to the Chief Executive or the Executive Director of Finance & Digital (as relevant) and must include:
- the Contract Standing Order number from which the waiver is requested
 - the reasons for requesting the waiver
 - the alternatives available if the waiver is not granted
 - total value of the waiver being requested
 - any potential legal implications associated with the waiver request
 - the financial implications of the waiver request

No Waiver may be retrospective.

No Waiver shall be presumed as permitted, nor deemed to take effect, until the Waiver Report has been signed as agreed by the Executive Director Finance & Digital (or in their absence, their nominated deputy), or the Chief Executive where the request is from the Finance & Digital Department.

[In exceptional circumstances - if the Executive Director of Finance & Digital and/or the Chief Executive are not able to grant an waiver - any two (2) Officers selected from the Deputy Section 151 Officer, the Monitoring Officer or any of the Council's remaining Executive Directors may, acting jointly, consider and where appropriate, grant an waiver. Executive Directors may not sign off an waiver report for their own department.]

- B. A non-exhaustive list of reasons for seeking an Waiver is set out below and may be referred to in the Waiver Report (by reference to this Appendix 2 and the relevant paragraph below):
- a) that only one Provider is able to perform the Contract for technical or artistic reasons or because of exclusive rights, for example, the commissioning or purchase of works of art, museum artefacts, manuscripts or archive collection items.
 - b) that time limits required for carrying out a procurement for a Contract in accordance with these CSOs cannot be met for reasons of extreme urgency (for example, in an Emergency or for Contracts where the terms of a court order set a time limit which specifically precludes all or part of the procurement process for the Contract) which were unforeseen and un-attributable to the Council.
 - c) where the Council would risk losing the opportunity of entering into a Contract or Property Agreement and reasonably considers that there is no other viable alternative to the proposed Contract or Property Agreement.
 - d) that additional goods, works and/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 disproportionate difficulty.
 - e) that goods are required as a partial replacement for or addition to existing goods or installations and obtaining them from another Provider would result in

- incompatibility or disproportionate technical difficulties in operation or maintenance.
- f) the proposed Contract is an extension to or variation of the scope of an existing Contract and demonstrates Value for Money.
 - g) when a grant from a public body includes a recommendation as to the Provider 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 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.
 - i) if there are exceptional circumstances not previously identified or covered by existing policies, procedures or these CSOs.

DRAFT

WAIVER REPORT

[Please ensure that you have read [CSO 7 \(Seeking an Waiver from Contract Standing Orders\)](#) and Appendix 2 (Waivers from Contract Standing Orders) prior to completing this form]

Executive Director of Finance & Digital Decision	Approved / Not Approved	Signature	Date
<i>(Chief Executive if a Finance & Digital Services request)</i>			

SUBJECT: _____

LEAD OFFICER: _____

CABINET MEMBER: _____

KEY DECISION REFERENCE No.: _____

RECOMMENDATION:

[Please include: the specific CSO are you asking waiver from? What the contract is for? Why are you seeking an waiver? Total value of waiver and total contract value if different? Total term? Note any other waiver previously granted in relation to this request]

Head of Commercial Services Recommendation	Approve / Not Approve	Signature	Date

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 refer to the Council’s Contract Standing Orders which form part of the Council’s Constitution and are published on the Council’s website under Council and democracy / Decision-making]

2. DETAILS

Background Information

[Please include: Description of contract is the contract for goods / works / services? Current supplier, proposed contract period, Total value (including licenses etc.).]

Current Supplier(s) (if applicable):

Proposed Contract period:

Total Contract Value:

Previous waiver granted [number of months and Value]:

3. ALTERNATIVE OPTIONS

[Please describe what alternative options to an waiver have been considered, for example: • do nothing. • or undertaking a compliant procurement exercise. Why have these option not been recommended?]

4. FINANCIAL IMPLICATIONS

[Please provide a breakdown of cost by financial year. Please describe how costs will be controlled over the duration of the contract. Please ask Finance to run a credit check and include a summary of the findings here Please ensure that the relevant Service Financial Adviser(s) (FSA) has reviewed and provided comment]

5. BUDGET SIGN OFF

Name of Budget Holder	Budget Approved / Not 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. any potential breach of PCR2015. Please include comments from a member of Commercial Services]

7. LEGAL IMPLICATIONS AND STATUTORY PROVISION

[Is there a statutory requirement to deliver this provision? Yes / No – Please provide details. Please ensure comments are added from a member of the SLLP]

8. HUMAN RIGHTS AND EQUALITIES IMPLICATIONS

Will this contract impact on the Councils Human Right and Equalities strategic objectives and if so, how (positive and/or negative)?

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

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			
Service Financial Adviser			
Legal			
[Insert details of other departments consulted]			

BACKGROUND PAPERS:

[Please insert details of any relevant reports that may have gone to CMT / Procurement Board etc.]

OFFICER CONTACT DETAILS:

Name:	
Job Title:	
Department:	
Email address:	
Telephone No.:	

APPENDIX 3– UK PROCUREMENT THRESHOLDS

The Cabinet Office is responsible for the legal framework for public sector procurement and leads on the development and implementation of procurement policies for government.

The over-riding procurement policy requirement is that all public procurement must be based on Value For Money, defined as “the best mix of quality and effectiveness for the least outlay over the period of use of the goods or services bought”. This should be achieved through competition, unless there are compelling reasons to the contrary.

Public sector procurement is subject to a legal framework that encourages free and open competition and Value For Money, in line with internationally and nationally agreed obligations and regulations. As part of its strategy, the Government aligns procurement policies with this legal framework, as well as with its wider policy objectives.

The threshold values at which public procurement opportunities are subject to the full suite of regulations governing public contracts are set out below.

They are revised every two years to take account of currency fluctuations, and to ensure the UK complies with its obligations under the World Trade Organisation’s Agreement on Government Procurement (the GPA).

When calculating the estimated value of the contract to determine whether public procurement regulations apply, the contract value estimation must be **inclusive** of VAT (where applicable, at the relevant percentage rate) from 1 January 2022.

This is a change in practice, as a result of the UK’s independent membership of the GPA following Brexit. The revised thresholds have been calculated in accordance with established GPA practice. Procurers should calculate the **estimated** value of a contract based on the total amount payable including VAT without making a deduction for any available VAT recovery.

The suggested, but not prescriptive, default for calculating VAT is to add an equal amount to the standard rate of VAT (currently 20%) to the contract estimation net amount. This would remove any problems of underestimating the contract value.

The threshold values for small lots, light touch regime (LTR) services and below threshold regulations are **not** subject to the two-year currency fluctuation amendment required to comply with UK GPA obligations. Contract values should be estimated **inclusive** of VAT to ensure compliance with public procurement law.

When the Procurement Act 2023 becomes operational, **for the purposes of the publication of any notices** under the new legislation, the estimated contract value must be provided **inclusive** of VAT.

Details of the thresholds that apply to Local Authorities (as sub-central authorities), applying from **1 January 2024** are given below:

(Threshold values are inclusive of VAT).

Supplies and Services (excluding subsidised service contracts)	£214,904 (inc. VAT)
Works (including subsidised works contracts)	£5,372,609 (inc. VAT)
Light Tough Regime for Services	£663,540 (inc. VAT)
Small Lots	Supplies and Services: £70,778 (inc. VAT) Works: £884,720 (inc. VAT)
Concession Contracts	£5,372,609 (inc. VAT)
Utilities Contracts	Good/Services: £429,809 (inc. VAT) Works: £5,372,609 (inc. VAT)

SQs may only be used for the award of contracts whose value equals or exceeds specific thresholds:

	Supply, Services and Design Contracts	Works Contracts	Social and other specific services
Local Authorities	£214,904	£214,904	£214,904

APPENDIX 4 – MERTON THRESHOLDS

For the avoidance of doubt, Merton’s internal thresholds are set excluding VAT. All contracts awarded over £5,000 (excluding VAT) must be published on the Council’s online Contracts Register as required by law.

Advertising of Contracts that started under the Public Contracts Regulations 2015:

CONTRACT VALUE (EXCL. VAT)	E-TENDERING SYSTEM	CONTRACTS FINDER	FIND A TENDER SERVICE
Below £5,000	No	No	No
At or above £5,000 but below £25,000	Yes via use of Quick Quotes or Request for Quotes (RfQs)	Not required unless advertised elsewhere.	Not required unless advertised elsewhere.
At or above £25,000 but below PPT	Yes	May be required to publish tender notice if advertising the opportunity. Notice required for contract award	Not required
Above PPT	Yes	Yes	Yes

Advertising of Contracts that started under the Procurement Act 2023:

CONTRACT VALUE (EXCL. VAT)	E-TENDERING SYSTEM	CENTRAL DIGITAL PLATFORM (FIND A TENDER SERVICE)
Below £5,000	No	No
At or above £5,000 but below £25,000	Yes via Quick Quotes or Request for Quotes (RfQs)	No (unless you advertise it elsewhere)
At or above £25k but below £170,000	Yes (RfQ)	Yes if it is a Regulated Below-Threshold Contract*
At or above £170,000 but below PPT	Yes (ITT)	Yes if it’s a Regulated Below-Threshold Contract*
Above PPT	Yes	Yes

*Exceptions may apply, please see guidance in Procurement Toolkit

APPENDIX 5 - RETENTION PERIODS FOR CONTRACT DOCUMENTS

The Council has a legal obligation to keep information for only as long as it is needed. There are costs and legal risks associated with keeping information that we no longer need.

The Council has a number of policies and procedures that must be followed by all staff, including the Retention and Disposal Policy. This policy applies to all records held by the council including electronic files, video, microfiche, paper files and photographs.

Please see the table below as a guide:

Transaction	Retention period
Contract under seal (Deed)	Twelve (12) years after expiry of Contract
Contract under hand / electronic signature	Six (6) years after expiry of Contract
Property Agreements – sales (other than right to buy)	Six (6) years
Property Agreements – right to buy	Twelve (12) years
Property Agreements – purchases	Twelve (12) years
Property Agreements – leases	Twelve (12) years from expiry of the lease
Property Agreements – licences	Six (6) years from expiry of lease
Property Agreements - compulsory purchase order	Property Agreements - indefinitely Correspondence – fifteen (15) years after completion of last transaction including settling the value

For further information, please visit Records management (Merton Hub) or speak to the Information Governance team (data.protection@merton.gov.uk)

APPENDIX 6 CODE OF PRACTICE FOR THE APPOINTMENT OF CONSULTANTS**Key Considerations**

- Value for Money must be demonstrated prior to engaging a consultant. External consultants are expensive and as such the requirement to engage with a consultant must be approved by the relevant departmental Executive Director.
- The Council's Standing Orders are applicable to the appointment of Consultants.
- The appointment of a Consultant follows the same procedures as all other procurements as it is a procurement for professional services which counts as a public contract for services.
- The Procurement Toolkit contains the Council's procurement procedures and standard templates including how to procure consultancy services and consultants.

What is a Consultant?

1. For the purposes of this procedure, an external consultant is someone who:
 - offers specialist skills and expertise not available in-house,
 - has a clearly specified and time-limited role that is not 'business as usual',
 - is not appointed to cover a vacant position within the Council.
2. Consultants generally work on specialist, strategic or advisory projects to a clearly defined brief with set deliverables and milestones.
3. Consultants will be contracted on a services contract not a contract of employment. They are a third-party supplier to the Council and not staff.
4. Temporary staff, including casual and contract staff and interims, are **NOT** consultants. There is a separate procedure for employing temporary staff as set out on the HR pages of the Hub (intranet):
https://lbmerton.sharepoint.com/sites/H_R/SitePages/Appointing-temporary-workers.aspx

Process to follow in appointing a consultant.

The appointment of an external consultant is no different to that used in appointing any other supplier.

Business Case

As with any requirement, a business case should be completed and approved prior to engaging the market. It is expected that for the appointment of most consultants, the need to retain such specialist skills and expertise would have been highlighted in the initial project business case.

The advice & guidance on the development of a business case is set out in the Merton Approach to Projects on the Council's intranet pages (the Hub).

Market Engagement

The advice and guidance on market engagement is set out in the Procurement Toolkit.

In accordance with these CSOs all correspondence inviting quotations and any formal market engagement must be carried out utilising the Council's e-tendering system unless the value is below £5,000 in which case email quotes are permitted.

The bid documents

Templates and guidance for developing the tender documents e.g. Specification. ITT. Contract terms are contained in the Procurement Toolkit. Please seek advice and guidance from Commercial Services.

Terms and Conditions

It should be noted that the appointment of consultants requires specific terms and conditions as set out in the Council's T&Cs for consultants. Legal advice will be required concerning which template should be used based on the nature of the consultancy to be provided. Any conditions relating to performance management and performance related payments must also be included. Insurance levels to be determined by the Council's Insurance Officer.

Advice must be sought from HR regarding the revised IR35 legislation and whether or not it will be applicable, depending on the employment status of the Consultant and/or whether or not they operate a Personal Service Company (PSC).

Recording on the Contracts Register

As with any contract over £5,000, contracts for consultants must be recorded on the corporate Contracts Register at the completion of the procurement.

Approvals

The appointment of a consultant must be approved by the relevant Executive Director and may need to go to CMT for approval.

APPENDIX 7 – JOINT PROCUREMENT ARRANGEMENTS WITH THIRD PARTIES

Joint procurement arrangements with third parties should be considered if such arrangements would offer the Council Best Value. Such third parties may include other public authorities and voluntary sector entities, and such arrangements may include membership of or use of purchasing consortia.

Any partnership agreement and/or shared services arrangement must be pre-approved by Procurement Board before being authorised by the Executive Director of Finance & Digital or the Chief Executive. At the sole discretion of either the Executive Director of Finance & Digital or the Chief Executive, the proposed joint arrangement may be designated as requiring prior consent from Cabinet to proceed.

Any joint procurement arrangements of the type described in Appendix 7 must be approved by the Executive Director of Finance & Digital or the Chief Executive prior to the commencement of any procurement or arrangement on behalf of the Council. No such approval may be given unless there has been a satisfactory appraisal of the matters set out below.

In considering any and all such proposals, the Executive Director of Finance & Digital and/or the Chief Executive must be satisfied:

- a. that the proposed joint procurement does not breach any UK law, or where the proposed third party is a foreign non-UK national, does not breach the laws of its country of registration if a company or location if a public authority. and
- b. is capable of delivering value for money. and
- c. where an waiver is required to the Council's Contract Standing Orders, (for example because it is necessary as part of the proposed arrangements to use the proposed third party's procurement regime, or because another party will be the lead body), that the proposed third party's governing procedures are sufficiently rigorous and can deliver standards of probity and transparency reasonably comparable to those of the Council's Contract Standing Orders. and
- d. that adequate consideration has been given to whether the proposed third party should indemnify the Council in the event that the third party's methods of operating and ideas may turn out to be unlawful or result in the Council being subjected to challenge, judicial review, or any similar action from any party that may lead to a financial loss for the Council.
- e. That an appropriate Inter-Authority Agreement shall be entered into by the Council and the Third Party(s).

The Executive Director of Finance & Digital and/or Chief Executive shall take procurement, legal and financial advice, as they consider necessary.

APPENDIX 8 – PROCEDURE FOR ACCEPTING AND OPENING PAPER BIDS

Where the Responsible Officer, with prior agreement of the Executive Director of Finance & Digital or their nominee determines (in accordance with these CSOs), requires that paper Bids may be submitted in relation to the Disposal of a Property Asset or where Bids in relation to Contracts are also required to be submitted in paper format, the procedure set out in this Appendix 8 shall apply. Please see the Procurement Toolkit for the process around receipt of paper bids.

1. Bids must not, under any circumstances, be opened before the deadline (date and time) for receipt of Bids has passed. If a Bid is opened early in error, the Responsible Officer must seek advice immediately from the Head of Commercial Services who will consult with Legal Services.
2. The Responsible Officer must fix a time and date for the opening of Bids received, which must (if relevant) take place after the deadline (date and time) for submission of electronic Bids.
3. No person may be present at the opening of Bids unless that person has been designated as part of the Bid opening process.
4. Only Officers may be present at the opening of the Bid.
5. All Bids received for a particular Contract or Disposal must be opened at the same time and place and in the presence of the same Officers.
6. All Bids must be opened in the presence of at least three (3) Officers.
7. The Officer leading the opening procedure must record the following details for each Bid received:
 - a. the date and time specified as the deadline for receipt of Bids for the particular Disposal or Contract.
 - b. the date and time that each Bid was received.
 - c. the name of each Bidder.
 - d. the amount of each Bid.
 - e. the names of those Officers present.
8. All Officers present at the opening of Bids must sign each Bid immediately after it is opened. All Bids received must be signed:
 - a. on the front page of the Bid. and
 - b. in the pricing schedule (or place where the price is stated).
11. Bids are to be scanned and filed electronically in accordance with the Council's retention policy. A copy of the electronic documentation is to be sent to Commercial Services for reference.

APPENDIX 9 – COMPLYING WITH THE UK'S INTERNATIONAL OBLIGATIONS ON SUBSIDY CONTROL

Following the UK's exit from the EU on the 31 December 2020, new rules on subsidy control now apply.

EU State aid rules only apply in certain limited circumstances:

- aid that is granted within scope of the Northern Ireland Protocol.
- the disbursement of outstanding Structural Funds payments

This quick guide summarises the key steps public authorities should take when awarding subsidies after 1 January 2021. Public authorities should read this guide in conjunction with the longer, technical BEIS guidance for more detailed background.

<https://www.gov.uk/government/publications/complying-with-the-uks-international-obligations-on-subsidy-control-guidance-for-public-authorities>

Step 1: Are you giving a subsidy and if so, what international obligations apply?

In general terms, and for the purposes of our international commitments, a subsidy is a measure which:

- is given by a public authority. This can be at any level – central, devolved, regional or local government or a public body
- makes a contribution (this could be a financial or an in kind contribution) to an enterprise, conferring an economic advantage that is not available on market terms. Examples of a contribution are grants, loans at below market rate, or a loan guarantee at below market rate or allowing a company to use publicly owned office space rent free. An enterprise is anyone who puts goods or services on a market. An enterprise could be a government department or a charity if they are acting commercially
- affects international trade. This can be trade with any World Trade Organisation member or, more specifically, between the UK and a country with whom it has a Free Trade Agreement. For example, if the subsidy is going towards a good which is traded between the UK and the EU this could affect trade between the EU and the UK. Please note that you are not being asked whether the subsidy could harm trade but merely whether there could be some sort of effect. Subsidies to very local companies or a small tourist attraction are unlikely to be caught as this is unlikely to affect international trade.

All of these tests must be met for a measure to be a subsidy.

If the measure meets the definition of a subsidy then you should consider which international obligations need to be met. In particular, you should determine whether the subsidy is going to a good or a service. Subsidies for services are outside the scope of the World Trade Organisation (WTO) Agreement on Subsidies and Countervailing Measures (ASCM). The WTO ASCM is most likely to be of relevance to subsidies in sensitive sectors such as aerospace, steel or automotive. On the other hand, attention needs to be given to the Free Trade Agreements (FTAs) the UK has agreed including the UK-EU Trade and Cooperation Agreement (TCA). These contain important obligations which must be met, where applicable. Please consult Section 5 of the technical guidance for more information on FTAs.

Public authorities also need to consider the implications of Article 10 of the Northern Ireland Protocol. The Protocol sets out that the EU State aid rules will apply in certain, limited cases where this is relevant to trade between Northern Ireland and the EU. Please consult Section 7 of the guidance for more information on the Northern Ireland Protocol.

12. Step 2: Is the proposed measure a prohibited subsidy?

The WTO ASCM contains 2 categories of prohibited subsidies, under which subsidies must not be given:

- subsidies dependent on export performance – for example giving a subsidy to a widget manufacturer linked to exporting a certain tonnage of widgets to another country
- subsidies contingent on the use of domestic content – for example stating that the beneficiary must use 50% UK manufactured widgets in their product

These are not new obligations. The UK, as a member of the WTO, has been following the WTO ASCM rules since 1994. Therefore, subsidies for goods should already be designed to be compliant with these obligations.

In addition, several FTAs – including the UK-EU TCA – expand the above prohibitions to cover services and include additional prohibitions. These include giving:

- unlimited State guarantees
- restructuring subsidy if the beneficiary does not have a valid plan in place to return the company to viability

The UK-EU TCA includes some additional conditions for subsidies given to air carriers, energy/environment and large cross border or international projects. These are not prohibitions but conditions which must be met.

13. Step 3: If you are within scope of the UK-EU TCA you must ensure that the subsidy meets the terms of the principles

The UK-EU TCA sets out principles which all subsidies of more than 325,000 Special Drawing Rights (59 approx. £350,000) given to a single beneficiary over 3 years must meet.

The only exceptions are subsidies to compensate for natural disasters, subsidies for agriculture and subsidies for audio visual. If in scope, you must consider these principles in the design and granting of subsidies on a case-by-case basis. Failure to do so could leave a public authority open to judicial review in the UK.

The principles are that:

- subsidies should pursue a specific public policy objective to remedy an identified market failure or to address an equity rationale such as social difficulties or distributional concerns (“the objective”)
- subsidies should be proportionate and limited to what is necessary to achieve the objective
- subsidies should be designed to bring about a change of economic behaviour of the beneficiary that is conducive to achieving the objective and that would not be achieved in the absence of subsidies being provided
- subsidies should not normally compensate for the costs the beneficiary would have funded in the absence of any subsidy

- subsidies should be an appropriate policy instrument to achieve a public policy objective and that objective cannot be achieved through other less distortive means
- subsidies' positive contributions to achieving the objective should outweigh any negative effects, in particular the negative effects on trade or investment between the Parties.

It is important to note that all the principles should be met. Public authorities should use the template in the Annex of the guidance to record their consideration of the principles. They may be required to provide this to the UK government if asked as part of the consultation or remedial measures processes in the UK-EU TCA or if they are subject to judicial review in the UK courts.

For the avoidance of doubt, public authorities can still pay out subsidies under previously approved schemes as these will be in line with the principles. This includes subsidies related to COVID-19 that have previously been given under the State aid Temporary Framework. Public authorities should keep these schemes under review and apply the principles to any changes made to these schemes.

14. Step 4: Assess the likelihood of triggering a dispute or unilateral remedies under WTO ASCM rules and other FTAs

This is where consideration needs to be given as to whether the subsidy could harm international trade or investment rather than merely affect it. The bar for WTO action is high, and as noted above is only likely to affect subsidies in sensitive sectors. Subsidies in these sectors may also be relevant under the other FTAs – especially the UK-EU TCA. When thinking about this, in addition to the sector, public authorities should consider:

- value of the subsidy and the intervention rate: very substantial subsidies (e.g., £hundreds of millions) are more likely to attract attention than small subsidies. The same is true for high intervention rates (e.g., 70% of project costs)
- international competitors: how many competitors are there? How easy is it to enter this market internationally? Are there only one or two competitors in the market who are likely to have concerns about any amount of subsidy?
- impact on trade: does this subsidy make it less likely that competitors can enter the UK market? Does it make it more likely that the beneficiary (or beneficiaries) can undercut in other markets? Does it make it more likely that the beneficiaries can win orders in third markets?

Public authorities should take a proportionate view when considering whether a subsidy could trigger action. Small sums to small companies are unlikely to do so. However, public authorities should consult BEIS if required using the email address at the bottom of this guide.

15. Step 5: Record the award of the subsidy

BEIS is developing a VAT database for public authorities to record information on relevant subsidies. This is beneficial not only for providing transparency in a domestic context but will also help deliver compliance with our international reporting requirements. It is therefore very important that subsidies are recorded in a timely way.

If in doubt, public authorities should contact subsidycontrol@beis.gov.uk for further advice

APPENDIX 10 – MERTON PROCUREMENT / DEMOCRATIC GOVERNANCE

Procurement Strategy Reports (Gateway 1) and Contract Award Reports (Gateway 2) for low-risk projects, with either a total contract value of £170,000 (but less than £3million), or Concession Contracts (and Contracts with nil value to the Council) need to be presented to the appropriate Departmental Procurement Group(s).

Procurement Strategies (Gateway 1) and Contract Award Reports (Gateway 2) with a total contract value of £3 million (or over) and/or rated high-risk i.e. those procurement projects which have been risk-rated at 15 and above, and/or procurement projects with carbon implications/impacts, must be presented to Procurement Board. [for risk guidance see: <http://intranet/councilwide/policyproceduresandguidance/riskmanagement.htm>]

All Concession Contracts (and Contracts with nil value to the Council) must also be presented to Procurement Board.

The Gateway 1 (Strategy Report) must be placed on the Forward Plan **at least 1 month prior** (but preferably 2-3 months prior) to the required Cabinet decision date - see <http://intranet/councillorsandcommittees/decisionmakinginmerton/forwardplan.htm>

Also see:

<https://democracy.merton.gov.uk/mgDelegatedDecisions.aspx?XXR=0&DR=01%2f10%2f2013-07%2f11%2f2028&ACT=Find&RP=0&K=0&V=0&DM=0&HD=0&DS=1&Next=true&NOW=071113145709&META=mgdelegateddecisions>

Please bear in mind, and flag-up any potential exempt appendices to your Award Report when filling in the Forward Plan.

All Gateway 1 (Strategy) reports that require Cabinet / Member approval, must ask for delegated authority to award the contract to be granted to the Executive Director(s) in consultation with the relevant Cabinet Lead Member(s). This will mean the Contract Award Report (Gateway 2) will not require approval at Cabinet unless stated as required or Members request it to go back to them for approval.

If delegated authority is provided, the Contract Award Report must be approved by Procurement Board, and then approved by the Executive Director(s) in consultation with the relevant Cabinet Member(s).

This may also apply to any permitted extension or variation to said Contract (so long as permission has been granted via the Strategy Paper/ Gateway 1) and if the extension/variation is permissible without further competition under the relevant procurement law.

Further guidance can be found in the Procurement Toolkit.

	<p>The governance process for Key Decisions with a total contract value of above £3 million and/or rated high-risk is:</p>
	<ul style="list-style-type: none"> • The report must include comments from Finance, Legal and Commercial Services and be approved by Procurement Board. • Reports are to be approved by the relevant Executive Director and then must be signed off by the relevant Cabinet Member(s). • May need to go to CMT (unless otherwise agreed by an Executive Director). • Must go to the Leader's Strategy Group for review prior to going to Cabinet (unless otherwise agreed by an Executive Director). <p>see: https://mertonintranet.moderngov.co.uk/mgAgendaManagementTimetable.aspx?RP=292. and http://intranet/councilwide/whoswho/cmtlsg.htm</p> <ul style="list-style-type: none"> • Must go to Cabinet for approval: https://mertonintranet.moderngov.co.uk/mgAgendaManagementTimetable.aspx?RP=146 • Is subject to post-decision call-in*. (Please allow one week for Scrutiny to decide whether or not it would like to call in the award for Cabinet decisions, 2.5 working days for Officer Key Decisions and all non-Key Decisions. If they do, this could add an additional 6 weeks to the decision process.) You will then need to allow for any additional standstill period required under relevant procurement law, where applicable, prior to notifying the bidder(s) of the award outcome.*If you believe that the award may be politically sensitive / of political interest you may opt to offer it up for pre-decision scrutiny.

	<p>The governance process for Key Decisions delegated to Chief Officers (i.e. with a total contract value of between £500k - £2.999m) is:</p>
	<ul style="list-style-type: none"> • The Authority to Award report must include comments from relevant Finance, Legal and Commercial Services Officers and be approved by the relevant departmental Departmental Procurement Groups • Must be placed on the Forward Plan - preferably 2-3 months prior to the required decision date • The Report must be reviewed by the relevant Executive Director before being signed off by the Chief Executive and the Executive Director of Finance & Digital (in line with the Scheme of Management) and published 5-days before the decision date. • May need to go to CMT (unless otherwise agreed by an Executive Director) • A decision form must be completed and published on the decision date. • Is subject to post-decision call-in* see http://intranet/ds-callinform.doc. Please allow one week for Scrutiny to decide whether or not it would like to call in the award. If they do, this could add an additional 4 -6 weeks to the decision process. You will then need to allow for any additional standstill period required under

	relevant procurement law, where applicable, prior to notifying the bidder(s) of the award outcome.
--	--

	The process for Non-Key Decisions (i.e. with a total contract value of between £250k - £499k) is:
	<ul style="list-style-type: none"> • The Authority to Award report must include comments from relevant Finance, Legal and Commercial Services Officers and be approved by the relevant Departmental Procurement Group(s) • The Report must be signed off in line with the relevant Departmental Scheme of Management • May need to go to CMT (unless otherwise agreed by an Executive Director) • Is subject to post-decision call-in* see http://intranet/ds-callinform.doc. Please allow one week for Scrutiny to decide whether or not it would like to call in the award. If they do, this could add an additional 4 -6 weeks to the decision process. You will then need to allow for any additional standstill period required under the relevant procurement law, , prior to notifying the bidder(s) of the award outcome. • A decision form must be completed and published on the decision date.

DRAFT

APPENDIX 11 – GUIDANCE NOTE ON SEALING CONTRACTS

Under Merton’s constitution, all contracts must be in writing.

A contract can be executed either under signature (also known as a simple contract) or under a deed (also known as under seal).

The types of risk where contracts under £250,000 should be sealed in the areas described above, reflect worst-case scenarios. The table below gives some examples:

Construction	Where defective design or build could become apparent at a later date and the Council would want to be able to sue for losses or costs arising out of this. (For example, where materials used. internal and/or external cladding. fixtures and fittings and structural works lead to injury and/or death arising out of the defects, or where, for example, the loss of premises (e.g. a school) results in alternative accommodation having to be acquired).
Services relating to Children and Vulnerable Adults	Circumstances where, if the services/goods provided under the contract are not adequate. or clauses in the contract that are designed to protect the users of the service/goods are not complied with entirely (or at all). results in allegations of abuse, injury or death. This may not come to light until after the contract has ended. Another potential risk could be data breaches that may not be apparent during the life of the contract.
ICT	System failure/data breaches/losses incurred
Mechanical / Electrical	Where defective design, installation and/or maintenance could become apparent at a later date and the Council would want to be able to sue for losses or costs arising out of this including injury or death arising out of the defects.

Please refer to the Procurement Toolkit on the Merton Hub for additional guidance.

APPENDIX 12 – PROCUREMENT CARDS (P-CARDS)

In certain circumstances, the Council makes use of general Purchase Cards, which are effectively like credit cards and are used to make small purchases in a wide range of situations.

Procurement cards may provide an alternative method to purchasing low value goods or services however the cards must only be used for authorised business expenditure.

Please make a note of the restrictions associated to your Procurement Card. Any attempt to purchase outside of these restrictions will result in the transaction being declined.

Procurement cards are not to be used as a mechanism for avoiding Contract Standing Orders / from following a compliant procurement process.

Please note that any unauthorised expenditure may lead to disciplinary proceedings, and possible dismissal and criminal proceedings.

The use and administration of P-cards is dealt with by Finance - please refer to the Merton Hub for further information on the appropriate use of Procurement Cards.

DRAFT

APPENDIX 13 – PUBLIC SECTOR PROCUREMENT FROM FEBRUARY 2025

The rules governing public procurement has changed following the UK's exit from the European Union. The new Procurement Act 2023 will be a transformation of public procurement resulting in a big change for all public bodies, which between them spend £300bn per year.

The Procurement Act brings a range of benefits, including:

- creating a simpler and more flexible commercial system that better meets our country's needs while remaining compliant with our international obligations
- opening up public procurement to new entrants such as small businesses and social enterprises so that they can compete for and win more public contracts. Further details at:

[gov.uk/ government/publications/benefitsfor-prospective-suppliers-to-the-public-sector](https://www.gov.uk/government/publications/benefitsfor-prospective-suppliers-to-the-public-sector)

- taking tougher action on underperforming suppliers and excluding suppliers who pose unacceptable risks
- embedding transparency throughout the commercial lifecycle so that the spending of taxpayers' money can be properly scrutinised.

The new regime is expected to go live 28th February 2025. Until then, the PCR 2015 will continue to apply, as they will also continue to apply to any procurement / contract that started before the new Act's operational date.

Link to the Procurement Act 2023:

<https://www.legislation.gov.uk/ukpga/2023/54/enacted>

Links to Public Contracts Regulations 2015:

<https://www.legislation.gov.uk/uksi/2015/102/contents>

<https://www.legislation.gov.uk/ukdsi/2019/9780111176788/contents>

<https://www.legislation.gov.uk/uksi/2020/1319/contents/made>

The National Procurement Policy Statement (NPPS)

The NPPS is a policy document owned by the Cabinet Office that sets out the Government's policy vision for public procurement on a national scale. Following its embedding into the Procurement Act, the NPPS is now mandatory for all contracting authorities to have regard of the NPPS as part of our Standing Orders and our Procurement Strategies. Link to the National Procurement Policy Statement (NPPS): <https://www.gov.uk/government/publications/national-procurement-policy-statement>

The Provider Selection Regime (PSR)

The Health and Care Act 2022 introduced a new procurement regime for selecting providers of health care services in England: The Provider Selection Regime (PSR). The Regime came into force 1st January 2024 and replaces:

- Public Contracts Regulations 2015, WHEN procuring health care services
- National Health Service (Procurement, Patient Choice and Competition) Regulations 2013

The aim of the regime is to introduce:

- A flexible and proportionate process for selecting providers of health care services so that all decisions are made in the best interest of people who use the services.
- The capability for greater integration and enhanced collaboration across the system, whilst ensuring that all decisions about how health care is arranged are made transparently.
- Opportunities to reduce bureaucracy and cost associated with the current rules.

The PSR has a reduced emphasis on competitive procurement every time in that it allows for direct awards: an authority can directly award to existing suppliers or by patient choice or can directly award to the most suitable supplier.

The PSR has a greater emphasis on quality and outcomes - providers are evaluated on capacity and track record, designed to foster a culture of continuous improvement and innovation of services. It also allows to reward performance by giving commissioners flexibility to allocate resources and contracts to providers who demonstrate good performance (see above).

The PSR also encourages transparent performance metrics - providers are required to report on various performance indicators allowing commissioners to make data-driven decisions based on quality benchmarks.

Further guidance on the PSR can be found here: <https://www.england.nhs.uk/long-read/the-provider-selection-regime-statutory-guidance/>

APPENDIX 14 – FLOWCHART OF NOTICES UNDER THE PROCUREMENT ACT

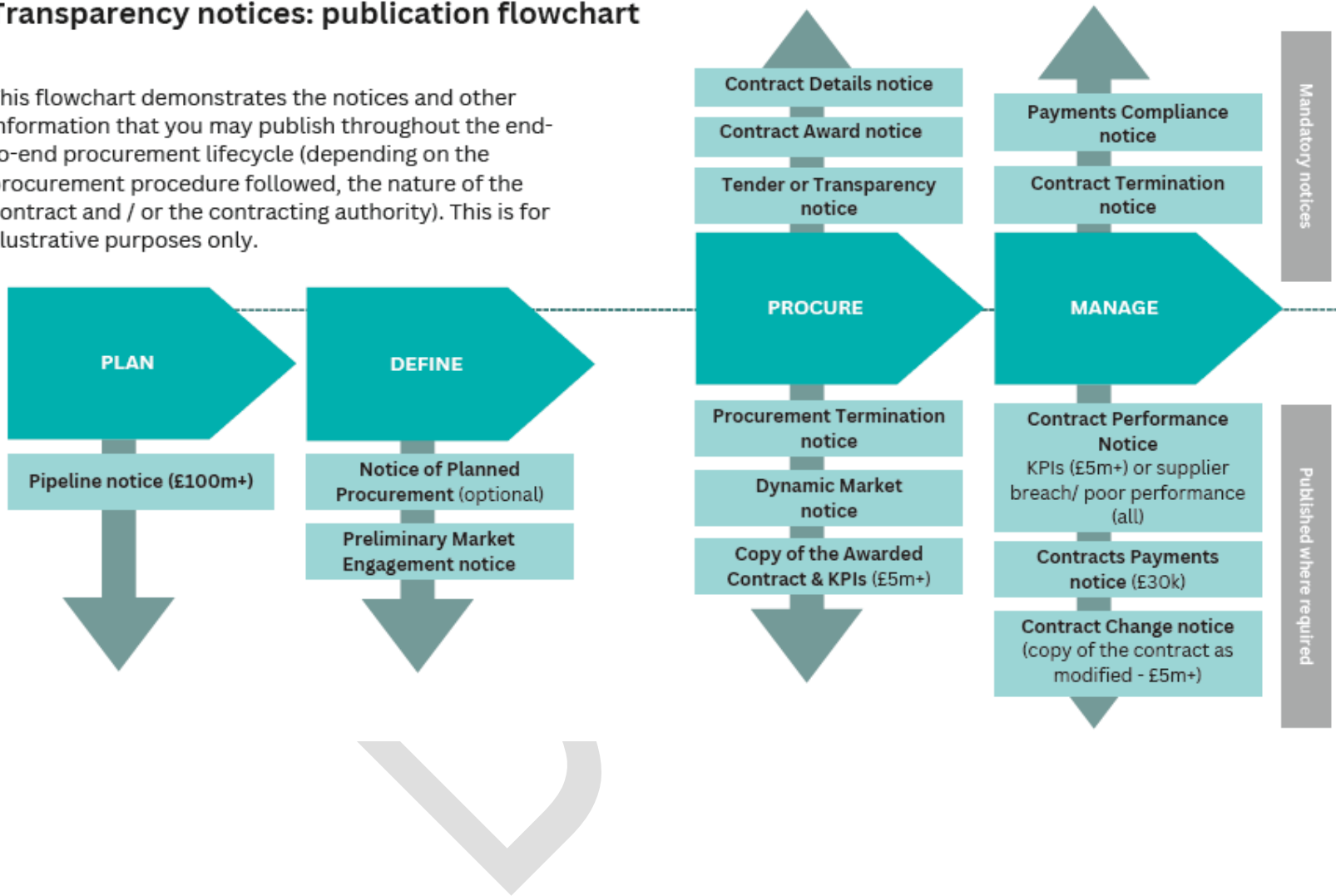
DRAFT

Transforming Public Procurement

Transparency notices: publication flowchart

This flowchart demonstrates the notices and other information that you may publish throughout the end-to-end procurement lifecycle (depending on the procurement procedure followed, the nature of the contract and / or the contracting authority). This is for illustrative purposes only.

Page 507



This page is intentionally left blank