

Contract Standing Orders 2014

**LONDON BOROUGH OF HAMMERSMITH & FULHAM
 CONTRACT STANDING ORDERS – 2014
 MADE PURSUANT TO SECTION 135 OF THE LOCAL GOVERNMENT ACT 1972**

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SECTION 1

Scope of Contract Standing Orders

1 BASIC PRINCIPLES

- 1.1 These Contract Standing Orders (hereafter referred to as “CSOs”) are made pursuant to section 135 of the Local Government Act 1972. The aim of these CSOs are to promote good purchasing practice and public accountability, and deter corruption. Following the rules is the best defence against allegations that a decision has been made incorrectly or fraudulently. Failure to follow them may result in disciplinary or even criminal proceedings.
- 1.2 Officers and Members responsible for purchasing or disposal must comply with these CSOs, which lay down minimum requirements. They will be supplemented by a series of Purchasing Guides (as published on the intranet and internet).
- 1.3 These CSOs have been written to reflect current legislative requirements and to ensure that there is compliance by the Council. However, where there are any inconsistencies between these CSOs and the requirements of the Public Contracts Regulations 2006 (as amended)^{1, 2} (or any other statutory requirements that may replace or supplement these Regulations), the latter will take precedence.
- 1.4 Where financial thresholds are mentioned they should be cross-referenced with the Council’s *Financial Regulation* and in the event of any inconsistency between the two documents *Financial Regulations* shall take precedence.
- 1.5 Throughout these CSOs where reference is made to “estimated values” that means the total estimated spend and not the annualised estimated value of the proposed contract.
- 1.6 For the avoidance of doubt, and subject to specific exemptions contained within these CSOs, a Cabinet Member Decision (CMD) is required for the approval of all contracts that have a total value of £20,000 and greater, but less than £100,000 and a Cabinet Key Decision (KD) for all contracts that have a total value of £100,000 or greater.
- 1.7 Procurement is the process which governs the acquisition of goods, works and services - from identification of need, through to the end of a service contract or the end of the useful life of an asset. Purchasing and disposal procedures must:
- Comply with all legal requirements
 - Achieve best value for public money spent
 - Be consistent with the highest standards of integrity
 - Ensure fairness in allocating public contracts
 - Ensure that *Non-commercial Considerations* do not influence any *Contracting Decision*
 - Support the Council’s corporate and departmental aims and policies
 - Comply with the Council’s procurement strategy and *Purchasing Guides*.

¹ The Public Contracts (Amendment) Regulations 2009

² The Public Procurement (Miscellaneous Amendments) Regulations 2011.

- 1.8 Every person involved in any procurement process has a responsibility to declare any links or personal interests that they may have with potential purchasers, suppliers and/or contractors if they are engaged in contractual or purchasing decisions on behalf of the Council.
- 1.9 To ensure the integrity of the tendering process, nobody involved in the procurement process may -
- act in any way that may be viewed or construed as a conflict of interest, or
 - disclose any information (otherwise known as "insider information") they may have obtained about any external or internal tenderer involved in a contract tendering process to any person who is not expressly entitled to it, or
 - divulge the content of any tender, tender list, detailed estimates, or other tender information to any person who is not expressly entitled to such information.
- 1.10 Where there is an inconsistency or ambiguity in these CSOs, the *Director for Procurement & IT Strategy* following consultation with the Bi-Borough Director of Law will advise.
- 1.11 Tri-borough³ Procurement –**
- 1.11.1 All procurement exercises will primarily be considered in terms of joint procurement activity either on a tri-borough (or bi-borough) basis. Secondary considerations may dictate that the procurement should, in addition, be opened to other public bodies. Only in exceptional circumstances will the Council consider procuring works, goods or services on its own behalf. (see CSO 7.4 below.)
- 1.11.2 Officers need to refer to the *Tri-borough Procurement Code, Tri-borough Procurement Protocol for Joint Contracts* and associated documents when carrying out procurement exercises.

2 OFFICER RESPONSIBILITIES

- 2.1. These CSOs must be strictly complied with; they are the Council's minimum requirements. A more thorough procedure may be appropriate for a particular contract. For example, rather than seeking a quotation a more formal tendering process may be applicable (as set out in CSO 12.3 and table 12.3). Equally, it may not always be appropriate to make use of an exemption under the following section (CSO 3), even if one might apply or be granted.
- 2.2. General responsibilities of Chief Officers (Executive Directors): The *Chief Officer* has responsibility for all contracts tendered and let by their Department. He/she is accountable to the Cabinet for the performance of his/her duties in relation to contract letting and management, which are:
- (a) to ensure compliance with English and EU legislation and Council Policy;
 - (b) to ensure value for money in all procurement matters;
 - (c) to ensure compliance with these CSOs *Financial Regulations* and the *Purchasing Guides*
 - (d) to maintain a departmental scheme of delegation;

³ Three boroughs comprising London Borough of Hammersmith & Fulham, Royal Borough of Kensington & Chelsea and Westminster City Council

- (e) to ensure that all relevant staff are familiar with the provisions of these CSOs, *Financial Regulations* and the *Purchasing Guides* and that they receive adequate training on their operation;
- (f) to ensure compliance with any guidelines issued in respect of these CSOs;
- (g) to take immediate action in the event of a breach of these CSOs or the *Purchasing Guides* within his or her area;
- (h) to keep proper records of all contracts, tenders etc. including electronic data files (where electronic tendering systems are used), minutes of tender evaluation panels and other meetings;
- (i) to keep records of waivers and exemptions of any provision of these Contract Standing Orders (as set out in Section 3 below);
- (j) to keep proper records of all contract awarded (using the *Council's approved Database*⁴ where these have a total value of £20,000 and over); and
- (k) the safekeeping of all original contracts which have been completed by signature and where the value is below £100,000. For contracts which exceed this figure the contractual paperwork is passed to the Bi-borough Director of Law for sealing as a Deed (and thereafter safekeeping).

2.3. *Chief Officers* are empowered within the terms of these CSOs to delegate to any officer within their Department authority to act on their behalf. However, such delegation will not affect their accountability for actions taken in their name.

2.4. Officers: The *Officer* responsible for purchasing or disposal must comply with these CSOs, *Financial Regulations*, *Code of Conduct* and with all UK and European Union binding legal requirements. The *Officer* must:

- (a) keep the records required by CSO 18
- (b) ensure that *Tender* procedures are conducted in accordance with procedures set out in the *Invitation to Tender*.
- (c) also ensure that agents, consultants, and contractual partners acting on their behalf also comply.
- (d) take all necessary legal, financial and professional advice.

2.5. No councillor or officer may accept any form of hospitality from any *Candidate* during a tendering (or similar exercise). Hospitality from suppliers, service providers or contractors who may or may not have current contracts with the Council may only be accepted in accordance with the "*Guidance on Gifts and Hospitality*" which forms part of the Council's Constitution (for Members) and "*Policy and Procedure for: Acceptance of Gifts and Hospitality by Employees* *Guidance on the receipt of gifts, benefits and hospitality*" that is part of the Council's Personnel Procedures (for officers). For both Members and officers the appropriate Register of Gifts and Hospitality should be completed in accordance with this guidance.

3. WAIVERS AND EXEMPTIONS

3.1 A prior written waiver to these CSOs may be agreed by the *Appropriate Persons* (as defined in table 3.1 below) if they are satisfied that a waiver is justified because:

- the nature of the market for the works to be carried out, or the goods to be purchased, or the services to be provided has been investigated and is demonstrated to be such that a departure from these CSOs is justifiable; or
- the contract is for works, goods or services that are required in circumstances of extreme urgency that could not reasonably have been foreseen; or

⁴ Capital-E-Sourcing

- the circumstances of the proposed contract are covered by legislative exemptions (whether under the *Public Contracts Regulations 2006*, *EU Directives* or English law); or
- it is in the Council's overall interest; or
- there are other circumstances which are genuinely exceptional.

A departmental record of the decision approving a waiver and the reasons for it must be kept in accordance with CSO 18.2 or CSO 18.3. The provisions contained in this paragraph cannot be considered if the *Public Contracts Regulations 2006 (EU Procedure)* applies.

table 3.1.

<u>Appropriate Person</u>	<u>Estimated Contract Value</u>
Client Executive Director	Less than £20,000
The appropriate Cabinet Member(s) acting on advice from the Client Director.	£20,000 or more but less than £100,000
The appropriate Cabinet Member(s) and the Leader of the Council	£100,000 or more.

- 3.2 All waivers and exemptions for contracts with an estimated value of £20,000 and more, and the reasons for them, must be detailed in a report either to the Cabinet or the appropriate Cabinet Member(s). The report must contain the comments of appropriate Chief Officer, the Executive Director of Finance & Corporate Governance, the *Director for Procurement & I.T. Strategy*, and the Bi-borough Director of Law.
- 3.3 Where a prior approval has not been obtained in accordance with CSO 3.1 the reason for non-compliance must be contained in the tender acceptance report.
- 3.4 Each Chief Officer shall take immediate action in the event of breach of these CSOs by reporting this breach to the *Executive Director of Finance and Corporate Governance*. It will be the responsibility of the *Executive Director of Finance and Corporate Governance* to determine the nature of the breach and if it is deemed to be serious (e.g. involving a Key Decision) to refer the matter to the *Bi-borough Director of Audit* for investigation with view to identifying the steps to be taken to avoid a reoccurrence.

4 RELEVANT CONTRACTS

- 4.1 All *Relevant Contracts* must comply with these CSOs
- 4.2 A *Relevant Contract* is any arrangement made by, or on behalf of, the Council for the carrying out of work or for the supply of goods, materials or services. These include arrangements for:
- the supply or disposal of goods;
 - hire, rental or lease of goods or equipment;
 - execution of works;
 - the delivery of services, including those related to:
 - the recruitment of staff
 - land and property transactions
 - financial and consultancy services; and
 - concessions (services and/or works)
- 4.3 *Relevant Contracts* do not include contracts relating to:

- the employment of staff
- the engagement of Counsel, or
- the engagement of arbitrators, adjudicators or mediators in connection with construction related disputes.
- the acquisition, disposal, or transfer of land (for which Financial Regulations shall apply)
- the making of grants.

5 PREVENTION OF CORRUPTION

5.1 The *Officer* must comply with the *Code of Conduct* and the Council's anti-fraud and corruption strategy and must not invite or accept any gift or reward in respect of the award or performance of any contract. It will be for the *Officer* to prove that anything received was not received corruptly.

5.2 High standards of conduct are obligatory. Corrupt behaviour will lead to dismissal and is a crime under the statutes referred to in CSO 5.3.

5.3 The following clause must be put in every written Council contract:

“The Council may terminate this contract and recover all its loss if the Contractor, its employees or anyone acting on the Contractor's behalf does any of the following things:

- (a) offers, gives or agrees to give to anyone any inducement or reward in respect of this or any other Council contract (even if the Contractor does not know what has been done); or
- (b) commits an offence under the Bribery Act 2010 or Section 117(2) of the Local Government Act 1972; or
- (c) commits any fraud in connection with this or any other Council contract, whether alone or in conjunction with Council members, contractors or employees.

Any clause limiting the Contractor's liability shall not apply to this clause.”

6 DECLARATION OF INTERESTS

6.1 If it comes to the knowledge of a member or an employee of the Council that a contract in which he or she has a pecuniary interest has been or is proposed to be entered into by the Council, he or she shall immediately give written notice to the Chief Executive. The Chief Executive shall report such declarations to the appropriate committee.

6.2 Such written notice is required, irrespective of whether the pecuniary interest is direct or indirect. An indirect pecuniary interest is distinct from a direct pecuniary interest in as much as it is not a contract to which the member or employee is directly a party.

6.3 A shareholding in a body not exceeding a total nominal value of £1,000 or 1% of the nominal value of the issued share capital (whichever is the less) is not a pecuniary interest for the purposes of this CSO.

6.4 The Chief Executive shall maintain a record of all declarations of interests notified by members and Officers.

6.5 The Chief Executive shall ensure that the attention of all members is drawn to the National Code of Local Government Conduct.

Section 2

Preparing for tendering

7 PRE-TENDER MARKET RESEARCH AND CONSULTATION

7.1 The Officer responsible for the purchase:

- may consult potential suppliers prior to the issue of the Invitation to Tender in general terms about the nature, level, broad estimated value and standard of the supply, contract packaging and other relevant matters provided this does not prejudice any potential *Candidate*, and
- may, where an existing contract exists, obtain from the current service provider information on service delivery aspects, **but**
- must not seek or accept technical advice on the preparation of an Invitation to Tender or Quotation from anyone who may have a commercial interest in bidding, as this may prejudice the outcome by distorting competition and compromise the equal treatment of all potential *Candidates*.

7.2 Consultation referred to in CSO 7.1 above may be initiated through the publication of a Prior Information Notice in OJEU, the electronic portal (used for tendering purposes) and/or on the “capitalEsourcing” website

8 STEPS PRIOR TO PURCHASE

8.1 Where an existing contractual arrangement has been approved, no orders shall be placed with any other organisation or new contractual arrangements sought unless:

- there is prior approval from the *Director for Procurement & I.T. Strategy* and there are reasonable grounds for doing so; or
- the contract itself needs to be renewed or
- an existing contractor or provider has defaulted on a contract. Where a contractor, provider or supplier defaults on a contract, any retention monies held under that contract could be used to raise an order with an alternative provider in the event of such failure.

8.2 Before promoting the procurement of a new or joining a pre-existing framework or consortium arrangement, an Officer must be satisfied that such an approach represents the most economically advantageous solution and can be entered into without breaching the Public Contracts Regulations 2006 (as amended).

8.3 With the exception of framework agreements let by the Crown Commercial Service (formerly the Government Procurement Service), the *Director for Procurement & I.T. Strategy* must be formally consulted where the purchase is to be made using a framework agreement awarded by another *Central Purchasing Body*, (e.g. local authority, government department, statutory undertaker or public service purchasing consortium). Before entering into a contract based upon an existing framework agreement or joining a consortium the *Officer* shall:

- (a) provide evidence to the *Director for Procurement & I.T. Strategy* that a full, open and proper competitive process has been (or will be) undertaken and that such process complies with all statutory requirements
- (b) consult with the Bi-borough Director of Law on the terms and conditions of the proposed contract to ensure that they do not compromise the Council's interests; and
- (c) comply with the terms of the framework agreement, including the carrying out of any further competition requirements contained in it (e.g. "mini-competition").

Establishing a Service Review Team & developing a Business Case

- 8.4 The precursor to any new procurement exercise (which requires a Key Decision) shall be carried out by a Service Review Team (SRT) established by the Client-side Director. The SRT will include the Contract Manager, client-side officers, relevant stakeholders, and engage relevant professional officers in legal, finance, procurement, IT and HR. It will also commission additional expertise where this is warranted.
- 8.5 All procurement related exercises (which require a Key Decision) must produce a high-level business case to the Client-Executive Director examining the possibilities of working with other boroughs, on either a regional⁵ or sub-regional basis⁶. Only where collaborative procurement is not an option will the SRT recommend procuring exclusively for the Council (see also CSO 1.11.1 above).

Establishing a Tender Appraisal Panel

- 8.6 Where a competitive tendering exercise is considered appropriate a *Tender Appraisal Panel (TAP)* shall be established to take responsibility for managing all aspects of the procurement process. This includes signing off all documentation required to undertake a procurement exercise.
- 8.7 The TAP will be chaired by a senior service manager in the client department (or where there are several departments involved, in the department with the highest spend), with a senior sponsor, and include relevant stakeholders (e.g. contract manager). It will consult and engage relevant professional officers in legal, finance, procurement, IT and HR. It will also commission additional expertise where this is warranted. It will be responsible for
- ensuring a contract is put in place in accordance with legal requirements,
 - that it meets required deadlines and service requirements and
 - represents value for money.
- 8.8 In most instances the TAP will identify and appoint a Project Officer who will be responsible for the day to day running of the procurement exercise. The Project Officer will be a member of the TAP.
- 8.9 Before beginning a purchase, the Project Officer responsible for it must, in a manner commensurate with the complexity and value of the purchase:
- ensure that there is an estimating process which sets out the initial project estimate, revised estimates and tender estimate being a necessary part of the tender comparison and competitiveness evaluation. Such estimates must reflect current or expected market values and must not be over inflated as a means of avoiding the requirements of either or both the Public Contracts Regulations (as amended) or these CSOs.

⁵ Regionally means within Greater London (or wider – South Eastern England), and in this context any identifiable public bodies may be party to it.

⁶ Sub-regionally means public bodies predominately in central and western London

- take into account any procurement guidance issued by the *Bi-borough Procurement Strategy Board* and/or the Executive Director of Finance & Corporate Governance
- consider any recommendations arising out of a Service Review (including the Business Case)
- consult with the *Director for Procurement & I.T. Strategy* to ensure that a contractual arrangement is not already in place (either as an in-house service or as a contract with an external organisation).
- appraise the need for the expenditure and its priority
- define the objectives of the purchase and, where appropriate, ensure that they meet the requirements of the Business Case developed by the SRT;
- assess the risks associated with the purchase and how to manage them
- consider, where it is appropriate, the Council's responsibilities under the Civil Contingency Act in terms of potential emergencies and the continuity of high priority services
- have due regard to the Council's responsibilities under the Public Sector Equality Duty¹ arising from the Equality Act 2010 and other relevant legislation (e.g. The Public Services (Social Value) Act 2012)
- consider what procurement method is most likely to achieve the purchasing objectives, including:
 - internal provision ("make decision") or
 - external sourcing ("buy decision"),
 - collaboration (including shared services) with other purchasers, partnering and long-term relationships
 - the use of a *framework agreement* already let by the Council or a *framework agreement* let by another *Central Purchasing Body* and which has been awarded on the basis that it can be used by others;
- consult users as appropriate about the proposed procurement method, contract standards, and also performance and user satisfaction monitoring
- select the most appropriate procurement method and
- set these matters out in writing if the Total Estimated Value of the purchase exceeds £20,000;

and confirm that:

- there is Cabinet, Cabinet Member or delegated approval for the expenditure in accordance with *Financial Regulations*;
- for non-procurement related issues the appropriate approvals, for example, those found in *Financial Regulations* have been complied with, and
- appropriate contract notices (and advertisements), have been placed in accordance with the *Public Contracts Regulations 2006*, *EU Procedures* and these CSOs.

8.10 The TAP shall appoint from its ranks the appropriate professional officers (and in most instances this will include the Project Officer) to evaluate expressions of interest or tenders received. These professional officers will individually score the submissions received and award marks against the pre-published criteria. Only those officers that are qualified to evaluate submissions may be invited to do so. The TAP will then consider these individual scores and shall arrive at and agree a consensus score for all criteria. The TAP shall not adopt, as a methodology, an average scoring arrangement.

8.11 The TAP will keep accurate records of all meetings, retain appropriate documentation and maintain proper records for transparency and audit purposes.

- 8.12 The TAP will undertake post project reviews where required. It will implement any corporate or tri-borough shared service requirements including supporting arrangements around any agreed Gate proposals and participating in any audits.
- 8.13 Except for our of hours purchases or minor expenses, no telephone orders are to be placed for goods, work, works or services, unless otherwise agreed by the *Director for Procurement & I.T. Strategy*. For most low value expenditure, and in order to reduce maverick spend, officers are required to raise a purchase order to be placed through the Council's e-Procurement system (or other approved specialist order system).

9 PROCUREMENT PRINCIPLES

- 9.1 Where there are no suitable pre-existing framework agreements the Council must carry out its own tendering exercise either for a contract or to establish for its own usage or for other public bodies to join a framework agreement. Where a framework agreement is to be established that will include other public bodies approval from the *Director for Procurement & I.T. Strategy* is required.
- 9.2 Unless otherwise agreed by the *Director for Procurement & I.T. Strategy*, all procurement exercises that have a competitive element will be undertaken using the Council's e-tender software
- 9.3 All procurement must be carried out in an open and transparent manner in accordance with *table 11.1* below. The process shall be undertaken by a *Tender Appraisal Panel* to ensure that the Council receives value for money (except where the award criteria is to be on the basis of the lowest tender received – no subjective decision on quality/price ratios).
- 9.4 Any agreed Council or tri-borough developed Gateway review process must be applied to all relevant contracts.

10 STANDARDS AND AWARD CRITERIA

- 10.1 The Officer must ascertain what are the relevant British (or equivalent) European or international standards which apply to the subject matter of the contract. The Officer must include those standards that are necessary properly to describe the required quality. The *Director for Procurement & I.T. Strategy* must be formally consulted before any Officer decides to use any standard that does not include a European standard.
- 10.2 The basis of award shall be either the:
- “**lowest price**” where payment is to be made by the Council
 - “**highest price**”, if payment is to be received, or
 - “**most economically advantageous tender**” (where quality and/or other considerations other than purchase price also apply).

The Council's preferred option is to accept the “most economically advantageous tender”. If this approach is adopted, it must be further defined by reference to criteria, sub-criteria and scoring methodologies. All levels of criteria may refer only to relevant considerations. These may include: price; quality of service; quality of goods; whole-life running costs; whole life cycle costs; technical merit; delivery date; cost effectiveness; quality; relevant environmental considerations; aesthetic and functional characteristics (including security and control features);

safety; after-sales services; technical assistance; partnering arrangements; long-term relationships, and any other relevant matter.

- 10.3 The Tender Appraisal Panel (TAP) (and/or Officer) must define and document the Award Criteria and sub-criteria that are appropriate to the tendering exercise, before tenders are sought. Award Criteria & sub-criteria must be designed to secure an outcome giving best value for money for the Council.
- 10.4 Tender Appraisal Panels are responsible for ensuring the optimum combination of whole life cost and quality.
- 10.5 The Award Criteria must not include:
- *Non-commercial Considerations*
 - matters which discriminate against suppliers from the European Economic Area or signatories to the Government Procurement Agreement
 - matters which are anti-competitive within the meaning of the various Local Government Acts.
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SECTION 3

Starting the procurement phase

11 PROCESS, ADVERTISING AND APPROVED LISTS

11.1 Officers will use the methods for selecting potential bidders for either quotations or tenders as set out in Table 11.1 immediately below.

table 11.1.

Estimated Value	Works	Supplies	Services	Consultants
Under £20,000	An existing framework agreement; or The <i>Constructionline</i> database (specialist works through a <i>select list</i> process)	Existing framework agreement set up by a Central Purchasing Body or <i>An Approved List</i> or advertisements appearing in trade or other recognised journals (if applicable);		
£20,000 but no more than £100,000		Existing framework agreement set up by a Central Purchasing Body or <i>Select List</i> (e.g. advertise the opportunity) or <i>Approved List</i>	An existing framework agreement set up by a Central Purchasing Body or <i>Approved List</i> or <i>Select List</i>	
£100,000. or more (except those listed below)		An existing <i>framework agreement</i> set up by a <i>Central Purchasing Body</i> , or <i>Select list</i>		
<i>Greater than EU Threshold for: Supplies & Services only (£173,934)</i>		An existing <i>framework agreement</i> set up by a <i>Central Purchasing Body</i> , or <i>Select list</i> – must include an OJEU Contract Notice (except for non-regulated services covered under Part B).		
<i>Greater than the EU Threshold: Works only (£4,348,350)</i>	Usually a <i>select list</i> (including an OJEU Contract Notice), otherwise an existing framework agreement			

11.2 Where a contract notice is published the minimum requirement is the “capitalEsourcing” Portal (or any other Portal that the Council may from time to time use). Publication may also be required in the *OJEU* and depending upon its complexity the *TAP* may recommend placing a notice in a trade journal. Where there is a statutory requirement for a Contract Notice to be published in *OJEU* no corresponding Contract Notice shall appear in any UK publication (including the “capitalEsourcing” Portal) before the date of despatch for publication in *OJEU*.

- 11.3 The TAP and appropriate *Chief Officer* shall be responsible for ensuring that all persons or bodies invited to tender for the supply of goods, services or works to the Council have been suitably assessed and meet the Council's minimum standards in terms of :
- technical ability and capacity to fulfil the requirements of the Council;
 - economic and financial standing;
 - insurance cover;
 - quality assurance
 - professional & business standing
 - meeting statutory requirements of the Equality Act 2010
 - meeting statutory requirements of Health & Safety legislation; and
 - environmental management.
- The assessment needs to be proportionate, based upon the value of the contract and the risks involved.
- 11.4 This may be achieved in respect of all contracts by selecting firms who have met the requirements of CSO 11.3 above:
- (a) the use of Constructionline as the preferred database for all construction related contracts (up to the *EU threshold*)
 - (b) an Approved List compiled following responses to a public advertisement (preferred method for recurrent low value consultancy commissions), or
 - (c) for other low value service and supply contracts only (below £20,000), from organisations who have advertised their products in appropriate trade journals (including "Yellow Pages"); or
 - (d) a "Select List" of shortlisted *Candidates* assessed from expressions of interest in a particular contract submitted in response to a *Contract Notice* (public advertisement) using either the restricted or open procedure (or for complex procurements either the competitive dialogue or negotiated procedure).
 - (e) a *Framework Agreement* (e.g. Government Procurement Service)
- Paragraphs (a) and (c) relate to contracts whose estimated values are below the *EU thresholds*. In both cases, a minimum number of quotation or tenders should be sought and obtained – as set out in CSO 12.3. Where *EU thresholds* apply in relation to (d), verification is needed that the appropriate *EU Procedures* have been complied with.
- 11.5 Where a restricted process is used (either through the use of Constructionline, an Approved List or a Select List) or where quotations or tenders are sought from organisations advertising in trade or other recognised journals, then the minimum number of tenderers invited to tender shall be as set out in the table set out in 12.3 below.

12 COMPETITION REQUIREMENTS FOR PURCHASE, DISPOSAL AND PARTNERSHIP ARRANGEMENTS

- 12.1 The *Officer* must calculate the estimated *Total Value*. The following procedures apply where there are no other procedures that take precedence. Other procedures may include agency/framework agreements with other public sector organisations (e.g. *Government Procurement Service – formerly Buying Solutions*). If in doubt, *Officers* must seek, in writing, the formal advice of the *Director for Procurement & I.T. Strategy*.
- 12.2 *Chief Officers* shall be responsible for planning all tendering exercises. However, the appropriate Cabinet Member shall be responsible for approving the relevant Business Case/Procurement Strategy at the beginning of the procurement process for all tenders regarding services where the estimated value exceeds

£1,000,000. Such Business Cases/Procurement Strategies will set out the frequency of interim reports to Cabinet Members on the procurement process.

- 12.3 With the exception outlined in CSO 12.4, the purchasing/competition requirements set out in table 12.3 (except where a *Framework Agreement, shared service or collaborative procurement is being considered*): where the *Total Value* for a purchase falls within the values in the first column below, the *Award Procedure* in the second column must be followed. Shortlisting shall be approved by the persons specified in the third column.

table 12.3

Maximum Total estimated Value	Competition requirement	Shortlisting	Contract Award Procedure. (total contract value threshold)
Under £5,000	One Quotation (confirmed in writing using a designated electronic system), although the duty to obtain value for money still remains.	Not applicable	Less than £20,000. Chief Officer's responsibility (may be delegated).
£5,000 to below £20,000	Invitation to Quote as set out in CSO 14.2. A minimum of 3 written quotations should be sought ⁷ (using a designated electronic system)	Officer & Line Manager	
£20,000 to below £100,000	Invitation to Quote as set out in CSO 14.2. A minimum of 3 written quotations (or tenders) should be sought (using a designated electronic system).	TAP ⁸	£20,000 or greater but less than £100,000 ----- Cabinet Member(s) responsible for award.
£100,000. or more but less than £173,934	Invitation to Tender as set out in CSO 14.2. A minimum of 3 tenders should be sought.	TAP	£100,000 ----- Cabinet responsible for award, subject to the exemptions set out in CSO 12.6 below
£173,934 or greater	Invitation to Tender as set out in CSO 14.2. A minimum of 5 tenders should be sought, if the <i>Restricted Procedure</i> is used	TAP	

- 12.4 The exception referred to in CSO 12.3 relates to the award of contracts relating to expenditure in connection with the Council's obligations under the Local Government Pension Scheme which are reserved for the Audit Pensions and Standards Committee.

- 12.5 The *Director for Procurement & I.T. Strategy* will be responsible for the opening of all tenders and quotations that have been submitted electronically through the e-tendering system. Only those exceptional tenders that are submitted on paper and have an estimated value in excess of the *EU Threshold* for Supply &

⁷ If less than 3 quotations are to be obtained prior approval to the suspension of the requirement must be obtained in accordance with section 3 on waivers and exemptions.

⁸ TAP – Tender Appraisal Panel

Services contracts will be directed to the Mayor's Office to be opened by the Mayor, Deputy Mayor or Chief Whip.

12.6 The Contract Award Procedures set out in CSO 12.3 above may be waived for all new contracts or renewals which are reported to Cabinet as either part of the Capital or Planned Maintenance Programme, or other major revenue contracts, provided that the proposed programme for tendering the schemes is approved as a Key Decision. The Key Decision must be made prior to the commencement of the tendering procedure. The report to Cabinet may be part of the regular financial monitoring reports and must include a realistic estimation of the costs. The award decision is then delegated to Cabinet Members as set out in CSO 12.5.1 below.

12.6.1 In such cases, where an open and transparent tendering exercise has been completed and the tendered sum is within budget then the contract can be awarded by

- the relevant Cabinet Member(s) where the value is £100,000 or more but less than £1,000,000; or
- the relevant Cabinet Member(s) and the Leader of the Council where the value is £1,000,000 or more but less than £5,000,000.

For avoidance of doubt, where the tender recommended for acceptance is above the previously agreed budget procedures set out in paragraph 12.3 above will apply.

12.7 Where the tender recommended for acceptance is more than 15% below the budget a report to the Cabinet Member shall be required explaining the reasons for the difference and confirm that the contractor has provided written confirmation that they are able to fulfil the contract for their tendered sum.

12.8 An Officer must not enter into separate contracts, nor select a method of calculating the Total Value, in order to avoid the requirements of the Public Contracts Regulations 2006 (EU Procedures) or to minimise the application these CSOs (otherwise known as disaggregation)⁹.

12.9 Where the Public Contracts Regulations 2006 apply and tendering under an *EU Procedure* is required, the *Officer (Line Manager or Chief Officer)* shall consult the relevant guidance on the EU public procurement set out in the *Purchasing Guides* and formally consult with the *Director for Procurement & I.T. Strategy* to determine the appropriate method of conducting the purchase.

12.10 Where no pre-existing disposal arrangements are in place (or have been agreed, disposals of assets must be carried out in accordance with Financial Regulations. Usually this will involve the relevant items being sent to public auction (and in most instances contain a reserve value placed on them), except where better value for money is likely to be obtained by inviting Quotations and Tenders. In the latter event, the method of disposal of surplus or obsolete stocks/stores or assets other than land must be formally agreed with the Executive Director of Finance & Corporate Governance.

12.11 Providing services to external purchasers must be in compliance with the Local Authorities (Goods and Services) Act 1970 and/or the Local Government Act 2003. Cabinet Member approval must be sought for the provision of services to other public bodies where the value is in excess of £100,000, and a recommendation from Cabinet to the Council is needed for approval to develop a business case for trading with the private sector.

⁹ Regulation 8(19) Public Contracts Regulations 2006

- 12.12 *Best Value* and partnership arrangements are subject to all UK and EU procurement legislation and must follow these CSOs. If in doubt, *Officers* must seek the formal advice of the *Director for Procurement & I.T. Strategy* in writing.
- 12.13 Prior to commencing a procurement exercise involving the use of either the *Competitive Dialogue* or *Negotiation* procedure a Cabinet Member Decision must be obtained from the relevant Cabinet Member(s) and the Leader, acting on advice from the Bi-borough Director of Law and the *Director for Procurement & I.T. Strategy*.

13 SHORTLISTING

- 13.1 Any *Shortlisting* must have regard to financial and technical standards relevant to the contract and may have regard to *Award Criteria*. Special rules apply in respect of the *EU Procedure* (advice from the *Director for Procurement & I.T. Strategy* should be sought).
- 13.2 The *Officers* responsible for *Shortlisting* are specified in the table CSO 12.3.
- 13.3 Where pre-qualification is used as a means of selecting the tender list, the shortlisting requirements must comply with the Regulations 23-35 of the Public Contracts Regulations 2006 (as amended) for all Works, Supply and Service (Part A) contracts that are above the *EU Thresholds*. For all de minimus quotations and tenders and Part B Services, the principles of these regulations should be observed, although they need not be as restrictive.
- 13.4 Pre-qualification should be based upon the principles of obtaining historical information – experience, references, technical & professional abilities, the organisational structure, economic & financial standing. It normally forms the first part of a two stage procurement process (the information to be sought is always “backward looking”). Information sought at pre-qualification cannot be re-sought (or re-used) at tendering stage. *Officers* must provide to all applicants a clear & transparent methodology on the selection criteria to be used.
- 13.5 In accordance with CSO 8.10 the TAP shall arrive at a consensus decision on which candidates to invite to tender.

14 INVITATIONS TO TENDER/QUOTATIONS

- 14.1 Where a contract is to be awarded on the basis of the *most economically advantageous tender*, the TAP shall agree prior to the issuing of the tenders (or quotations) an appropriate evaluation model and award criteria. Tenderers will be informed of the evaluation model and award criteria in the “Invitation to Tenderers” and the subsequent evaluations must be carried out in accordance with them.
- 14.2 The *Invitation to Tender* shall state that no *Tender* will be considered unless it is received by the date and time stipulated in the *Invitation to Tender*. No *Tender* delivered in contravention of this clause shall be considered.
- 14.3 All Invitations to Tender shall include the following:
- a) A specification that describes the Council’s requirements in sufficient detail to enable the submission of competitive offers, along with the contractual terms and conditions.
 - b) A requirement for tenderers to declare that the tender content, price or any other figure or particulars concerning the *Tender* have not been disclosed

- by the tenderer to any other party (except where such a disclosure is made in confidence for the purpose of complying with tendering requirements)
- c) A requirement for tenderers to complete fully and sign all tender documents including a form of tender and certificates relating to canvassing and non-collusion. The *Director for Procurement & I.T. Strategy* shall agree the appropriate protocols to be used where a tendering exercise is being undertaken using an e-tendering arrangement.
 - d) Notification that tenders are submitted to the Council on the basis that they are compiled at the Candidate's expense.
 - e) A description of the *Award Procedure* and, unless defined in a the Contract Notice or other prior advertisement, a definition of the *Award Criteria* in objective terms (including the appropriate weightings) (see CSO 14.1).
 - f) The method by which any arithmetical errors discovered in the submitted tenders is to be dealt with. In particular, whether the overall price prevails over the rates in the tender or vice versa, or whether the Contractor shall be given the opportunity to make a correction.
- 14.4 The Invitation to Tender or Quotation must state that the Council is not bound to accept any Quotation or Tender.
- 14.5 All Candidates invited to Tender or quote must: (a) be issued with the same information, (b) at the same time and (c) subject to the same conditions. Any supplementary information must be given on the same basis.

15 SUBMISSION, RECEIPT AND OPENING OF TENDERS

- 15.1 **Period for *Candidates'* response:** *Candidates* invited to respond must be given an adequate period in which to prepare and submit a proper *Quotation or Tender*, consistent with the urgency of the contract requirement. Normally at least four weeks should be allowed for submission of *Tenders*. The *Public Contracts Regulations 2006* setting out *EU* tendering procedures lays down specific time periods for tender returns.
- 15.2 Unless otherwise agreed by the *Director for Procurement & I.T. Strategy*, all *quotations and tenders* must be received through the Council's *e-tendering* system (the rules for the return of paper based quotations and tenders will be determined on an individual basis by the *Director for Procurement & I.T. Strategy*)
- 15.3 Any quotation or tender received after the date and time for its return cannot and must not be accepted . Late tenderers will be advised that their tender has been rejected because it was received after the date and time scheduled for its return.
- 15.4 The *Officer* must not disclose the names of *Candidates* to any staff not involved in the receipt, custody or opening of *Tenders*.
- 15.5 The electronic opening of tenders shall be carried out by the person appointed by the *Director for Procurement & I.T. Strategy* in the presence of an independent client-side witness.

16 CLARIFICATION PROCEDURES AND POST-TENDER NEGOTIATION

- 16.1 Providing clarification of an *Invitation to Tender* to potential or actual *Candidates*, or seeking clarification of a *Tender*, whether in writing or by way of a meeting, is permitted.
- 16.2 In particular post-tender negotiation must not be conducted in an *EU Procedure* where this might distort competition, especially with regard to price. Such

negotiation is not permitted under *Public Contracts Regulations 2006*. However, Officers (under instructions from a TAP) may seek clarifications from tenderers.

- 16.3 Post-tender clarification must only be conducted in accordance with the guidance issued by the *Director for Procurement & I.T. Strategy* and the Bi-borough Director of Law, both of whom who must also be consulted wherever it is proposed to enter into such post-tender clarifications.
- 16.4 Where tenders are received above the approved budget, *the Officer* may consider adjusting the specification and *the Candidates* may be asked to re-cost based on an amended specification in order, to bring the cost within budget. However, where it is identified that there needs to be a fundamental change to the specification (or contract terms), the contract must not be awarded but retendered in accordance with the *Public Contracts Regulations 2006* (as amended).

17 EVALUATION AND AWARD OF CONTRACT

- 17.1 In accordance with CSO 8.10 the TAP will take responsibility for the evaluation of all tenders received.
- 17.2 The confidentiality of *Quotations, Tenders* and the identity of *Candidates* must be preserved at all times, and information about one *Candidate's* response must not be given to another *Candidate*. Where questions are received prior to the return of tenders, then the Project Officer shall anonymise both the question(s) and response(s) and forward to all tenderers for information, unless the questions are tenderer-specific.
- 17.3 In accordance with CSO 14.1. where a contract is to be awarded on the basis of the *most economically advantageous tender* received, the evaluations must be carried out in accordance with the pre-published evaluation model and award criteria.
- 17.4 The arithmetic in compliant *Tenders* must be checked. If arithmetical errors are found they should be notified to the tenderer, who should be requested to confirm or withdraw their *Tender*. Alternatively, if the rates in the *Tender*, rather than the overall price, were stated within the *Invitation to Tender* as being dominant, an amended *Tender* price may be requested to accord with the rates given by the tenderer.
- 17.5 *Chief Officers* shall ensure that submitted tender prices or rates are compared with any pre-tender estimates and that any discrepancies are examined and resolved satisfactorily. Details of correspondence needs to be kept on the project file, and this information needs to be recorded in decision award reports (to Chief Officers, Cabinet Member Decisions or Cabinet Reports).
- 17.6 Where the Council has applied a quality-price award criteria it has a statutory duty to inform the unsuccessful candidates of the relative advantages of the successful tenderer. This is usually carried out as part of the statutory cooling-off period after the award decision has been made. For tenders that are subject to the *Public Contracts Regulations 2006* (as amended) there are strict rules that the Council must comply with and advice on their application must be sought from the *Director for & I.T. Strategy* and/or the *Bi-borough Director of Law*.
- 17.7 As soon as possible after the contract has been awarded the Council must send a contract award notice to the *Official Journal of the European Union*. In accordance with the *Public Contracts Regulations 2006* (as amended) this must

be done within 48 days. The only exception is any contract that is below the EU threshold.

18 RECORDS AND DEBRIEFING CANDIDATES

- 18.1 The *Public Contracts Regulations 2006* (regulations 32(14) & 32(15)) imposes specific record-keeping duties on the Council.
- 18.2 Where the *total value* is less than £20,000, it is a requirement that the following documents must be kept:
- invitations to quote and Quotations received
 - a written record of:
 - any exemptions which apply and reasons for them
 - the reason, if the lowest price is not accepted
 - all communications with the successful *Candidate*.
- 18.3 Where the *total value* is £20,000 or greater, the *Officer* must record the following information -
- the subject matter and value of the *contract, framework agreement or dynamic purchasing system*
 - details of the successful candidate(s) and the reason why it/they were awarded the *contract, framework agreement* or admitted to the *dynamic purchasing system*.
 - details of the rejected candidate(s), and the reason(s) for rejection.
 - the method for obtaining tenders (see CSO 11.1)
 - any *Contracting Decision* and the reasons for it
 - any exemption under CSO 3 together with the reasons for it
 - the *Award Criteria*
 - tender documents sent to and received from *Candidates*
 - pre-tender market research
 - clarification (and where appropriate post-tender negotiation) (to include minutes of meetings)
 - the contract documents
 - post-contract evaluation and monitoring
 - written records of communications with *Candidates* and with the successful *Candidate(s)*.
- 18.4 Written records required by this CSO must be kept for six years (12 years if the contract is under seal) after the final settlement of the contract.
- 18.5 Documents which relate to unsuccessful *Candidates* should be kept for a minimum period of 12 months, provided there is no dispute about the award (these may be microfilmed or electronically scanned or stored by some other suitable method).
- 18.6 Where a tendering exercise is regulated by the provisions of the *Public Contracts Regulations 2006 (as amended)*, *Candidates* must be simultaneously notified (in writing) and as soon as possible after any decision has been made in connection with their exclusion from the process or the outcome of the award decision is known. The process is set out in Regulations 29A, 32 and 32A of the Regulations and must be strictly adhered to. The process shall be communicated in writing only and at no time will any officer of the Council be engaged in a verbal debrief with the unsuccessful candidates.
- 18.7 Where a tendering exercise is not regulated by the *Public Contracts Regulations 2006 (as amended)* and where a *Candidate* requests in writing the reasons for a

Contracting Decision, the Officer must give the reasons in writing within 15 working days of the request

SECTION 4

Documentation & other formalities

19 CONTRACT DOCUMENTS

- 19.1 All *Relevant Contracts* shall be in writing, and in a format approved by the Bi-borough Director of Law.
- 19.2 All *Relevant Contracts*, irrespective of value, shall clearly specify:
- the works, goods, materials or services to be carried out, furnished or provided (description and quality)
 - the price or rates to be paid, together with a statement of any discounts or other deductions (amount and timing) which apply, and
 - the time, or times, within which the contract is to be performed
 - all other contractual terms, which will be based upon:
 - § the Council's standard terms & conditions (for quotations); or
 - § standard terms and conditions issued by a relevant professional body (e.g. JCT or NEC in relation to construction related works); or
 - § bespoke terms & conditions drafted by the Bi-borough Director of Law.
- 19.3 In addition, every *Relevant Contract* of purchase over £50,000 must also as a minimum state clearly:
- that the contractor may not assign or sub-contract without prior written consent of a Chief Officer (and where it is a "sub-contract", written consent of a contract administrator)
 - any insurance requirements
 - health and safety requirements
 - ombudsman requirements
 - Freedom of Information Act obligations
 - Civil Contingencies Act 2004 requirements
 - data protection requirements, if relevant
 - that charter standards are to be met, if relevant
 - equalities and other diversity related requirements
 - (where agents are used to let contracts) that agents must comply with the Council's CSOs relating to contracts
 - a right of access to relevant documentation and records of the contractor for monitoring and audit purposes, if relevant.
- 19.4 The formal advice of the *Director for Procurement & I.T. Strategy* must be sought for the following contracts:
- where market testing of Council services is being considered
 - where the Total Value exceeds £100,000 (except for construction related contracts, in which case such advice should be sought only where the Total Value exceeds £1,000,000)
 - those involving leasing arrangements
 - those which are complex or considered high risk in any other way
- 19.5 Where it is proposed to use a supplier's own terms, the agreement of the Bi-borough Director of Law must be sought in relation to any terms and conditions which differ from the Council's standard terms.

19.6 Contract formalities

19.6.1 Contracts and agreements shall be entered into in accordance with the following table - table 19.6.1 - (subject to delegated financial limits)

table 19.6.1

Contract value or notional value attached to the agreement	Procedure
Below £50,000	Contract or agreement to be signed by the <i>Officer's</i> Line Manager, providing there is delegated authority from their Chief Officer, otherwise to follow the procedure below.
£50,000 and above but below £100,000	Contract or agreement to be signed by the Chief Officer (or their nominated deputy in accordance with CSO 2.3), otherwise to follow the procedure below.
£100,000 and above	Contract or agreement to be executed by the Bi-borough Director of Law as a Deed and stored by Legal.

19.6.2 Where:

- (a) for operational reasons a Chief Officer considers it appropriate for a contract or agreement to be entered into on the basis of a Deed; or
- (b) the price paid or received under the contract is a nominal price and does not reflect the value of the goods or services; or
- (c) where there is any doubt about the authority of the person signing for the other contracting party

the Bi-borough Director of Law will arrange for the document to be sealed on behalf of the Council.

19.6.3 The person responsible for executing a contract or agreement must ensure that the person(s) signing it on behalf of the contractor, supplier or service provider is empowered to do so.

19.6.4 The execution of a contract as a Deed shall be carried out by the Bi-borough Director of Law on behalf of the Council and by the Contractor in accordance with the relevant legal provisions. The Council's seal must not be affixed without the authority of the Cabinet (or Cabinet Member or Chief Officer acting under delegated powers).

19.6.5 For all contracts where the actual contract value is £100,000 or more, the relevant contract documentation must be concluded (including the formal exchange of contracts) before its commencement. In exceptional circumstances, and then only with the written consent of the Bi-borough Director of Law, may a contract commence on the basis of an exchange of correspondence.

20 EXTENSIONS AND VARIATIONS

20.1 Options to extend.

20.1.1 Contracts may only be extended where there are provisions contained in them.

20.1.2 Where there are no such provisions or where such provisions have already been exhausted then, in exceptional circumstances only, temporary arrangements may be sought from the current provider on existing terms and conditions to provide a continuation of service whilst a procurement exercise is undertaken. Authority to enter into a temporary contract may be authorised by the

- (a) relevant Chief Officer where the total value of is below £20,000 (subject to appropriate budgetary provision);
 - (b) relevant Cabinet Member where the total value is £20,000 or greater but does not exceed £100,000 (subject to appropriate budgetary provision); or
 - (c) the Cabinet where the total value is £100,000 or greater.
- 20.1.3 Providing that the original award report contains provision relating to exercising an optional extension provision, these may be authorised by the
- (d) relevant Chief Officer where the total value of extension or extensions is below £20,000 (subject to appropriate budgetary provision);
 - (e) relevant Cabinet Member where the total value of the extension or extensions is £20,000 or greater but does not exceed £100,000 (subject to appropriate budgetary provision); or
 - (f) the Cabinet where the total value of the extension or extensions is £100,000 or greater.
- 20.2 Variations to a contract**
- 20.2.1 Where minor variations are required to construction or highways related works that are covered by contingency sums within a contract sum they may be authorised by a Chief Officer subject to compliance with Financial Regulations.
- 20.2.2 Where a variation to a contract is to be made that will not have service delivery impacts to users or residents then this may be agreed by a Chief Officer providing that there are no increased costs to the contractual value. Where there will be an increase in the contract value then the decision is reserved to the
- (a) relevant Chief Officer where the total value of variation or variations is below £20,000 (subject to appropriate budgetary provision);
 - (b) relevant Cabinet Member where the total value of the variation or variations is £20,000 or greater but does not exceed £100,000 (subject to appropriate budgetary provision); or
 - (c) the Cabinet where the total value of the variation or variations is £100,000 or greater.
- 20.2.3 Reports seeking variations to contracts that are subject to the *Regulations* and equate to +/-10% or more for service or supply contracts or +/-15% or more for works must be referred to the Bi-borough Director of Law and the Director for Procurement & I T Strategy.

21 PARENT COMPANY GUARANTEES AND BONDS.

- 21.1 Where a *Candidate* is a subsidiary of a parent company, and:
- there is some concern about the stability of the Candidate; and/or
 - the Total Value exceeds £250,000, and/or
 - award is based on evaluation of the parent company,
- the *Officer* must consult the Executive Director of Finance & Corporate Governance about the use a *Parent Company Guarantee*.
- 21.2 There is no requirement for the *officer* to obtain a *Bond* from a *Candidate*. The Council will self-insure all contracts where significant risks are identified to 10% of the *Total Value*.
-

SECTION 5

Special procedures

22 ENERGY PROCUREMENT

22.1 Due to the volatility of the energy market, prices of electricity, gas, oil & petroleum fluctuate on a daily basis and the sums quoted require immediate acceptance. In order to achieve the best value for the Council all decisions relating to energy procurement including the award and/or the variation of contracts may be approved by the Executive Director of Finance & Corporate Governance and the Director for Building & Property Management. All decisions relating to the award of or variation of energy related contracts will be reported to the Cabinet for information purposes only.

23 APPOINTMENT OF CONSULTANTS & COUNSEL

23.1 The engagement of consultant architects, engineers and surveyors or other professional consultants including Counsel shall be subject to completion of a formal letter, contract of appointment or brief. Consultants shall be required to provide evidence of and maintain professional indemnity policies to the satisfaction of the relevant *Chief Officer* for the periods specified in the respective agreement. Consultants shall be selected and commissions awarded in accordance with the procedures detailed within these CSOs and as outlined below, but quotations and tenders are not required for arbitrators, adjudicators or mediators in connection with construction related disputes, or for counsel (see CSO. 4.3).

table 23.1

Total Estimated Fee	Method of Selection
Less than £5,000	One <i>Quotation</i> (confirmed in writing).
£5,000 but less than £100,000	Three written <i>Quotations</i>
£100,000 but less than the EU thresholds	Three tenders
Above the EU threshold	The provisions of the Public Contracts Regulations 2006 (as amended) will apply.

24 SPOT CONTRACTS – ADULT SOCIAL CARE & CHILDREN’S SERVICES

24.1 Contracts that relate to “social care” are not regulated under the Public Contracts Regulations 2006 (as amended) and can be let under slightly different, but no less rigorous arrangements; rather than using traditional tendering methodologies.

24.2 Specific rules and guidelines for these contracts will be issued by the relevant Chief Officer following consultation with the Bi-borough Procurement Board and approval from the relevant Cabinet Member. The rules will ensure that the Council receives value for money in relation to all transactions. These rules and guidelines must be reviewed not less than every two years.

24.3 Following the approval of these rules and guidelines the relevant Chief Officer will agree a scheme of delegation for their departments for the Spot Purchasing of these services where they may be required based on the maximum weekly number of care hours that may be authorised by certain officers.

24.4 The relevant Chief Officers are responsible for ensuring that any specific rules and guidelines are adhered to. The provision of CSO 2.3 will apply to contracts let under this section of CSOs.

24.5 For the purposes of this section of these CSOs, social care contracts may be defined as those (including supporting people services) under which the Council provides, or arranges to provide, practical help or care services to individuals within the community or in a residential setting.

24.6 Spot Purchasing of Domiciliary Care and Residential and Nursing Care

24.6.1 The Chief Officer of Social Services will maintain information on Domiciliary Care Providers and Providers of Residential and Nursing Care placements that can be used for the spot purchase of care services. Such providers will have met the minimum national standards laid down by the Care Quality Commission.

24.6.2 Domiciliary care services and residential and nursing care may be spot purchased for people whose needs cannot be met through the commissioned services or service directly provided by the Department itself.

SECTION 6

Contract management

25 MANAGING CONTRACTS,

- 25.1 Chief Officers and/or Heads of Service in sponsoring departments are to name contract managers for all new contracts. All contracts must have a named Council contract manager for the entirety of the contract.
- 25.2 Contract managers must follow the *Purchasing Guides* (and any other procedures determined from time to time by the *Bi-borough Procurement Strategy Board*).

26 RISK ASSESSMENT AND CONTINGENCY PLANNING

- 26.1 A business case must be prepared for all procurements which involve a Key Decision. Provision for resources for the management of the contract, for its entirety, must be identified in the business case.
- 26.2 For all contracts with a value of over £100,000, contract managers must:
- maintain a risk register during the contract period
 - undertake appropriate risk assessments and
 - for identified risks, ensure contingency measures are in place.

27 POST-CONTRACT MONITORING, EVALUATION AND REVIEW

- 27.1 All contracts which have a value higher than the EU Threshold limits, or which are *High Risk*, are to be subject to monthly formal review with the contractor. The review may be conducted quarterly if permitted by the *Executive Director of Finance & Corporate Governance*.
- 27.2 In relation to all contracts that are considered to be with a value higher than the EU Threshold limits and/or which are considered to be of High Risk, the *Bi-borough Procurement Strategy Board* may review them with a view to an audit to be undertaken in relation into their management.
- 27.3 During the life of the contract, the Officer must regularly monitor and report on -:
- a contractor's performance
 - the regularity of meetings held with the Contractor
 - any risks and issues identified and how these are being addressed
 - compliance with specification and contract costs and identifying as early as possible any potential over-spends
 - any Best Value requirements
 - user satisfaction and risk management
 - the data quality and supplier information ensuring that it is fit for purpose.
- 27.4 Where the Total Value of the contract exceeds £100,000, the Officer must make a written report evaluating the extent to which the purchasing need and the contract objectives were met by the contract. This should be done normally when the contract is completed. Where the contract is to be re-let, a provisional report should also be available early enough to inform the approach to re-letting of the subsequent contract.

APPENDIX - Glossary of Defined Terms

<u>Defined term</u>	<u>Definition/description</u>
Appropriate Persons	<p>A person who has the delegated powers to waive the provisions of these CSOs. For a contract that has an estimated value of:</p> <ul style="list-style-type: none"> • <u>less than £20,000</u>: the appropriate person will be the Client Executive Director • <u>£20,000 or more but less than £100,000</u>: the appropriate Cabinet Member(s) acting on written advice from the Client Director) • <u>more than £100,000</u>: the appropriate Cabinet Member(s) and the Leader of the Council.
Approved List	<p>A list of approved service providers (maintained by Directors at departmental level) who have expressed an interest in carrying out small scale professional services (usually below <i>EU Threshold</i> (for services). An Approved List is usually set up for a specific period of time and purpose following a public advertisement placed in a local newspaper and on the Council's internet. Admission to the Approved List shall be on the basis that the Council's minimum requirements in terms of finance, references, Health & Safety, diversity and environmental considerations are met. The Approved List shall not contain details of schedules of rates and admission shall be free (in accordance with section 21 of the Local Government Act 1988).</p>
Award Criteria	<p>The criteria by which the successful quotation or tender is to be selected (CSO 10).</p>
Award Procedure	<p>The procedure for awarding a contract as specified in CSO 12 (table 12.3)</p>
Best Value	<p>The duty on local authorities to secure continuous improvement in the way in which functions are exercised, having regard to a combination of economy, efficiency and effectiveness, as implemented by the Council</p>
Bi-borough	<p>Means a joint arrangement between the Council and either the Royal Borough of Kensington and Chelsea or Westminster City Council (see also <i>Tri-borough</i>).</p>
Bi-borough Procurement Strategy Board.	<p>The Board is chaired by the Executive Director, Environment, Leisure and Residents' Services and is made up of departmental representatives. Its role is to provide strategic direction on procurement related issues, monitoring contractual renewals, procurement training of staff, and advice to secure <i>value for money</i> in the Council's procurement activities.</p>
Business Case	<p>A document used to obtain management commitment and approval for investment in business change, which alters the way that suppliers are selected and goods and services are purchased. It provides a framework for planning and management of this change and ongoing identification of risks. The viability of the resulting project will be judged on the contents of the business case.</p>

<u>Defined term</u>	<u>Definition/description</u>
Bond	A form of “insurance policy”. If the contractor does not do what it has promised to under a contract with the Council, the Council can claim from the insurer which provided the bond the sum of money specified in the bond (often 10% of the contract value). A bond is intended to protect the Council against a level of cost arising from the contractor’s failure.
Cabinet	The executive committee of the Council
Cabinet Member	One of 9 executive councillors reporting to the Cabinet, having the following responsibilities & portfolios: the <ul style="list-style-type: none"> • Leader of the Council, • Deputy Leader of the Council • Cabinet Member for Children and Education, • Cabinet Member for Economic Development and Regeneration • Cabinet Member for Finance • Cabinet Member for Health and Adult Social Care • Cabinet Member for Housing, • Cabinet Member for Social Inclusion • Cabinet Member for Environment, Transport & Residents Services
Cabinet Office	The Cabinet Office has responsibility for all public sector procurement within the UK. It works with key government departments (H M Treasury and the Department for Communities and Local Government (DCLG)) along with other interested public sector organisations to provide procurement advice.
Candidate	“candidate” means any person or organisation and defined as an economic operator that has sought an invitation to tender (or submit a quotation) or has been invited to take part in a restricted procedure, in a competitive procedure with negotiation or in a negotiated procedure without prior publication, in a competitive dialogue or in an innovation partnership;
Central Purchasing Body	As defined in the Public Contracts Regulations 2006, being another contracting authority which - <ul style="list-style-type: none"> (a) acquires goods or services intended for one or more contracting authorities; or (b) awards public contracts intended for one or more contracting authorities; or (c) concludes framework agreements for work, works, goods or services intended for one or more contracting authorities.
Chief Officer	The “Chief Executive”, in respect of the Chief Executive’s office (Bi-borough H&F and RBK&C) The most senior officer in a department of the Council (H&F), or a shared department with either or both the Royal Borough of Kensington & Chelsea (K&C) and Westminster City Council. At the date of adoption of these CSOs these were:

<u>Defined term</u>	<u>Definition/description</u>
	<ul style="list-style-type: none"> • Executive Director of Finance and Corporate Governance (H&F) • Executive Director of Housing and Regeneration (H&F) • Executive Director, Environment Leisure and Residents' Services (<i>Bi-borough</i> H&F and K&C) • Executive Director, Transport and Technical Services (<i>Bi-borough</i> H&F and K&C) • Executive Director of Adult Social Care (<i>Tri-borough</i>) • Executive Director of Children's Services (<i>Tri-borough</i>).
Code of Conduct	The code regulating conduct of officers issued by the Bi-borough Director of Human Resources.
Competitive Dialogue Procedure	Introduced by the <i>EU Directive and Public Contracts Regulations 2006</i> as an alternative to the Open, Restricted and Negotiated Procedures. It is less flexible than the Negotiated Procedure.
Constructionline	A list of preferred providers who have expressed an interest in carrying out mostly construction and engineering related works and have registered their details on a national database maintained by the Department for Business, Enterprise and Regulatory Reform.
Consultant	Someone employed for a specific length of time to work to a defined project brief, with clear outcomes to be delivered, who brings specialist skills or knowledge to the role. To be used only where the Council has no ready access to employees with the necessary skills, experience or capacity to undertake the work.
Contract	A binding agreement made between two or more parties, which is intended to be enforceable at law.
Contract Notice	An "advertisement" published in accordance with these CSOs seeking expressions of interest from candidates to tender for works, supplies or services. The Contract Notice must be published on the Council's website and may appear in a local paper, and/or a trade or professional journal. A Contract Notice must be published in the <i>Official Journal of the European Union</i> (OJEU) where the EU thresholds are exceeded.
Contracting Decision	Any of the following decisions: <ul style="list-style-type: none"> • withdrawal of invitation to tender • whom to invite to submit a quotation or tender • shortlisting • award of contract • any decision to terminate a contract.
CSO[#] and CSOs	CSO[#] refers to a specific Contract Standing Order [where the "hash" symbol (#) will be substituted for a specific paragraph number] and CSOs means these Contract Standing Orders.
Deed	This is a legal term relating to a type of contractual arrangement. The execution of a contract as a "Deed" extends the statute of limitations from 6 years to 12 years.

<u>Defined term</u>	<u>Definition/description</u>
Bi-borough Director of Law	The Director of the Council having overall responsibility for the provision of legal advice in relation to all procurement matters.
Director for Procurement & I.T. Strategy	The Director of the Council having overall responsibility for the Council's procurement functions.
Discrete Operational Unit	A unit: <ul style="list-style-type: none"> • to whom the decision to purchase (and budget) has been devolved • for the sole use of whom a purchase is intended, and • which takes a purchasing decision independently of any other part of the Council.
Dynamic Purchasing System	Defined in the <i>Public Contracts Regulations 2006</i> as a type of Approved List where framework prices have been provided. A dynamic Purchasing System must remain open to new applicants and is designed to enable "mini-competition" exercises to be carried out.
e-procurement.	A term for electronic procurement or purchasing. It refers not just to the purchasing process but encompasses a range of technologies that allows procurement processes such as the issue and receipt of tender documents, the issue of purchase orders and the receipt of invoices to occur electronically.
e-procurement system	The Civica AFP or Agresso system approved for use by the Executive Director of Finance and Corporate Governance for the issuing of orders and the receipt of invoices by the Council.
e-tendering	A computer based system run through the "CapitalESourcing" portal designed to: <ul style="list-style-type: none"> • undertake the tasks of advertising the requirement for goods or services, registering suppliers, and issuing and receiving tender documents via the internet • assist in the evaluation of responses to an invitation to tender.
EU	the European Union
EU Directive	Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts.
EU Procedure	The procedure required by the <i>EU Directive</i> (and the <i>Public Contracts Regulations 2006</i>) where the Total Value exceeds the <i>EU threshold</i>
EU Threshold	The threshold at which the <i>EU Directive</i> must be applied. If the Total Value

<u>Defined term</u>	<u>Definition/description</u>
	is expected to exceed this amount, the <i>EU</i> procedure must be followed. (Until 31 December 2011 the thresholds are £173,934 (€200,000) for the supply of goods or services and £4,348,350 (€5,000,000) for building and engineering works contracts.)
Financial Regulations	The financial regulations approved by the Council and issued by the Executive Director of Finance and Corporate Governance.
Framework Agreement	A contractual arrangement (let in accordance with clause 19 of the Public Contracts Regulations 2006) that can be up to 4 years in duration and provides for the Council to place individual orders for goods, or services.
High Profile	A high-profile purchase is one that could have an impact on functions integral to Council service delivery, should it fail or go wrong.
High Risk	A high-risk purchase is one which presents the potential for substantial exposure on the Council's part, should it fail or go wrong.
High Value	A high-value purchase is where the value exceeds the EU Threshold values.
Invitation to Negotiate	Invitation to negotiate documents in the form required by these CSOs.
Invitation to Tender	Invitation to tender documents in the form required by these CSOs
Leader, the	The Leader of the Council and Chairman of the Cabinet.
Line Manager	The officer's immediate superior or the officer designated by the appropriate chief officer to exercise the role reserved to the line manager by these CSOs.
London Councils	London Councils is a cross-party organisation, funded and run by all the councils in Greater London to work on their behalf regardless of political persuasion.
Market, the	The term "the market" is used as a means of describing organisations outside the Council that provide works, services or supplies that the Council may wish to buy.
Negotiated Procedure	An <i>EU Procedure</i> . The Negotiated Procedure preceded by a Contract Notice can now only be used in exceptional circumstances, and is unlikely to be considered by the Council.
Nominated Suppliers and Nominated Subcontractors	Those persons or organisations specified in a main contract for the discharge of any part of that contract.

<u>Defined term</u>	<u>Definition/description</u>
<p>Non-commercial Considerations</p> <p>Non-commercial Considerations - continued.</p>	<p>Matters designated as such under section 17 of the Local Government Act 1988, i.e.:</p> <p>(a) Whether the terms on which contractors' contract with their sub-contractors constitute, in the case of contracts with individuals, contracts for the provision by them as self-employed persons of their services only.</p> <p>(b) Any involvement of the business activities or interests of contractors with irrelevant fields of government policy.</p> <p>(c) The conduct of contractors or workers in industrial disputes between them or any involvement of the business activities of contractors in industrial disputes between other persons.</p> <p>(d) The country or territory of origin of supplies to, or the location in any country or territory of the business activities or interests of, contractors.</p> <p>(e) Any political, industrial or sectarian affiliations or interests of contractors or their directors, partners or employees.</p> <p>(f) Financial support or lack of financial support by contractors for any institution to or from which the authority gives or withholds support.</p> <p>(g) Use or non-use by contractors of technical or professional services provided by the authority under the Building Act 1984</p>
Official Journal of the <i>European Union</i>	The official publication maintained by the European Commission for the purposes of publishing Contract Notice and Contract Award Notices (also known as <i>OJEU</i>)
OJEU	See – <i>Official Journal of the European Union</i>
Open Procedure	An <i>EU Procedure</i> under which all candidates are invited to bid in response to a Contract Notice.
Parent Company Guarantee	A contract which binds the parent of a subsidiary company as follows: If the subsidiary company fails to do what it has promised under a contract with the Council, under the terms of the guarantee, can require the parent company to do so instead.
Project Officer	The officer designated by the <i>Chief Officer</i> (and appointed by the SRT and/or TAP) to deal with the Contract in question.
Protected Characteristic	See <i>Public Sector Equality Duty</i> in this list
Purchasing Guides	The suite of guidance documents, together with a number of standard documents, forms and templates, which supports the implementation of these Contract Standing Orders. The guidance is published on the Council's intranet and internet
Public Sector Equality Duty	The Public Sector Equality Duty (effective from 5 April 2011) covers the following groups (Protected Characteristics'): <ul style="list-style-type: none"> • Age • Disability

<u>Defined term</u>	<u>Definition/description</u>
Public Sector Equality Duty - continued	<ul style="list-style-type: none"> • Gender reassignment • Pregnancy and maternity • Race • Religion or belief • Sex (gender) • Sexual orientation • Marriage and civil partnership (not always relevant to the duty) <p>Those subject to the public sector equality duty must, in the exercise of their functions, have due regard to the need to:</p> <ul style="list-style-type: none"> • Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act. • Advance equality of opportunity between people who share a protected characteristic and those who do not. • Foster good relations between people who share a protected characteristic and those who do not. <p>The Act states that meeting different needs involves taking steps to take account of disabled people's disabilities. It describes fostering good relations as tackling prejudice and promoting understanding between people from different groups. It states that compliance with the duty may involve treating some people more favourably than others.</p>
PQQ or Pre Qualification Questionnaire.	An application form use for admission to an <i>Approved List</i> or in response to a <i>Contract Notice</i> for a <i>Select List</i> .
Prior Indicative/ Information Notice.	A notice that is published in <i>OJEU</i> advising <i>the market</i> of the intention to start tendering within the next 12 months. It may be used to seek the views from interested parties on proposed packaging arrangements.
Public Contracts Regulations 2006.	Statutory Instrument SI 2006/5 Public Contracts Regulations effective date 31 January 2006 (which implements the <i>EU Directive</i> into UK law).
Quotation	A quotation of price and any other relevant matter (without the formal issue of an invitation to tender). (The contract will be subject to the Council's standard terms and conditions.)
Relevant Contract	Contracts to which these CSOs apply.
Restricted procedure	Pre-qualification assessment of all candidates responding to a Contract Notice prior to sending out an Invitation to Tender or Negotiate.
Select list	A tender list compiled following expressions of interest received from external organisations who have responded to an: <ul style="list-style-type: none"> • Advertisement appearing in a local news-paper and/or trade journal

<u>Defined term</u>	<u>Definition/description</u>
	(if considered appropriate); and/or <ul style="list-style-type: none"> • Publication on the Council's website; and/or • OJEU Contract Notice (except for non-priority [Part B] services – a Voluntary OJEU Contract Notice may be considered), if the estimated value is above <i>EU threshold</i>
Shortlisting	Where <i>Candidates</i> are selected: <ul style="list-style-type: none"> • to quote or bid, or • to proceed to final evaluation.
Supervising Officer	The <i>Line Manager's</i> immediate superior.
TAP	-see <i>Tender Appraisal Panel</i> .
Tender documents	Documents issued by the Council specifying what it wishes to purchase, the contractual terms and conditions for the tender and instructions for responding with bids.
Tender	A <i>tenderer's</i> proposal submitted in response to an invitation to tender.
Tender Appraisal Panel (TAP)	A panel constituted to manage all tendering processes (as defined in CSO 7.6).
Tender Record Book	The log kept by the Mayor's Secretary to record details of tenders. (made up of the tender opening forms)
Tenderer	'tenderer' means an economic operator that has submitted a tender
Total Value	The whole of the value or estimated value (in money or equivalent value) for a single purchase or disposal excluding VAT. <ul style="list-style-type: none"> • Whether or not it comprises several lots or stages. • To be paid or received by the Council or a <i>discrete operational unit</i> within the Council. The Total Value shall be calculated as follows: <ol style="list-style-type: none"> Where the contract is for a fixed period, by taking the total price to be paid or which might be paid during the whole of the period. Where the purchase involves recurrent transactions for the same type of item, by aggregating the value of those transactions in the coming 12 months. Where the contract is for an uncertain duration, by multiplying the monthly payment by 48. For feasibility studies, the value of the scheme or contracts which may be awarded as a result. For nominated suppliers and sub-contractors, the total value shall be the value of that part of the main contract to be fulfilled by the <i>nominated supplier or sub-contractor</i>. Where an in-house service provider is involved, by taking into

<u>Defined term</u>	<u>Definition/description</u>
	account redundancy and similar/associated costs.
Trade advertisement	Suppliers or services providers who have placed advertisements in reputable trade journals, magazines and publications (including local Yellow Pages, Thompson Directory, & etc).
Tri-borough (councils)	Means a joint working arrangement between the Council, the Royal Borough of Kensington & Chelsea and Westminster City Council. (See also <i>Bi-borough</i>)
Tri-borough Procurement Protocol for Joint Contracts.	A decision has been made by the Tri-borough councils to share services and collaborate where it is in the best interest of each borough to do so. This includes aggregating third party expenditure on the procurement of goods, construction works and services. The Protocol requires officers responsible for procurement to explore the opportunity for collaboration as a matter of course and seek direction from the relevant Service Director where this is considered not to be in the best interest of the Council.
Tri-borough Procurement Code.	This is a set of mandatory rules agreed by the Tri-borough councils which shall be followed by all service directorates in conducting all Tri-borough procurement and contracting activity above agreed financial thresholds.
UK	United Kingdom
Value for money	Value for money is not the lowest possible price; it combines goods or services that fully meet the Council's needs, with the level of quality required, delivery at the time you need it, and at an appropriate price.