

Contract Standing Orders (draft)

Introduction

1. When do Contract Standing Orders (CSOs) apply?

2. General principles

- 2.1 Compliance with relevant statutory and corporate requirements
- 2.2 Consequences of non-compliance
- 2.3 General principle of contract decision making
- 2.4 Contracts in writing
- 2.5 Record keeping
- 2.6 Lead contract officer
- 2.7 Authority to act in line with scheme of management
- 2.8 Declarations of interest
- 2.9 Maintenance of CSOs

3. Particular types of contract

- 3.1 Corporate contracts
- 3.2 Consortium contracts
- 3.3 Framework/schedule of rates contracts
- 3.4 Health & social care and education Spot contracts

4. Approvals processes

- 4.1 Overview of procurement process
- 4.2 Gateway and other reports
- 4.3 Supplemental advice from other officers in Gateway and other reports
- 4.4 Decision on procurement strategy – Gateway 1
- 4.5 Decision on contract award – Gateway 2
- 4.6 Decision to allow Variations during contract term
- 4.7 Exemptions
- 4.8 Emergencies

5. Requirements to obtain tenders or quotes depending on type of contract and levels of contract value

- 5.1 Contracts less than £5,000
- 5.2 Contracts from £5,000 to £74,999
- 5.3 Works contracts and works-related services above £75,000 but below EU threshold
- 5.4 All other contracts not falling within 5.1 to 5.3 above

6. Tender procedure

Definitions

Introduction

The council seeks to achieve value for money and best value when obtaining supplies of goods, services and works.

The Contract Standing Orders (CSOs) set out minimum requirements to be followed. CSOs are governed by section 135 of the Local Government Act 1972 and are the council's rules for contracts. They must always be followed unless the law (European or UK) requires something different.

Further information can be found in the Procurement Guidelines. Officers must always seek advice from Southwark procurement and/or legal services if they have any queries and for all contracts where European law applies or which are Strategic Procurements.

CSOs do not override other parts of the council's constitution. For example, if a decision about a contract is also a "Key Decision", then the requirements set out in the constitution in relation to CSOs and to Key Decisions will have to be met.

There is a Definitions section at the end of these Orders which provides explanations of capitalised words or phrases (e.g. Estimated Contract Value).

1. When do Contract Standing Orders (CSOs) apply?

1.1 Contract Standing Orders apply:

- to any procurement or tendering process or contract entered into by the council for the provision of goods, services and works and to the operation of any concession
- where the council is involved in joint working funded partly or entirely by external funding to the extent that the money passes through the council's accounts
- to all schools maintained by the London Borough of Southwark but subject to the current Southwark Scheme for Financing Schools and the Schools' Contract Standing Orders.

unless an exemption to CSOs is approved (see 4.7 below).

1.2 Contract Standing Orders do not apply:

- to contracts of employment
- to land transactions
- to grants given by the council.

2. General principles

2.1 Compliance with relevant statutory and corporate requirements

There must be compliance with the requirements of:

- a) propriety, including obtaining all necessary approvals
- b) value for money and best value, through the consideration of all procurement options
- c) all parts of the council's constitution such as these Contract Standing Orders, the Financial Standing Orders and the protocol on Key Decisions
- d) EU and domestic legislation, including the "Standstill" Period
- e) the council's procurement strategy, the Procurement Guidelines and other council policies and procedures
- f) the Employee Code of Conduct (for officers).

2.2 Consequences of non-compliance

It is a disciplinary offence to

- fail to comply with Contract Standing Orders or
- fail to have regard to the Procurement Guidelines when letting contracts.

Employees have a duty to report breaches of CSOs to an appropriate senior manager and the finance director.

2.3 General principle of contract decision making

The aim of the procurement process is to ensure that each contract is awarded to the most economically advantageous tenderer, who may or may not have submitted the lowest sum offered, and that any decision on a Variation is made on a similar basis so as to ensure that value for money and quality considerations are taken into account. Contracts may only be awarded or a Variation decision made if the expenditure has been included in approved revenue or capital estimates or has been otherwise approved by, or on behalf of, the council.

2.4 Contracts in writing

- 2.4.1 Every contract awarded must be in writing and, wherever practicable, on terms agreed by the council and consistent with any council terms of trading and contain full details of the contract documents and contract terms. All Strategic Procurement contracts and those works contracts whose contract value is in excess of the EU threshold for services/supplies must be executed on behalf of the council under seal as a deed.
- 2.4.2 All other contracts must be signed by at least two authorised officers of the lead contract officer's (LCO's) department.
- 2.4.3 All contracts must wherever practicable be signed or sealed before contract commencement and in accordance with the procedures set out in the Procurement Guidelines.

2.5 Record keeping

Chief officers must ensure that the following records are kept:

- a detailed contract file for each contract, including the Estimated Contract Value
- all decisions made, reasons for them and actions taken in relation to contracts
- all reports relating to contracts
- entries in the council's contract register of all contracts with an Estimated Contract Value of £75,000 or more.

2.6 Lead contract officer

A lead contract officer (LCO) must be identified for each contract. Where no LCO is identified, the LCO will be deemed to be the budget holder of the section from which the contract is funded.

2.7 Authority to act in line with scheme of management

Each officer will act only within the limits of their delegated authority, as set out in their department's scheme of management.

2.8 Declarations of interest

2.8.1 The following will declare any interests which may affect the contract process:

- a) all staff, whether employed by the council or otherwise, who play a role in any aspect of the tendering process;
- b) all staff listed on a scheme of management or delegation in relation to a contract or procurement issue; and
- c) external consultants and representatives of bodies other than the council (including community representatives) who play a role or whose work gives them influence over or information about any aspect of the contract process.

2.8.2 Chief officers will ensure that staff, consultants and representatives of bodies other than the council (including community representatives) appointed or agreed by them make declarations on appointment, or on any change in circumstances (and annually in the case of staff); and will either certify them as acceptable or take any necessary action in respect of potential conflicts of interest.

2.8.3 Chief officers will keep completed staff declarations on the individual's personnel file; and also maintain a departmental register of declarations indicating the names and grades of all those declaring, and the nature of their declaration; LCOs will keep any consultants' or other bodies' representatives' declarations on the contract file.

2.9 Maintenance of CSOs

The director of legal and democratic services will maintain the Contract Standing Orders, after consultation with the finance director.

3 Particular types of contract

3.1 Corporate contracts

Where there is a Corporate contract for a service, supply or for works, it should be used to make the relevant purchase. If a lead contract officer believes that the Corporate contract does not meet their requirements they must obtain an exemption (see 4.7) through a Gateway report regardless of the value of the purchase.

3.2 Consortium contracts

The requirements in these Contract Standing Orders for obtaining tenders or quotes shall not apply where the council intends to purchase under a Consortium contract so long as approval to the use of that Consortium contract has been given via a Gateway 1 report.

3.3 Framework/schedule of rates contracts

When a Framework contract or similar type of contract (such as a schedule of rates contract) is entered into, no individual order may be placed which will exceed the EU threshold for services/supplies unless this has been approved by the relevant decision maker appropriate to that contract, whether at the time of the approval of the procurement strategy (Gateway 1 report) or in the approval of the award of the contract (Gateway 2 report) or before the individual order is placed.

3.4 Health & social care and education Spot contracts

Personal, social or educational services are sometimes provided by the purchasing of these services under Spot contracts. The relevant chief officers will seek to minimise the use of Spot contracts, but where they are to be used for such services:

- a) the requirements in these Contract Standing Orders for obtaining tenders or quotes shall not apply;
- b) the relevant chief officer may award all such Spot contracts; and
- c) the relevant chief officer must provide an annual report to the Corporate Contract Review Board (CCRB) detailing the nature, extent and value of Spot contracts entered into in the previous financial year.

4 Approvals processes

4.1 Overview of procurement process

4.1.1 Having identified a need to purchase goods, services or works which are not covered by an existing contract and having confirmed that they are subject to CSOs (see section 1 above), the main stages of all non-emergency procurements are – in summary –

- a) identify who is the lead contract officer (LCO) – see section 2.6 above;
- b) obtain approval of procurement strategy (Gateway 1 report). This will depend on the Estimated Contract Value and other factors and may require advice from the Departmental and Corporate Contract Review Boards (DCRB and CCRB) – see section 4.4 below;
- c) follow appropriate quote/tender route. This will depend on the Estimated Contract Value and other factors – see section 5 below;

- d) obtain approval to award contract (Gateway 2 report). This will depend on Estimated Contract Value and other factors and may require advice from the DCRBs and CCRB – see section 4.5 below;
- e) ensure that a written contract has been signed (and sealed if necessary) on behalf of the chief officer of the LCO's department in line with constitutional requirements.

For an emergency procurement, see section 4.8 below.

- 4.1.2 Where there is a need to vary an existing contract, the process to be followed is set out in section 4.6 below.

4.2 Gateway and other reports

The procurement process requires approvals via written reports at the following stages:

- a) approval of procurement strategy – Gateway 1 report
- b) approval of award of the contract – Gateway 2 report
- c) approval of Variation to contract – written report

More information can be found in sections 4.4 to 4.6 and the definitions below.

4.3 Supplemental advice from other officers in Gateway and other reports

Where the Estimated Contract Value or, in relation to a Variation, the Contract Value is over the relevant EU threshold or where required elsewhere in the CSOs, any Gateway report or other report containing a contract matter (such as a Variation report) must include legal advice from the director of legal and democratic services and financial and procurement advice from the finance director or delegated officer(s).

4.4 Decision on procurement strategy – Gateway 1

- 4.4.1 A decision on the procurement strategy to be used on any contract with an Estimated Contract Value of over £75,000 must only be made after consideration of a Gateway 1 report. It is recommended that such a report is also used for contracts with an estimated value of £75,000 or below.
- 4.4.2 The decision on the approval of the procurement strategy is to be taken by the relevant chief officer or under his/her delegated authority in line with the department's scheme of management, except where:
- i) the contract is a Strategic Procurement, the decision must be taken by the executive or executive committee, after taking advice from the CCRB
 - ii) the Estimated Contract Value is above £2 million but below £4 million for services and supplies or above £10 million but below £15 million for works but the contract does not fall into (i) above, the decision must be taken by the relevant individual decision maker, after taking advice from the CCRB
 - iii) the contract is a Corporate contract, but does not fall into (i) or (ii) above, the decision must be taken by the finance director, after taking advice from the CCRB

- iv) the contract will affect the budget of more than one directorate and the Estimated Contract Value is £500,000 or more, but does not fall into (i), (ii) or (iii) above, the decision must be taken by the finance director, after taking advice from the CCRB
- v) the Estimated Contract Value is above the relevant EU threshold but the contract does not fall into (i), (ii), (iii) or (iv) above and the LCO is requesting approval to proceed with a single tenderer or to negotiate with a single provider (and this is permitted by EU legislation), the decision must be taken by the finance director, after taking advice from the CCRB
- vi) the contract will affect the budget of more than one directorate and the Estimated Contract Value is less than £500,000, the chief officers of all the directorates concerned must agree the decision, after taking advice from relevant DCRBs
- vii) the Estimated Contract Value is above the relevant EU threshold but the contract does not fall into (i), (ii), (iii), (iv), (v) or (vi) above, the decision must be taken by the strategic director or under his/her delegated authority, after taking advice from his/her DCRB
- viii) a different requirement must be met as specified elsewhere in the constitution or these CSOs
 - i for the decision to be made by someone else (e.g. pensions, treasury management where decisions are to be made by the finance director); or
 - ii about the decision (e.g. in emergencies where no prior written report is needed – see 4.8 below).

4.4.3 Gateway 1 reports should also include any details of procurement proposals that are different from the normal routes, requests for exemptions to these CSOs and requests to delegate powers to award the contract.

4.5 Decision on contract award – Gateway 2

4.5.1 A decision to award any contract with an Estimated Contract Value of over £75,000 must only be made after consideration of a Gateway 2 report. It is recommended that such a report is also used for contracts with an estimated value of £75,000 or below. As a minimum, the LCO must keep a written record of decisions and action taken.

4.5.2 The decision on the award of a contract is to be taken on the basis of a written report by the relevant chief officer or under his/her delegated authority in line with the department's scheme of management, except where:

- i) the contract is a Strategic Procurement, the decision must be taken by the executive or executive committee, after taking advice from the CCRB
- ii) the Estimated Contract Value is above £2 million but below £4 million for supplies and services or above £10 million but below £15 million for works but the contract does not fall into (i) above, the decision must be taken by the relevant individual decision maker, after taking advice from the CCRB
- iii) the contract is a Corporate contract, but does not fall into (i) or (ii) above, the decision must be taken by the finance director, after taking advice from the CCRB
- iv) the contract will affect the budget of more than one directorate, and the Estimated Contract Value is £500,000 or more but does not fall into (i), (ii) or (iii) above, the decision must be taken by the finance director, after taking advice from the CCRB

- v) the contract will affect the budget of more than one directorate and the Estimated Contract Value is less than £500,000, the chief officers of all the directorates concerned must agree the decision, after taking advice from relevant DCRBs
- vi)
 - i. the Estimated Contract Value is £500,000 or above (for services and supplies contracts) or above the relevant EU threshold (for works contracts) and
 - ii. the contract is to be awarded to a contractor whose bid was more than 15% above the Lowest Bid
 but does not fall into (i), (ii), (iii) or (iv) above the decision must be taken by the finance director, after taking advice from the CCRB
- vii) the Estimated Contract Value is above the relevant EU threshold but the contract does not fall into (i), (ii), (iii), (iv), (v) or (vi) above, the decision must be taken by the relevant strategic director or under his/her delegated authority, after taking advice from the relevant DCRB
- viii) a different requirement must be met as specified elsewhere in the constitution or these CSOs
 - i for the decision to be made by someone else (e.g. pensions, treasury management where decisions are to be made by the finance director); or
 - ii about the decision (e.g. in emergencies where no prior written report is needed – see 4.8 below)
- ix) approval has been obtained in line with 4.4.3 above to a different decision process.

4.6 Decision to allow Variations during contract term

- 4.6.1 Any decision to allow a Variation of a contract is to be taken on the basis of a written report by the relevant chief officer or under his/her delegated authority in line with the department's scheme of management, except where:
- a) the Contract Value plus the amount of the proposed Variation and any previous Variations is £500,000 or above (for services and supplies contracts) or above the relevant EU threshold (for works contracts) and the amount of the proposed Variation is more than 15% of the Contract value, the decision must be taken by the finance director, after taking advice from the CCRB; all such decisions will be advised in writing by the finance director to members of the executive
 - b) an additional amount is to be paid in respect of an outstanding sum for works, services or supplies already provided or where an Urgent Payment is required, written confirmation from the director of legal and democratic services that the sums are legally payable must be obtained and the decision to make the payment must be reported in writing to the finance director within five clear working days
 - c) a different requirement must be met as specified elsewhere in the constitution or these CSOs
 - i for the decision to be made by someone else (e.g. pensions, treasury management where decisions are to be made by the finance director); or
 - ii about the decision (e.g. in emergencies where no prior written report is needed – see 4.8 below)
 - d) approval has been obtained in line with 4.4.3 above to a different decision process.

- 4.6.2 Where a decision on a Variation is made in relation to a contract for works, there will also be a deemed variation of the contract of any consultant engaged in relation to that works contract. This only applies where the consultant is engaged on a fixed percentage of the works contract value. The deemed variation of the consultant's contract will be by the same percentage as that applied to the works contract.

4.7 Exemptions

In the event that there appear to be exceptional circumstances which mean that the usual procedures set out in Contract Standing Orders cannot be followed, written approval must be obtained in advance through a Gateway report. The report should set out the exceptional circumstances and explain why usual procedures cannot be followed. Proposed alternative courses of action must still comply with remaining relevant statutory and corporate requirements as set out in 2.1 above.

Examples of circumstances which might amount to an exceptional reason for not following the usual procedures are:

- a) the nature of the market has been investigated and is such that a departure from the CSO requirements is justified
- b) the contract is one required because of circumstances of extreme urgency which could not reasonably have been foreseen
- c) the circumstances of the proposed contract are covered by legislative exemptions (whether under EU or domestic law).

The above is not an exclusive list.

4.8 Emergencies

An emergency is a situation where action is needed to prevent a risk of injury to or loss of life, or to the security or structural viability of a property. In the case of an emergency, action necessary can be approved by a chief officer without a prior written Gateway report. Such action shall be limited to dealing with the emergency and it shall be subsequently recorded in a written report to the CCRB.

5 Requirements to obtain tenders or quotes depending on type of contract and levels of contract value

5.1 Contracts less than £5,000

For all contracts where the Estimated Contract Value is less than £5,000, there is no requirement to obtain competitive quotes; the requirement is to ensure value for money and best value and to keep a record of what action has been taken and why. In addition, if the contract is for works or for works-related services, the provider must be obtained from the council's Works Approved List.

5.2 Contracts from £5,000 to £74,999

For all contracts where the Estimated Contract Value is from £5,000 to £74,999, there is a requirement to obtain at least three written quotes unless the LCO decides that this will not secure value for money. In such cases, a

record must be kept of what alternative action is taken and why. In addition, if the contract is for works or works-related services, those invited to submit quotes must be selected from the council's Works Approved List unless permission is obtained to do otherwise through a Gateway 1 report; such a report must include supplementary procurement advice from the finance director or his delegated officers, without which the approval cannot be granted.

5.3 Works contracts and works-related services above £75,000 but below EU threshold

For all such contracts where the Estimated Contract Value is above £75,000 but below the relevant EU threshold, there is a requirement to take all reasonable steps to obtain at least five tenders. Those invited to submit tenders must be selected from the council's Works Approved List unless permission is obtained to do otherwise through a Gateway 1 report; such a report must include supplementary procurement advice from the finance director or his delegated officers, without which the approval cannot be granted.

5.4 All other contracts not falling within 5.1 to 5.3 above

For all contracts not covered by 5.1 to 5.3 above, there is a requirement to take all reasonable steps to obtain at least five tenders following a publicly advertised competitive tendering process, as set out in these CSOs and in line with the Procurement Guidelines.

6 Tender procedure

- 6.1 Officers must seek advice from Southwark procurement before using any e-procurement processes in order to ensure compliance with relevant legislative requirements. All other tender processes must comply with the following requirements.
- 6.2 Exceptions to the requirements set out in this CSO will only be made in exceptional circumstances and must be authorised by the relevant chief officer in writing following consultation with the finance director, CCRB or DCRB as appropriate to the contract.
- 6.3 Tenderers must be told that their tenders may only be considered if they follow the requirements below:
 - a) The tender must be returned in a plain envelope or parcel which is marked clearly "Tender" followed by the subject of the contract
 - b) the envelope or parcel must not show the identity of the tenderer in any way; and
 - c) the envelope or parcel must be delivered to the place and by the time stated in the tender invitation.
- 6.4 All tenders will be opened at the same time and place, after the closing date and time for receipt stated in the tender documents.
- 6.5 Tenders where the Estimated Contract Value is £500,000 or more must be returned to the director of legal and democratic services and shall be opened by his/her authorised representative. Where the Estimated Contract Value is

less than £500,000, tenders may be returned to the chief officer or their authorised representative who will arrange for tender opening in the presence of at least two officers, one of whom will be the witness and will not have been directly involved in that particular contract.

- 6.6 A tender received by the council after the time and date specified in the invitation shall not be accepted or considered.

Definitions

Consortium contract	a contract procured usually following a competitive process by a public sector agency other than the council under which the council is permitted to purchase, such as those provided by the Office of Government Commerce, e.g. Catalist (which replaces GCAT and S-CAT), or the London Contracts and Supplies Group
Contract register	a register of contracts held by Southwark procurement
Contract Value	means the total value of a contract as awarded (which may be different from the Estimated Contract Value), net of VAT, or if there is no fixed figure, the LCO's best estimate of the likely amount to be spent over the period of the contract, taking into account the prices accepted
Corporate contract	a contract arranged by Southwark procurement or another department that should be used by the whole council for all goods, works or services specified in it
CCRB	Corporate Contract Review Board – panel of officers operating under terms of reference of CCRB. Its role includes considering reports from DCRBs and advising the executive, individual decision makers and the finance director on contract decisions
DCRB	Departmental Contract Review Board – panel of officers operating under terms of reference of DCRB. Its role includes agreeing reports for consideration by the CCRB and advising the chief officer on contract decisions where the Estimated Contract Value is above the relevant EU threshold
Estimated Contract Value	is the total value of a proposed contract (as estimated by the LCO on the basis of all relevant factors) net of VAT, in accordance with the valuation rules contained in European Regulations, whether or not the Regulations apply to the particular contract. This may be different from the lifetime cost of the contract, which may need to be considered for other purposes (see Procurement Guidelines). Note that a contract may not be artificially packaged into two or more separate contracts (nor a valuation method selected) with the intention of avoiding the application of these CSOs. Chief officers are responsible for considering aggregation within their department to ensure delivery of best value within CSO requirements
EU Regulations	means the Public Contracts Regulations 2006 or any amendment to or successor to those Regulations
EU threshold	means the current contract value at which the requirements of the EU Regulations apply

Framework contract	a framework contract is an agreement between the council and one or more contractors, the purpose of which is to establish the terms governing jobs to be awarded during the period of the framework agreement, in particular with regard to price. Usually, the council is under no obligation to offer work but the provider is obliged to perform work if the council asks
Gateway report	a written report in substantially the same terms as those contained in the relevant template which can be found on the Source
Key Decision	<p>there are two types of key decision:</p> <ul style="list-style-type: none"> - those which are subject to a general financial threshold (£500,000 or more – note that in relation to awarding contracts, this is a per annum value not a contract term value); - those which have a significant impact on communities <p>More information can be found in the protocol on Key Decisions in the constitution</p>
Lead contract officer (LCO)	the lead contract officer (LCO) for each contract is the officer who has a duty to ensure that the obligations set out in these CSOs are complied with
Lowest Bid	The lowest price offered by tender or quotation which meets the specification and other requirements of the contract
Procurement Guidelines	a document issued and maintained by Southwark procurement containing best practice information on procurement matters
Spot contract	a one-off contract under which services are provided to meet an individual service user's needs for personal, social or educational provision
“Standstill” Period	this is the “standstill” period required by EU regulations between notification of an award decision and when the contract comes into existence, in order to allow unsuccessful parties time to challenge the award decision. Most contracts are covered by this requirement; a few are not (Part B services – such as some personal services in relation to education, social care and health). Seek advice on whether your contract is about a Part B service and if you are unclear about the application of the Standstill Period
Strategic Procurement	<p>means procurement where one or more of the following apply:</p> <ul style="list-style-type: none"> (1) Estimated Contract Value over £4 million for non-works and £15 million for works; (2) Significant change to previous service;

- (3) Possible externalisation or change in manner of delivery;
- (4) Significant transfer of assets or staff;
- (5) Political sensitivity; and
- (6) Carrying a high level of risk

Tender value means the value of the contract at the time of the award of the contract or, if there is no fixed value, the LCO's best estimate of the likely spend on the contract during the contract period

Urgent Payment means one where delay would lead to significant demonstrable financial loss to the council (and where no breach of EU or domestic requirements would be occasioned)

Variation means a decision to extend the length, cost or change the scope of a contract which was not anticipated or allowed for in the contract terms. This might, for example, be a change in duration, i.e. an increase in the duration of the contract that was not anticipated or allowed for when the contract was awarded; or an increase in volume, i.e. an increase in the volume usage of the contract that was not anticipated when the contract was awarded

Works Approved List a list of providers of works and works-related consultancy services maintained by Southwark procurement, which have been appraised to meet minimum criteria in respect of their financial standing, level of insurance held, health and safety policies and procedures, and equal opportunities policies and procedures. (For further information about the use of Approved Lists, see the Procurement Guidelines or seek advice from Southwark procurement)