

### CONTRACT STANDING ORDERS

#### INTRODUCTION

The purpose of Contract Standing Orders (“CSO”) is to provide a framework within which the Council can get value for money and achieve Best Value when obtaining supplies of goods, services and works. CSOs do not apply where grant giving powers are to be used; this should be rare. CSOs do not apply to a land transaction or to contracts of employment, but will apply to any obtaining of goods, services or works linked to that land transaction. Guidelines on all issues to do with contracts and on grants is given in the Procurement Guidelines.

CSOs do not provide Guidelines on what is the best way to procure goods, services and works. They set out minimum requirements to be followed. Guidelines can be found in the Procurement Guidelines. Officers must always seek advice from Southwark Procurement and/or from the Council’s Legal Services when in any doubt and in particular for **all** contracts where European law applies or which are Strategic Procurement.

CSOs must always be followed unless the law (in particular, European Procurement Directives, but also U.K. law) requires something different.

CSOs do not override other parts of the Council’s Constitution – for example, a decision about a contract may be a Key Decision, and then the requirements of the Constitution in relation to CSOs and to Key Decisions will need to be followed.

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### DEFINITIONS

Approval Report	a report produced under CSO 3
Consortium Contract	as set out in CSO 5.3
Contract Register	a register of contracts held by Southwark Procurement
Contract Value	means the total value of a proposed contract, net of VAT, in accordance with the valuation rules contained in European Regulations (whether or not the particular contract is one to which those Regulations apply)
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
Departmental List	means a list of providers of supplies, services or works used by only one department, 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
Estimated Contract Value	see CSO 4.1
EU Regulations	means the Public Works/Supplies/Utilities Contracts Regulations issued in relation to the Directives of the Council of the European Communities or any amendment to or successor to those Regulations or Directives
EU Threshold	means the current Contract Value at which the requirements of the EU Regulations apply
High Value contract	means a contract where the Contract value is over £2 million for non-works and £10 million for works
IDM	means a decision taken by an individual member of the Executive
LCO	see CSO 2.6
Lowest Bid	the lowest price offered by tender or quotation, which meets the specification and other requirements of the contract
Procurement Guidelines	means a document issued and maintained by Southwark Procurement containing best practice information on procurement matters
Strategic Procurement	means procurement where one or more of the following apply:

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	<ol style="list-style-type: none"><li>(1) Contract value over £2 million for non-works and £10 million for works;</li><li>(2) Significant change to previous service;</li><li>(3) Possible externalisation or change in manner of delivery;</li><li>(4) Significant transfer of assets or staff;</li><li>(5) Political sensitivity; and</li><li>(6) Carrying a high level of risk.</li></ol>
Tender Value	means the value of the contract on the award of the contract
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)
Works Approved List	a list of providers of works and 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 the Southwark Procurement.)

### **CSO1 WHEN DO CONTRACT STANDING ORDERS 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 any concession.
- 1.2 This includes involvement by the Council in partnerships and other joint working where that is funded partly or entirely by external funding, to the extent that the money passes through the Council's accounts. Note: see CSO 3.2.4.
- 1.3 Contract Standing Orders apply 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.

### **CSO2 GENERAL PRINCIPLES**

- 2.1 The Chief Executive and the Borough Solicitor will maintain Contract Standing Orders. Advice should be sought on the implementation of these CSO where a Contract Value is over the EU Threshold for the type of contract or below that level where there is any risk involved to the Council in undertaking that action.
- 2.2 Every contract made by the Council or on its behalf must comply with the all relevant EU and domestic requirements and legislation and the Council's Constitution (including these Contract Standing Orders and Financial

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Standing Orders), and must take full account of the Council's Procurement Strategy, the Procurement Guidelines and other Council policies and procedures.

- 2.3 It is the obligation of everyone engaged in obtaining supplies, services and works to ensure probity, obtain value for money and achieve Best Value. This means considering whether a matter is a Strategic Procurement, considering all procurement options and ensuring that all approvals required are obtained.
- 2.4 Consequences of non-compliance  
It is a disciplinary offence to fail to comply with Contract Standing Orders and the Procurement Guidelines when letting contracts and employees have a duty to report breaches of CSOs to an appropriate senior manager and the Head of Audit. Every officer working in relation to contracts must comply with their obligations under the Employee Code of Conduct, including the obligation to declare interests and the need to avoid any impropriety or appearance of impropriety.
- 2.5 General principle of contract award  
Where there is to be a contract, it will be awarded to the most economically advantageous tender (which may or may not be the lowest sum offered).
- 2.6 Lead Contract Officer  
A properly authorised Lead Contract Officer ("LCO") must be appointed for each contract. Where no LCO is appointed, the LCO will be deemed to be the budget holder of the section from which the contract is funded. The duties of the LCO include:
- a) ensuring that CSOs complied with and value for money and Best Value are obtained;
  - b) recording actions taken on and maintaining detailed contract files in respect of each contract, including the Estimated Contract Value ;
  - c) ensuring the highest standards of propriety and proper practice (including respecting the confidentiality of commercial information);
  - d) ensuring that the tender and contract documents clearly and fully state what the Council requires the provider to do and the terms of that provision;
  - e) ensuring that tender evaluation is carried out properly and against pre-determined evaluation criteria;
  - f) recording the contract in the Council's Contract Register; and
  - g) sending a contract award notice under the EU Regulations within 48 days of award of contract.
- 2.7 Each officer will when carrying out Contract Standing Orders, act only within the limits of their delegated authority, including the authority of Chief Officers in relation to approving entry into contracts and granting of approvals.
- 2.8 For each contract, no steps may be taken to award the contract or pay any additional sum once the contract has been awarded such as a variation unless the expenditure involved has been included in approved estimates or on capital or revenue accounts; or has been otherwise approved by, or on behalf, of the Council. The LCO will ensure that evidence of authority to spend, and the budget code to be used, is recorded on the contract file.

**CSO3 APPROVALS**

3.1 Contract Standing Orders set out the usual procedure, which should be followed. If in a particular case there is an exceptional reason for not following these usual procedures then approval must be **obtained in advance in writing with reasons being given** to do something different, at whatever stage of the procurement process. Such a report is called an “Approval Report” in these Contract Standing Orders. No approval can be given which would mean that there would be no compliance with:

- a) the requirements of propriety;
- b) the requirement for value for money and Best Value;
- c) requirements of the Council's Constitution apart from Contract Standing Orders – such as requirements for action by the Executive or members; and
- d) requirements of EU and domestic legislation.

3.2 Examples of circumstances which might amount to exceptional reasons (but this is not an exclusive list) are:

3.2.1 The nature of the market has been investigated and is such that a departure from CSO requirements is justified;

3.2.2 The contract is one required because of circumstances of extreme urgency which could not reasonably have been foreseen;

3.2.3 The circumstances of the proposed contract are covered by legislative exemptions (whether under EU or domestic law); and

3.2.4 (in relation particularly to requirements for obtaining quotes and tenders and for contract award) where:

- a) the Council is involved in a partnership or other joint working arrangement where that is funded partly or entirely by external funding; and
- b) where the partnership or joint working structure has equivalent controls to those in CSOs in place, and the application of those controls instead of the controls set out in these Contract Standing Orders has been approved through an Approval Report.

3.3 Content of Approval Reports

The request for an approval must be in a written report (“Approval Report”). This report must set out what the officer wants to do differently from the normal requirements of CSOs; what the normal requirement would be; and the reasons for requesting the approval, and satisfy any other requirements set out in CSOs. For contracts where the Contract Value is over the relevant EU Threshold, the report must include a legal concurrent setting out the view of the Borough Solicitor to the approval, and a procurement concurrent setting out the view of the Head of Procurement, without which the approval cannot be granted.

3.4 Who makes approval decisions

The identity of the person who makes the decision on whether to grant the request will depend on what the request is. Where there is no requirement elsewhere in these CSOs or in the Council's Constitution about who is to make that decision, then the decision is one, which can be made by the

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LCO's Chief Officer. However, where a proposed contract would affect the budget of more than one Department, all Chief Officers concerned must agree or, where the decision is one to be made by IDM and the matter affects the remit of more than one Individual Member, the Executive should take the decision.

### 3.5 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. Where there is an emergency, the action can be taken by a Chief Officer without obtaining any other prior written approval. Such action shall be confined to prevention of further danger. Where such action is taken, it must subsequently be recorded in a written report.

### 3.6 Register of Approvals

Each Chief Officer will keep a Register of Approvals granted by them where the LCO is a member of their Department. Each Chief Officer will report to Chief Executive every 6 months on the approvals given during the preceding period.

## **CSO4 ESTIMATED CONTRACT VALUE**

4.1 The Estimated Contract Value of a contract is the total value of a proposed contract, net of VAT, in accordance with the valuation rules contained in European Regulations whether or not the particular contract is one to which those Regulations apply. This may be different to the lifetime cost of the contract, which may need to be considered for other purposes (see Procurement Guidelines).

4.2 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. Contracts will be packaged to best ensure delivery of CSO requirements. Chief Officers are responsible for considering aggregation within their own Department.

4.3 Chief Officers will supply to Southwark Procurement, at the commencement of each financial year, an estimate of their requirements for Supplies or for Services for the forthcoming 12 months, for the purposes of the annual Pre-Information Notice required under E.U. Directives.

## **CSO5 PARTICULAR TYPES OF CONTRACT: CORPORATE CONTRACTS, FRAMEWORK CONTRACTS, SCHEDULES OF RATES AND SPOT CONTRACTS**

### 5.1 Corporate Contracts

Where there are corporate contracts for a service, supplies or for works, these 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 approval through an Approval Report regardless of the value of the purchase.

### 5.2 Framework / Schedule of Rates

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In Framework Contracts or similar types of contract (such as Schedule of Rates contracts), the Council is under no obligation to offer work but the provider is obliged to perform work (which might be for works, services or supplies) if the Council asks it to do so. The Contract Value for the contract will be established under the principles above. However, once the Framework Contract is entered into, no individual order, which is likely to exceed the EU Threshold level for supplies, may be placed. For any order above that threshold unless an Approval is obtained (whether at the time of the tendering of the entire contract or before the placing of the individual order), a fresh tendering exercise will take place.

### 5.3 Consortium Contracts

The requirements in these Contract Standing Orders for obtaining tenders or quotes shall not apply where the adoption of this procurement strategy has been approved through Approval Report and either:

- a) the Council is part of a consortium of councils contracting with the same contractor in respect of the provision of a particular good or service and where the Council is not the lead borough in the Consortium, and the contract has been tendered and the form of contract agreed in accordance with the contract standing orders of another borough council in the consortium; or
- b) where the Government procurement schemes GCAT, SCAT or GTC are to be used.

### 5.4 Social services care and certain Education contracts for individuals

Social Services care contracts or certain Education contracts may be 'block' or 'term' contracts (where a number of beds, places or services is provided by the contractor at pre-agreed prices, to which the Council may refer users over the contract period) or 'spot' contracts (one-off contracts meeting an individual's needs, or framework contracts without pre-agreed prices). The relevant Chief Officers will seek to maximise the use of block or term contracts where this represents best value for the Council. The following provisions shall apply to Social Services care contracts and some Education contracts:

- a) the requirements in these Contract Standing Orders for obtaining tenders or quotes shall not apply to spot contracts; other than this, all requirements of these Contract Standing Orders apply to block and term contracts;
- b) the relevant Chief Officer may award all spot contracts; and
- c) the relevant Chief Officer must provide quarterly reports to the Executive Lead Member responsible for their area and an annual report to the Executive detailing the nature, extent and value of spot contracts entered into in the previous year.

## **CSO6 REQUIREMENTS DEPENDING ON TYPE OF CONTRACT AND LEVELS OF CONTRACT VALUE**

6.1 The general requirements set out in CSOs will always apply – for example, the requirement to obtain Best Value and value for money. The obligations below are the minimum, depending on the level of Contract Value.

6.2 Where the Estimated Contract Value is:

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- a) less than £5,000  
No requirement to obtain competitive quotes; requirement is to ensure value for money and Best Value and in the manner most expedient for efficient management, and to keep a record of what action is taken and why;
- b) between £5,000 to £49,999  
requirement to obtain at least 3 written quotes. However, the LCO may decide that this process is not appropriate in order to secure value for money. If that is the case, a method which will secure value for money and best value should be used. Either way, a record must be kept of what action is taken and why; and
- c) £50,000 or above  
requirement to invite at least 5 tenders following a publicly advertised competitive tendering process in accordance with these Contract Standing Orders and any Procurement Guidelines.

### 6.3 Works contracts below EU Threshold

Where the contract is one for works (as defined by EU requirements, whether or not those requirements apply for the particular contract being considered) and below the EU Threshold for works contracts, the following requirements apply in addition to the requirements of 6.2 above:

- a) where less than £5,000 – as in 6.2 a) but in addition consider obtaining provider from works Approved List; and
- b) where between £5,000 to £50,000 and above – those invite to submit quotes or tenders must be selected from Works Approved List in the manner set out in Procurement Guidelines unless permission is obtained to do otherwise through an Approval Report; such an Approval Report must include a procurement concurrent setting out the view of the Head of Procurement, without which the approval cannot be granted.

## CS07 TENDER PROCEDURE

- 7.1 All tender procedures must ensure propriety and should be in accordance with the Procurement Guidelines.
- 7.2 Tenderers must be told that their tenders will only be considered if they are:
  - 7.2.1 Sent in a plain envelope or parcel which is marked clearly “Tender” followed by the subject of the contract;
  - 7.2.2 The envelope or parcel does not show the identity of the tenderer in any way; and
  - 7.2.3 Delivered to the place and by the time stated in the tender invitation.
- 7.3 All tenders will be opened at the same time and place, after the closing date and time for receipt stated in the tender documents. Tenders where the Estimated Contract Value is over £500,000 must be returned to the Borough Solicitor and Secretary and shall be opened by an authorised representative of the Borough Solicitor. 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



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two officers of different disciplines one will be the witness and will not have been directly involved in that particular contract.

- 7.4 A tender received after the time and date specified in the invitation shall not be accepted or considered unless at the time of receipt, other tenders have not been opened and the relevant Chief Officer authorises to the contrary in writing following consultation with Southwark Procurement or Legal Services.
- 7.5 Tenders may be received electronically with the prior approval of the Head of Procurement and (where the Estimated Contract Value is over £500,000) Borough Solicitor and where in accordance with a procedure specified by the Head of Procurement.
- 7.6 The LCO will keep securely all tenders or quotations received with their envelopes for a period of at least 12 months after the award of the contract.

### CSO8 DECISIONS

- 8.1 Decisions must be made on the basis of a written report which complies with the requirements of these CSOs. For contracts where the Contract Value is over the current EU Threshold, the report must include a legal concurrent setting out the view of the Borough Solicitor, and a procurement concurrent setting out the view of the Head of Procurement, without which the decision cannot be made and comment on equalities, health and safety and sustainability.
- 8.2 Every decision maker must make a record of the decision which they take and the reasons for that decision in writing in accordance with Procurement Guidelines and other Council requirements.
- 8.3 **Decisions about procurement of goods, services and works and variations to existing contracts can be made by the relevant Chief Officer (or under his/her delegated authority) unless there is a requirement in these CSOs for someone else to make that decision.**
- 8.4 The main requirements for decisions other than by Chief Officer are set out in the table below. The other potential decision makers are the Executive and an individual member of the Executive (called "IDM" in these CSOs). The decision maker may take a decision to delegate their decision to another decision maker; such as from Executive to IDM or from IDM to Chief Officer. The Leader, Deputy Leader and/or the Chief Executive may direct that any decision about a particular contract should be reserved to the Executive. An individual member of the Executive may refer any IDM decision to the Executive.

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	<b>DECISION TO BE MADE</b>	<b>WHO MUST TAKE DECISION</b>
<b><u>Decision to proceed with the procurement process or where partnership or joint working arrangement</u></b>		
A Application to partnerships and other joint working	<p>Decision on whether usual CSO procedures (such as in particular to obtaining quotes and tenders and for contract award) should apply.</p> <p>See decision column. For example, where a decision on entry into the partnership or joint working or on the award of a particular contract funded by the external funding would (but for the Approval Report) have had to be made by Executive, only the Executive can decide to give the decision to someone else.</p>	As set out in 8.3 or below
B <u>Strategic Procurement</u>	Agreement on the procurement strategy in relation to a Strategic Procurement.	The Executive
C <u>Single tender / negotiation</u>	Decision to carry out a tender process with only a single tenderer or to negotiate with only a single provider where the Estimated Contract Value is above the relevant EU Threshold (where EU requirements allow this).	IDM
<b><u>Decision on contract award</u></b>		
D <u>Strategic Procurement -- contract award</u>	Award of contract which is Strategic Procurement and the Executive has not previously agreed a different route for award, such as to IDM.	The Executive
	Award of a contract which is a Strategic Procurement and where the Executive has previously agreed that IDM will make the decision on award of the contract (such as they may consider in relation to High Value contracts).	IDM
E Contract award – not Strategic Procurement and award to other than Lowest Bid		

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	a) Where the Tender Value is below relevant EU Threshold and - is not more than 15% above the Lowest Bid	Chief Officer
	- is more than 15% above the Lowest Bid	IDM
	b) Where the Tender Value is above relevant EU Threshold and - is not more than 15% above the Lowest Bid	IDM
	- is more than 15% above the Lowest Bid	The Executive
	<b>DECISION TO BE MADE</b>	<b>WHO MUST TAKE DECISION</b>
<b><u>Decision to allow variations during contract term</u></b>		
<b>F</b> <u>Variations of contracts</u>	<ul style="list-style-type: none"> <li>• Any decision to vary a contract must be made in accordance with CSOs. For the purpose of this CSO a variation is a sum to be paid which was not anticipated when the contract was awarded or is not allowed for in the terms of the contract.</li> <li>• Where an additional amount is to be paid which is in respect of an outstanding sum for works or services already provided or where there is a variation required because an Urgent Payment is required, and the officer has obtained confirmation from the Borough Solicitor that the sums are legally payable, the decision to make the payment may be made by a Chief Officer regardless of the amount. The decision must be reported in writing to the Executive or to IDM subsequently (depending on which would, other than for the urgency, have taken the decision).</li> <li>• Where a decision on a variation is made in relation to a contract for Works, there will also be a deemed decision that the contract of any consultant engaged in relation to that Works contract will be varied to the same percentage as that applied to the Works contract, without the need for a separate decision in relation to the consultant's contract. Where the sum to be paid to the consultant is not a fixed percentage of the Works contract value, then this does not apply.</li> </ul>	
	<u>F1 Executive</u>	
	Where the amount of the variation is more than 15% of the Tender Value, unless the decision is one given to the Chief Officer by E3 below.	The Executive
	<u>F2 IDM</u>	
	a) <u>Services / supplies</u> : where the Tender Value plus the amount of the proposed variation and any previous variations is more than £500,000, and the amount of the proposed variation is not more than 15% of the Tender Value; and	IDM

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	b) <u>Works</u> : where the Tender Value plus the amount of the proposed variation and any previous variations is more than the current EU Works limit, and the amount of the proposed variation is not more than 15% of the Tender Value.	IDM
	<u>F3 Chief Officer</u>	
	a) <u>Services / supplies</u> : where the Tender Value plus the amount of the proposed variation and any previous variations is less than £500,000, and the amount of the proposed variation is not more than 15% of the Tender Value;	Chief Officer or on his/her delegated authority
	b) <u>Works</u> : where the Tender Value plus the amount of the proposed variation and any previous variations is less than the current EU Works limit, and the amount of the proposed variation is not more than 15% of the Tender Value; and	Chief Officer or on his/her delegated authority
	c) <u>General</u> : where the total of the Tender Value and the amount of the proposed variation and any previous variations is less than £25,000.	Chief Officer or on his/her delegated authority

### CSO9 DECLARATIONS OF INTERESTS

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

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

9.2 Chief Officers will ensure 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.

9.3 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.

**CSO10 CONTRACTS IN WRITING**

- 10.1 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.
- 10.2 All other contracts must be signed by or on behalf of the Chief Officer of the LCO's Department.
- 10.3 Contracts for works must wherever practicable be signed or sealed before work starts on site and in accordance with the procedures set out in the Procurement Guidelines. If works must commence before the contract is signed or sealed the procedure set out in the Procurement Guidelines must first be followed.