

## CONTRACT STANDING ORDERS ~~2016/17~~

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## 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 the procurement advice team and/or legal services for all contracts where European law applies or which are Strategic Procurements and for other contracts if they have any queries.

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 [Glossary definitions section](#) at the end of these [CSO orders](#) which provides explanations of important words or phrases (e.g. Estimated Contract Value).

### 1. When do Contract Standing Orders apply?

#### 1.1 CSOs 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 [6.84.9](#) below).

#### 1.2 CSOs 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

##### [2.1.1](#) 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 CSOs, 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 Guidance Guidelines and other council policies and procedures
- f) the employee code of conduct (for officers)
- g) the council plan
- h) the council's policy commitment to the London Living Wage ~~as confirmed by council assembly on 29 February 2012.~~

## 2.2 Consequences of non-compliance

2.2.1 It is a disciplinary offence to:

- fail to comply with CSOs
- fail to comply with council policies and procedures ~~have regard to the Procurement Guidelines~~ when letting contracts.

2.2.2 Employees have a duty to report breaches of CSOs to an appropriate senior manager, who will advise the monitoring officer and the strategic director of finance and governance.

2.2.3 The monitoring officer will report to the audit, governance and standards committee any serious breach of CSOs ~~contract standing orders or of the Procurement Guidelines~~.

## 2.3 General principle of contract decision making

2.3.1 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, quality considerations and the need to implement the council's plan and strategies 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.

2.3.2 When estimating the value of a contract, reference should be made to the Estimated Contract Value paragraph set out in the Glossary and, in particular, to the note that a contract may not be split into two or more separate contracts with the intention of avoiding the application of the CSOs.

2.3.3 For contracts with an Estimated Contract Value of £100,000 or more, the LCO must consult with the relevant cabinet member before a procurement strategy is implemented.

## 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 for supplies and services and those works contracts whose contract value is £200,000 or more ~~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 over £25,000 must be signed by at least two authorised officers of the lead contract officer'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 Guidance Guidelines.

## 2.5 Record keeping

2.5.1 Chief officers must ensure that the following records are kept:

- a detailed contract file for each contract, including the Estimated Contract Value and, for all contracts with an Estimated Contract Value of ~~£100,000~~ £75,000 or more, all tender opening records where e-procurement is not used
- all decisions made, reasons for them and actions taken in relation to procurement processes and contracts
- all documents and reports relating to procurement processes and contracts.

2.5.2 Chief officers must ensure that all contracts with an Estimated Contract Value over the value of £5,000 or more are recorded on the council's contract register via the e-procurement system.

## 2.6 Lead contract officer

2.6.1 A lead contract officer (LCO) must be identified for each contract. Where no LCO is ~~named~~ 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

2.7.1 Each officer will act only within the limits of their delegated authority, as set out in their department's scheme of management. The hierarchy of decision makers for procurement decisions is as follows:

- cabinet/cabinet committee (highest)
- individual decision maker (IDM)
- strategic director of finance and governance
- chief officer, or as delegated through departmental schemes of management.

## 2.8 Declarations of interest

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

- a) all staff, whether directly 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

- c) external consultants, community representatives 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
- d) joint negotiating committee (JNC) officers
- e) any other officers who regularly give advice to members including report authors.

2.8.2 Chief officers will ensure that staff, consultants, community representatives 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; 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 Changes to CSOs

2.9.1 As set out in article 1, the monitoring officer may make minor changes to the ~~CSOs Contract Standing Orders~~, after consultation with the chief finance officer.

2.9.2 Minor changes are defined as:

- typographical/presentational/explanatory changes
- changes in statutory framework, i.e. references to new or updated legislation
- changes in titles, names or terminology
- changes consequential to other constitutional changes already made.

## 3. ~~Particular types of contract~~

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### ~~3.1 — Corporate contracts and corporate framework agreements~~

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~~3. Where there is a Corporate contract for a service, supply or for works, it must 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 4.9) through a Gateway report regardless of the value of the purchase. This requirement also applies where a corporate framework agreement is in place. The process for establishing a corporate framework agreement is as set out in 3.4.1.~~

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### ~~3.2 — Contracts secured through purchasing consortia~~

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~~3. — Approval to create or join a purchasing consortium must be obtained in a Gateway 1 report which must identify the procedure for award of individual contracts or orders placed by the consortium. Once approval has~~

been obtained, contracts or orders placed through the purchasing consortium will not be subject to the tendering or quotation requirements in these Contract Standing Orders, but a Gateway 2 approval must be obtained in accordance with 4.6 before the individual contract or order can be placed.

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### **Demand-led contracts (framework contracts)**

3.3.1 Establishing demand-led contracts will be subject to the full requirements of these Contract Standing Orders using the total Estimated Contract Value across the duration of the contract. Using the contract once it is in place will not be subject to the tendering or quotation requirements of these Contract Standing Orders, but a Gateway 2 approval must be obtained in accordance with 4.6 before individual orders can be placed under the framework in order to demonstrate value for money and proper process. No individual order may be placed under a demand led contract which will exceed the EU threshold for services/supplies unless this has been approved by the relevant decision maker appropriate to that contract. Such approval can be given 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.

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### **3.4 Framework agreements**

3.4.1 Establishing a Framework agreement is subject to the full requirements of these Contract Standing Orders. Any procurement utilising an existing council Framework agreement will not be subject to the tendering or quotation requirements of these Contract Standing Orders, but a Gateway 2 approval must be obtained in accordance with 4.6 before individual orders can be placed under the framework to demonstrate value for money and proper process. If recommending use of a direct award on a multi-supplier framework, the LCO must treat this as a single supplier negotiation in the Gateway 1 report.

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3.4.2 Any procurement involving the use of a third party's Framework arrangement will not be subject to the tendering or quotation requirements of these Contract Standing Orders. Gateway approval must however be obtained in accordance with 4.4 to 4.6 to demonstrate value for money and proper process. Some framework arrangements require buying authorities to formally join the framework in order to use it. Some may require an access charge to be paid, e.g. Improvement and Efficiency South East (IESE). Where it is necessary to join a framework or to pay an access charge, this should be made clear in the Gateway 1 report. If recommending use of a direct award on a multi-supplier framework, the LCO must treat this as a single supplier negotiation in the Gateway 1 report.

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### **3.5 Health and social care and education Spot contracts**

3. ~~ersonal, 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:~~

3. ~~the requirements in these Contract Standing Orders for obtaining tenders or quotes shall not apply~~
3. ~~the relevant chief officer may award all such Spot contracts~~
3. ~~the relevant chief officer must provide an annual report to the Corporate Contract Review Board (CCRB) within six months of the end of the financial year detailing the nature, extent and value of Spot contracts entered into in the previous financial year and the steps being taken to minimise the use of Spot contracts~~
3. ~~the relevant chief officer must have regard to the threshold for light touch regime services under the Public Contract Regulations 2015.~~

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### ~~3.6 Leasing contracts~~

3. ~~Where approval is being sought to enter into a contract for the lease of an asset, written permission is also required from the strategic director of finance and governance in most cases, as set out in the Financial Standing Orders. Confirmation that this has been obtained should be included in Gateway reports.~~

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### ~~4. Approvals processes~~

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## ~~Overview of procurement process~~

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### 4.1 Overview of procurement process

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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) to identify who is the lead contract officer (LCO) – see 2.6 above
- b) to follow appropriate quote/tender route. This will depend on the Estimated Contract Value and other factors – see 4 below
- c) to obtain approval of a pre-procurement strategic assessment for services contracts with an Estimated Contract Value of £10 million or more – see 6.3 below
- d) to obtain approval of procurement strategy (Gateway 1 report). This will depend on the Estimated Contract Value and other factors and may require consideration of the report by the Departmental and Corporate Contract Review Boards (DCRB and CCRB) – see 6.4.5 below



- ~~e) to follow appropriate quote/tender route. This will depend on the Estimated Contract Value and other factors – see 5 below~~
- e) to obtain approval to award contract (Gateway 2 report). This will depend on Estimated Contract Value and other factors and may require consideration of the report by the DCRBs and CCRB – see 4.6.5 below
- f) to 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 6.94.10 below.

3.2 Where there is a need to vary an existing contract, the process to be followed is set out in 6.64.7 below.

34.4.3 Where it is proposed to bring a service which was previously externalised back in-house, it is necessary to follow 34.1.1 a) and ~~db~~) above.

#### 4. Requirements to obtain quotes or tenders

##### 4.1 Contracts less than £25,000

4.1.1 For all contracts where the Estimated Contract Value is less than £25,000, there is a requirement to ensure value for money and best value and to keep a record of what action has been taken and when. The best way of ensuring value for money is to obtain competitive quotes and, if this is not done, the reason for not seeking quotes should be recorded.

~~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, unless permission is obtained to do otherwise through a Gateway 1 report; such a report must include supplementary procurement advice from the strategic director of finance and governance or his delegated officers, without which the approval cannot be granted.~~

##### 4.2 Contracts from £25,000 or more to below £100,000

4.2.1 For all contracts where the Estimated Contract Value is from £25,000 or more to below £100,000, there is a requirement to take all reasonable steps to obtain at least three written quotes, including one from a local supplier where this is possible, unless the LCO decides that this will not secure value for money. In such cases, a Gateway 1 report must be completed to explain what alternative action is being 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 strategic director of finance and governance or his delegated officers, without which the approval cannot be granted.

##### 4.3 Contracts of £100,000 or more to below EU threshold

4.3.1 For all contracts where the Estimated Contract Value is £100,000 or more to below the relevant EU threshold, there is a requirement to take all reasonable steps to obtain at least five tenders. In addition, if the contract is for works or work-related services, 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 strategic director of finance and governance or his delegated officers, without which the approval cannot be granted.

#### **4.4 All contracts above EU threshold values**

4.4.1 For all contracts above the EU threshold applicable to them, there is a requirement to comply with the Public Contract Regulations 2015 following a publicly advertised competitive tendering process, as set out in these CSOs and in line with the Procurement Guidance.

4.4.2 Health, social care or educational services fall within the EU's Light Touch Regime (see definition in Glossary). The relevant chief officer must have regard to the threshold for these services under the Public Contract Regulations 2015.

### **5. Use of Framework agreements and Purchasing consortia**

#### **5.1 Using Framework agreements**

5.1.1 Where there is a contract in place for the council by way of a Framework agreement for a service, supply or work, it must be used to make the relevant purchase. If the LCO believes that the Framework agreement does not meet their requirements, they must obtain an exemption (see CSO 6.8) through a Gateway report if the value is £25,000 or more.

5.1.2 Establishing a council-led Framework agreement or use of a third party's Framework Agreement is subject to the full requirements of these CSOs, including a Gateway 1 and Gateway 2 report.

5.1.3 For all Framework agreements, if recommending use of a direct award on a multi-supplier framework, the LCO must treat this as a single supplier negotiation in the Gateway 1 report.

5.1.4 Any planned use of a Framework agreement once in place will need a Gateway 2 report, which will be approved in line with CSO 6.5, and which should set out how orders are to be placed. In the absence of this, the LCO will need to prepare Gateway 1 and 2 reports.

#### **5.2 Third party Framework agreements**

5.2.1 Some Framework agreements require buying authorities to formally join the framework in order to use it. Some may require an access charge to be paid. Wherever necessary, these should be made clear in the Gateway 1 and 2 reports.

#### **5.3 Contracts secured through Purchasing consortia**

5.3.1 Approval to create or join a Purchasing consortium must be obtained in a Gateway 1 report which must identify the procedure for award of individual contracts or orders placed via the consortium. Once approval has been obtained, contracts or orders placed through the Consortium Agreement will

not be subject to the quotation or tendering requirements in these CSOs, but a Gateway 2 report must be obtained in accordance with CSO 6.5 before any individual contract or order is placed.

## **6. Approvals processes**

### **6.1 Gateway and other reports**

**6.1.1** The procurement process requires written reports at the following stages:

- a) approval of pre-procurement strategic assessment – Gateway 0 report
- b) approval of procurement strategy – Gateway 1 report
- c) approval of award of the contract – Gateway 2 report
- d) approval of Variation or Extension to contract – Gateway 3 report
- e) monitoring reports throughout the life of the contract.

More information can be found in CSOs 6.34.4 to 64.8, 98 and the Glossary definitions below.

#### **6.24.3 Supplemental advice from other officers in Gateway and other reports**

**6.2.1** Where the Estimated Contract Value or, in relation to a Variation, the Contract Value is over the relevant EU threshold for supplies and services or over £2 million for works contracts 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 monitoring officer, financial and procurement advice and, for housing-related reports, statutory leaseholder consultation advice from the strategic director of finance and governance or delegated officer(s).

**6.2.2** There is a requirement to include all relevant information and this may require advice from other officers e.g. the director of modernise for all IT projects or director of education for all school-related projects.

#### **6.34.4 Decision on pre-procurement strategic assessment – Gateway 0**

**4.4.1** A pre-procurement assessment decision is required for:

- All services contracts with an Estimated Contract Value of above £10 million or more in value (excluding capital investment works)
- Other strategically important contracts for services, goods or works where requested by the relevant cabinet member

**6.34.4.2** The decision on a pre-procurement assessment is to be taken by the relevant cabinet member, after consideration by the CCRB of a Gateway 0 report.

### **6.4 Decision on procurement strategy – Gateway 1**

**6.4.1** For contracts with an Estimated Contract Value of £100,000 or more, the LCO must consult with the relevant cabinet member before a procurement strategy is implemented.

**6.4.24.5.1** A decision on the procurement strategy to be used on any contract with an Estimated Contract Value of £100 over £75,000 or more 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. For contracts with an Estimated Contract Value over~~ £100,000. As a minimum, the LCO must keep a written record of decisions, consult with the date that the decision relevant cabinet member before a procurement strategy is taken and action taken. implemented.

6.4.35.2 The decision on the approval of the procurement strategy is to be taken ~~as set out below by the relevant chief officer or under his/her delegated authority in line with the department's scheme of management, except where:~~

- a) if the contract is a Strategic Procurement, the decision must be taken by the cabinet or cabinet committee, after consideration by the CCRB of the report
- b) if the Estimated Contract Value is ~~above~~ £2 million or more but below £4 million for services and supplies or ~~above~~ £10 million or more but below £15 million for works but the contract does not fall into a) above, the decision must be taken by the relevant individual decision maker, after consideration by the CCRB of the report
- c) if the contract will affect the budget of more than one directorate is a Corporate contract, but does not fall into a) or b) above, the decision must be taken by the chief officer responsible for the contract strategic director of finance and governance, after consideration by all relevant DCRB the CCRB of the report
- d) ~~if 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 a), b) or c) above, the decision must be taken by the strategic director of finance and governance, after consideration by the CCRB of the report~~
- d) ~~the Estimated Contract Value is~~ above the relevant EU threshold but the contract does not fall into a), b), ~~c) or cd)~~ cd) 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 strategic director of finance and governance, after consideration by the CCRB of the report
- e) ~~if 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 consideration by the relevant DCRBs of the report~~
- e) ~~the Estimated Contract Value is~~ above the relevant EU threshold but the contract does not fall into a), b), c), ~~d), e)~~ or df) above, the decision must be taken by the chief officer or under his/her delegated authority, after consideration by his/her DCRB of the report
- f) 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 and insurance where decisions are to be made by the strategic director of finance and governance), or
  - ii) about the decision (e.g. in emergencies where no prior written report is needed – see CSO 6.94.10 below).
- g) if the decision does not fall into any of the categories above, it must be taken by the relevant chief officer or under their delegated authority in line with the department's scheme of management.

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4.45.3 Gateway 1 reports should consider social value and set out how this will be included in any tender process. They must also include any details of procurement proposals that are different from the normal routes, including requests for exemptions to all or some of these CSOs and requests to delegate powers to award the contract.

#### 4.6.5 Decision on contract award – Gateway 2

4.6.5.1 A decision to award any contract with an Estimated Contract Value of ~~£100,000~~ over £75,000 or more 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~~ £100,000. As a minimum, the LCO must keep a written record of decisions, the date that the decision is taken and action taken.

4.6.5.2 The decision on the award of a contract is to be taken as set out below: ~~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) if the contract is a Strategic Procurement, the decision must be taken by the cabinet or cabinet committee, after consideration by the CCRB of the report
- b) if the Estimated Contract Value is ~~above~~ above £2 million or more but below £4 million for supplies and services or ~~above~~ above £10 million or more but below £15 million for works but the contract does not fall into a) above, the decision must be taken by the relevant individual decision maker, after consideration by the CCRB of the report
- c) if the contract will affect the budget of more than one directorate is a Corporate contract, but does not fall into a) or b) above, the decision must be taken by the chief officer responsible for the contract the strategic director of finance and governance, after consideration by ~~the CCRB of the report~~
- c) ~~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 a), b) or c) above, the decision must be taken by the strategic director of finance and governance, after consideration by the CCRB of the report~~
- c) ~~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 consideration by the relevant DCRBs of the report~~
- d) If:
- i) if:
  - 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 a), b), ~~c)~~ or cd) above, the decision must be taken by the relevant chief officer after consultation with the strategic director of finance and governance, after consideration by the CCRB of the report
- e) if the proposed contract includes pension arrangements terms which are different from those set out in the council's Admitted Bodies policy but the contract does not fall into a), b) c) or d) above, the decision must be taken by the strategic director of finance and governance, after consideration of

the report by the CCRB and taking advice from the Pensions Advisory Panel

- f) if the Estimated Contract Value is above the relevant EU threshold but the contract does not fall into a), b), c), d), ~~e), f)~~ or eg) above, the decision must be taken by the relevant chief officer or under his/her delegated authority, after consideration by the relevant DCRB of the report
- g) 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 and insurance where decisions are to be made by the strategic director of finance and governance)
  - ii) about the decision (e.g. in emergencies where no prior written report is needed – see CSO 6.94.10 below)
- h) approval has been obtained in line with CSO 6.4.45.3 above to a different decision process.
- i) if the decision does not fall into any of the categories above, it must be taken by the relevant chief officer or under their delegated authority in line with the department's scheme of management.

4.6.5.3 Requests to delegate the decision on the award of a contract should be included within the Gateway 1 report.

4.6.5.4 Report authors should include, as part of the proposed recommendations contained within the Gateway 2 report, details of any possible options to extend the contract. ~~Where such a recommendation is not included, even where the contract was awarded prior to the commencement of these CSOs, any decision to exercise an option to extend the contract will be subject to the requirements of 4.7 below.~~

### **6.64.7 Decision to allow Variations during contract term – Gateway 3**

6.6.1 For contract Variations with an Estimated Contract Value of £100,000 or more, the LCO must consult with the relevant cabinet member before this is implemented.

6.6.24.7.1 A decision to allow a contract Variation of ~~£100 more than £75,000 or more~~ must only be made after consideration of a Gateway 3 report. It is recommended that such a report is also used for contract Variations with an estimated value of ~~£10075,000~~ or below. As a minimum, the LCO must keep a written record of decisions and action taken.

6.6.34.7.2 Any decision to allow a Variation of a contract or Framework agreement is to be taken as set out below:

~~if~~ on the value 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 is a Strategic Procurement, the decision must be taken by the cabinet and any previous Variations is £250,000 or cabinet committee, after consideration by the CCRB of the report
- b) if the value above (for services and supplies contracts) or £1 million or above (for works contracts) and the amount of the proposed Variation is £2 million or more but below £4 million for supplies and services or £ than

~~10 million or more but below £15 million for works but% of the contract does not fall into a) aboveContract value, the decision must be taken by the relevant individual decision makerstrategic director of finance and governance, after consideration by the CCRB of the report~~

- ~~c) if the value; all such decisions will be advised in writing by the strategic director of finance and governance to members of the proposed variation is £1 million or more but cabinet~~
- ~~c) the contract is a Corporate contract, but does not fall into a) or b) above, the decision must be taken by the strategic director of finance and governance, after consideration by the CCRB of the report; all such decisions will be advised in writing by the strategic director of finance and governance to members of the cabinet~~
- ~~d) 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 and insurance where decisions are to be made by the strategic director of finance and governance)~~
  - ~~ii. the contract affects the budget of more than one directorate, butabout the decision (e.g. in emergencies where no prior written report is needed – see CSO 6.9)~~~~
- ~~e) if the decision does not fall into any of the categoriesa) or b) above, the decision must be taken by the relevant chief officer or under their delegated authority in line with the department's scheme of management; after obtaining agreement in writing from the other relevant chief officer(s); and after consideration by the relevant DCRBs of the report.~~

6.6.4 Where 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 monitoring officer that the sums are legally payable must be obtained and the decision to make the payment must be reported in writing to the strategic director of finance and governance within five clear working days.

- ~~f) 6.6.5a different requirement must be met as specified elsewhere in the constitution or these CSOs:
  - ~~for the decision to be made by someone else (e.g. pensions, treasury management and insurance where decisions are to be made by the strategic director of finance and governance), or~~
  - ~~about the decision (e.g. in emergencies where no prior written report is needed – see 4.10 below)~~approval has been obtained in line with 4.5.3 above to a different decision process.~~

4.7.3 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.

#### **6.74.8 Retrospective approvals**

6.7.1 In the event of a contract having been entered into other than in compliance with these CSOs, it may be necessary to seek approvals retrospectively. In such cases, the procedures relating to Gateway 1, Gateway 2 and Gateway 3

reports should be followed ~~as soon as possible.~~ ~~Where the decision makers for the Gateway 1 and 2 reports are different, both decisions can be taken by the higher decision maker (see 2.7 above), after consulting with the other decision maker.~~ In addition, a report should be submitted to the relevant departmental contract review board for information and, where a decision relates to a procurement strategy, a contract award or a contract Variation with an estimated value of over £100,000, also to the audit, governance and standards committee, setting out the circumstances and manner in which the decision was taken, for the purpose of obtaining guidance to inform future decision making.

#### **6.84.9 Exemptions**

**6.8.1** In the event that there appear to be exceptional circumstances which mean that the usual procedures set out in the CSOs 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.

**6.8.2** Examples of circumstances which might amount to an exceptional reason for not following the usual procedures include but are not limited to:

- 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~~
- b) the circumstances of the proposed contract are covered by legislative exemptions (whether under EU or domestic law).

#### **6.94.10 Emergencies**

**6.9.1** An emergency is a situation where action is needed to prevent a risk of injury or loss of life, or to the security or structural/operating viability of a property or other tangible or intangible asset. 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, within six months of the action taken.

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

~~When estimating the value of a contract, reference should be made to the Estimated Contract Value paragraph set out in the Definitions section.~~

#### **~~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, unless permission is obtained to do otherwise through a~~



Gateway 1 report; such a report must include supplementary procurement advice from the strategic director of finance and governance or his delegated officers, without which the approval cannot be granted.

## **5.2 — Contracts from £5,000 to £75,000**

For all contracts where the Estimated Contract Value is from £5,000 to £75,000, there is a requirement to take all reasonable steps to obtain at least three written quotes, including one from a local supplier where this is possible, unless the LCO decides that this will not secure value for money. In such cases, a Gateway 1 report must be completed to explain what alternative action is being 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 strategic director of finance and governance or his delegated officers, without which the approval cannot be granted.

## **~~75.3 — 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 strategic director of finance and governance or his delegated officers, without which the approval cannot be granted.~~

## **Supplies and services contracts 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.~~

## **5.5 — All other contracts above EU threshold values**

~~For all contracts above the EU threshold applicable to them, there is a requirement to comply with the Public Contract Regulations 2015 following a publicly advertised competitive tendering process, as set out in these CSOs and in line with the Procurement Guidelines.~~

## **6. Tender return and opening procedure**

76.1 Officers must use any e-procurement processes as required by the procurement advice team in order to ensure compliance with relevant legislative requirements. All tender processes must comply with the following requirements.

76.2 Tenderers must be told that their tenders may only be considered if they are received in time within the protocols of the council's e-procurement system or, where permitted by the invitation to tender instructions, if they follow the following requirements below:

~~Either:~~

- a) the tender must be returned in a plain envelope or parcel which is marked clearly "Tender" followed by the subject of the contract, and
- 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, with Tenders where the Estimated Contract Value is £500,000 or more being returned to the monitoring officer.

~~Or:~~

~~tenders must be received in time within the protocols of the council's e-procurement system.~~

6.3 All tenders will be electronically released or opened at the same time and place, after the closing date and time for receipt stated in the tender documents.

~~76.4~~ A tender received by the council via the e-procurement system or otherwise (subject to CSO 7.6) after the time and date specified in the invitation shall not be accepted or considered.

~~76.5~~ Tenders where the Estimated Contract Value is £500,000 or more shall be electronically opened/released or opened by the monitoring officer's authorised representative. Where the Estimated Contract Value is less than £500,000, tenders not required to be returned using the e-procurement system 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. ~~Tenders; tenders~~ required to be returned using the e-procurement system will be released from the sealed tender box by the relevant chief officer or their authorised representative.

~~76.6~~ Exceptions to the requirements set out in ~~76.1~~ to ~~76.5~~ above will only be made in exceptional circumstances and must be authorised by the relevant chief officer in writing following consultation with the monitoring officer and legal advice as necessary~~strategic director of finance and governance, CCRB or DCRB as appropriate to the contract.~~

## **~~87.~~ Advertisement and publication of procurement notices**

~~87.1~~ Chief officers are responsible for ensuring that the council's obligations in relation to the publication of notices relating to procurement and contracts are met. Contract opportunities for quotations or tenders with an Estimated Contract Value of £25,000 or above that are advertised in any way must be advertised on the Contracts Finder website. All awards of contracts that have an Estimated Contract Value of £25,000 or above, including call-off contracts from Framework agreements must also be published on the Contracts Finder website.

~~87.2~~ Notices to be published in the Official Journal of the European Union (OJEU) must only be placed by the monitoring officer or delegated representative.

These include contract notices, contract award notices, voluntary ex-ante transparency (VEAT) notices and modification of contract during term notices.

## **98. Contract management and monitoring**

8.1 The ~~LCO~~~~lead contract officer~~ must ensure that systems are in place to manage and monitor contracts in respect of at least:

- a) compliance with specification and contract
- b) contractor performance and KPIs
- c) budget and cost
- d) user satisfaction
- e) risk management
- f) delivery of social value commitments, including London Living Wage.

8.2 Where the ~~Estimated Contract Value~~~~estimated contract value~~ exceeds the relevant EU threshold, the ~~LCO~~~~lead contract officer~~ should prepare a six-monthly monitoring report to the relevant DCRB.

8.3 Where the contract relates to a Strategic Procurement or was awarded by an individual decision maker, the LCO~~strategic procurement or is corporate in nature or has an estimated contract value of £500,000 or more and affects the budgets of more than one department, the lead contract officer~~ should prepare an annual monitoring report to the CCRB, within six months of the contract anniversary.

## **109. Contract termination / Mergers and acquisitions**

### **10.1 Contract termination**

10.1.1 A contract may only be terminated early or suspended by a chief officer by the council, and only after obtaining approval from the monitoring officer and strategic director of finance and governance; all such decisions will be advised in writing by the chief officer to the relevant member of the cabinet and cabinet member for finance, modernisation and performance.

### **10.2 Mergers and acquisitions**

10.2.1 Where it appears that a current contractor may be the subject of a merger or acquisition by another company or organisation, the LCO must inform the monitoring officer and strategic director of finance and governance as early as possible, in order to enable appropriate advice to be given.

## **11. Contractor insolvency**

### **11.1 ~~10.~~ Contractor insolvency**

Where it appears that a contractor is at risk of becoming insolvent, or the council is notified that insolvency proceedings have been brought, the chief officer must inform the monitoring officer and strategic director of finance and governance as early as possible, in order to enable appropriate advice to be given.

## Glossary

CCRB	Corporate Contract Review Board – panel of officers operating under terms of reference of CCRB. Its role includes considering reports from LCOs for the cabinet, individual decision makers and the strategic director of finance and governance on contract decisions <a href="#">and contract monitoring reports</a> .
Consortium agreement	A consortium agreement is a single formal legal document, agreed and signed by all the parties to a project, and which imposes a set of standard conditions on those signatories. These conditions include, amongst other things, agreements as to ownership and exploitation of intellectual property rights, and a set of warranties and disclaimers allocating risk between the parties. A consortium agreement is needed when joining a purchasing consortium.
Contract Value	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.
<del>Corporate contract</del>	<del>A contract arranged by a department that should be used by the whole council for all goods, works or services specified in it.</del>
Council's contract register	A register of contracts, compiled through the council's e-procurement system.
DCRB	Departmental Contract Review Board – panel of officers operating under terms of reference of DCRB. Its role includes reviewing reports for consideration by the CCRB and the chief officer on contract decisions <a href="#">and contract monitoring reports</a> .
<del>Demand-led contract</del>	<del>A demand-led contract is an agreement between two parties which commits one to buying from another over a period of time. The rates to be charged through the contract are set whilst the volumes of work to be delivered through the contract are not defined or guaranteed. Individual orders are issued prices against the agreed rates. This is sometimes referred to as a demand-led contract and is often based on a schedule of rates.</del>
Estimated Contract Value	The total value of a proposed contract including options to extend it (as estimated by the LCO on the basis of all relevant factors) net of VAT calculated for the proposed contract period, or, if for an undetermined period, 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. The Estimated Contract Value should be based on the best available estimates, or on actual costs if known.

EU Regulations The Public Contracts Regulations 2006 and 2015 or any amendment to or successor to those Regulations.

EU threshold The current contract value at which the requirements of the EU Regulations apply for the services, supplies or works being procured.

Framework agreements ~~Framework~~A framework agreement is similar to a framework contract but without rates. The agreement is to provide an unspecified volume of work at an unspecified rate. These agreements are often used when a number of providers are secured to provide ~~the specific~~ supplies, services or works. Setting up framework arrangements is subject to EU regulations and they generally can exist for no more than four years.

Providers on a Framework agreement will have been through a procurement process to appear on the framework list. During this process the providers must demonstrate that they can deliver the scope of requirements covered by the framework. There should be clear rules supporting the use of the framework as these will need to be followed to ensure the framework remains EU compliant. Some frameworks require a further competition process to be undertaken involving all providers appearing in the list. The council may set up its own framework agreements for a particular service or decide to use a framework set up by a third party, e.g. Crown Commercial Service (CCS).

Gateway report A written report in substantially the same terms as those contained in the relevant template which can be found on the Source at <http://thesource/SectionLandingPage.asp?id=22344&cat=1234>.

Key Decision Definitions of Key Decisions are contained in the Protocol on Key Decisions in appendix 1 of the Access to information procedure rules section of the constitution. Examples of Key Decisions for procurement purposes are:

- 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
- Strategic Assessment (Gateway 0) approvals
- Gateway 1 approvals in respect of a Strategic Procurement.

Lead contract officer (LCO) The LCO for each contract is the officer who has a duty to ensure that the obligations set out in these CSOs are complied with.

Light Touch Regime Services that fall within the EU definition of Light Touch Regime Services for Social and other Specific Services noted in schedule 3 of the Public Contract Regulations 2015. These generally include Health, Social Care or Education Services. Any queries on this should be directed to the procurement advice or legal contract teams.

Lowest Bid The lowest price offered by tender or quotation which meets the specification and other requirements of the contract and has not been rejected as abnormally low.

Procurement GuidanceGuidelines Guidance, advice or templates published on the intranet pages in relation to issued and maintained by the procurement process. advice team and legal services containing best practice information on procurement matters.

Purchasing consortium A purchasing consortium is a group of organisations that have come together with the primary objective to buy collectively, thereby increasing their buying power and minimising procurement activity. To join a purchasing consortium it is necessary to sign a consortium agreement. An example of a purchasing consortium is the London Contracts Supply Group (LCSG).

~~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~~ ~~The 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. Seek advice if you are unclear about the application of the Standstill Period.~~

Strategic Procurement Procurement where one or more of the following apply:

- 1) Estimated Contract Value of £4 million or more for non-works and of £15 million or more for works
- 2) a significant change to previous service
- 3) possible externalisation or change in manner of delivery
- 4) significant transfer of assets or staff
- 5) political sensitivity
- 6) contract carrying a high level of risk.

Tender value The value of a 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 A payment where delay would lead to significant demonstrable

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financial loss to the council (and where no breach of EU or domestic requirements would be occasioned).

### Variation

A modification to an existing contract such as additional services, exercising options, changes in price or a change in contractor.

~~A decision to extend the length or cost or amend the scope of a contract where the original agreed contract makes explicit provision for this. This might be an increase in the duration of the contract (contract length/new end date), an increase in the volume usage of the contract (amount supplied), and/or the exercise of an option (e.g. to now use an element of the service which was not used before).~~

### Works Approved List

A list of providers of works and works-related consultancy services which have all 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, maintained by the procurement advice team. For further information about the use of Approved Lists, ~~see the Procurement Guidelines or~~ seek advice from the procurement advice team.