

LONDON BOROUGH OF MERTON

CONSTITUTION - PART 4G CONTRACT STANDING ORDERS

Effective: December 2017¹

Version: 2.0

Revised by: Dawn Jolley – Head of Commercial Services

Approved by: Director of Corporate Services (30/08/2017)
Standards and General Purposes Committee (07/09/2017)
Full Council (22/11/2017)

¹ Full Council revised last version 1.1 on 19 November 2014.

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

CONTENTS

| | | |
|---------|--|-------------|
| CSO 1. | CONTRACT STANDING ORDERS - COMPLIANCE AND TERMINOLOGY | <u>44</u> |
| CSO 2. | AMENDMENT OF CONTRACT STANDING ORDERS | <u>55</u> |
| CSO 3. | PROCUREMENT TOOLKIT | <u>55</u> |
| CSO 4. | SCHEMES OF MANAGEMENT | <u>55</u> |
| CSO 5. | DIRECTOR'S RESPONSIBILITY | <u>66</u> |
| CSO 6. | RESPONSIBLE OFFICER'S DUTIES | <u>66</u> |
| CSO 7. | SEEKING AN EXEMPTION FROM CONTRACT STANDING ORDERS | <u>88</u> |
| CSO 8. | EXCEPTIONS TO CONTRACT STANDING ORDERS | <u>99</u> |
| CSO 9. | OPTIONS APPRAISAL | <u>1010</u> |
| CSO 10. | CONTRACT VALUE ESTIMATION AND AUTHORISATION TO COMMENCE THE PROCUREMENT | <u>1010</u> |
| CSO 11. | CONTRACT PACKAGING AND AGGREGATION | <u>1212</u> |
| CSO 12. | FRAMEWORK AGREEMENTS | <u>1313</u> |
| CSO 13. | GENERAL PROVISIONS, THE E-TENDERING SYSTEM AND COMMUNICATION WITH BIDDERS | <u>1414</u> |
| CSO 14. | CONSULTANTS | <u>1515</u> |
| CSO 15. | SERVICES COVERED BY THE LIGHT TOUCH REGIME | <u>1616</u> |
| CSO 16. | CONTRACTS UP TO AND INCLUDING £5,000 | <u>1616</u> |
| CSO 17. | CONTRACTS ABOVE £5,000 UP TO AND INCLUDING THE LOWER THRESHOLD (£5,001 - £25,000) | <u>1717</u> |
| CSO 18. | CONTRACTS ABOVE THE LOWER THRESHOLD UP TO AND INCLUDING THE UPPER THRESHOLD (£25,001 - £100,000) | <u>1717</u> |
| CSO 19. | CONTRACTS ABOVE THE UPPER THRESHOLD (£100,001) | <u>1818</u> |
| CSO 20. | CONTRACT AWARD NOTICES AND PUBLISHING AWARD DETAILS ON CONTRACTS FINDER | <u>1919</u> |
| CSO 21. | EMERGENCY PROCUREMENT | <u>2020</u> |
| CSO 22. | SHORTLISTING BIDDERS – STANDARD SELECTION QUESTIONNAIRES (SQS) AND SUITABILITY QUESTIONS | <u>2020</u> |
| CSO 23. | EVALUATION OF BIDS AND AWARD CRITERIA | <u>2121</u> |
| CSO 24. | CONTRACT AWARD AND AUTHORISATION PROCESS | <u>2222</u> |
| CSO 25. | FORMS OF CONTRACTS AND IN WRITING | <u>2323</u> |
| CSO 26. | CONTRACT CONDITIONS | <u>2323</u> |
| CSO 27. | CONTRACT VARIATIONS, EXTENSION AND NOVATIONS | <u>2424</u> |
| CSO 28. | CONTRACTS FOR THE DISPOSAL OF COUNCIL ASSETS | <u>2525</u> |
| CSO 29. | CONFLICTS OF INTEREST | <u>2626</u> |
| CSO 30. | ACCEPTANCE OF GIFTS AND HOSPITALITY | <u>2727</u> |
| CSO 31. | UNAUTHORISED DISCLOSURE OF INFORMATION | <u>2727</u> |
| CSO 32. | INTERNAL ADMINISTRATIVE MATTERS FOLLOWING AWARD OF CONTRACT | <u>2727</u> |

| | |
|---|--------------------|
| APPENDIX 1 - DEFINITIONS | <u>2828</u> |
| APPENDIX 2 - EXEMPTIONS FROM CONTRACT STANDING ORDERS | <u>3636</u> |
| EXEMPTION REPORT | <u>3738</u> |
| APPENDIX 3- EU THRESHOLDS AND SQ THRESHOLDS | <u>4041</u> |
| APPENDIX 4 – COUNCIL THRESHOLDS | <u>4142</u> |
| APPENDIX 5 - RETENTION PERIODS FOR CONTRACT DOCUMENTS | <u>4243</u> |
| APPENDIX 6 CODE OF PRACTICE FOR THE APPOINTMENT OF CONSULTANTS | <u>4344</u> |
| APPENDIX 7 – JOINT PROCUREMENT ARRANGEMENTS WITH THRID PARTIES | <u>4748</u> |
| APPENDIX 8 – PROCEDURE FOR ACCEPTING AND OPENING PAPER BIDS | <u>4849</u> |
| APPENDIX 9 –THE COMMISSION NOTICE ON THE NOTION OF STATE AID (WITH RELEVANCE TO CONCESSION CONTRACTS AND GRANT AGREEMENTS) | <u>4950</u> |
| APPENDIX 10 – MERTON PROCUREMENT / DEMOCRATIC GOVERNANCE | <u>5152</u> |

CSO 1. CONTRACT STANDING ORDERS - COMPLIANCE AND TERMINOLOGY

- 1.1 Contract Standing Orders (“CSOs”) form part of the Constitution of the London Borough of Merton (“the Council”) and govern contracts as described below.
- 1.2 The Council is legally obliged to have standing orders. CSOs must include provision for securing competition in the award of contracts and for regulating the manner in which tenders are invited.
- 1.3 In addition, each Department must have and adhere to a Scheme of Management. The Scheme of Management will set out what level of financial authority officers in each Department have.
- 1.4 Officers must comply with these CSOs² unless an Exemption is obtained, in advance, in accordance with [CSO 7 \(Exemptions from Contract Standing Orders\)](#).
- 1.5 A list of Exceptions to these CSOs can be found [under CSO 8 \(Exceptions to Contract Standing Orders\)](#).
- 1.6 Failure by Officers to comply with these CSOs is a disciplinary offence.
- 1.7 These CSOs apply to all contracts awarded by the Council for works, services or supplies, regardless of the source of funding for the contract, and to the award of concession contracts and those relating to income generation. They apply equally to contracts awarded by any person, firm or body acting on the Council’s behalf subject to CSO 1.7.
- 1.8 In certain cases, the Council may enter into joint procurement arrangements, partnership agreements or shared services with other parties, including other councils. Such agreements may contain delegations to either individual officers, joint committees or other Councils to authorise procurement strategies and/or contract awards in compliance with a third party’s contract standing orders. Any partnership agreement and/or shared services arrangement must be approved, at the outset, by Procurement Board before being authorised by the Director of Corporate Services or the Chief Executive. At the sole discretion of either the Director of Corporate Services or the Chief Executive, the proposed joint arrangement may be designated as requiring prior consent from Cabinet to proceed. Please see [Appendix 7](#).
- 1.9 When entering into any agreement to engage a Consultant to carry out work on behalf of the Council in relation to any Disposal, Contract or Property Agreement (or proposed Disposal, Contract or Property Agreement), the appointing Officer must ensure that such Consultant agrees to comply with these CSOs.
- 1.10 Disposals and Property Agreements are dealt with specifically at [CSO 28 \(Contracts for the Disposal of Council Assets\)](#) and unless otherwise stated to the contrary, the

² These CSOs should be read in conjunction with the Council’s Procurement Toolkit that sets out guidance on the application of these principles and compliance with these CSOs. The Toolkit is located on the Council’s intranet and is updated on a regular basis in consultation with the Procurement Board and Departmental Operational Procurement Groups.

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

provisions stated to apply specifically to Contracts do not apply to Disposals or Property Agreements.

1.11 Every Contract and Disposal and Property Agreement must comply with:

-) all applicable UK and EU Laws;
-) Financial Regulations; and
-) relevant Council Policies.

1.12 These CSOs (whether amended or superseded or not) shall be retained for twelve (12) years from the date of publication before being considered for destruction.

1.13 The Director of Corporate Services may from time to time issue practical guidance and governance as to the steps to be taken to comply with these CSOs.

1.14 In these CSOs reference to a post, Director, department, team or the like includes a reference to any re-designated post, Director, department, team or the like from time to time who performs or substantially performs the role, function or duties of that post, Director, department, team or the like, or the manager of these posts.

1.15 Terminology and abbreviations referred to in these CSOs are set out at [Appendix1](#).

CSO 2. AMENDMENT OF CONTRACT STANDING ORDERS

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

2.2 These CSOs may be supplemented, varied or amended from time to time during their currency in respect of the Council Thresholds, the Authorisation Thresholds and to reflect the requirements of any amendments to or additional UK/EU Procurement Laws or other Laws with the written approval of the Leader, Chair of Scrutiny, Chief Executive and the Monitoring Officer.

CSO 3. PROCUREMENT TOOLKIT

3.1 The Procurement Toolkit contains guidance, information, templates, tools and techniques to assist Officers in undertaking Contract procurement and management activity generally and in complying with these CSOs.

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

CSO 4. SCHEMES OF MANAGEMENT

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

4.2 The Director of Corporate Services shall keep a register of all Schemes of Management and make this available on the Council's intranet.

CSO 5. DIRECTOR'S RESPONSIBILITY

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

CSO 6. RESPONSIBLE OFFICER'S DUTIES

- 6.1 The departmental Director (or alternative Officer on their behalf) shall appoint a Responsible Officer to be responsible for every proposed or actual Contract, Disposal and Property Agreement. Where no Responsible Officer has been appointed, the Responsible Officer shall be deemed the Budget Holder of the department from which the Contract is funded, income received (e.g. Concession Contracts, etc.) or Disposal/Property Agreement is handled.
- 6.2 The Responsible Officer shall be responsible for ensuring that the procurement of the Contract or Disposal is conducted in accordance with these CSOs.
- 6.3 Without prejudice to the general requirement at CSO 6.2, the Responsible Officers shall:
- 6.3.1 before selecting the most appropriate procurement route for a Contract, carry out a robust Options Appraisal;
 - 6.3.2 seek value for money and, in the procurement of a Contract and to the extent relevant, proportionate and permitted by UK/EU Procurement Law, consider social benefits of the Contract (and in particular the Public Services (Social Value) Act 2012). Guidance is also contained within the Procurement Toolkit;
 - 6.3.3 conduct all activity in accordance with the highest standards of probity and integrity to prevent fraud and corruption;
 - 6.3.4 fulfil the role as the project sponsor or appoint a project sponsor and appoint a project manager where relevant;
 - 6.3.5 in relation to any Contract, adhere to the Council's Procurement Governance and Gateway Process as stipulated by the Director of Corporate Services;
 - 6.3.6 take into account all relevant Laws and Council strategies and policies relating to equality, diversity, health & safety and sustainability;
 - 6.3.7 carry out and demonstrate that they have carried out appropriate statutory and stakeholder consultation;

- 6.3.8 clarify the role (if any) of community groups, the voluntary sector and the business community;
 - 6.3.9 ensure that either on appointment or engagement or (if not already done so) prior to commencing any relevant activities, all Officers, Contractors and Consultants, involved in the procurement of a Contract or a Disposal, complete a Declaration of Interest as set out on the Council's intranet. This applies equally to any Community Representatives that may participate in any way in a procurement process.
 - 6.3.10 take into account all relevant requirements under the Local Government Transparency Code and General Data Protection Regulation (GDPR);
- 6.4 The Responsible Officer may not delegate their duty under CSO 6.2 and 6.3 and shall ensure that compliance is properly evidenced.
- 6.5 Officers may invite community representatives to participate in the procurement process for development of specifications, assistance in selection of providers and the commentary on performance of particular contracts. The agreement of the Director of Corporate Services is required for any other type of involvement where this is not covered by law or any Council policy. Guidance is also contained in the Procurement Toolkit
- 6.5.1 Community representatives (e.g. school representatives, but not Members) are not and may not be "Responsible Officers" for the purposes of these Standing Orders and, except where the law specifically provides otherwise, will be observers with speaking rights at the discretion of the Responsible Officer. They may advise Responsible Officers where appropriate, but all decisions will be taken by the Council within the framework of the schemes of delegation;
 - 6.5.2 Responsible Officers will ensure community representatives give a written undertaking to treat all information confidentially throughout the tendering process, and the life of the contract and sign the appropriate declaration of interests;
 - 6.5.3 The Council must always avoid any suspicion or risk of potential allegation about possible bribery or corruption. An adequate record of the Community Representatives involved, consulted and the responses obtained must be kept and filed. It must include a written record of those approached and their responses, including notes of any meetings held with names of all those present. Where possible, written responses should be encouraged. If face-to-face discussion is necessary, then the Responsible Officer should attend such a meeting accompanied by another Council representative.
- 6.6 The Council has a statutory duty to achieve best value and it is in the Council's best interests to spend public money in this way. Contracts must be awarded on the basis of the most economically advantageous tender (MEAT), quotation or proposal, as determined by such criteria as are relevant to the type of goods, works or services. This will generally cover the optimum combination of whole life costs and benefits, including such factors as quality, initial price, running costs and disposal costs.

CSO 7. SEEKING AN EXEMPTION FROM CONTRACT STANDING ORDERS

- 7.1 The Chief Executive will consider and may grant exemptions, where appropriate, to these CSOs when requested by Officers within Corporate Services.
- 7.2 For Departments other than Corporate Services, the Director of Corporate Services is authorised, to grant exemptions to these CSOs.
- 7.3 The grounds for granting exemptions are as follows. No exemption to these CSOs may be permitted unless the authoriser can be satisfied that:
- i. the circumstances of the proposed waiver are permitted by EU and English law; and
 - ii. there are exceptional circumstances that have led to a need to depart from the CSOs and evidence has been provided which demonstrates the exemption is necessary to achieve the Council's objectives; and
 - iii. the nature of the market for the works to be carried out, or the services or supplies to be provided, has been investigated and it has been demonstrated that due to a lack of competition in the market, a departure from the requirements of CSOs is justifiable; or
 - iv. the contract is for works, services or supplies that are required in circumstances of an emergency and as such could not reasonably have been foreseen.
- 7.4 Where an exemption is requested, an Exemption Report must first be submitted to the relevant Service Financial Adviser and Legal Services for comment. The report is then to be submitted to the Head of Commercial Services (for comment and sign-off) prior to it being submitted to the Chief Executive or the Director of Corporate Services (as relevant) and must include:
- a) the Contract Standing Order number from which the exemption is requested
 - b) the reasons for requesting the exemption
 - c) the alternatives available if the exemption is not granted
 - d) total value of the exemption being requested
 - e) any potential legal implications associated with the exemption request
 - f) the financial implications of the exemption request
- 7.5 No requested exemption shall be permitted to take effect until the Exemption Report has been signed as agreed by the Chief Executive or the Director of Corporate Services (as relevant).
- 7.6 A non-exhaustive list of circumstances where an exemption may be granted is set out in [Appendix2](#).
- 7.7 No exemption may be granted that:
-) Would result in a breach of UK/EU Procurement Law
 -) requires Cabinet to approve major contract variations
 -) requires Cabinet to approve certain contract awards

-) differs from the Scheme of Management
-) removes the requirement for declaration of any Officer or Members Interests

7.8 The Director of Corporate Services shall maintain a register of exemptions granted by department that shall refer to the relevant Contract, Disposal or Property Agreement and set out the nature of the exemption and the value of the Contract, Disposal or Property Agreement as well as include the Exemption Report. The Director of Corporate Services shall report exemptions monthly to the Procurement Board.

7.9 In exceptional circumstances if the Director of Corporate Services and/or the Chief Executive are not able to grant an exemption, any two (2) Officers selected from the deputy Section 151 Officer, the Monitoring Officer or any of the Council's remaining Directors may, acting jointly, consider and where appropriate grant an exemption.

CSO 8. EXCEPTIONS TO CONTRACT STANDING ORDERS

DISPOSALS AND CONTRACTS NOT REQUIRING PROCUREMENT IN ACCORDANCE WITH THESE CONTRACT STANDING ORDERS

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

-) Contracts of employment for staff;
-) Contracts with agencies for the provision of individual temporary staff where the Head Human Resources, (after liaison with the Head of Commercial Services) agree that use of the vendor-managed service is not appropriate;
-) Land Transactions (which solely relate to interest in land);
-) Arrangements for the engagement of counsel for particular instructions, and certain other legal services (subject always to UK/EU Procurement Law), where the ~~Managing Director of the South London Legal Partnership~~ ~~Assistant Director of Corporate Governance~~ considers the instructions do not require a procurement exercise and can be commissioned outside of any current framework agreement for those services. Such instructions are to be reported by the SLLP to Procurement Board on a monthly basis;
-) Contracts for particular Voluntary Sector bodies where the Council is seeking to move from a grant agreement to a formal contractual relationship, and where the purpose of the contract is to establish the general conditions to support the voluntary sector body in adapting to the new arrangements, where the grant terminates;
-) Contracts entered into by school governing bodies that operate under the relevant Scheme of Management, unless otherwise stated in the relevant Scheme of Management;
-) Orders placed under Existing Contracts, Dynamic Purchasing Systems or Electronic Auctions (provided they are placed in accordance with the requirements set out or otherwise referred to in those Contracts);
-) Contracts for the provision of packages of social care, educational and welfare, services to individual clients, where the aggregate value of such contracts does

not exceed the EU Threshold for supplies and services, and there is no cross border interest.

-) Contracts that ensure continuity of care of vulnerable persons in accordance with the Care Act;
-) where the provider has signed a pre-placement agreement with the Council for residential or nursing care;
-) the engagement of professional expert witnesses in contentious matters; and
-) the appointment of independent investigators, arbitrators, mediators, and facilitators.

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

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

8.2 Disposals of Property Assets shall be carried out in accordance with [CSO 28 \(Contracts for the Disposal of Council Assets\)](#).

CSO 9. OPTIONS APPRAISAL

9.1 Prior to the procurement of any Contract (be it for the provision of Services or Works) with a value above the Upper Threshold, the Responsible Officer must carry out an Options Appraisal³ to determine the best way of structuring the procurement to achieve the best outcome for the Council and the most appropriate procurement process.

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

10.1 Before commencing any procurement, Officers must estimate the total value of the Contract to be procured (net of VAT). Also See [CSO 11 \(Contract Packaging and Aggregation\)](#).

10.2 The estimation must be carried out in accordance with UK/EU Procurement Law and the estimated value will determine the extent to which UK/EU Procurement Law applies and which CSOs apply⁴.

10.3 In estimating the total value of the Contract, this must be based on the total amount payable (net of VAT) over the full life of the Contract to the provider (regardless of where the funding is coming from) and in all cases must include the value of any possible extensions to the period of the Contract.

10.4 In the case of contracts without a fixed term, the estimated value shall be the monthly value, multiplied by 48 (net of VAT). Additional guidance must be sought

³ Guidance as to how to undertake an Options Appraisal is set out in the Procurement Toolkit

⁴ The Procurement Toolkit contains guidance on the most appropriate form of Contract and procurement process and Commercial Services can provide further advice. The Responsible Officer shall have authority in accordance with the Scheme of Management.

from both Commercial Services and Legal Services to ensure compliance with UK/EU Procurement Law.

- 10.5 A Contract must not be divided into smaller related Contracts (disaggregated) with the intention to avoid the application of UK/EU Procurement Law or particular CSOs. Where Contracts are disaggregated, the total value of all of the Contracts must be taken into account in determining the value of the Contract.
- 10.6 In the case of setting up a Framework Agreement or Contracts to set up Dynamic Purchasing Systems, the value to be taken into account shall be the maximum estimated value of all of the Contracts envisaged to be awarded under the relevant Framework Agreement or Dynamic Purchasing System for the total period of the Framework Agreement or Dynamic Purchasing System.

Officers must consult Corporate Services and Legal Services prior to seeking setting up any Framework Agreement or Dynamic Purchasing System.

10.7 Lots

- 10.7.1 As a general rule, where a Contract is (or may be) divided into smaller Contracts (Lots), the estimated value should take account of the value of all of the separate Lots, although in certain circumstances the Public Contracts Regulations 2015 may permit a different methodology. Officers are to seek advice from Commercial Services and Legal Services when seeking to procure a Contract comprising of Lots.
- 10.7.2 Where a Contract is likely to be over the EU Threshold, Officers should record the justification for dividing or not dividing the Contract into smaller Lots.

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

- 10.8.1 Specific rules apply to the valuation of Concession Contracts, where the Contract may have a nil value in terms of how much the Council pays the Provider, but this may not be a nil value when considered under the rules of the Concession Contracts Regulations 2016. The value of concession contracts shall therefore be the estimated total turnover of the concession generated over the duration of the contract, net of VAT. Also see [Appendix 9 \(The Commission Notice on the Notion Of State Aid\)](#)
- 10.8.2 A contract will be considered to be a concession contract where:
-) The consideration given to the contractor is that the contractor is permitted to exploit the works or services that are the subject of the contract (together with payment if desired).
 -) The award of the contract transfers the operating risk to the concessionaire and involves real exposure to the vagaries of the market (this will be assumed where the concessionaire has no guarantee that it will recoup its investment).
- 10.8.3 Officers should seek advice from both Commercial Services and Legal Services, as well as approval from Procurement Board, when considering procuring a Concession Contract.

CSO 11. CONTRACT PACKAGING AND AGGREGATION

11.1 A procurement process for a new Contract may only proceed where the Council does not have a suitable Existing Contract in place. Commercial Services will, in conjunction with departmental users, publish (and update from time to time) via the Council's e-Tendering System an Existing Contracts Register.

11.2 Contracts must be packaged to best ensure they provide Value for Money for the Council.

11.3 Responsible Officers, in conjunction with Category Managers, should consider whether aggregation of Contracts across departments offers best Value for Money for the Council and comply with reviews of service for the Council as a whole. Responsible Officers are required to justify their decision with regard to aggregation or disaggregation of Contracts across departments on the basis of Value for Money. Responsible Officers should seek advice from Commercial Services, and where necessary, Legal Services.

11.4 Aggregation:

11.4.1 Responsible Officers must aggregate contracts which have similar characteristics or are intended for renewal within a given time period, in the following way:

Contracts of the same type

11.4.2 The calculation of the estimated contract value should be based on the total value of successive contracts of the same type, awarded during the preceding 12 months. This should be adjusted, where possible, to take account of changes in quantity or value which would occur in the course of 12 months following the initial contract.

Contracts for renewal within a certain time period

11.4.3 The calculation of the estimated contract value should be based on the total estimated value of successive contracts which are awarded:

-) during the 12 months following the first delivery; or
-) during the financial year, where this is longer than 12 months.

Works contracts

11.4.4 In relation to a Works project the values of any services and supplies contracts, which are necessary for the completion of the works, must be included in the calculation of the estimated contract value.

CSO 12. FRAMEWORK AGREEMENTS

12.1 A Framework Agreement is a form of Contract and as a general rule, these CSOs shall apply (as appropriate) to accessing any existing Framework Agreement (be it let nationally, regionally or locally) and to the establishment of any new Framework Agreement by Merton Council.

12.2 Accessing an existing Framework Agreement

12.2.1 A Contract of any value may be procured using a suitable existing Framework Agreement (set up by the Council or another public sector authority, or other organisation) - provided that the Framework Agreement has been procured in accordance with UK/EU Procurement Law - and it is lawful and appropriate (in respect of scope, value, terms and eligibility to access) for the Council to use it. Responsible Officers should seek advice from Commercial Services, and where necessary, Legal Services.

12.2.2 Prior to utilising an existing Framework Agreement:

- i. the Director of Corporate Services (or their nominee) shall approve using such Framework Agreement; and
- ii. the Responsible Officer must seek written confirmation from both Commercial Services and Legal Services that it is lawful and appropriate for the Council to access the Framework Agreement.

12.3 Setting up a new Framework Agreement

12.3.1 When considering setting up a new Framework Agreement for the Council the Responsible Officer shall determine the estimated value of the Framework Agreement in accordance with [CSO 10 \(Contract Value Estimation and Authorisation to Commence the Procurement\)](#) and must seek advice from both Commercial Services and Legal Services, as well as approval from Procurement Board.

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

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

12.4 Call-off Contracts

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

Dynamic Purchasing Systems

A Dynamic Purchasing System may not be established without the prior approval of Procurement Board and the authorisation of the Head of Commercial Services and

the ~~Managing Director of the South London Legal Partnership Assistant Director of Corporate Governance~~ and/or Joint Head of Legal Services or nominated officer.

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

- 13.1 The procurement of Contracts of any value and the Disposal of Council Assets shall at all times be subject to Law.
- 13.2 In addition to the general principle at CSO 13.1, Contracts with a value at or above the Lower Threshold are subject to UK/EU Procurement Law (which includes for the avoidance of doubt, the Treaty Principles) and Officers must comply with the relevant aspects of UK/EU Procurement Law. This includes Concession Contracts.
- 13.3 The Council Thresholds and the EU Thresholds are set out in [Appendix 3 \(EU Thresholds and SQ Thresholds\)](#) and [Appendix 4 \(Council Thresholds\)](#).
- 13.4 Save with respect to Contracts excluded from CSOs in line with [CSO 08](#):
- 13.4.1 all Contracts must be procured using the e-Tendering System;
- 13.4.2 the completed Contract must be added to the Existing Contracts Register;
- 13.4.3 [CSO 27 \(Contract Conditions\)](#) applies with respect to the requirement to include certain Terms and Conditions.
- 13.5 Subject to CSO 13.4 and [CSO 29](#), all procurements for Contracts and Disposals of Property Assets regardless of their value must be conducted using the e-Tendering System. This includes placing advertisements, requesting bids, issuing Invitations to Tender (and or Requests for Quotes) and publishing other Tender Documents, communicating with Bidders and the submitting bids.
- 13.6 All bids must be submitted to the Council via the e-Tendering System. In a very limited number of circumstances, it may be appropriate to require Bidders (in addition to submitting their bids via the e-Tendering System) to submit their bids or offers in hard copy (see [Appendix 8](#)).
- J Under no circumstances may a late tender be accepted or opened without the written authorisation of the Head of Commercial Services and/or the ~~Managing Director of the South London Legal Partnership Assistant Director of Corporate Governance~~ and/or Joint Head of Legal Services or nominated officer.
- J Where genuine technical difficulties arise and the fault lies with the e-Tendering System, Bidders may be asked to submit their bid via the messaging section of the e-Tendering portal and/or a designated email address, once agreement has been sought by the Head of Commercial Services and/or the ~~Managing Director of the South London Legal Partnership Assistant Director of Corporate Governance~~ and/or Joint Head of Legal Services or nominated officer. Bids must be opened in the presence of 2 (two) officers and a record made of the exact time and date each bid was opened. An audit trail must be sought from the system provider as to the nature of the technical difficulty. Under no circumstances may bids be sent to Officer email accounts

without the prior written authorisation of either the Head of Commercial Services and/or the ~~Managing Director of the South London Legal Partnership~~~~Assistant Director of Corporate Governance~~ and/or Joint Head of Legal Services or nominated officer.

- J) In the unlikely event that the e-Tendering portal is not accessible at all:
- o where the system is not accessible for one day or less, an extension to the deadline for the receipt of quotes and/or tenders is to be granted and notification issued to all providers via a designated email address. Details of the extension are to be later added onto the portal for audit purposes.
 - o Where the system is not accessible for a period of more than one day, an alternative arrangement will be set up by the Head of Commercial Services in conjunction and agreement with the Head of IT Service Delivery and notification issued to all providers via a designated email address. Details of the extension are to be later added onto the portal for audit purposes.

13.7 In certain complex procurements or Disposals and/or following an award decision (but prior to formal entry into the Contract), it may be necessary to communicate with Bidders. Such communications must be recorded in writing (preferably via the e-Tendering system) and/or minuted; and the decision to do so must be made by the Responsible Officer post discussion with the Commercial Services and/or Legal Services. Officers must not meet with Bidders in person unless at least one other Officer is present.

CSO 14. CONSULTANTS

14.1 Where the Contract is a contract for the appointment of a Consultant, these CSOs shall at all times apply. This includes (without limitation) that the procurement procedure to be followed shall be as set out at [CSO 16 \(Contracts up to and including the £5,000\)](#), [CSO 17 \(Contracts above the £5,000 up to and including the Lower Threshold\)](#), [CSO 18 \(Contracts above the Lower Threshold up to and including the Upper Threshold\)](#) or [CSO 19 \(Contracts above the Upper Threshold\)](#) as appropriate, depending on the estimated value of the Contract.

14.2 Without prejudice to the general provision at CSO 14.1, the Responsible Officer shall ensure that:

- 14.2.1 the procurement complies with the Council's Code of Practice on procuring Consultants ([Appendix 6](#));
- 14.2.2 the Contract is in a form approved by the Director of Corporate Services (and [CSO 26.1.1 \(Forms of Contract and in Writing\)](#) shall not apply);
- 14.2.2 that the Consultant complies with IR35 legislation and, where necessary, on a case-by-case basis, the Responsible Officer must seek guidance from the Head of Organisation Development and HR Strategy with regards to whether or not the 'off-payroll working rules' apply.

- 14.2.3 the Council's Officer responsible for insurance matters shall determine the minimum insurance levels required; and
- 14.2.4 any Contract with the Consultant shall require the Consultant to comply with [CSO 30 \(Conflicts of Interest\)](#) and [CSO 31 \(Acceptance of Gifts and Hospitality\)](#).

CSO 15. SERVICES COVERED BY THE LIGHT TOUCH REGIME

- 15.1 Schedule 3 of the Public Contracts Regulations 2015 list the social and other specific services to be covered by the new 'Light Touch Regime' (LTR). These can also be found in the Procurement Toolkit.
- 15.2 The LTR has a much higher EU Threshold than applies for other service contracts and permits a more flexible procurement procedure, subject always to compliance with UK/EU Procurement Law. (See [Appendix 3](#) for current thresholds)
- 15.3 A Contract for services that fall within the LTR is still a Contract and as such these CSOs apply (as appropriate) to entering into any Contract for such services.

CSO 16. CONTRACTS UP TO AND INCLUDING £5,000

- 16.1 This CSO applies to all Contracts with an estimated value of up to and including £5,000. Please also see [CSO 10.8](#) (Concession Contracts (and Contracts with nil value to the Council)) with regards to estimating the value of such contracts.
- 16.2 For all Contracts:
 - 16.2.1 the procurement may (where it is lawful to do so) be carried out using a suitable Existing Framework Agreement but otherwise must be carried out in accordance with this CSO;
 - 16.2.1 there is no requirement to advertise the Contract opportunity publically unless a Responsible Officer decides that advertising would provide better Value for Money for the Council;
 - 16.2.2 Responsible Officers may issue either a Quick Quote or a Request for Quote (RfQ) inviting Bids from any number of Bidders. Where deemed appropriate, the Responsible Officer may directly award the Contract by approaching a single Bidder. If a decision is made to directly award the Contract, the Responsible Officer must be satisfied (and keep a record) that this demonstrates best Value for Money for the Council;
 - 16.2.3 all Bids must be submitted in writing via the Council's e-Tendering portal.

CSO 17. CONTRACTS ABOVE £5,000 UP TO AND INCLUDING THE LOWER THRESHOLD (£5,001 - £25,000)

- 17.1 This CSO applies to all Contracts with an estimated value above £5,000 up to and including the Lower Threshold of £25,000. Please also see [CSO 10.8](#) (Concession Contracts (and Contracts with nil value to the Council)) with regards to estimating the value of such contracts.
- 17.2 For all Contracts:
- 17.2.1 the procurement may (where it is lawful to do so) be carried out using a suitable Existing Framework Agreement but otherwise must be carried out in accordance with this CSO;
 - 17.2.2 Bids should, as best practice, be sought by issuing either a Quick Quote or a Request for Quote (RfQ) to at least three (3) Bidders, although Officers may approach a single Bidder in accordance with CSO 17.3;
 - 17.2.3 all Bids must be submitted in writing via the Council's e-Tendering portal (including where CSO 17.3 applies).
 - 17.2.4 Once awarded, the details of the Contract must be published on the Council's Existing Contracts Register in-line with the Local Government Transparency Code 2015 (and any subsequent amendments)
- 17.3 The Responsible Officer may approach a single Bidder provided the Responsible Officer can demonstrate (and keeps a record of the fact) that there is only one Provider capable of performing the Contract.

CSO 18. CONTRACTS ABOVE THE LOWER THRESHOLD UP TO AND INCLUDING THE UPPER THRESHOLD (£25,001 - £100,000)

- 18.1 This CSO applies to all Contracts with an estimated value above the Lower Threshold up to and including the Upper Threshold of £100,000. Please also see [CSO 10.8](#) (Concession Contracts (and Contracts with nil value to the Council)) with regards to estimating the value of such contracts.
- 18.2 For all Contracts:
- 18.2.1 the procurement may (where it is lawful to do so) be carried out using an Existing Framework Agreement but otherwise must be carried out in accordance with this CSO;
 - 18.2.2 the procurement must be conducted in accordance with UK/EU Procurement Law;
 - 18.2.3 selection of Providers using a PQQ/SQ is not permitted;
 - 18.2.4 where the Contract is for works and falls below £100,000, Bidders may be selected from an accredited provider directory;
 - 18.2.5 there is no requirement to advertise the Contract (although the Responsible Officer may choose to do so) and an RfQ may be issued to Bidders without advertising;
 - 18.2.6 if the Contract is not advertised, RfQs must be issued to at least three (3) Bidders;

- 18.2.7 where the Contract is advertised, the contract notice must also be published on Contracts Finder;
- 18.2.8 all Bids must be submitted in writing via the Council's e-Tendering portal;
- 18.2.9 If fewer than three (3) written Bids are received the reason for this must be recorded and retained;
- 18.2.10 Once awarded, the details of the Contract must be published on both the Council's Existing Contracts Register in-line with the Local Government Transparency Code 2015 (and any subsequent amendments), as well as Contracts Finder in-line with Crown Commercial Services guidance.

CSO 19. CONTRACTS ABOVE THE UPPER THRESHOLD (£100,001)

- 19.1 This CSO applies to all Contracts with an estimated value above the Upper Threshold of £100,000. Please also see [CSO 10.8](#) (Concession Contracts (and Contracts with nil value to the Council)) with regards to estimating the value of such contracts.
- 19.2 For all Contracts:
 - 19.2.1 the procurement may (where it is lawful to do so) be carried out using a suitable Existing Framework Agreement but otherwise must be carried out in accordance with this CSO;
 - 19.2.2 the procurement must be conducted in accordance with relevant UK/EU Procurement Law;
 - 19.2.3 all Contracts must be advertised as detailed below;
 - 19.2.4 Once awarded, the details of the Contract must be published on both the Council's Existing Contracts Register in-line with the Local Government Transparency Code 2015 (and any subsequent amendments), as well as Contracts Finder in-line with Crown Commercial Services guidance.

Contracts below the relevant EU Threshold

- 19.3 Where the value of the Contract is below the relevant EU Threshold:
 - 19.3.1 there is no requirement to place a Contract Notice in the OJEU, but an advertisement must be placed via the e-Tendering System and also on Contracts Finder;
 - 19.3.2 selection of Providers using a SQ is not permitted, other than for work Contracts and Social and Other Services Contracts, where an SQ may be used for Contracts with a value exceeding that of the EU Threshold for Services and Supplies .

Contracts above the relevant EU Threshold

- 19.4 Where the value of the Contract is at or above the relevant EU Threshold:
 - 19.4.1 save where the PCR 2015 permit a PIN to be used as a call of competition, a Contract Notice must be placed both in the OJEU and

- on Contracts Finder;
- 19.4.2 selection of Providers using a SQ is permitted;
- 19.4.2 save where the Contract is for services that fall into the LTR category, the procurement must follow one of the procedures set out in the PCR 2015, namely:
 -) the Open Procedure (Regulation 27);
 -) the Restricted Procedure (Regulation 28);
 -) the Competitive Procedure with Negotiation (Regulation 29);
 -) the Competitive Dialogue (Regulation 30); or
 -) the Innovation Partnership (Regulation 31).

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

- 19.5 A notice communicating the decision to award a Contract must be sent to each Bidder and a standstill period of 10 working days observed prior to entering into the Contract. Where an award of Contract is to be approved by Cabinet, the 10-day standstill period cannot commence until post-decision call in is complete.

CSO 20 CONTRACT AWARD NOTICES AND PUBLISHING AWARD DETAILS ON CONTRACTS FINDER

- 20.1 For all Contracts with a value at or above the relevant EU Threshold:
- 20.1.1 a Contract Award Notice is required to be published;
 - 20.1.2 information about the award of the Contract must also be published on Contracts Finder.
- 20.2 Contract Award Notices must be sent for publication no less than thirty (30) days after the formal decision to award a Contract has been made.
- 20.3 For Contracts with a value at or above the Lower Threshold, there may be a requirement to publish information about the award of the Contract on Contracts Finder and Officers should refer to the PCR 2015. Guidance is also contained in the Procurement Toolkit.
- 20.4 Where information about the award of the Contract is required to be published on Contracts Finder (i.e. for all contracts over £25,000), this shall be done within a reasonable time, but not exceed three months from the date authority to award has been granted by the Council. The information should include at the very least:
-) the name of the Provider;
 -) the date the Contract was entered into;
 -) the value of the Contract; and
 -) whether the Provider is an SME or a VCSE.

- 20.5 There is also a requirement for the Council to prepare and retain a written report (a "Regulation 84 Report") covering specified information about the procurement process for every over EU threshold contract, framework agreement and dynamic purchasing system which is awarded or established. Responsible Officers should seek guidance from Commercial Services and the Procurement Toolkit.

CSO 21. EMERGENCY PROCUREMENT

- 21.1 In an Emergency, it may not be possible to comply with the procurement procedures set out in these CSOs and in such circumstances, senior Officers may authorise the procurement of Contract or a Disposal to be carried out without the need for such compliance.
- 21.2 Senior Officers with authority to Authorise an procurement of a Contract or a Disposal in an Emergency are:
-) the Chief Executive;
 -) the Director of Corporate Services; and
 -) the Director of the relevant department.
- 21.3 In the event that the persons set out at CSO 21.2 are not available, the Responsible Officer may use their own judgement based on the severity and urgency of the situation to make a decision as to whether the relevant situation is an Emergency.
- 21.4 The decision as to whether a situation is an Emergency shall be made by those Officers referred to at CSO 21.2 and CSO 21.3 in accordance with the Council's emergency planning and business continuity procedures set out on the Council's intranet. The Procurement Toolkit contains guidance on when an Emergency procurement for a Contract may be appropriate.

CSO 22. SHORTLISTING BIDDERS – STANDARD SELECTION QUESTIONNAIRES (SQs) AND SUITABILITY QUESTIONS

- 22.1 SQs (or the European Single Procurement Document (ESPD)) are only permitted to be used where a Contract is valued at or above the relevant SQ Threshold and there is a need to pre-qualify bidders based on previous history. The SQ Thresholds are set out in Appendix 3. The Procurement Toolkit contains the form of SQ to apply. Officers may not deviate (including changing the SQ wording or adding new questions to the SQ) unless this is approved by Commercial Services.
- 22.2 Where a SQ is permitted, the procurement may be structured as a two stage procedure or a single stage procedure,
- 22.3 Where a Contract is valued below the relevant SQ Threshold, Suitability Questions are still permitted, provided these are relevant to the subject matter of the Contract, are proportionate, and do not involve a separate stage in the procurement process (i.e. there can be no shortlisting of Bidders prior to requiring them to submit a Bid).
- 22.4 The Procurement Toolkit contains a set of appropriate Suitability Questions that

may be used. Officers may omit questions from the Suitability Questions if these are not relevant.

- 22.5 There are mandatory and discretionary exclusion criteria set out in the PCR 2015. The Procurement Toolkit contains guidance on when these apply.
- 22.6 The assessment of responses to SQs and Suitability Questions shall be carried out by applying Selection Criteria.
- 22.7 Assessment Criteria for assessing responses to the SQ must comply with UK/EU Procurement Law.
- 22.8 Assessment Criteria for assessing responses to Suitability Questions must comply with the Treaty Principles.
- 22.9 Assessment Criteria, together with their relative weightings and methodology to be used to assess responses to SQs and Suitability Questions must be made available to Bidders in advance of them submitting their responses.

CSO 23. EVALUATION OF BIDS AND AWARD CRITERIA

- 23.1 In this CSO, all references to Award Criteria include sub-criteria of any level.
- 23.2 Save where the Council has invited only one (1) Bid (as permitted by these CSOs and/or PCR2015), the evaluation of Bids shall be carried out by applying Award Criteria.
- 23.3 The Award Criteria to apply, together with their relative weightings and the methodology used to evaluate Bids must be contained in the Tender Documents or the RfQ (as relevant) issued to Bidders at the commencement of the procurement process.
- 23.4 Evaluation of Bids must be open, transparent and not discriminate or favour a particular Bidder and must be carried out by applying the published Award Criteria in accordance with the published evaluation methodology.
- 23.5 The Bid evaluation process should be designed specifically for each procurement process. The Procurement Toolkit contains guidance on evaluation of Bids.
- 23.6 Whilst the Bid evaluation process is in progress, Officers and Members must not disclose information relating to any Bid or the procurement process to anybody not directly involved in the process; regardless of whether they are Officers, Members, residents of the borough, members of the press or Bidders (this includes not disclosing to a Bidder information about its own Bid evaluation).
- 23.7 Subject to CSO 23.10 below, during the Bid evaluation process, contact with Bidders must be strictly limited, and where contact is necessary, it must be fully documented and be carried out via the e-Tendering System.
- 23.8 Subject to CSO 23.10 below, contact with Bidders must be limited to matters directly related to the Bid evaluation and must be fair and transparent. Examples of where contact may be necessary are:

-) to raise clarifications, or
-) to arrange presentation meetings.

- 23.9 Where an incumbent Provider has submitted a Bid, normal Contract management activities may continue, however care should be taken to limit the interaction to Contract management activities only and Officers must not discuss any Bid, including that submitted by the incumbent Provider or any aspect of the procurement or evaluation process.
- 23.10 Officers must not meet with any Bidder (including an incumbent Provider that has submitted a Bid for the new Contract) without at least one other Officer being present.

CSO 24. CONTRACT AWARD AND AUTHORISATION PROCESS

- 24.1 A decision taken by the Council may either be a non-key Decision or a key Decision. Key Decisions must be included on the forward plan, and published. Non-key Decisions do not require inclusion on the forward plan, however the decision and report must be published in line with the Local Authorities Regulations 2012. (See [Appendix 10](#))
- 24.2 A Contract (including those in relation to income generation) may only be awarded and (save with respect to CSO 24.2.2 below) a Property Agreement may only be entered into when:
- 24.2.1 all of the requirements of these CSOs have been met; and
 - 24.2.2 the expenditure and/or income involved has been included in approved revenue estimates, or is in the capital programme, or has been otherwise approved by the Director of Corporate Services;
 - 24.2.3 Authorisation has been obtained from the relevant body or person as set out in the Scheme of Management; and
 - 24.2.4 (if relevant) the Call-in Period and/or standstill period has expired.
- 24.3 Contract or Property Agreement variations (including extensions) shall, unless otherwise provided for in the original Authorisation to award the Contract or enter into the Property Agreement, be Authorised:
- 24.3.1 in the case of Contracts or Property Agreements being procured or proposed by Corporate Services, by the Chief Executive;
 - 24.3.2 in the case of all other departments, by the Director of Corporate Services.
- 24.4 Where Authorisation is required to enter into a new Framework Agreement - to be established by the Council - in determining who the Authorising Body is, the value of the Contract is the value of all of the Call-off Contracts proposed to be entered into (by the Council or any other body able to access the Framework Agreement) pursuant to the relevant Framework Agreement.
- 24.5 Where the Council has established its own Framework Agreement, provided that Authority has been given to enter into the Framework Agreement, then unless

otherwise stated in that Authority, no further Authority is required to enter into a Call-off Contract under that Framework Agreement.

- 24.6 Where Authorisation is required to enter into a Call-off Contract - that has been established by an authority or organisation other than the Council - in determining who the Authorising Body is, the value of the Contract is the value of all of the Call-off Contracts proposed to be entered into by Merton Council. Unless otherwise stated in the Authorisation, further Authorisation is required to enter into any additional Call-off Contract under that Framework Agreement.
- 24.7 Contracts for the provision of legal services or legal advice may not be awarded without the prior written consent of the [Managing Director of the South London Legal Partnership](#)~~Assistant Director of Corporate Governance~~ and/or Joint Head of Legal Services or nominated officer.

CSO 25. FORMS OF CONTRACTS AND IN WRITING

- 25.1 Subject to CSO 25.3 below, before any Contract is awarded, it must be:
- 25.1.1 in a form which has been approved by the [Managing Director of the South London Legal Partnership](#)~~Assistant Director of Corporate Governance~~ and/or Joint Head of Legal Services or nominated officer as being suitable for the proposed purpose of the Contract; and
- 25.1.2 in writing.
- 25.2 Contracts must either be executed under seal or signed by an appropriate Officer who is an Authorising Body. Legal Services shall advise whether a Contract should be executed under seal or signed by hand / electronically⁵.
- 25.3 Contracts required to be entered into in an Emergency do not need to comply with CSO 25.1. before they are entered into. They do, however, need to be confirmed as meeting the requirements of CSO 26.1 as soon as possible after the commencement of the Contract. Where possible, prior to the commencement of the Contract, written heads of agreement should be drawn up, approved by Legal Services as suitable and signed by the appropriate Authorised Body and the Provider.

CSO 26. CONTRACT CONDITIONS

- 26.1 The presumption is that except in limited circumstances Legal Services will be preparing the terms and conditions of contracts. In circumstances where the contract is of an extremely low value and very low risk, template contracts set up by Legal Services may be used by Officers. However, Officers should first consult Legal Services if they intend to use the templates themselves to ensure this is appropriate in the circumstances.

⁵ Contracts can be executed under electronic signature by virtue of the Electronic Communications Act 2000, the 2001 Law Commission Paper and case law. However there are a few exceptions namely any contracts that need to be registered at the Land Registry and deeds which must be executed in the Councils case under seal

CSO 27. CONTRACT VARIATIONS, EXTENSION AND NOVATIONS

- 27.1 This CSO shall apply to all Contracts
- 27.2 Contracts may be modified/varied or extended, if any such changes are provided for within the terms of the contract and /or allowed within the Public Contracts Regulations 2015. Advice must be sought from both Commercial Services and Legal Services before any changes are approved and executed.
- 27.3 Contract variations and extensions should be based on the same terms and conditions set out in the original Contract as a minimum, although where appropriate an improved position for the Council with regard to price and or T&Cs may be sought providing the scope of the contract is not substantially altered.
- 27.4 Total contract value (aggregation) must be taken into consideration.
- 27.5 In certain circumstances it may be appropriate for a Voluntary Transparency Notice to be published following a variation or extension to a Contract - the Responsible Officer should liaise with both Commercial Services and Legal Services.
- 27.6 The variation or extension shall require the Authorisation of the relevant Authorising Body in accordance with [CSO 24 \(Contract Award and Authorisation Process\)](#), taking into account the revised total contract value.
- 27.7 Contract variations and extensions must be recorded in writing and signed/sealed (as appropriate) by both the Council and the Provider.
- 27.8 Responsible Officers must be able to demonstrate that a variation and/or extension of a Contract will offer Value for Money to the Council and that the Contract will continue to meet the Council's requirements.
- 27.9 In an Emergency, a Contract variation or extension may be permissible pursuant to [CSO 21 \(Emergency Procurement\)](#).
- 27.10 The Responsible Officer must ensure that the Corporate Contracts Register is updated accordingly.
- 27.11 Contract variations and extensions shall at all times be subject to UK/EU Procurement Law.

27.12 Contract Extensions

- 27.12.1 A Contract shall not be extended unless expressly allowed for within the Contract Notice and the Contract.
- 27.12.2 An 'extension' of contract not expressly allowed for within the Contract Notice and the Contract will be classified as a Direct Award for which an Exemption of these CSOs must be sought. Alternatively a contract variation may be sought. Advice is to be sought from Commercial Services and Legal Services.
- 27.12.3 A Contract shall not be varied or extended (beyond the term and/or contract value originally approved) until funding has been identified in accordance with Council's financial procedures.

27.13 Contract Novation

- 27.13.1 A Responsibly Officer may agree the novation (transfer) of any contract subject to EU rules.
- 27.13.2 Legal advice must be sought and the Public Contracts Regulations 2015 adhered to.
- 27.13.3 A contract novation must be approved as per the thresholds referenced in the Council's Scheme of Management.

CSO 28. CONTRACTS FOR THE DISPOSAL OF COUNCIL ASSETS

- 28.1 This Contract Standing Order sets out specific requirements relevant to the Disposal of Council Assets.
- 28.2 Subject to CSO 28.4 below, any Disposal of Council Assets must be for best consideration reasonably obtainable. In respect of Property Assets, the duty to obtain best consideration reasonably obtainable is set out in section 123 of the Local Government Act 1972 ("Section 123"). In the context of Property Assets "best consideration" can, provided that it is reasonable and proportionate in the circumstances, include a quantifiable or demonstrable benefit to the public, the community or the Council that compensates the Council for any shortfall in financial compensation it receives from the Disposal.
- 28.3 Where the Disposal involves a Property Asset, the Corporate Property Officer shall determine whether an auction, a Bid process or a private treaty is the most appropriate method of Disposal taking into account the procedure set out in the Code of Practice – Disposal of Property. The Corporate Property Officer must be able to demonstrate that the Disposal satisfies the Council's obligation to comply with Section 123.
- 28.4 Where a Disposal of a Council Asset is proposed which is at less than best consideration reasonably obtainable (determined by the market or a qualified Valuer), and where the Council has the power to do so, no Disposal shall be made without the express written approval of the Director of Corporate Services and the appropriate Authorising Body and in consultation with Corporate Services and Legal Services.
- 28.5 In all cases where the Disposal of a Property Assets is or includes works and/or services to be performed or goods to be supplied which may result in the transaction being subject to UK/EU Procurement Law then the Responsible Officer shall liaise with Legal Services and shall be responsible for ensuring compliance with UK/EU Procurement Law.
- 28.6 Subject to CSO 28.7, where the Corporate Property Officer determines, in advance, that the most appropriate means of communication with the market and Bidders in relation to the Disposal of Property Assets is via means other than the e-Tendering System, this shall require prior approval of the Director of Corporate Services. Where the Corporate Property Officer determines that the most appropriate method of Disposal is by submission of paper Bids:

- 28.6.1 Bidders must be advised not to include any markings that would identify them on the outside of their Bid; and
- 28.6.2 The procedure set out in [Appendix 8](#) shall apply.
- 28.7 Where the proposed Property Agreement is a lease for rent, the e-Tendering System need not be used.

CSO 29. CONFLICTS OF INTEREST

- 29.1 All Officers and Members must ensure that in carrying out their duties and functions for or on behalf of the Council, their decisions and actions are not impaired by a Conflict of Interest with their private interest.
- 29.2 The obligation to ensure that there is no Conflict of Interest extends to ensuring that there is no perception of a Conflict of Interest.
- 29.3 In order to ensure actual or perceived Conflicts of Interest are identified and appropriate steps taken to ensure that the Council's interest is not impaired, the following people are required to declare any interests⁶ which may affect a Disposal or the procurement process for a Contract or the appointment of a consultant or the management of any Contract or Property Agreement:
- 29.3.1 all Officers;
- 29.3.2 all Members involved in any relevant decision (at executive or scrutiny level) relating to a Disposal, Contract or Property Agreement.
- 29.3.3 All Consultants / interim members of staff
- This should be done by those persons completing a Declaration of Interest.
- 29.4 Members are required to comply with the Members' Code of Conduct. Officers are required to comply with the Staff Code of Conduct.
- 29.5 Any Officer to whom an interest is declared has a duty to examine that declaration in the context of the Contract, Disposal or Property Agreement in question. The Officer must decide whether the interest declared would affect (or would appear to affect) the relevant person's ability to represent the Council's sole interest if they (in each case) participate in or carry out any action or make any decision in the Disposal or procurement process for a Contract or the management of the relevant Contract or Property Agreement.
- 29.6 A person who is considered to have a Conflict of Interest will be precluded from (in each case) participating in or taking any action and/or making any decision in relation to the relevant Contract, Disposal or Property Agreement until the Conflict of Interest no longer exists.

⁶ Please see the Council's Intranet for the most current version of the Declaration of Interest Form.

CSO 30. ACCEPTANCE OF GIFTS AND HOSPITALITY

- 30.1 Acceptance of gifts, money, hospitality and other inducements by any Officer or Member involved in a Disposal and/or the procurement of a Contract and/or the management of and/or any decision relating to a Contract or Property Agreement could be viewed as accepting a bribe or corrupt practice. The general rule is that no gift, money, hospitality or other inducement should be accepted by Officers or Members. All Officers and Members must comply with the Council's rules on the receipt and registration of gifts, money, hospitality and other inducements set out in the Staff Code of Conduct and in the Members' Code of Conduct.
- 30.2 Any Officer or Member involved in a Disposal or the procurement process for a Contract should be particularly sensitive to their involvement in that Disposal or procurement process where a person or organisation that has offered or given them a gift, money, hospitality or other inducement is involved in that Disposal or procurement or may submit a Bid for that Contract or Property Agreement in the future.
- 30.3 All offers of gifts, money, hospitality or other inducement should be reported in accordance with the Staff Code of Conduct or the Members' Code of Conduct (as appropriate).

CSO 31. UNAUTHORISED DISCLOSURE OF INFORMATION

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

CSO 32. INTERNAL ADMINISTRATIVE MATTERS FOLLOWING AWARD OF CONTRACT

- 32.1 Following the entering into of any Contract, each Responsible Officer shall be responsible for⁷:
-) recording details of the Contract on the Existing Contracts Register; and
 -) arranging for the archiving of the original signed Contract by Legal Services (Responsible Officers are to retain an electronic local copy of the signed Contract),
 -) Where a Contract is over the relevant OJEU threshold, prepare a Section 84 report

⁷ in each case in accordance with the relevant process set out within the Procurement Toolkit

APPENDIX 1 - DEFINITIONS

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

“Accredited Provider Register(s)” means the Council’s register(s) of individuals and organisations that have been appointed from time to time by the Council in accordance with these CSOs to provide relevant works, services and/or goods.

“Approved List(s)” means the Council’s list(s) of Providers that have been appointed from time to time by the Council in accordance with these CSOs to provide relevant works, services and/or goods.

“Asset Management Plan” means the Council’s plan containing details relating to the Council’s Assets.

“Assistant Director” means the deputy to an appointed Director.

“Authorisation” means the approval given by the appropriate Authorising Body before Contracts or Property Agreements may be entered into (and “Authority” and any other derivatives shall be construed accordingly).

“Authorising Body” means a body or individual acting under properly delegated authority with power, up to the relevant Authorisation Threshold, to Authorise the award of a Contract or entering into of a Property Agreements on behalf of the Council.

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

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

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

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

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

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

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

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

“Chief Executive” means the most senior Officer of the Council.

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

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

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

“Competitive Dialogue” means the procurement procedure set out in Regulation 30 which may be used in the circumstances set out in that Regulation.

“Competitive Procedure with Negotiation” means the procurement procedure set out in Regulation 29 which may be used in the circumstances set out in that Regulation.

“Concession Contract” means a Contract where the consideration (payment) paid by the Council to the Provider under the Contract includes a right for the Provider to exploit the Contract commercially. This right may be the sole form of income received by the Provider or there may also be a financial payment by the Council.

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

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

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

“Contract Award Notice” means a notice sent by the Council for publication in the OJEU confirming the award of a Contract.

“Contract Notice” means a notice sent by the Council for publication in the OJEU seeking expressions of interest or inviting Bidders to submit a Bid for a Contract.

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

“Contracts Finder” means the online database administered by central Government setting out details of public sector Contracts opportunities and information relating to award of Contracts.

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

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

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

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

“CSO” means a Contract Standing Order.

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

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

“Director of Corporate Services” means the Director in charge of Corporate Services or any other Director to whom responsibility for corporate procurement functions is delegated by the Chief Executive

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

“Dynamic Purchasing System” means an electronic purchasing system for Contracts for works, services and goods commonly available in the market as described in Regulation 34.

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

“EIRs” means the Environmental Information Regulations 2004 (SI 2004/3391).

“Electronic Auction” means an online auction for Contracts for works, services and goods as described in Regulation 35.

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

-) life, property or equipment are immediately at risk; and/or
-) standards of public health, welfare or safety are required to be re-established without delay, such as in the case of disaster relief or an act of terrorism.

“European Single Procurement Document” is a standard, self-declaration form for use by all EU member states, which replaces pre-qualification questionnaires. The UK generally makes use of the Crown Commercial Services, Standard Selection Questionnaire.

“UK/EU Procurement Law” means the PCR 2015, the Treaty Principles and all relevant case law and guidance published by central Government and/or the European Commission and/or other relevant body from time to time.

“EU Thresholds” means the various thresholds set by the European Commission from time to time in place and used to determine the extent to which EU Procurement Law applies. The current EU Thresholds relevant to the Council are set out in [Appendix 3 \(EU Thresholds and Procurement Thresholds\)](#).

“Exemption” an exemption from the requirement to comply with all or part of these Contract Standing Orders.

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

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

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

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

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

“Forward Plan” means the Council’s document which sets out the Key Decisions to be taken.

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

“Innovation Partnership” means a Contract having as its aim the development of an innovative product, service or works and the resulting purchase by the Council of such product, service or works as described in Regulation 31.

“Invitation to Tender” means, where a Contract opportunity has been advertised, the document sent by the Council to Bidders inviting them to participate in the procurement procedure for that Contract, together with any other relevant documentation issued with that document or referred to in that document as forming a part of it. For the purpose of these CSOs, an invitation to tender means any document inviting Bids (for example, an invitation to negotiate or invitation to participate in dialogue) but excluding an RfQ and (for the avoidance of doubt) a SQ.

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

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

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

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

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

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

“Light Touch Regime” means the regime described at Section 7 of the PCR 2016 to apply to those social and other specific services set out at schedule 3 to the PCR 2016.

“Lots” means small related Contracts that may be entered into with the same or a number of separate Providers following the division of a larger Contract into smaller but related parts.

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

“Member” means an elected member of the Council.

“Members’ Code of Conduct” means the Council’s code of conduct from time to time applying to Members. The current code of conduct is set on the intranet.

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

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

“OJEU” means the Official Journal of the European Union.

“Open Procedure”: means the single stage procurement procedure to be conducted in accordance with Regulation 27.

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

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

“PCR 2015” means the 2015 Public Contract Regulations (SI 2015/102) as amended from time to time.

“PIN (Prior Information Notice)” means a notice published by the Council (in the OJEU and/or on the Council’s website) which is used as a mechanism for notifying potential Bidders of the Council’s likely future requirements for good, services and/or works and which may (in certain circumstances permitted by the PCR 2015) be used as a call for competition for a Contract opportunity .

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

“Procurement, Governance and Gateway Process” means the Council’s processes and procedures for conducting, monitoring and reviewing its procurement activities as set out in the Procurement Toolkit.

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

“Property Agreement” means an agreement relating to land and/or buildings, including a purchase or sale agreement, lease and licence where the Council is seeking a premium/capital receipt.

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

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

“Restricted Procedure” means the two stage procurement procedure to be conducted in accordance with Regulation 28 where the second stage is restricted to those Bidders who have pass the previous SQ stage.

“Regulation” means, unless stated otherwise, a regulation of the PCR 2015.

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

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

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

“Scheme of Management” means the management arrangements for a department setting out the delegated authority of Officers within that department.

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

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

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

“SQ (Standard Selection Questionnaire)” means a set of questions to be completed by Bidders to assess their suitability to be invited to the next stage of a procurement process for a Contract.

“SQ Threshold” means the various thresholds from time to time used to determine the extent to which the Council is permitted by the PCR 2015 to use a SQ. The current SQ Thresholds are set out in Appendix 3.

“Staff Code of Conduct” means the Council’s code of professional conduct from time to time applying to Officers. The current code of professional conduct is set out at [<http://intranet/councilwide/hr/staff-performance.htm>].

“Standstill Period” means the mandatory standstill period as described in Regulation 87 that must be observed between notifying Bidders of the Council’s intention to award a Contract and confirming the award of that Contract.

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

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

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

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

“Treaty Principles” means the principles of:

- 13.1.1 non-discrimination – which requires the Council to not discriminate against or in favour of certain Bidders or Providers;
- 13.1.2 equality – which requires the Council to treat all Bidders and Providers equally and give them all the same opportunities;
- 13.1.3 transparency – which requires the Council to be transparent in terms of the process followed and its decision making;
- 13.1.4 proportionality – which requires the Council to be proportionate and not require Bidders or Providers to comply with unnecessary requests or requirements;
- 13.1.5 mutual recognition- which requires the Council to allow for mutual recognition of diplomas, certifications and other evidence of formal qualifications.

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

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

“Value for Money” means the optimum combination of whole life cost and quality (or fitness for purpose) to meet the Council’s requirements.

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

“Voluntary Transparency Notice” means a notice to be published in the OJEU setting out (inter alia) the Council’s justification for its decision to award a Contract without prior publication of a Contract Notice.

“Written” to also include receipt by email.

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

APPENDIX 2 - EXEMPTIONS FROM CONTRACT STANDING ORDERS

- A. Where an Exemption is sought from all or any part of these CSOs, the request for the Exemption and the reasons for requesting the Exemption (including the CSO relating to the request) must be set out in writing in an Exemption Report to the Director Corporate Services (or in their absence the nominated deputy), or the Chief Executive where the request is from the Corporate Services Department.

No Exemption shall be permitted nor take effect until the Exemption Report has been signed as agreed by the Director Corporate Services (or in their absence, their nominated deputy), or the Chief Executive where the request is from the Corporate Services Department.

- B. A non-exhaustive list of reasons for seeking an Exemption is set out below and may be referred to in the Exemption Report (by reference to this Appendix 2 and the relevant paragraph below):
- a) that only one Provider is able to perform the Contract for technical or artistic reasons or because of exclusive rights, for example, the commissioning or purchase of works or art, museum artefacts, manuscripts or archive collection items;
 - b) that time limits required for carrying out a procurement for a Contract in accordance with these CSOs cannot be met for reasons of extreme urgency (for example, in an Emergency or for Contracts where the terms of a court order set a time limit which specifically precludes all or part of the procurement process for the Contract) which were unforeseen and un-attributable to the Council;
 - c) where the Council would risk losing the opportunity of entering into a Contract or Property Agreement and reasonably considers that there is no other viable alternative to the proposed Contract or Property Agreement;
 - d) that additional goods, works and/or services are required which, through unforeseen circumstances, were not included in the original Contract and which either are strictly necessary for the completion of the Contract or, for technical or economic reasons, cannot be carried out separately without disproportionate difficulty;
 - e) that goods are required as a partial replacement for or addition to existing goods or installations and obtaining them from another Provider would result in incompatibility or disproportionate technical difficulties in operation or maintenance;
 - f) the proposed Contract is an extension to or variation of the scope of an existing Contract and demonstrates value for money;
 - g) when a grant from a public body includes a recommendation as to the Provider or is time limited;
 - h) in furtherance of the Council's social enterprise policy, or other economic development aims, subject to the prevailing financial support limits for this type of activity where the Council has agreed to collaborate with another public body and is satisfied that the contracting arrangements of the lead body (where different from the Council) do not contravene the Council's legal responsibilities in this respect;
 - i) if there are exceptional circumstances not previously identified or covered by existing policies, procedures or these CSOs.

EXEMPTION REPORT

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

| Director of Corporate Services Decision <i>(Chief Executive if a Corporate Services decision)</i> | Approved / Not Approved | Signature | Date |
|--|-------------------------|-----------|------|
| | | | |

SUBJECT: _____

LEAD OFFICER: _____

LEAD MEMBER: _____

KEY DECISION REFERENCE No.: _____

RECOMMENDATION:

[Please include: Which CSO are you asking exemption from? Why? Total value? Total term?]

| Head of Commercial Services Recommendation | Approve / Not Approve | Signature | Date |
|--|-----------------------|-----------|------|
| | | | |

1. EXECUTIVE SUMMARY AND PURPOSE OF REPORT

[Why is this request to exclude the application of the Council’s Contract Standing Orders to the process of awarding this contract being made and what is the business case to support this request? Please provide all relevant detail.]

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

2. DETAILS

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

Background Information

Current Supplier(s) (if applicable):

Proposed Contract period:

Total Contract Value

3. ALTERNATIVE OPTIONS

*[Please describe what alternative options to an exemption have been considered, for example:
 • do nothing; • or undertaking a compliant procurement exercise]*

4. FINANCIAL IMPLICATIONS

[Please provide a breakdown of cost by financial year. Please describe how costs will be controlled over the duration of the contract. Please ensure that the relevant Service Financial Adviser(s) (FSA) has reviewed and provided comment]

5. BUDGET SIGN OFF

| Name of Budget Holder | Budget Approved / Not Approved | Signature | Date |
|-----------------------|--------------------------------|-----------|------|
| | | | |

6. PROCUREMENT IMPLICATIONS

[Please describe how: value for money will be achieved over the duration of the contract, including contract management; social value will be considered; any potential breach of PCR2015. Please include comments from a member of Commercial Services]

7. LEGAL IMPLICATIONS AND STATUTORY PROVISION

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

8. HUMAN RIGHTS AND EQUALITIES IMPLICATIONS

*Will this contract impact on the Councils Human Right and Equalities strategic objectives?
‘Equalities Merton’ aims for full and equal access to learning, employment, services and cultural life and the celebration of diversity.*

9. CONSULTATION UNDERTAKEN

Please set out which Service Area and Officer have been consulted in the preparation of this report. As a minimum please ensure you have consulted with Commercial Services who will advise if further consultation is required.

| Department | Comments | Date | Signed |
|---|----------|------|--------|
| Commercial Services | | | |
| Service Financial Adviser | | | |
| Legal | | | |
| [Insert details of other departments consulted] | | | |

BACKGROUND PAPERS:

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

OFFICER CONTACT DETAILS:

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

APPENDIX 3– EU THRESHOLDS AND SQ THRESHOLDS

The European public contracts directive (2014/24/EU) applies to public authorities including, amongst others: government departments; local authorities; and NHS Authorities and Trusts.

The directives set out detailed procedures for the award of contracts whose value equals or exceeds specific thresholds.

Details of the thresholds, applying from **1 January 2016** are given below. (Thresholds are net of VAT).

THE EUROPEAN PUBLIC CONTRACTS DIRECTIVE (2014/24/EU)

| | Supply, Services ⁸ and Design Contracts | Works Contracts ⁹ | Social and other specific services ¹⁰ |
|---|--|------------------------------|--|
| Other contracting authorities (e.g. Local Authorities) | £164,176 €209,000 | £4,104,394 €5,225,000 | £589,148 €750,000 |
| Small Lots | £62,842 €84,000 | £785,530 €1,000,000 | n/a |

In February 2015, the Cabinet Office and Crown Commercial Services, published Procurement Policy Note 03/15: *reforms to make public procurement more accessible to SMEs*. The reforms were introduced to ensure that public contracts would be more accessible to businesses and in particular to small and medium-sized enterprises (SMEs).

Primarily, the reforms removed the pre-qualification stage for procurements below the EU threshold. As of the 26 February 2016, the Standard Selection Questionnaire (SQ) replaced the Pre-Qualification Questionnaire (PQQ).

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

| | Supply, Services ⁷ and Design Contracts | Works Contracts ⁸ | Social and other specific services ⁹ |
|-------------------|--|------------------------------|---|
| Local Authorities | £164,176 | £164,176 | £164,176 |

⁸ With the exception of the following services which have different thresholds or are exempt:

- Social and other specific services (subject to the light touch regime) Article 74.
- Subsidised services contracts specified under Article 15.
- Research and development services under Article 14 (specified CPV codes are exempt).

⁹ With the exception of subsidised works contracts specified under Article 13.

¹⁰ As per Article 74. Services are listed in Annex XIV.

APPENDIX 4 – COUNCIL THRESHOLDS**Council Thresholds**

| | |
|-----------------|----------|
| Lower Threshold | £25,000 |
| Upper Threshold | £100,000 |

Advertising of Contracts

| CONTRACT VALUE | E-TENDERING SYSTEM | CONTRACTS FINDER | OJEU |
|---|----------------------------------|--|--------------|
| At or above £5,000 but below Lower Threshold | Make use of Quick Quotes or RfQs | Not required unless advertised elsewhere | Not required |
| At or above Lower Threshold but below EU Threshold | Yes | Yes | Not required |
| Above EU Thresholds | Yes | Yes | Yes |

APPENDIX 5 - RETENTION PERIODS FOR CONTRACT DOCUMENTS

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

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

-) Value for Money must be demonstrated prior to engaging a consultant. External consultants are expensive and as such the requirement to engage with a consultant must be approved by the relevant departmental Director.
-) The Councils Standing Orders are applicable to the appointment of Consultants,
-) The appointment of a Consultant follows the same procedures as all other procurements.
-) The Procurement Toolkit contains the Council's procurement procedures and standard templates.

What is a Consultant?

1. For the purposes of this procedure, an external consultant is someone who:
 -) offers specialist skills and expertise not available in-house,
 -) has a clearly specified and time-limited role that is not 'business as usual'
 -) is not appointed to cover a vacant position within the Council.
2. Consultants generally work on specialist, strategic or advisory projects to a clearly defined brief with set deliverables and milestones
3. Temporary staff, including casual and contract staff and interim managers, are not consultants. There is a separate procedure for employing temporary staff as set out on the HR pages of the intranet

Process to follow in appointing a consultant.

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

Business Case

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

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

Market Engagement

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

In accordance with these CSOs all correspondence inviting quotations and any formal market engagement must be carried out utilising the Council's e-tendering system.

The bid documents

Templates and guidance for developing the Invitation documents e.g. Specification; ITT; Contract terms are contained in the procurement toolkit. Please seek advice and guidance from Commercial Services

Terms and Conditions

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

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

Recording on the Contracts Register

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

**THIS FORM IS TO BE COMPLETED POST APPOINTMENT OF A CONSULTANT,
BE THEY AN INDIVIDUAL OR PART OF A FIRM.**

Please email the fully completed and signed form to: temporaryworker@merton.gov.uk

RESPONSIBLE OFFICER

| | | |
|------------------------------------|------------------|----------------------|
| Name: | | Tel Ext: |
| Department: Choose an item. | Division: | Section/Team: |

CONSULTANCY ASSIGNMENT DETAILS

Is the appointment: a new assignment or an extension to an existing assignment
(please tick as appropriate)

| | |
|--|--|
| Provider's name: | |
| Value of assignment including all options: £ | |
| If extension, expiry date of the current assignment: | |
| If extension, value of services provided to date [£.....] and value of the extension [£.....] | |
| Start date: | Duration of appointment in weeks: |
| Appointment location: | Cost code: |
| Assignment brief / Key deliverables: | |

RATIONALE FOR ENGAGEMENT/EXTENSION OF CONSULTANTS

Please give detailed reasons as to why you have engaged consultant or extended the assignment of the existing appointment. The reasons you provide must be explicit, otherwise you will be asked for more justification.

PROCUREMENT PROCESS

London Tenders Portal Reference Number (if applicable):

| | | |
|---|--|--|
| What procurement process was followed? | | |
| Appointment using a Framework | How many quotations were invited: | Details of Framework (e.g. title, Owner, when it was let?): |

| | | |
|---|---|--|
| | How many quotations were received: | |
| Appointment following Requests For Quotation (RFQ) | How many quotations were invited: How many quotations were received: | |
| If only one Quotation was invited then justification for a single quotation process. | Reason for single quotation | |
| Appointment following Invitations to Tender (ITT): | How many tenders were invited: How many tenders were received: | |

APPENDIX 7 – JOINT PROCUREMENT ARRANGEMENTS WITH THRID PARTIES

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

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

In considering any and all such proposals, the Director of Corporate Services and/or the Chief Executive must be satisfied:

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

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

APPENDIX 8 – PROCEDURE FOR ACCEPTING AND OPENING PAPER BIDS

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

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

APPENDIX 9 –THE COMMISSION NOTICE ON THE NOTION OF STATE AID (With relevance to Concession Contracts and Grant Agreements)

In 2016, the European Commission published its Notice on the notion of State Aid ("the Notice"), which provides guidance on when public spending falls within, and outside, the scope of EU State Aid control.

In the press release announcing the adoption of the Notice, the Commission stated that:

"If public authorities buy goods or services through tenders, which respect EU rules on public procurement, this is in principle sufficient to ensure that the transaction is free of State Aid."

This represents a departure from the Commission's previous stance conveyed in its 2012 communication on Services of General Economic Interest and in its draft notice on the notion of State Aid. These documents set out as the main rule that any public procurement procedure under the procurement Directives involving negotiation could not be assumed to comply with State Aid law. The main rule now is that the use of procurement procedures will be sufficient to avert capture by the State Aid provisions.

The apparent exclusion of State Aid control in the field of public procurement will be of interest to procurement officers. As with any rule there are exceptions to it. This update looks at the exceptional circumstances which lead to a departure from this general position.

What is State Aid?

As with the public procurement rules, State Aid rules aim to prevent protectionism. The measures are designed to eliminate financial aid given by a Member State (including an 'organ of the State' such as certain contracting authorities) that favours selected businesses and has the potential to distort competition and affect trade between EU Member States.

Certain cumulative criteria must be satisfied in order for a finding of State Aid to be made:

1. the aid favours certain undertakings, or the production of certain goods;
2. the aid may be directly or indirectly imputed to the State and must have been paid through State resources;
3. a selective economic advantage or benefit is granted, which an undertaking could not have obtained under normal market conditions; and
4. the aid has the potential of affecting competition and trade between Member States.

The interface between procurement law and State Aid

It is useful to outline the relevant interface between the procurement and State Aid rules. The awarding of a public contract which falls within the scope of the procurement rules has the potential to result in the granting of State Aid since there may be an economic advantage conferred, which the recipient undertaking would not have received under normal market conditions (point 3 above). The Commission's general rule is that the award of a public contract will not amount to State Aid provided that it is in compliance with the EU Public Procurement Directive. The rationale is that procurement law compliance adds objectivity to the contract award and thereby precludes the existence of an unwarranted selective economic advantage or benefit. The use of an open, transparent and unconditional procedure under procurement rules should

ensure a market price for the contract which corresponds to the highest price that a private investor operating in normal competitive conditions would be prepared to pay.

Exceptions to the rule

1. "Specific circumstances that make it impossible to establish a market price"

Examples of this include:

- » a direct award, made using the negotiated procedure without prior publication;
- » contracts excluded from the public procurement Directives;
- » awards made on a basis other than a tender establishing the market price, such as in-house awards; and
- » where there has been collusion by tenderers resulting in over-inflated prices.

The above examples do not comprise an exhaustive list of the circumstances falling under this category. This exception effectively allows the Commission to investigate contract awards which arouse suspicion under the State Aid rules despite adherence to the procurement rules.

2. Where only one bid is submitted

The Commission provides further clarification on this point in the Notice, by explaining what CAs can do to ensure that market conditions are established. Firstly, the procurement procedure used must be unconditional – any specific conditions attached to the tender should be non-discriminatory and closely and objectively related to the subject matter of the contract. Secondly, obtaining the market price means that in practice significant weight must be put on the price component of the bid. Effectively, the Commission is narrowing the scope of discretion for CAs to fix the award criteria.

What does this mean for contracting authorities?

The Commission's Notice has provided greater coherence between public procurement and State Aid rules. CAs are afforded a level of certainty in knowing that generally, following the rules in the public procurement rules will afford a degree of protection against the risk of falling foul of the rules on State Aid. The overarching concern for CAs, in order to benefit from protection, must be creating genuine competition for public contracts rather than formal adherence to the rules.

Why is this important?

The risks posed by State Aid regulations should be of concern to both CAs and the economic operators from whom they procure. Where the Commission makes a finding of unlawful State Aid, the economic operator must repay the aid in question, with interest, from the date of the grant. This could have a serious detrimental impact on the entity with a significant reduction in their cash flow or funds. The State Aid is repaid to the CA. This might be seen as advantageous however the CA must consider reputational damage as well as the wider commercial implications such as its contractor encountering severe financial complications, including the danger of insolvency.

APPENDIX 10 – MERTON PROCUREMENT / DEMOCRATIC GOVERNANCE

Procurement Strategy (Gateway 1) and Contract Award Reports (Gateway 2) with a total contract value of £2m (or over) and/or rated high-risk i.e. those procurement projects which have been rated 3:5 / 3:6 / 4:4 / 4:5 / 4:6 - Impact : Likelihood

[see: <http://intranet/councilwide/policyproceduresandguidance/riskmanagement.htm>]

Must be placed on the Forward Plan - preferably 2-3 months prior to the required Cabinet decision date - see <http://intranet/councillorsandcommittees/decisionmakinginmerton/forwardplan.htm>

If the need arises, the decision date on the Forward Plan items can always be pushed back a month or two without too much trouble providing sufficient notice is given to Democratic Services

Also see:

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

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

- Both the Gateway 1 and Gateway 2 report must go to Procurement Board as soon as practicable - Procurement Board is held once a month.

| | |
|-----|--|
| 2.a | Where the Contract Award Report (Gateway 2) is for a contract with a total value (including all possible extension options) of £2m (or over) and/or rated high-risk: |
| | <ul style="list-style-type: none">) The report must be approved by Procurement Board) Must be signed off by both the relevant Departmental Director(s) and relevant Cabinet Member(s) and must include comments from relevant Finance, Legal and Commercial Services Officers.) May need to go to CMT (unless otherwise agreed by a Director)) Must go to the Leader's Strategy Group for review prior to going to Cabinet (unless otherwise agreed by a Director) <p>see:</p> <p>https://mertonintranet.moderngov.co.uk/mgAgendaManagementTimetable.aspx?RP=292; and</p> <p>http://intranet/councilwide/whoswho/cmtlsg.htm</p> <ul style="list-style-type: none">) Must go to Cabinet for approval) https://mertonintranet.moderngov.co.uk/mgAgendaManagementTimetable.aspx?RP=146) Is subject to post-decision call-in*. Please allow one week for Scrutiny to decide whether or not it would like to call in the award. If they do, this could add an additional 4 -6 weeks to the decision process. You will then need to allow for any additional standstill period required under PCR2015, where applicable, prior to notifying the bidder(s) of the award outcome. |

*If you believe that the award may be politically sensitive / of political interest you may opt to offer it up for pre-decision scrutiny.

| | |
|-----|--|
| 2.b | The process for Key decisions delegated to Chief Officers (i.e. with a total contract value of between £500k - £1.9m) is: |
| | <ul style="list-style-type: none"> <li data-bbox="288 322 1404 394">) Must be placed on the Forward Plan - preferably 2-3 months prior to the required decision date <li data-bbox="288 398 1337 470">) The Report must be signed off by the relevant Departmental Director(s) and published 5-days before the decision date. <li data-bbox="288 474 1166 510">) May need to go to CMT (unless otherwise agreed by a Director) <li data-bbox="288 515 1273 551">) A decision form must be completed and published on the decision date. <li data-bbox="288 555 1404 745">) Is subject to post-decision call-in* - see http://intranet/ds-callinform.doc. Please allow one week for Scrutiny to decide whether or not it would like to call in the award. If they do, this could add an additional 4 -6 weeks to the decision process. You will then need to allow for any additional standstill period required under PCR2015, where applicable, prior to notifying the bidder(s) of the award outcome. |
| 2.c | The process for Non-Key Decisions (i.e. with a total contract value of between £250k - £499k) is: |
| | <ul style="list-style-type: none"> <li data-bbox="288 918 1270 954">) The Report must be signed off by the relevant Departmental Director(s) <li data-bbox="288 958 1161 994">) May need to go to CMT (unless otherwise agreed by a Director) <li data-bbox="288 999 1404 1182">) Is subject to post-decision call-in* - see http://intranet/ds-callinform.doc. Please allow one week for Scrutiny to decide whether or not it would like to call in the award. If they do, this could add an additional 4 -6 weeks to the decision process. You will then need to allow for any additional standstill period required under PCR2015, where applicable, prior to notifying the bidder(s) of the award outcome. <li data-bbox="288 1187 1273 1223">) A decision form must be completed and published on the decision date. |