

Agenda item:

[No.]

Cabinet Procurement Committee

On 16th June 2011

Report Title. Review of Contract Standing Orders (CSOs)	
Report of Julie Parker – Director of Corporate Resources	
Signed :	
Contact Officer: Michael Wood – Head of Procurement	
Wards(s) affected: All	Report for: Key Decision
1. Purpose of the report - This report sets out proposed amendments to the Council's Contract Standing Orders (CSOs) so as to: 1.1.1 Ensure a regulatory framework that continues to reflect good procurement practice and governance. 1.1.2 Provide clarity where necessary to avoid any mis-interpretation.	
2. Introduction by Cabinet Member I have been consulted on the proposed amendments to these Contract Standing Orders which are intended to enable greater efficiencies within the procurement process; ensuring compliance with Public Contract Regulations and that adequate controls continue to exist to protect the Council's interests and reputation.	
3. State link(s) with Council Plan Priorities and actions and /or other Strategies: 3.1 Contract Standing Orders form part of the Council's Constitution.	

4. Recommendations

4.1 To consider and agree proposed amendments of the Council's Contract Standing Orders.

4.2 That the Cabinet Procurement Committee recommends the proposed amendments to CSOs to the Constitution Review Working Group for endorsement before being put before full Council for approval.

5. Reason for recommendation(s)

5.1 Contract Standing Orders set out the rules that must be observed to ensure continued compliance with EU and English law and therefore need to be reviewed from time to time to ensure they remain "fit for purpose".

5.2 The Council also needs to achieve significant cost saving efficiencies and in this regard, it is proposed to increase the delegated powers of Directors and adjust the balance between "requests for quotation" and tendering procedures; whilst ensuring sufficient competition to achieve overall best value for the Council.

6. Other options considered

6.1 n/a

7. Summary

7.1 To review and make recommendations for change to Part Four (Rules of Procedure Section J– Contract Procedure Rules) of the London Borough of Haringey Constitution

8. Chief Financial Officer (s151) Comments

8.1 Regular review of the Council's Contract Standing Orders is considered best practice to as a minimum ensure that the Council complies with prevailing procurement law and to clarify the procedures under which officers must work.

8.2 The proposals recommended make some adjustments to improve the consistency and clarity of the procedures but also make recommendations particularly around the thresholds that tendering should apply and also to levels of delegation. These later changes are in part being proposed to support the delivery of staffing efficiencies as part of the 2011/12 revenue savings but also as part of an assessment of balance between risk and value for money.

8.3 As outlined in paragraphs 10 and 13, officers are of the view that sufficient mitigation against risk from these increased thresholds has been built in to the revised procedures.

8.4 Compliance with the revised CSO's across the Council will be tested as part of the

annual internal audit programme of work. During 2011/12, this will include a specific audit review to provide assurance that departments have adequate systems in place to ensure compliance with the new CSO limits. In addition, internal audit will work with Corporate Procurement to undertake ongoing reviews using expenditure information in SAP to ensure that departments' expenditure complies with the Council's CSO's.

9. Head of Legal Services Comments

- 9.1 Local authorities have a duty under Section 135 of the Local Government Act 1972 to establish and maintain standing orders with respect to the making of contracts for the supply of goods, works and services.
- 9.2 The Council has accordingly established Contracts Standing Orders which are contained within the Council's Constitution (Part 4, Section J).
- 9.3 In order to ensure their continued suitability, the current Contract Standing Orders have been reviewed, and a number of amendments to the provisions have been identified.
- 9.4 It is proposed to raise the level at which a competitive tender needs to take place from £25k to £100k. It will be necessary to ensure that this complies with general EU procurement law principles, particularly the obligation for transparency. The Head of Procurement has confirmed that there will be a sufficient degree of advertising based on the circumstances of each case to allow the procurement to be opened up to competition and the impartiality of procedures to be reviewed.
- 9.5 The Head of Legal Services has been involved in the review of the Council's Contract Standing Orders and supports the recommendation to amend them.
- 9.6 Under Part 2, Art 4.2(a) of the Council's Constitution, full Council has the power to approve amendments to the Constitution (including Contract Standing Orders). Part 2, Article 15.3(a) of the Constitution however provides that full Council should approve amendments to the Constitution following recommendation of the proposals by the Constitution Review Working Group.
- 9.7 The Head of Legal Services sees no legal reasons preventing members from approving the recommendations

10. Head of Procurement Comments (provided by Head of Supplies & Services)

10.1 Contract Standing Orders are the rules by which the Council procures works, goods and services. These rules are designed to ensure compliance with prevailing procurement law and best practice and to set out a framework within which all Council officers must work.

10.2 It is necessary from time to time to review CSO's to ensure their continued

relevance and to address any queries or uncertainty raised by officers in application and/or interpretation.

10.3 The proposed changes contained within this report will provide alignment of delegated powers of authority across the CSOs and also raise the threshold at which tendering procedures are to be applied. These changes will enable staff cost efficiencies to be achieved.

10.4 The Head of Suppliers and Services is therefore satisfied that the recommendations in this report will ensure continued good governance and compliance.

11. Equalities & Community Cohesion Comments

11.1 The Council is committed to using procurement as a strategic tool for promoting equality of opportunity in terms of both the range of suppliers we do business with and in terms of ensuring that services provided by contractors reach all sections of the community that are entitled to them. In addition to this policy stance, the Council has a Guide to Equality in Procurement, which sets out detailed guidance on how to ensure that equalities principles and relevant issues are identified and included in all key stages of the procurement.

11.2 Together, the Equal Opportunities Policy and the Guide to ensuring equality in procurement are reflected in the Council's current Procurement Strategy which guides all procurement activities in Haringey.

11.3 Contract Standing Orders deal with procedural matters and roles and responsibilities. From equalities standpoint, the important thing is that all procurement activities will take account of the Council's equal opportunities policy and the Guide referred to above and will therefore have due regards to our Equality Act 2010 public sector equality duty.

11.4 It is therefore not anticipated that these amendments to the CSOs will have any adverse impacts as equalities measures are built into the over-arching procurement strategy which direct procurement activities.

11.5 An equalities screening tool has been applied to the review of Contract Standing Orders and concludes that in view of the comments above, does not require a full equalities impact assessment.

11.6 To ensure transparency under EU procurement law principles (as stated in 9.4) there should be a monitoring and review process for awarding of contracts/funding established, to make sure that groups with protected characteristics are treated equally and consistently.

12. Consultation

12.1 Chief Officers and their management teams have been afforded the opportunity to

comment on these proposed changes.

12.2 These matters will also be discussed at the Council Advisory Board.

13. Service Financial Comments

13.1 The only financial risk identified as a result of the proposed changes would apply to procurement below the amount at which Central Procurement would become involved (£50k) if the business units should not follow procedures that would provide best value for the Council. This has been mitigated by the Head of Procurement reserving the right to determine another process for selecting a contractor that will meet the best value criteria. The decision and process in such cases must be properly documented

14. Use of appendices /Tables and photographs

14.1 n/a

Background Information

15.1 s 135 of the Local Government Act 1972 requires local authorities to establish and maintain standing orders with respect to the making of contracts for the supply of works, goods and services. It further sets out the expectation for securing contracts by way of competition.

15.2 Contract Procedure Rules commonly referred to as Contract Standing Orders are contained within Haringey's Constitution and is the legal instrument by which the Council adheres to its legal duty.

15.2.1 The Constitution allows the Constitution Review Working Group to consider amendments to Contract Standing Orders and to make recommendations to full Council accordingly.

16. Proposed Amendments

CSOs have been renumbered and grouped more logically to redress cumulative changes over the years. Since re-numbering has no material effect to CSOs, they have not been highlighted and all of the following proposed changes therefore use the new numbering scheme.

Material changes to text have been explained (by means of underlining) and any deleted text shown in the bubbles in the right-hand margin.

An index to CSOs is included for the first time because one has not existed previously.

Statement of Principles

Principle 0.3: “Officers” are included in the list of recipients to whom the Head of Procurement must make available, the latest version Contract Standing Orders.

Principle 0.4: emphasises the need for “optimal” value

Principle 0.5 (and CSO 3.02a): replace “legislation” with “law” which is a term that includes both legislation and case law.

Principle 0.6: is deleted as meaningless, because if officers follow the Contract Standing Orders and Procurement Code of Practice, then they are meeting their individual and collective responsibilities.

Introduction

CSO 1.02 – includes reference to the need to report any attempted bribery (in support of the new UK Bribery Act 2010).

Definitions and Interpretations

2.02a (and (c) deleted) – reflects the change of title of the General Manager at the Alexandra Palace and Park Charitable Trust to that of Chief Executive.

2.02c – added:- Specific reference to Statutory Instrument No5 and making clear that these are amended from time to time.

Accordingly, previous references to “Public Contract Regulations 2006” have been simplified throughout to read “Public Contract Regulations” so as to embrace other such regulations without the need to list them individually.

2.04 – making it clearer to seek advice from the Head of Procurement when necessary

Roles & Responsibilities

CSO 3.01 the value of contract extensions and variations that must be approved by Cabinet Procurement Committee is increased to align with the value of contract awards; thereby increasing the delegated powers of Directors from £150k to £250k.

Also, a need to include any additional extensions and variations, valued over £500,000 in the Council's Forward Plan is introduced.

CSO 3.03 delete "tendered and" because Directors should be responsible for all contracts whether awarded through tendering or requests for quotation.

CSO 3.03i: makes it clear that Legal Service only keep "sealed" contracts, otherwise contracts are filed and managed by contract managers.

CSO 3.03o: sufficient budget must be confirmed "beforehand" to any contract award.

CSO 3.04: the powers of the Pensions Committee are explicitly extended to include contract extensions and variations and thus ensure clearer alignment with the powers of the Cabinet Procurement Committee.

EU Public Procurement Directives

CSO 5.02b clarifying the that 10 day notice period only applies when notice is served electronically, otherwise alternative timescales will apply by reference to Public Contract Regulations.

Contract Value and Aggregation

CSO 6.01 the proposed amendment replaces "anticipated costs" with "contract value" to simplify the requirement and avoid any misunderstanding because "costs" imply the cost of managing the procurement (and which are outside of procurement regulations).

Procedure for Contracts below £100,000

General Comment

It is evident that existing CSO's inadequately safeguard competitive bids that are received through the quotation process. Currently prices can be viewed as they are received from each bidder. To address the matter, CSO 8.01 to CSO 9.07 have been amended to replace the word "tenders" with "bids" (to thus include both tenders and quotations) AND a specific link is made at 8.03 to the need at 9.02 - 9.04 for quotation prices to be held secure until a stated date and time for opening.

CSO 8.02 the threshold under which a quotation process can be followed is raised from £25k to £100k (with split values in a new CSO 8.03) along with a new requirement to obtain “at least three competitive quotations from selected contractors without the need to advertise”. This change is necessary to relieve the administrative burden and related costs of running tendering exercises as recommended in the Council’s Support Functions Review.

CSO 8.03 the effect of the new rule is for quotations valued below £50k to be managed in departments, but any valued between £50k - £100k are to be managed centrally by the Head of Procurement. This reflects the centralisation of procurement staff under the Council’s Support Function Review.

CSO 8.04 mirrors CSO 9.01e but for use in relation to the contracts valued below £100k.

CSO 8.05 - the decision as to which procurement methods and processes to apply is explicitly delegated to the Head of Procurement.

Procedure for Contracts above £100,000

CSO 9 the threshold above which a tendering process must be followed is raised to £100k.

CSO 9.01 g) and h) – deleted because these form part of the standard legal boilerplates from which contracts are compiled and are only two examples of the many clauses contained therein. There is no reason to specify these two examples over the many others e.g. data protection, child protection etc

CSO 9.02.3 and 9.03.3 – the need for two independent officers to open bids is reduced to one independent officer plus the procurement officer, to reflect the significant reduction in Council staffing levels.

CSO 9.02 - 9.04 – the phrase “tenders” has been generally replaced with “bids” to embrace both tenders and quotations and thus ensure the necessary controls apply to both processes.

CSO 9.03.3 to open an electronic file “simultaneously” using different passwords is not practical therefore the CSO is amended to reflect the need for two officers to “be present” at the time of opening the file.

CSO 9.04.1 in practical terms, it is impossible to adequately record any non-compliant bids without opening the envelopes to identify the bidder

involved since there must be no visible identification marks on the envelope. Therefore replace “unopened” with “late”.

CSO 9.04.2 deletion of “without any contact with the contractor” removes the absolute criteria and allows some flexibility to reflect practicalities.

CSO 9.06.1c – explicit delegation of power to the Head of Procurement.

CSO 9.07.1f – “care packages” has been added for clarity and as relating to “spot contracts”.

CSO 9.07.1g delete the cross reference because it is unnecessary.

CSO 9.08 simplified title.

CSO 9.08.1 this new requirement is considered necessary as a consequence of the Public Procurement (Remedies) Directive 2009 and is intended to offer the Council some degree of safeguard in the unlikely event that a Court declares an award of contract to be “ineffective”.

CSO 9.08.2 The figure of £50 (fifty) is replaced with £5,000 since the lower figure was totally inappropriate. The cost of producing contract documentation must be taken into account, hence the increased threshold.

CSO 9.08.4 – mention of Purchasing Cards is included.

CSO 9.08.5g – explicit requirement to protect personal data re: Data Protection Act.

CSO 9.08.8 the value of contracts into which specific clauses must be inserted is raised. This will have the effect of further efficiencies through reduced legal costs.

CSO 9.08.9 – whilst lower value contracts do not normally require sealing (sealed = valid for 12 years as opposed to being unsealed = 6 years), we must have due consideration to latent defects and thus an allowance is made for some flexibility in regard to risk.

CSO 9.08.10 – contracts valued over £250k must be sealed.

CSO 9.08.12 establishes a value above which bonds or parent company guarantees may apply.

Waivers, Variations, Extensions and Novations

CSO 10.01.1 the whole sentence has been simplified for ease of reading.

CSO 10.01.1b the delegated powers of Directors to waive CSOs is increased from £50k to £250k to align with the threshold for contract award powers of Cabinet Procurement Committee and which as a result negates the need for CSO10.01.1c (thereby deleted).

CSO 10.01.1c delete in favour of increased delegated powers of Directors.

CSO 10.01.2 delete “by the appropriate officer” since this is repetition within the sentence, and include “demonstrates” as a lead-in to the subsequent sub-paragraphs.

CSO10.01.2 delete “demonstrated to be” in favour of the line above which now embraces all the requirements of CSO10.

CSO 10.01.03 new CSO to emphasis the need for waiver requests to be approved before contracts are awarded, or variations or extensions agreed.

CSO 10.01.5 – to avoid low value waiver requests being considered by Cabinet Procurement Committee, the “regardless of value” criteria is replaced with a delegated power for a Member of that Committee to agree second waiver requests up a value of £50k.

CSO 10.02 cross reference added to CSO 3.01.03 to clarify that Cabinet Procurement Committee and not the Director must approve any extensions over £250,000

CSO 10.02.1a – delete the need to report “to the relevant Cabinet Procurement Committee Member” on contract performance in respect of those cases of Director approved contract variations and extensions.

A Director may agree a contract extension valued over £250k if such extension(s) had been included in a previous contract award decision taken by Cabinet Procurement Committee.

CSO 10.02.3 increase the delegated powers of Directors from £150k to £250k for the award of contract variations.

CSO 10.03 delete the cross reference because it is unnecessary.

CSO 12 - a collective schools body cannot have the same powers as an individual Director, therefore the schools body is aligned to an equivalent collective body in the Council, which in this case is the Cabinet Procurement Committee.

CSO 13 The departmental tiles of Adults services and Childrens services have been changes to reflect the new Council organisation.

Also, delete “maximise the use of block contracts” in favour of seeking “optimum overall best value” thus allowing more freedom to manage overall strategies.

CSO 13b - delete “and formation of contracts” due to being superfluous.

CSO 13d - as an efficiency, the need to produce monthly reports to the relevant Cabinet Member is relaxed in favour of reporting bi-annually.

CSO 16 (OLD) – this related to proprietary products, but is a repetition of CSO 9.01f and is therefore deleted.

CSO15.05 - the need to seek the prior approval of Cabinet Procurement Committee for the disposal of assets is replaced with a requirement to report on the results of disposal.

Also the threshold values for reporting are increased from £150k to £250k to align with the general delegated powers of Directors contained within CSOs.

17. Implications

The Councils’ CSOs are maintained to ensure the most cost efficient processes are applied and in accord with known best practice.

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Contract Procedure Rules**

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0. Statement of Principles

- 0.1 The Contract Standing Orders provide the framework rules for the Council's procurement of works, goods and services. Following them will ensure value for money, propriety and the proper spending of public money.
- 0.2 The Procurement Code of Practice provides more detail and shall govern Council tendering and contract procedures. The Director of Corporate Resources and Head of Procurement shall maintain and issue the Procurement Code of Practice. Any procurement activity shall proceed in accordance with the Contract Standing Orders and the Procurement Code of Practice and all such other guidance issued by the Head of Procurement.
- 0.3 The Head of Procurement shall make the latest version of the Contract Standing Orders and the Procurement Code of Practice available to every Director, Member and officer of the Council. Directors, or officers acting on their behalf, shall apply the requirements of the Contract Standing Orders and the Procurement Code of Practice when engaging in any procurement activity.
- 0.4 The purpose of procurement activity shall be to achieve best value in accordance with the Council's statutory or approved objectives. This should include an innovative approach to building partnerships with the private and not-for-profit sectors and collaborating with other public sector bodies within a robust contractual framework. Officers with responsibility for procurement shall ensure that they are able to demonstrate achievement of best value with regards the optimal combination of economy, efficiency and effectiveness.
- 0.5 Every contract or official order for works, goods or services made by the Council shall be for the purpose of achieving the Council's statutory or approved objectives and shall conform to all relevant English and European Union law.
- 0.6. Directors shall ensure that the Cabinet, Cabinet Procurement Committee or appropriate Member of the Cabinet or Cabinet Procurement Committee is consulted on any procurement activity prior to its publication in the Council's Forward Plan.
- 0.7. Directors must ensure that audit trails are in place for all procurement activity in accordance with the Procurement Code of Practice.
- 0.8. No Member shall enter into any contract on the Council's behalf.
- 0.9. No Member shall be permitted to become security under any agreement between the Council and a contractor employed by it.

CONTRACT STANDING ORDERS

1. Introduction

- 1.01. Procurement decisions are among the most important decisions a manager will make because the money involved is public money and the Council is required to ensure that best value works, goods and services are provided. Efficient use of resources in order to achieve best value is therefore an imperative. The Council's reputation is equally important and should be safeguarded from any imputation of dishonesty or corruption.
- 1.02. For these reasons it is a disciplinary offence to fail to comply with Contract Standing Orders and the Procurement Code of Practice when letting contracts. Employees have a duty to report breaches of Contract Standing Orders to an appropriate senior manager and the Head of Audit & Risk.
- 1.03. Reference should be made to the Procurement Code of Practice for more detailed procurement procedures.

2. Definitions and Interpretation

- 2.01. These Contract Standing Orders are made pursuant to section 135 of the Local Government Act 1972 and shall come into force with this Constitution.
- 2.02. Unless the context otherwise requires, in these Contract Standing Orders the terms below shall have the meanings ascribed to them.
 - a) "**Director**" means an employee of the Council (inc Alexandra Palace and Park Charitable Trust) holding a post designated as Director, Chief Executive or Assistant Chief Executive.
 - b) "**EU**" means European Union.
 - c) "Public Contract Regulations" means the Public Contract Regulations 2006 SI 2006 No. 5 as amended from time to time.
- 2.03. In the event of any conflict between EU law, English law and Council policy, the requirements of EU law shall prevail over English law and the requirements of English law shall prevail over Council policy.
- 2.04. In the event of any doubt as to the interpretation of these Contract Standing Orders or the Procurement Code of Practice, or as to the proper procedure to be followed, clarification should be sought from the Head of Procurement.

3. Roles & Responsibilities

3.01 Cabinet Procurement Committee will:

- a) hold Directors accountable for any decisions they make under their delegated authority or under these Contract Standing Orders.

- b) approve award of contract including any options to extend that are set out within the original contract and valued over £250,000 (two hundred and fifty thousand).

- c) approve any variations or extensions valued over £250,000 (two hundred and fifty thousand) that are not covered in the original decision taken in b) above.

- d) ensure that the award of any contract and any extension (not included in the original decision) or variation valued over £500,000 (five hundred thousand) is a 'key decision' and as such must be in the Council's Forward Plan and comply with the other procedures in that regard set out in the Constitution.

3.02 Constitution Review Working Group

The Constitution Review Working Group will keep under review these Contract Standing Orders and recommend amendments to full Council for adoption.

3.03 Directors

The Director has responsibility for all contracts let under his/her control. He/she is accountable to the Cabinet for the performance of their duties in relation to contract letting and management, which are:

- a) to ensure compliance with English and EU law and Council Policy;
- b) to ensure value for money in all procurement matters;
- c) to ensure compliance with Contract Standing Orders and the Procurement Code of Practice;
- d) to maintain a departmental scheme of delegation;
- e) to ensure that all relevant officers are familiar with the provisions of Contract Standing Orders and the Procurement Code of Practice and that they receive adequate training on their operation;
- f) to ensure compliance with any guidelines issued in respect of these Contract Standing Orders;
- g) to take immediate action in the event of a breach of Contract Standing Orders or the Procurement Code of Practice within his or her area;
- h) to keep proper records of all bids and contracts etc. including minutes of tender evaluation panels and other meetings;
- i) to keep records of waivers of any provision of these Contract Standing Orders;
- j) to make appropriate arrangements for the opening of bids and their secure retention so as to protect the integrity of the procurement process;

- k) to ensure that the Council's seal is affixed to any document required to be executed as a deed and that where a document is not expressed to be under seal, it is signed by two people as provided for in these Contract Standing Orders;
- l) to ensure original sealed contract documents are held by the Head of Legal Services for safekeeping;
- m) to record all contracts in the Contracts Register;
- n) to ensure effective management of all contracts under his/her control and to a level deemed appropriate in regard to risk or value of each contract.
- o) no contract shall be let unless the expenditure involved has been fully considered and approved beforehand and sufficient money has been allocated in the relevant budget.

3.04 **Pensions Committee**

The Pensions Committee shall have the same powers and duties of the Cabinet Procurement Committee specified in these Contract Standing Orders but limited to procurement decisions and award of contract and any extension or variation relating to the Pension Fund.

4. Scope of Contract Standing Orders

- 4.01. These Contract Standing Orders shall apply to all contracts for the procurement by the Council of works, goods and services unless otherwise expressly stated or these requirements are waived in accordance with CSO 10.
- 4.02. Where the Council secures funding from an external funding body, and the funding is conditional upon the grant monies being used to facilitate service delivery, Contract Standing Orders shall apply to procurement by the Council of the works, goods, and services to facilitate the service delivery.
- 4.03. These Contract Standing Orders shall **not apply** to contracts of employment, or to contracts relating to any interest in land. For the avoidance of doubt, there are excluded from these Contract Standing Orders any agreement relating to the provision of nomination rights to housing, collateral management arrangements in respect of social housing and the acquisition of rights or benefits pursuant to the Council's Private Sector Temporary Accommodation Leasing Scheme.

5. EU Public Procurement Directives

- 5.01 Where the value of a works, goods or services contract is equal to, or exceeds, the applicable threshold in relation to the Public Contracts Regulations, the provisions of those Regulations shall govern the tendering process and shall take precedence over the provisions of these Contract Standing Orders in the event of any conflict.

- 5.02. In respect of contracts to which Public Contract Regulations apply:
- a) where the tender is for appointment to a Framework Agreement, the total period of the Framework Agreement including any possible extension, shall not exceed four years except in exceptional circumstances relating to the subject of the Framework Agreement;
 - b) all bidders must be notified in writing of a tender selection decision by the Council at least 10 (ten) calendar days prior to the proposed contract award date, provided notification is by facsimile or electronic means. Where the last day of this ten-day notice period falls on a non-working day, the period must be extended to include the next working day. Where notification is not by facsimile or electronic means, the notice period shall be in accordance with the timeframes required by the Public Contract Regulations.
- 5.03. Where the subject matter of a contract is not exempt under the Public Contract Regulations and when, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, it may be awarded only to a particular contractor, a negotiated procedure without prior publication of a contract notice may be used for such award

6. Contract Value and Aggregation

- 6.01. Directors must ensure that a pre-tender estimate of the contract value is prepared and recorded in writing and in order to determine whether the thresholds under the Public Contract Regulations apply.
- 6.02. Unless otherwise specifically provided, reference to contract value or an estimated contract value in these Contract Standing Orders means the aggregate value payable in pounds sterling exclusive of Value Added Tax over the entire contract period, including any extension periods as anticipated in the proposed contract.
- 6.03. Contracts must not be artificially under or over estimated or divided into two or more separate contracts where the effect is to avoid the application of Contract Standing Orders or the Public Contract Regulations.

7. Framework and Consortia Arrangements

- 7.01. Subject to the provision of CSO 7.02, these Contract Standing Orders shall **not apply** where the Council procures particular works, goods and services:
- a) as part of a group of public sector bodies contracting with one or more contractors (consortium arrangement), provided the contract standing orders of one of the public sector bodies constituting the group and/ or where applicable the Public Contract Regulations have been followed, or
 - b) by selecting one or more contractors from a Framework or similar arrangement (including approved lists), established by a public sector body

in accordance with the contract standing orders of that public sector body and/ or where applicable the Public Contract Regulations.

- 7.02. The Council's decision to enter into a contract with the recommended contractor must be made in accordance with CSO 9.07.
- 7.03. The Council shall observe these Contract Standing Orders where it procures works, goods and services for the benefit, or on behalf of, other public bodies.

8. Procedure for Contracts valued below £100,000

- 8.01. Where a contract has an estimated value of less than £5,000 (five thousand), the relevant Director should act in the manner most expedient to the efficient management of the service, having kept a record for so doing.
- 8.02. Where a contract has an estimated value of more than £5,000 (five thousand), but less than £100,000 (one hundred thousand), at least three competitive quotations should be obtained from chosen contractors without the need for an advertisement or the tender procedure followed.
- 8.03. The quotation procedure shall replicate CSO 9.02-9.04 and be managed by the:
 - a) relevant Director where the estimated value of the contract is more than £5,000 (five thousand) but less than £50,000 (fifty thousand).
 - b) Head of Procurement where the estimated value of the contract is more than £50,000 (fifty thousand) but less than £100,000 (one hundred thousand).
- 8.04. Where a pre-qualified Framework arrangement (including approved lists) exists in respect of the subject matter and prices have yet to be determined then CSO 9.01e applies.
- 8.05. The Head of Procurement may decide that processes in CSO 8 are not appropriate in order to secure value for money for the Council and to ensure general EU procurement law principles are complied with. If that is the case, he/she may determine another process of selecting a contractor which will meet best value criteria. The decision and process must be properly documented.

9. Procedure for Contracts valued above £100,000

- 9.01. Except as otherwise provided, contracts with an estimated value of £100,000 (one hundred thousand) or more must be let following publication of an appropriate (tender) advertisement.

Where tenders are to be invited the procedure to be followed shall be determined prior to advertising and shall be one of the following:

- a) open tender (all interested contractors submit a tender in response to an advertisement);
- b) restricted procedure (expressions of interest from interested contractors in response to an advertisement, with a selection of those contractors being invited to submit a tender);
- c) negotiated procedure (expressions of interest from interested contractors in response to an advertisement, with a selection of those contractors being invited to negotiate);
- d) competitive dialogue (expressions of interest from interested contractors in response to an advertisement, followed by dialogue with a selection of those contractors to identify a solution (or solutions) which meets the Council's requirements, and an invitation to the selected contractors to submit tenders based on the solution/s resulting from the dialogue);
- e) Where it is proposed to award a specific contract based on a framework agreement in which all the terms of the proposed contract are not laid down, a mini- competition shall be held in which tenders shall be invited from all members of the framework agreement which are capable of carrying out the requirements of the specific contract.
- f) single tender where the relevant goods are a proprietary product and/or the relevant services relate to such a product and for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the contract may be awarded only to a particular contractor. The Director of Corporate Resources must first be consulted before this procedure is used. Where applicable, use of this procedure must be compliant with the Public Contract Regulations. Where this procedure is used, an advertisement is not required.

9.02 Receipt and Opening of Bids

- 9.02.1. Other than when electronic procedures are followed (CSO9.03) contractors must be informed that their bids will only be considered if they are:
- a) sent in a plain envelope or parcel with a label on which is printed either with the word "Tender" or "Quotation" followed by the subject of the contract; and
 - b) contained in a sealed envelope or parcel which does not show the identity of the contractor in any way;
- and
- c) delivered to the place and by the date and time stated in the invitation.
- 9.02.2. Bids must be kept safe until the date and time for their opening by the officers given this duty by the Director responsible for the process.

- 9.02.3. Bids for a particular contract must be opened at the same time in the presence of two officers, one of whom has had no involvement in the process. These officers shall be responsible for properly recording the price, duration of any works and all other relevant details of each opened bid.
- 9.02.4. The Head of Procurement must approve the training and seniority of all officers employed to open bids and also the arrangements in each Directorate for ensuring the independence of such officers from the teams involved in the competitive process.

9.03 E- Bids

- 9.03.1 Invitations to bid may be dispatched, and responses received, by electronic means with the prior approval of, and in accordance with a procedure specified by the Head of Procurement.
- 9.03.2. Bids received electronically must be stored securely, and must not be accessible until after the closing date and time in respect of submission of the bids.
- 9.03.3. At an appointed time for opening the electronically submitted bids, two authorised officers, one of whom has had no involvement in the process, shall both be present to access the submitted bids, and record the price, duration of any works and all other relevant details of each opened bid.

9.04 Late or Non Compliant Bids

- 9.04.1. Records of any non-compliant bids and of the date and time of receipt of any late tenders must be kept by officers.
- 9.04.2. Bids received late may only be considered if the other bids have not yet been opened and:
 - a) failure to comply is the Council's fault; or
 - b) it is clear that the bid was sent in such a way that in the normal course of events it would have arrived on time.

9.05 E-Auctions

In appropriate cases, the submission of prices for a bid may be conducted by e-auction using an on-line facility, with the prior approval of, and in accordance with a procedure specified by the Head of Procurement.

9.06 Post Tender Negotiations

- 9.06.1. Except where the negotiated procedure referred to in CSO 9.01c and 9.01f applies, negotiation after receipt of formal bids and before the award of contract is only permitted:
 - a) with those contractors submitting the most economically advantageous bid, and

- b) with a view to obtaining an improvement in content in circumstances which do not put other contractors at a disadvantage, distort competition or adversely affect trust in the competitive process, and
- c) if the prior authority of the Head of Procurement has been obtained.

9.06.2. There may be circumstances where an officer authorised by the Director may contact a contractor in order to clarify an ambiguous bid. This does not constitute post tender negotiations.

9.06.3. All communication with contractors under this Contract Standing Order must be in writing or recorded in writing.

9.07 Bid Acceptance and Contract Award

9.07.1. Bids are to be accepted on the basis of either:

a) The lowest price;

or

b) The most economically advantageous tender (i.e. the tender providing the most benefit to the Council) as determined by such criteria, to include whole life costing methodologies, as are relevant to the type of works, goods or services.

c) A Director may award, assign, or novate contracts valued at £250,000 (two hundred and fifty thousand) or less.

d) Subject to the provisions of CSO 9.07.1g, all contracts valued over £250,000 (two hundred and fifty thousand) at the time of award may only be awarded, assigned, or novated by the Cabinet Procurement Committee.

e) The award of any contract valued at over £500,000 (five hundred thousand pounds) is a 'key decision' and as such must be in the Council's Forward Plan and comply with the other procedures in that regard set out in the Constitution.

f) In accordance with Part 5 Section C of the Constitution, the award of spot contracts for care packages and contracts for the supply of energy to the Council are not "key decisions".

g) Contracts for the supply of energy to the Council valued over £250,000 may be awarded by a Director.

9.08. Conditions applying to all contracts:

9.08.1. The tender documents in respect of every contract to which the Public Contract Regulations apply shall include a requirement that the successful contractor must enter into a collateral contract in a form approved by the Head of Legal Services which provides for the allocation of risks between the parties where the contract has been declared ineffective by a court.

Valued £5,000 or more:

9.08.2. Except as provided in CSO 9.08.4, all contracts above £5,000 (five thousand) in value must be in writing by way of a document prepared, or on a basis approved, by the Head of Legal Services.

9.08.3. Where the works, goods or services to be provided under a contract are required to commence prior to the issuance and execution of a formal contract, a Director, if satisfied that it is in the Council's best interest in the particular circumstances, may approve issuance of a Letter of Intent pending the issuance and execution of a formal contract. However, the maximum cover afforded by any Letter of Intent shall not exceed 10% of the contract price in respect of works or services contracts, or £50,000 in respect of supplies contracts.

9.08.4. A contract made in extreme urgency or a contract for goods or services resulting from a purchase using a Council purchase card need not be in writing so long as it is confirmed in writing within four weeks.

9.08.5. Every contract shall specify:

- a) the works, goods or services to be provided or executed;
- b) the price to be paid or the precise method of its ascertainment and a statement of any discounts or other deductions; and
- d) as appropriate, the start and finish dates, or delivery dates, and any maintenance or defects liability period.
- e) compliance with the Council's insurance requirements. The requirement to comply with the Council's standard insurance requirements may only be waived with the Director of Corporate Resource's approval.
- f) compliance with the Council's equality policy.
- g) compliance with regards the protection of personal data.

9.08.6. All contracts for the provision of services which may potentially involve either direct contact with children and vulnerable adults or access to their personal records shall contain a provision requiring the service provider (including agents and assigns) to undertake a Criminal Records Bureau check on relevant employees prior to provision of the services under the contract and at appropriate intervals thereafter.

9.08.7. All computer software contracts shall contain a clause to the effect that use of the software by the Council's contractors shall not amount to use by a third party for which an additional software licence might otherwise be required.

Valued £25,000 or more:

9.08.8. Every contract with a value of £25,000 (twenty five thousand) or more must unless the Head of Legal Services and Director of Corporate Resources agree to the contrary contain clauses to cover the following:

- a) compliance with all applicable legislation;
- b) a prohibition on assignment and/or subletting without the written consent of the Director;
- c) a provision allowing the Council to cancel the contract and recover any resulting loss from the contractor if the contractor does anything which is contrary to the Prevention of Corruption Acts 1889 to 1916 or incites breach of Section 117 (2) of the Local Government Act 1972;
- d) a provision to ensure the Council is protected against the contractor's defective performance by default provisions which are appropriate to the contract;
- e) if the contractor is in breach of contract the Council can do any or all of the following:
 - i. determine all or part of the contract or determine the contractor's appointment;
 - ii. itself perform the contract in whole or in part;
 - iii. recover from the contractor any additional cost resulting from the completion or cancellation of the contract.
- f) If the contractor has obtained or received by whatever means any information which gives or is intended or likely to give the contractor any unfair advantage over any other tenderer (including the Council's own workforce) in relation to the tendering for, and award of, any works/services contract, that the Council shall be entitled to terminate that contract;
- g) It shall be a condition of any contract between the Council and any person (not being an Officer of the Council) who is required to manage a contract on the Council's behalf that, in relation to such contract, he/she shall comply in all respects with the requirements of these Contract Standing Orders as if he/she were an employee of the Council.

9.08.9. A contract up to and including £250,000 (two hundred and fifty thousand) in value does not require sealing and should be signed on behalf of the Council, by both the relevant Director and by the Head of the relevant business unit. However, if the nature of the works, goods or services is such as to pose a high risk of significant latent defects, then the Head of Procurement may decide to have the contract executed under seal as a deed.

Valued £250,000 or more:

9.08.10. A contract over £250,000 (two hundred and fifty thousand) in value must be executed on behalf of the Council under seal as a deed.

- 9.08.11. Every contract which exceeds £250,000 (two hundred and fifty thousand) in value must contain clauses to cover the following:
- a) if it is a contract for works, that the Council may require the contractor to provide security for completing the contract in the form of a bond;
 - b) that where the contractor is a subsidiary or group company, the contractor may be required to provide a parent or group company guarantee.
- 9.08.12. The decision as to whether or not a bond or parent company guarantee will be required in respect of a contract that exceeds £250,000 will ultimately be made by the Director of Corporate Resources, or an officer acting under his/her delegated authority.

10. Waivers, Variations, Extensions and Novations

10.01 Waivers

- 10.01.1. Contract Standing Orders other than CSO 5 (which relates to the Public Contract Regulations) may be waived on the basis set out in CSO 10.01.2 by:
- a) the Cabinet Procurement Committee where the contract value is more than £250,000; or
 - b) a Director where the contract value is £250,000 (two hundred and fifty thousand) or less (save that the Director shall not have authority to waive CSO 9.08)
- 10.01.2. A waiver may be agreed after considering a written report that demonstrates:
- a) the nature of the market for the works to be carried out or the goods or services to be provided has been investigated and is such that a departure from the requirements of Contract Standing Orders is justifiable; or
 - b) the contract is for works, goods or services that are required in circumstances of extreme urgency that could not reasonably have been foreseen; or
 - c) the circumstances of the proposed contract are covered by legislative exemptions (whether under EU or English law); or
 - d) it is in the Council's overall interest; or
 - e) there are other circumstances which are genuinely exceptional.
- 10.01.3. Waiver requests must be approved before any related contract awards, variations or extensions.
- 10.01.4. A record of the decision approving a waiver and the reasons for it must be kept and an entry made in a central register maintained and monitored by the Head of Procurement.
- 10.01.5. Where a waiver of Contract Standing Orders is sought for the second time in relation to the same individual contract, a Cabinet Procurement

Committee Member must agree those valued at £50,000 (fifty thousand) or less and be agreed by the Cabinet Procurement Committee for those valued £50,000 (fifty thousand) or more.

10.02 Variations and Extension

- 10.02.1. Subject to the provisions of CSO 3.01; the Public Contract Regulations restrictions and compliance with Financial Regulations, a Director may authorise the following:
- a) any extension provided for within the terms of a contract and previously included in an award of contract decision taken by Cabinet Procurement Committee (but subject to satisfactory outcomes of contract monitoring
 - b) or a single extension by up to six months, or half the contract term (whichever is less) of the contract not provided for within the original contract award decision; and
 - c) any variation, and if relevant a consequent change in price, determined in accordance with the contract terms.
- 10.02.2. In any other circumstances where the value exceeds £250,000 (two hundred and fifty thousand) the Cabinet Procurement Committee may vary or extend a contract providing that to do so is consistent with the Public Contract Regulations and the Council's Financial Regulations.
- 10.02.3. In addition a Director may authorise variations to a contract where either delay would incur substantial cost penalties to the Council or the proposed variations are unavoidable and/or essential for the contract to proceed or continue, and the additional cost of such variations does not exceed 25% of the value of the contract, up to a maximum of £250,000 (two hundred and fifty thousand). Variations above this level may be authorised by a Director, where the Director considers that circumstances require such authorisation, as long as such variations are reported to the Cabinet Procurement Committee at the earliest opportunity.
- 10.02.4. All variations and extensions must be recorded in writing.

10.03 Novations (Transfers)

In appropriate circumstances the Council may agree to the novation or assignment of a contract. This decision must be taken based on the value of the contract at the date of award.

11. Contract Termination

- 11.01. In the event of a supplier being declared bankrupt, going into administration, receivership or liquidation then a Director may terminate any associated contract(s) and initiate alternative arrangements as may be required taking into account CSO 10.03 in cases of novation or CSO 4.01 in cases that warrant the re-letting of the contract(s).
- 11.02. The decision to terminate a contract early in all other circumstances must be approved by a Director.
- 11.03. In all cases of contract termination for whatever reason where the awarded contract value was more than £250,000, a report must be presented at the earliest opportunity to Cabinet Procurement Committee.

12. Schools

In accordance with the requirements of the Council's Scheme for Financing Schools, and the Financial Regulations for Schools, where a school acts as an agent for the Council, these Contract Standing Orders apply to all schools within the London Borough of Haringey with the exception of Academy and Trust Schools. A school's governing body shall have the powers and duties of the Cabinet Procurement Committee specified in these Contract Standing Orders, except in relation to waivers (CSO 10.01).

13. Care Contracts for Individuals

Adults & Housing Services and the Children & Young People's Service care contracts may be 'block' contracts (where a number of beds, places or services are provided by the contractor at pre-agreed pricing schedules, to which the Council may refer users over the contract period) or 'spot' contracts (one-off contracts meeting an individual user's needs, or contracts where a number of beds, places or services are provided by the contractor without pre-agreed prices, such prices to be agreed upon each referral of a user over the contract period). The Directors of the Adult & Housing Services and the Children & Young People's Service will seek to optimise overall best value for the Council. The following provisions shall apply to the Adult & Housing Services and the Children & Young People's Service care contracts:

- a) All Contract Standing Orders apply to block contracts;
- b) CSO 8.03 (in relation to quotation procedures) shall **not apply** to spot contracts;
- c) The Directors of the Adult & Housing Services and the Children & Young People's Service may award all spot contracts, which shall be reviewed at least annually as part of the review of whether the service provided

continues to demonstrate value for money and meet the needs of the service user;

d) The Directors of the Adult & Housing Services and the Children & Young People's Service shall provide bi-annual reports to the relevant Cabinet Member and an annual report to the Cabinet Procurement Committee detailing the nature, extent and value of spot contracts entered into in the previous period.

14. Alexandra Palace and Park

These Contract Standing Orders apply to the procurement of works, goods and services by or on behalf of Alexandra Palace and Park Charitable Trust on the following basis:

a) The Chief Executive of APPCT shall have the powers and duties of a Director specified in Contract Standing Orders;

b) The Alexandra Palace and Park Board and Panel shall have the powers and duties of the Cabinet Procurement Committee and a Cabinet Member specified in these Contract Standing Orders;

c) In the event of any conflict, the requirements of the Charities Act 1993, any regulations made under that Act or charity law in general shall prevail over the provisions of Contract Standing Orders.

15. Disposal of assets

15.01. Where Council assets (other than land & buildings) are to be disposed of because they are surplus to requirements, damaged or obsolete, reasonable endeavours must be undertaken to realise the residual value of the assets.

15.02. Assets having little or no realisable value may be disposed of as waste with the approval of the relevant Head of Business Unit, provided the disposal shall be in favour of recycling wherever possible.

15.03. In respect of assets to be disposed of having an estimated value of less than £5,000 (five thousand), the Director concerned should act in the manner most expedient to the efficient management of the service, having kept a record for so doing.

15.04. Assets recommended for disposal with an estimated value of more than £5,000 (five thousand), shall be disposed of in such a manner as to secure best value.

15.05. Disposal of assets valued at more than £250,000 (two hundred and fifty thousand) must be reported to the Cabinet Procurement Committee.

- 15.06. Under no circumstances shall disposal of Council assets be made to employees or Members of the Council without the prior approval of the Director.

16. Urgent Decisions

- 16.01. These provisions apply where action needs to be taken urgently on any matter between meetings of the Cabinet Procurement Committee and that action would be outside the powers given to a Director or an individual Cabinet Procurement Committee Member. They may only be used in cases of genuine urgency and not to avoid proper forward planning.
- 16.02. All urgent decisions, including waivers and awards of contract, that are not “key decisions”, may be taken by the Chair of the Cabinet Procurement Committee or in his/her absence by the Leader of the Council.
- 16.03. All urgent decisions, including waivers and awards of contract, that are “key decisions”, may be taken by the Leader of the Council in accordance with his/her powers under the Constitution and subject to the statutory “Special Urgency” rules where these apply. In the absence of the Leader, the decision may be taken by the Chair of the Cabinet Procurement Committee subject to the same procedures being followed.