

# **Part 4.1 of the Council Constitution**

## **Tenders and Contracts Regulations 2022**

These Regulations form part of the Constitution and were adopted by Full Council on 23 March 2022

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# Background

These Tenders and Contracts Regulations are designed to ensure that all Contracts covered by these Regulations will be cost effective and meet the priorities of our Corporate Plan, link below:

<https://www.croydon.gov.uk/sites/default/files/articles/downloads/Corporate%20Plan%202018-22.pdf>

The Council's Commissioning Framework principles which these regulations support are outlined below:

Ethical And Sustainable Commissioning					
We will embed ethical and sustainable procurement considerations in all aspects of commissioning practice. We will use the Council's purchasing power to maximise social value, fostering local employment, promoting fair pay, encouraging local business growth and supporting community priorities.					
Principles					
Evidence based	Preventative	Locality based	Collaborations and Partnerships	Resident Focused	Delivering Outcomes
We will use data and insights at the locality level together with service user input to inform robust decisions that aid our commissioning and procurement practices.	We will focus on a preventative approach, in partnership with our communities, businesses and residents, enabling empowerment and self-resilience.	We will take a locality based commissioning approach, which takes account of the existing strengths, skills and resources to ensure that investment decisions support community empowerment.	We will collaborate or work jointly with other organisations to ensure improved outcomes and value for money for our residents.	We will put our residents at the center of our commissioning approach. We will involve customers and service users in the co-production of services.	We will commission for sustainable and effective outcomes that deliver beyond service and organisational structures.

The principles of these regulations are:

- to achieve good value for money and deliver social value wherever possible;
- to deliver a competitive process; ensuring there is no discrimination, with fair and transparent procedures, and equal treatment of all potential suppliers;
- to encourage and ensure continuous improvement in the delivery of Council services through the application of value for money principles;
- to incorporate effective and best practice procedures;
- to publish clear and understandable rules;
- to minimise risks and to protect the Council's interests and reputation;

- to ensure controls and accountability, and always to act within the law;
- to maintain an auditable trail of all tender activity;
- to be responsive to any weaknesses identified by internal/external audit;
- to ensure that regulations reflect the current procurement environment;
- to effectively support the delivery of direct services;
- to have regulations with which everyone complies.

These Tenders and Contracts Regulations are designed to achieve these key commissioning and procurement principles.

These Regulations are also the best defence against allegations that a purchase has been made unfairly, incorrectly or fraudulently. All those involved in the commissioning and procurement process must comply with these Regulations. Failure to do so may lead to disciplinary action being taken.

# Section 1 – General

## 1. The Legislation Governing these Rules

- 1.1 These Regulations are made under Section 135 of the Local Government Act 1972 and any subsequent qualifying or amending legislation. Under the Local Government Act 2000 the making and amending of these Regulations and the approval of any exceptions to them are part of the Council's non-executive functions.
- 1.2 These Regulations are part of the Council's Constitution and govern all relevant Contracts including those funded by way of grant.
- 1.3 The EU Rules and national legislation and related Public Contracts Regulations (PCR) 2015 & Concessions Contracts Regulations (CCR) 2016, which affects contracts under these Regulations, takes precedence.
- 1.4 These Regulations are subject to any general waivers agreed or provided for by these Regulations e.g. Regulation 19.
- 1.5 Anyone operating these Regulations must also follow the Council's Financial Regulations.
- 1.6 These Regulations support the Public Services (Social Value) Act 2012 and as amended, which allow for specific non-commercial considerations to be taken into account in contracting decisions.

## 2. Glossary of Terms is provided at Appendix A

## 3. Application of the Regulations

- 3.1 These Regulations apply if the Council intends to enter into a contract either as a purchaser or as a provider with another entity.
- 3.2 If a Contract involves generating income for either the Council or a provider, the Officer responsible must make an estimate of the notional value of the contract and use these Regulations if the value is estimated to be at or above the Low Value Threshold.
- 3.3 These regulations apply to all Contracts except for the following types of Contracts:
  - a) Contracts of employment which make an individual a direct employee of the Authority;
  - b) Fines;
  - c) Payment of taxes;
  - d) Situations where the Council carries out work by arrangement with the owner of any property but in exercise of the Council's statutory default powers;

- e) Agreements directly associated with the acquisition, disposal, or transfer of assets or land (to which the Financial Regulations shall apply).
- f) Grants that the Council is applying for or issuing.

#### **4. Officer Responsibilities**

##### **4.1** Officers involved in the commissioning and procurement process must comply with:

- These Regulations;
- All UK and European Union binding legal requirements;
- The Council's Financial Regulations;
- The Council's Staff Code of Conduct;
- The Council's Gifts & Hospitality Procedures;
- The Anti-Bribery policy;
- Declare any conflicts of interest;
- The Council's Scheme of Delegation;

Officers must ensure that any agents, consultants and contractual partners acting on their behalf also comply through relevant provision in the contract of engagement or other suitable means. Any arrangements, which might, in the long term, prevent the effective operation of fair competition, must be avoided.

##### **4.2** Officers must:

- a. Have proper regard for all necessary legal, financial and professional advice;
- b. Ensure compliance with the Council's policy and procedures for example Equalities and Diversity, Safeguarding, ICT, Council's IT Security, Data Protection and Social Value;
- c. Declare any personal financial interest in a contract. Corruption is a criminal offence;
- d. Report any offers of bribes, inducements or gifts & hospitality;
- e. Conduct a relevant value for money review;
- f. Ensure that there is adequate budget provision for the procurement being undertaken;
- g. Check whether there is an existing contract that can be used before undergoing a competitive process;
- h. Not divide up any contract in order to avoid any rules set out in these Regulations;
- i. Receive approval for the RP2 How we Buy report (procurement/commissioning strategy) before advertising the contracting opportunity or inviting any tenders for a relevant Contract;
- j. Allow sufficient time for the submission of bids;
- k. Keep all supplier bids confidential;
- l. Keep records of all dealings with suppliers;
- m. Obtain all required approvals at the correct point in the procurement process as advised by these Regulations and complete a written contract (signed and/or sealed, as required) before placing an order or raising a purchase order for any supplies, services or works;

- n. Where appropriate don't award a contract until the Standstill period is over;
- o. Enter all purchase order information onto the Council's financial system prior to any goods or services being provided. Raising purchase orders, and any permitted exceptions, must be conducted in accordance with the Council's P2P Guidance documentation;
- p. Identify an appropriate senior manager with the relevant delegation, who is the designated contract owner responsible for the relationship with the supplier. In addition, a contract manager with responsibility for day to day issues and ensuring the contract delivers as intended must also be appointed;
- q. The contract manager should ensure the safe keeping of contract documentation in line with Croydon's document retention policy and uploaded onto the Council's contract management system;
- r. Throughout, ensure that the procurement exercise delivers against the Council's Commissioning Framework and supports the delivery of the Corporate Plan Priorities.

**4.3** When any employee either of the Council or of a service provider may be affected by any transfer arrangement, Officers must ensure that the Transfer of Undertaking (Protection of Employment 2006 Regulations (amended 2014)) TUPE is considered along with any issues related to employee's membership of the LGPS, and Teachers Pension Scheme. Advice and guidance on TUPE must be sought at an early stage from the relevant departmental HR Lead. The Pensions team must also be notified as early as possible so that the implications relating to pensions may be considered.

## **5. Director Responsibilities**

**5.1** Directors must:

- a. Ensure that these Regulations are followed and enforced within their areas of responsibility;
- b. Make the staff aware of the requirements of these regulations;
- c. Declare any personal financial interest in a contract. Corruption is a criminal offence;
- d. Report any offers of bribes, inducements or gifts & hospitality;
- e. For Contracts at or over the Low Value Threshold ensure the relevant Cabinet Member(s) and the CCB are aware of commissioning intentions and are advised in advance of the purpose of any Contract that falls within these Regulations, including the commissioning and/or tendering process to be followed to secure the Contract and of any anticipated issues for the process, with particular regard to any service implications arising;
- f. Consider any advice given by CCB;
- g. Monitor compliance and investigate any non-compliance with the regulations and report any findings to the Director of Commercial Investment as Chair of the Contracts and Commissioning Board;





report to CCB for agreement to the proposed outcome for values at or over the Low Value Threshold .

- 7.2** Consideration must be given to what procurement method is most likely to achieve the commissioning and procurement objectives, including packaging (Lots) strategies, internal or external sourcing, shared services, partnering arrangements and collaborative procurement arrangements with other local authorities and government departments. Officers will also consider working with CCGs, statutory undertakers and Central Purchasing Bodies. They may also consider the establishment of separate trading entities.
- 7.3** The relevant Officer must refer to the Procurement & Contract Management Handbook for further details on process and requirements before instigating any procurement exercise.

## **Section 3 – How we Buy - Approach and Principles**

### **8. How we Buy**

- 8.1** The Director responsible must submit a How we Buy (procurement strategy) Report to the CCB, setting out commissioning intentions and sourcing strategy, (in the format required), for all proposed Contract awards for goods and services with an estimated total Contract value at or above the Low Value Threshold. Where it is intended to complete a mini competition or call off for works from an existing Council contract or an OJEU procured framework as advertised for works, then a report is not required up to an estimated total contract value of £500,000.
- 8.2** A Report must be presented to Cabinet (in the required format) for approval that has been recommended by CCB, where the eventual Contract value is estimated at £5m or above unless the underlying procurement strategy to which it relates has already been reported and agreed by Cabinet. In these cases, the Leader has delegated the authority to agree the procurement strategy to the relevant Cabinet Member.
- 8.3** The How we Buy report or Cabinet report should, as a minimum, set out the project plan, the proposed procurement route, compliance with the Council's policies on LLW, Social Value, data protection and equality analysis recommendations, any proposed departures from standard procurement practice or these regulations, the evaluation approach, risks, timetable, project structure and details of the Contract, e.g. term, value and any other relevant information.
- 8.4** No advertisement should be placed or invitation to tender made prior to approval of the How we Buy report in accordance with Regulation 11.

## **9. E-Procurement and the Use of E-Sourcing (Tendering)**

- 9.1** E-Procurement is a critical method of ensuring transparency, fairness and accountability in procurement processes. As such, all quotation and tendering processes for Contracts run by the Council or on behalf of the Council must use an e-tendering portal under the supervision of the Head of Strategic Procurement & Governance. When the Council is running a quotation or tendering process it will use its own e-tendering portal. Any other tendering method or use of other e-tendering portals may be used only with prior authorisation via a Waiver request.
- 9.2** All electronic documentation will be securely accessed and retained on the Council's e-sourcing website. The Council will not accept hard copies of suppliers tender submissions.
- 9.3** The relevant Director must ensure that all information required to commence an e-procurement process effectively, and to provide a full audit trail for the process, is provided, including details of evaluation criteria, their weightings and the way in which evaluation scores will be calculated.

## **10. Contract Value, Aggregation and Existing Council Contracts**

- 10.1** The Officer responsible must not divide any Contract ordinarily treated as a single Contract into two or more Contracts or in phased or staged delivery in such way as to avoid the application of any of these Regulations, the UK Regulations or the EU Rules.
- 10.2** The value of Contracts which are subject to the UK Regulations shall be calculated as provided for in those regulations. For the purposes of approvals and other requirements of these Tenders and Contracts Regulations, the value of any Contract is calculated net of VAT and over the total duration of the Contract, including any pilot, phases or stages of delivery.
- 10.3** The Officer responsible may not arrange to purchase separately any supplies, services or works that are available to be purchased through an existing contractual arrangement with the Council, where the items sought are either the same or sufficiently similar to those that are the subject of the existing contract to fulfil the Council's needs. Unless it can be clearly demonstrated to the satisfaction of the Chair of CCB for spend at or above the Low Value Threshold and to the satisfaction of the Strategic Procurement Manager for spend below the Low Value Threshold, that using the existing Contract would not fulfil the Council's statutory duty to provide Best Value under Section 3 of the Local Government Act 1999.

## **11. Procedures and Approval Process for the Council's Tendering and Request for Quotation Activities**

**11.1** These regulations apply to all purchases except for those where Regulation 19.3 applies.

**11.2 Procurement below the Low Value Threshold**

**11.2.1** For all contracts with an estimated value of below the Low Value Threshold the following thresholds apply:

<b>Contract Value</b>	<b>Procedure</b>	<b>Approval</b>
Up to £10,000	Preferably two written quotations both to be from local supplier using the Council's Business Directory (if possible)	In accordance with the Council's Scheme of Financial Delegation and Departmental Scheme of Delegation
Over £10,000 and up to Low Value Threshold	Min. three written quotations with two from local suppliers using the Council's Business Directory (if possible) and processed by the Council's Buying Team via the Council's e-tendering portal.	

**11.2.2** For values over £10,000 written quotations should be processed through the Central Buying Team using the Council's e-tendering system. Quotations must be processed in accordance with the information on low value procurement provided in the Commissioning & Procurement Handbook.

**11.2.3** Where the procurement route will not follow Regulation 11.2.1, a waiver is required as set out in Regulation 19. The Director of Commercial Investment may approve a list of general exemptions for circumstances where it is not feasible or advantageous to seek written quotations or Waivers.

**11.3 Formal Tendering (Low Value Threshold and above)**

**11.3.1** For all contracts with an estimated value at or above the Low Value Threshold, formal tendering procedures should be followed using the Council's e-tendering portal in accordance with the requirements of Regulations 8 & 26 and the UK Regulations. No procurement can commence without prior approval of the RP2 How we Buy - procurement strategy and no contracts can commence without prior approval of the award of contracts. Approvals are in accordance with the table below and where approval is sought from a Cabinet Member then it is in consultation with the Cabinet Member for Finance & Resources or where the Cabinet Member is the Cabinet Member for Finance & Resources then it is in consultation with the Leader of the Council.

<b>Approval Required</b>	<b>Chair of CCB Approval</b>	<b>Cabinet Member Approval</b>	<b>Cabinet Approval</b>
RP2 How we Buy – Procurement Strategy	Up to £5,000,000	Cabinet Member(s) to be sighted on all reports	Over £5,000,000

RP3 Contract Award	Low Value Threshold up to £500,000	Over £500,000 up to £5,000,000	Over £5,000,000
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**11.3.2** Unless as otherwise specified in these Regulations, the approval of strategies and awards relating to Framework Agreements and the establishment/initial appointment of providers to a DPS shall be subject to the requirements and procedures applicable to Contracts, by reference to the estimated value of contracts to be called off over the life of the Framework or DPS.

**11.3.3** The periodic appointment of new providers to an approved DPS or (where relevant) Framework shall be reported to CCB with such frequency as shall be specified in the report seeking approval for the award of a Framework Agreement or establishment/initial appointment of providers to a DPS ('Framework/DPS Award report').

**11.3.4** Unless as otherwise stated in these Regulations, the approval of strategies and awards in relation to Call-off Contracts under a Framework or DPS approved via a Framework/DPS Award Report shall be subject to the requirements and procedures applicable to Contracts, except as may be otherwise specified and approved in the relevant Framework/DPS Award Report.

## **12. Pre Tender Market Consultation**

**12.1** Before submitting a procurement strategy to CCB, the officer responsible for the procurement and in consultation with the relevant Category Manager, may issue a Prior Indicative Notice (PIN) or conduct market consultations with a view to informing the eventual procurement approach, scope of contract, specification etc. and/or to communicate to prospective applicants and tenderers the Council's procurement plans and requirements such as the nature, level and standard of the provision, contract packaging, timescales and other relevant matters.

**12.2** For this purpose, the officer responsible may, for example, seek or accept advice from independent experts, other authorities or from market participants.

**12.3** Such advice may be used in the planning and the proposed procurement procedure, provided that it does not have the effect of distorting competition (by giving those who participate in the pre-tender market consultation an unfair advantage over others in relation to future procurement opportunities) and does not result in a violation of the EU Rules and transparency and furthermore, is conducted in line with the UK Regulations.

## **13. London Living Wage (LLW)**

**13.1** The Council will include a requirement for all staff to be paid no less than the LLW, as defined by the Living Wage Foundation. For these purposes the scope

will be defined as by the Living Wage Foundation. For 'staff' means all persons employed by the contractor to perform its obligations under the relevant Council contract together with the Provider's servants, agents, suppliers and sub-contractors used in the performance of its obligations under that Contract.

#### **14. The Public Services (Social Value) Act 2012**

**14.1** This Act places a requirement on commissioners to consider the economic, environmental and social benefits of their approaches to commissioning and procurement before the process starts. The Act requires authorities to make the following considerations at the pre-procurement (commissioning) stage:

- a)** How, what is proposed to be procured, might improve the economic, social and environmental well-being of the 'relevant area';
- b)** How in conducting a procurement process, the Authority might act with a view to securing that improvement and whether to undertake a consultation on these matters.

**14.2** Commissioners should use this Act, including any updates to it and the Council's Social Value Policy to consider outcomes and the types of services to commission before starting the procurement process. When considering how a procurement process may improve the social, economic or environmental well-being of a relevant area, the Council must only consider matters that are relevant to what is proposed to be procured. The Council must only consider those matters to the extent to which it is proportionate, in all the circumstances, to take those matters into account. See: <http://www.legislation.gov.uk/ukpga/2012/3/enacted>

#### **15. Nominated or Named Sub-contractors and Suppliers**

**15.1** In accordance with Croydon's commitment to developing the local supply base and proactively implementing the Social Value Act, sub-contracting can provide a useful tool for engaging small businesses, voluntary organisations and the community sector in the supply of goods, supplies and services.

**15.2** Officers should consider whether the inclusion of sub-contracting clauses is appropriate for their commissioning activity.

**15.3** Where a Director nominates or names a sub-contractor or supplier to a main contractor, they must ensure the compliance with LLW, Modern Day Slavery, Council's Equality and Diversity policy, data protection legislation and any other such policy or legislation relevant to the goods, services or works being contracted for is included in that suppliers agreement. They must seek approval from the Chair of CCB prior to engagement with the sub-contractor or supplier.

#### **16. Collaboration**

**16.1** In order to secure value for money, the Council may enter into a procurement arrangement with a Central Purchasing Body (CPB) such as Crown Commercial Services (CCS) or another such body. These agreements should include (where possible) compliance with the Council's policy and procedures,

and must be approved in accordance with Regulation 11. The terms and conditions of the CPB must be fully complied with, including any requirement to undertake competition between providers, roles and responsibilities and liabilities must be clearly set out in all Call-off and contract documentation when using these agreements.

- 16.2** In order to secure value for money, the Council may enter into collaborative procurement arrangements with another local authority, government department, Clinical Commissioning Groups (CCG) and health providers, statutory undertaker or other contracting authority. These arrangements must be approved in accordance with Regulation 11 and must ensure that roles and responsibility and liability has been clearly set out within the documentation.

## **17. Provision of Services and Works for Other Organisations**

- 17.1** This Regulation applies whenever the Council carries out or provides any services or work or other action on behalf of another Local Authority/ consortium of Local Authorities, Government Department, Statutory Body or third sector organisation (third parties). The following conditions apply:

- a. the Officer responsible must be satisfied that the Council's interests will not be prejudiced by any such action; and
- b. there must be sufficient budget for the work in the Council's own estimates; and
- c. the third party must sign an agreement with the Council that clearly states liabilities, roles and responsibilities, and include contingency arrangements should the third party no longer exist during the term of the provision; and
- d. the third party must authorise any additional requirements, variations or departures and any additional funding required by the Council must be authorised in accordance with the Financial Regulations; and
- e. the third party must first confirm that it accepts financial responsibility for the provision of services or work.

- 17.2** Approval must be sought from the CCB via a RP2 How we Buy report prior to any notable commitment of Council resources or budget

## **18. Tendering with or through other Public Bodies**

- 18.1** Subject to the requirements of EU Rules, UK Regulations and any other applicable legislation, regulation, policy and/or guidance document, the Officer responsible can call off tenders with or through the following organisations, provided that they can obtain equivalent or more advantageous terms than by inviting competitive tenders:

- a. Another Local Authority, consortium of local authorities, Commissioning Partnerships, a Mutual;
- b. Government Department, Purchasing Organisation which has been approved by the Director responsible for procurement;
- c. Statutory Body;

d. Utility Undertaking (public or previously public).

**18.2** However, the Officer responsible must obtain the most favourable terms possible for the Council and must be able to demonstrate Best Value for Money under Section 3 of the Local Government Act 1999. An award report recommending any award must be submitted in accordance with Regulation 11.

## **19. Waivers and Emergencies**

**19.1** Where the value is under the Low Value Threshold any waivers must be signed by the relevant Director of the service area in consultation with either the Head of Strategic Procurement or Sourcing Managers of the Central Buying Team.

**19.2** Over and above this, the Director of Commercial Investment (exercising delegated non-executive powers) can waive any requirements contained within these Tenders and Contracts Regulations for specific projects, following a recommendation from the CCB. Any such waivers granted with a value at or above the Low Value Threshold must be reported to Cabinet at its next meeting.

**19.3** For Disasters and Emergencies where there is a clear need to provide a service or product immediately in the instance of a sudden unforeseen crisis or the immediate risk is to health, life, property or environment, compliance when these regulations may not be feasible. Any Director may place an order for supplies, services or works as the circumstances require after seeking approval from the chair of CCB, clearly stating the immediate procurements required. If that is not feasible for example due to outside of normal working hours then immediately after when reasonably feasible. A report of contracts awarded and any future procurements required will require approval by the Chair of CCB and if applicable Cabinet at the next available meeting after the event.

**19.4** For emergency placements (Placement) relating to children or vulnerable adults, where it is not possible to arrange the Placement through an existing Council Contract, the relevant Director may authorise an order for the Placement. As soon as practical the Director shall review the Placement to satisfy themselves that it is and continues to be appropriate to the circumstances and provides value for money.

**19.5** A monthly report of all Placements and other emergency orders made under this Regulation 19 in the relevant month shall be presented to CCB, Cabinet Member or Cabinet as appropriate (by reference to regulation 28 in accordance with the value of award and reporting protocols). Where the Director making the Placement or emergency order is not a Corporate Director such report shall also be provided to the relevant Corporate Director.

**19.6** All waivers against any of these regulations, including the reasons for them and the period for which the waiver is valid must be recorded and approved. Where a waiver is to be sought, the procurement process may not begin before approval has been granted. This restriction cannot be avoided by seeking approval of a waiver with retrospective effect, unless it is confirmed that it was



not reasonably practicable to obtain it prior to approval. All requirements of these Regulations relating to the approval to award still remain.

## **20. Preparation of a Specification**

- 20.1** The Officer responsible must prepare a clear and unambiguous specification. It must be in keeping with the Council's commissioning principles (including Social Value outcomes), they must be outcome-based and must include any necessary outputs, plans, sections, drawings and bills of quantities. This specification must be agreed by the relevant Category Manager or the Central Buying Team for values below the Low Value Threshold .
- 20.2** Sometimes, because of the type of work, the Officer responsible may not consider it practical or possible to prepare a detailed specification of every item of work necessary for the contract to be carried out. Here, the Officer responsible may include, in general words, provision for such works in the specification. This is subject to the requirement that any such work is carried out under the direct supervision of and on the written authority of the Officer responsible.
- 20.3** If the specification is for a contract for works, the Officer responsible must include provision within the budget for contingencies.

## **21. Advertising and the Number of Tenders**

- 21.1** One of the principles of Croydon's commissioning framework is to let contracts via an open and transparent competitive process.
- 21.2** Officers shall ensure that all tender processes that are to be advertised are done so in a sufficiently accessible manner and where proposed Contracts, irrespective of their total Contract value, might be of interest to potential suppliers located in other member states of the EU, a sufficiently accessible advertisement is published. Generally, the greater the interest of the Contract to potential suppliers the wider the coverage of the advertisement should be. Advertisements for tenders must as a minimum be placed as follows:
- a.** Where the value exceeds the current EU thresholds for goods, service and works Contracts, tender advertisement rules must be followed in accordance with the current EU Rules and UK Regulations;
  - b.** For procurement activity of any value, Officers must use the Council's own e-tendering portal and website(s). They may use additional advertisements in national official journals, specialist trade papers or websites, if relevant and if affordable.
- 21.3** As a minimum, any advertisement must state the place where interested providers may obtain the procurement documents and the deadline for receipt of submissions. As appropriate and as an alternative to advertising; tenderers may be selected either via an accepted framework (Croydon's own, via an established CPO or authorised 3rd party) or via an approved list such as 'Constructionline'. Details should be provided in the RP2 How we Buy report.

## **22. Standards and Evaluation Criteria**

- 22.1** Where the value is at or above the Low Value Threshold the Director for whom the procurement is being undertaken must ascertain the relevant EU, UK, European or international standards which apply to the subject matter of the contract. The Officer must include those standards which are necessary to properly describe the required quality and obligations under the contract. Advice from the Head of Strategic Procurement & Governance must be sought, as necessary.
- 22.2** The composition of and assessment of the SQ and ITT must be carried out in line with the EU Rules and UK Regulations which provides for transparency, non-discrimination, equal treatment, mutual recognition and proportionality amongst the freedom of movement of goods, freedom of establishment and freedom to provide services.
- 22.3** The Officer responsible for the procurement must define evaluation criteria that are appropriate to the purchase and designed to secure an outcome that meets the objectives of the Council. This must be included in the approved RP2 How we Buy Report. The evaluation criteria chosen must, where relevant, be compliant and in accordance with the UK Regulations. This must be either MEAT for goods, services and works, or Highest Price if payment is to be received for sale or disposal.
- 22.4** When awarding on the basis of MEAT, the rationale for the percentage split between cost and quality must be included in the RP2 How we Buy Report, which is in accordance with Regulation 8, for approval by the CCB. Where, under the MEAT approach, quality is adopted as a criterion, it must be further defined by reference to sub-criteria. There is no definitive list of quality criteria that should be applied to all procurements, but they must be linked to the subject matter of the contract and proportionate. Please reference the Procurement & Contract Management Handbook for further advice.
- 22.5** The evaluation assessment must include an allocation for a minimum of 10% for the Social Value criteria, any deviation from this must be in accordance with Regulation 19.
- 22.6** The Director must ensure that, whatever method of tendering is chosen, financial appraisals of contractors are part of the selection/award process. Directors must also ensure abnormally low tender submissions have been fully evaluated to ensure it does provide value for money. Any concerns regarding the evaluation especially with consideration of the Modern Day Slavery Act, should be reported to the Chair of CCB.
- 22.7** Officers must indicate in the contract notice whether or not they authorise variants. Variants shall not be authorised without this indication.
- 22.8** Officer must state in the tender documents the minimum requirements to be met by the variants and any specific requirements that need to be met. Only variants meeting those minimum requirements shall be taken into consideration

## **23. Standard Contract Clauses**

**23.1** All Contracts valued at or in excess of £100,000 must be in writing and signed by an Authorised Signatory on behalf the Council, or sealed with the Council's Seal in the presence of an Authorised Signatory.

**23.2** The Officer responsible must include the following standard clauses in every written Contract. Any proposed changes to the standard clauses are subject to legal advice and approval by the Director of Commercial Investment if not included in a RP2 How we Buy Report.

**23.3** All Contracts must include:

- a. Default procedures. These may include charges for defaults.
- b. A clause enabling the Council to claim actual or liquidated damages or an appropriate combination, depending upon the nature of the contract. Where a liquidated damages clause is used, there must also be included a clause for an extension of the time for completion. Appropriate advice must be sought on the type of damages clause suitable for each proposed contract.
- c. A genuine pre-estimate of liquidated damages must be quoted in the contract to be valid. Liquidated damages clauses generally yield limited sums in damages and, therefore, the risks of adopting a liquidated damages clause should be assessed in each case.
- d. A clause requiring the Contractor to maintain and test a business continuity plan at least annually and to keep the Council informed of how that plan would be deployed to protect the Council's interests, in the event of any interruption in the delivery of goods, services or works.
- e. A clause setting out the arrangements by which the contract will be managed and monitored by the Council, including arrangements for regular liaison between the parties, in compliance with the Council's standard requirements for contract management and monitoring.
- f. An extension of the 'time for completion' clause to protect the Council and allow for liquidated damages to be claimed in the event that the Council is responsible to any extent for a delay.
- g. A clause permitting the termination of the Contract in whole or in part, and without penalty, where the Council elects to do so.
- h. A clause that entitles the Council to terminate a Contract without penalty where it has been subject to a substantial modification by the provider without prior consultation and agreement.
- i. A provision requiring the Council to pay undisputed invoices, within 30 days of receipt of a valid invoice (subject to any contractual or statutory obligation to pay earlier).
- j. Provision that any significant deviation from the tender proposal shall constitute a default in the same manner as a deviation from the Specification and may constitute grounds upon which to terminate the contract.
- k. Suitable clauses to enable the Council to cancel the contract and recover any loss due to the cancellation of the contract if the Contractor or any person employed by the Contractor or acting on the Contractor's behalf

shall have committed any offence under the Bribery Act 2010 or shall have given any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972 or shall have given any fee or reward to any member or officer of the Council which shall have been exacted or accepted by such officer by virtue of office or employment and is otherwise than such officer's proper remuneration.

- l.** A clause that states the Council will require all staff engaged by the Contractor in the delivery of services or works under the Contract be paid the LLW.
  - m.** Where appropriate a clause that states the Contractor must comply with the Modern Day Slavery policy.
  - n.** Where appropriate a clause that states the Contractor will ensure they maintain their compliance with Council policies that are relevant to the services that the Council are procuring.
  - o.** Where personal data is being used within the delivery of the services, the appropriate data protection provision is made including that the Contractor must indemnify the Council against any relevant liabilities applicable to the Contractors responsibilities.
  - p.** Where appropriate, relevant safeguarding provisions must be included.
- 23.4** Standard contract clauses for securing social value are set out in the Social Value Framework. The Officer responsible should refer to this framework to ensure the appropriate clauses are used. Every Contract awarded by the Council must have a commitment on social value.
- 23.5** The Officer responsible must consider the obligation to require tenderers to provide a Performance Bond and/or Parent Company Guarantee where a contractor is a subsidiary of a parent company, as a Contract requirement in the following circumstances:
- (i)** the award is based on evaluation of the parent company;
  - (ii)** the financial status of the contractor (having regard, inter alia, to the proposed contract) warrants the same; and or
  - (iii)** the S151 Officer recommends;
  - (iv)** where it is proposed to make stage or other payments in advance of receiving the whole of the subject matter of the Contract.
- 23.6** The decision to require a Performance Bond and/or Parent Company Guarantee as a Contract requirement should be detailed in the RP2 How we Buy report.
- 23.7** If during the tendering exercise it becomes a requirement for a tenderer to provide a Performance Bond and/or Parent Company Guarantee as a Contract requirement - perhaps to support a financial standing issue, then this requirement, if different from that stated in the procurement should be reported in the eventual award report.
- 23.8** If required, advice should be sought from the relevant Finance Head of Service and included as part of the RP2 How we Buy report or Contract Award report for approval by the Chair of CCB.

- 23.9** In all cases where relevant, the Officer responsible, must discuss the need for the provision of a Pension Bond with the Head of Service responsible for Pensions and Treasury.
- 23.10** Every Contract must have a clause requiring the contractor to obtain adequate public liability and employer's liability insurance and any other insurance as may be required by the contract. The contractor must provide reasonable proof of this before work is commenced and throughout the life of the contract upon renewal of insurance.
- 23.11** The levels of cover are to be as stated in the Council's insurance guidance document. Any proposed reduction in required cover must be in consultation with the Council's Insurance, Risk and Corporate Programme Office.
- 23.12** All Contracts must include the following:
- a.** wording in which the contractor agrees to indemnify the Council for all claims proceedings, actions and other matters relating to the contract, except where the Council is found to be legally liable;
  - and**
  - b.** a clause in which the contractor agrees to certain service levels while dealing with claims, etc;
  - and**
  - c.** a clause requiring the full range of relevant insurances to be provided by the contractor, advice on this must be taken from the Risk and Insurance Officer;
  - and**
  - d.** the need for any self-employed person or consultant to have their own insurance, particularly where services are provided by employment agencies.
- 23.13** Every Contract must have a clause requiring all parties to comply with the provisions of the Data Protection Act 2018 ('DPA').
- 23.14** Every contract must ensure that the contractor acknowledges that the Contract and the information associated with it is subject to the Freedom of Information Act 2000 ('FoIA').
- 23.15** Every Contract must name the supervising person/s.
- 23.16** Every Contract must have a clause requiring the contractor to observe statutory requirements as to the manner in which work is to be carried out.
- 23.17** Every Contract must incorporate the specification and any drawings and bills of quantities as required/relevant.
- 23.18** Every Contract must contain a provision enabling the Council to deal with cases where the contractor, without good reason, either wholly or partly fails to complete delivery of the supplies, services or works, the subject of the Contract, to the contract standard or at all. The provision must enable the Council, if so desired, to:
- a.** engage an alternative provider, and in situations of urgency, without notice to the original contractor;

- b. arrange for the delivery of necessary supplies or materials from an alternative source;
- c. change quality or quantity of supplies, services or works required;
- d. recharge to the original contractor the costs of re-procurement and/or associated administrative and legal costs, and any costs incurred in excess of the original tendered price of the contractor to complete the delivery of the supply the subject of the contract, including the costs of any changes required to that supply, resulting from the contractor's default.

**23.19** Where appropriate, a standard form of contract issued by the regulatory body, trade industry or profession may be used in conjunction with these Regulations.

## **24. Form of Contract for all Awards**

**24.1** Every Contract must be in writing and in a form approved by the Director of Legal Services.

**24.2** The Director of Legal Services or other person authorised by the Director of Legal Services ('Authorised Signatory') must sign every written contract valued at or above £100,000 in accordance with the Council's Constitution and is responsible for settling the detailed terms thereof. However, the relevant Director may sign and settle the terms of Contracts valued at or above £100,000 if specifically authorised in writing to do so by the Director of Legal Services.

**24.3** Where a standard form of contract is issued by the regulatory body, trade industry or profession, the Officer responsible may use this in conjunction with these Regulations. The Officer responsible must ensure that the Contract is approved and executed by the Director of Legal Services.

## **25. Invitations to Tender and Quotations/Tendering Instructions**

**25.1** The Officer responsible must issue Invitations to Tender and tendering instructions to every supplier:

- a. invited to tender following a short-listing process;
- or**
- b. who is listed on the relevant Framework, Framework lot or DPS and who is capable and willing to tender;
- or**
- c. who requests the supply of tender documents under open tendering.

**25.2** All Invitations to tender must specify the goods, service or works that are required, together with the terms and conditions of contract that will apply.

**25.3** All suppliers invited to tender must be issued with the same information at the same time and subject to the same conditions. Any supplementary information must be given on the same basis.

**25.4** All Invitations to tender shall include the following:

- a. A specification that fully describes the Council's requirements;

- b. A requirement for tenderers to declare that the tender content, price or any other figure or particulars concerning the tender have not been disclosed by the tenderer to any other party (except where such a disclosure is made in confidence for a necessary purpose);
  - c. A requirement for tenderers to complete fully and sign all tender documents including a form of tender and certificates relating to canvassing and non-collusion;
  - d. Notification that tenders are submitted to the Council on the basis that they are prepared at the tenderer's expense;
  - e. A description (detailed as appropriate) of the award procedure and evaluation methodology.
- 25.5** The Officer responsible must advise every supplier submitting a tender that:
- a. no extension of time will be allowed for the receipt of any tender, unless at the discretion of the Council;
  - b. tenders received after the date and time specified for receipt may be rejected;
  - c. any departure from the Tendering Instructions may lead to the tender being rejected;
  - d. the Council does not bind themselves to accept the lowest or any tender or to accept any tender in full;
  - e. as soon as the Council has advised that (subject to contract) the tender has been accepted, then the agreement becomes legally binding;
  - f. the tender documents to be in electronic format;
  - g. the tenderers signed form of tender cannot be different in detail to that provided as part of the e-sourcing process.
- 25.6** Standard contract clauses must be stated (Regulation 22). Every supplier who submits a tender must be willing to enter into a contract containing these clauses.
- 25.7** The Officer responsible must also specify the period for which the tender will be kept open for acceptance. The normal minimum provision will be 90 days.
- 25.8** Tenders must be submitted electronically via the Council's e-tendering portal or by such other form of submission provided it was approved and a waiver to this regulation sought in the relevant RP2 How we Buy report.
- 25.9** Every tender must specify:
- i. the amount of the tender and any discounts or deductions allowable and the terms for any such allowance; and
  - ii. the time or times within which the contract is to be performed or completed.
- 25.10** The Officer responsible must check that every tender sum has been calculated by reference to the minimum specification required and stipulated in the tender. If they discover any departure from the specification, they can treat it as grounds for disregarding the tender.
- 25.11** When a tenderer proposes a variant bid, they must have demonstrated, by way of a compliant bid, that the Council's minimum standard has been met before a variant bid can be considered.

**25.12** The Officer responsible must check that every tender sum is stated net of Value Added Tax or any other Tax or Duty.

## **26. Submission, Receipt and Opening of Tenders/Quotations**

**26.1** Every tender must be received by a secure method using the Council's e-tendering portal or an approved e-sourcing system.

**26.2** Suppliers or providers who have expressed interest in a tender must be given an adequate period in which to prepare and submit a proper tender, consistent with the complexity of the contract requirement. PCR 2015 or CCR 2016 includes specific tendering time periods.

**26.3** Officers must notify all suppliers of the correct tender return instructions, including the date, time and place (details of the e-sourcing system).

**26.4** In exceptional circumstances, the deadline for receipt of tenders may be extended, but only with the agreement of the Head of Strategic Procurement & Governance and only if such extension of time will not disadvantage a tenderer. No extension to the deadline can be given once the original deadline has passed and the seal has been broken on the e-tendering portal.

**26.5** The Head of Strategic Procurement and Governance must arrange for all tenders for any one Contract to be opened at the same time. All tenders received via the Council's e-tendering portal should be opened by those listed below providing they are not involved in the tender exercise:

- Category Manager from outside of the service area leading the tender exercise;
- the Strategic Procurement Manager of the Central Buying Team;
- the Senior Procurement Governance Officer.

**26.6** In exceptional circumstances, the Director of Commercial Investment following advice from the Head of Strategic Procurement and Governance may approve the delegation of the opening of tenders received via the Council's e-tendering portal to the Senior Procurement Systems Officer or a Procurement Officer from outside the service area leading the tender exercise.

**26.7** Any tender that does not comply with the Council's requirement as set out in the tender invitation e.g. arrives late, should normally be excluded from consideration, with the circumstances recorded on the Council e-tendering portal. Officers may, however, seek the agreement of the Chair of CCB to amend these requirements in appropriate circumstances. Any such relaxation shall be identified when seeking any necessary authorities required before the acceptance of a tender.

**26.8** The Head of Strategic Procurement and Governance must ensure, for audit and information purposes that for all tenders received via the Council's e-tendering portal:

- a) An electronic record is retained of the date and time of opening and the name of the Officer involved.; and



- b) An electronic record of all tenders received is retained

## **27. Post SQ and Tender Clarifications**

- 27.1** The Director must maintain a detailed written record and clear audit trail of all post SQ and tender clarifications detailing all contact with the tenderer. All such communications must be recorded via the Council's e-tendering portal.
- 27.2** The Director must report to the CCB or the nominated Cabinet Member or Cabinet as appropriate (based on Contract value) any amendments to tender prices arising from post tender clarification and the reasons for them.
- 27.3** Directors may amend tender prices under post tender clarification, providing it does not disadvantage any other tenderer and in accordance with PCR 2015 and CCR 2016, in the following circumstances only:
  - a. if, between the submission of tenders and the Contract being awarded, a tenderer seeks to reduce the price without changing the original specification, then the Director must consult with the Chair for CCB to determine if there are reasons for accepting the new price and, if appropriate, offer the same opportunity to all the other tenderers. Opportunities to other tenderers to revise their bid prices would not normally be given to those previously eliminated for reasons other than cost or where a tenderer rectifies a mathematical error;
  - or**
  - b. if there are errors in totals;
  - or**
  - c. if the tender price is so low, the Director believes that the tenderer may have made an error and that acceptance might lead to difficulties of performance;
  - or**
  - d. where the lowest tenderer agrees to reduce their price (without varying the specification) after negotiation because:
    - i) the original tender was unacceptably high;
    - or**
    - ii) the schedule covers a range of requirements and, although lowest overall, negotiations might allow further savings to the Council.
  - e. where, for a particular requirement:
    - i) the lowest tender exceeds the Department's allocation;
    - or**
    - ii) where it offers an alternative specification and negotiation would permit an assessment of the scope for savings.
  - f. If there is a Professional or local Code of Practice, that may restrict price negotiation and must be taken into consideration.
- 27.4** If the Director amends the original specification or the acceptable alternative differs from the original specification, then they must give similar opportunities to all other tenderers that submitted a tender.

- 27.5** The tenderer must subsequently confirm, in writing, any alterations to a tender before the Director may consider all the tenders received.
- 27.6** All post tender negotiation must be available for audit and recorded via the Council's e-tendering portal.

## **Section 4 – Contract Award**

### **28. Contract Award**

- 28.1** A Contract with a value at or above the Low Value Threshold may not be awarded before the relevant Director has submitted a RP3 Contract Award report on the tenders received for the relevant contract and the appropriate acceptance in accordance with Regulation 28.4a-d.
- 28.2** The Officer responsible must provide a report on financial references in the report seeking acceptance of a tender.
- 28.3** Where the financial appraisal of a contractor gives an 'extreme caution' rating, the contractor must not be used unless the Director or Officer reports on and seeks approval from the Council's Section 151 Officer:
- a.** any mitigating circumstances;
  - and/or**
  - b.** why they wish to appoint that contractor.
- 28.4** Prior to the submission to CCB or to the Chair of CCB, every report seeking acceptance of a tender for a Contract must be reviewed first by the Strategic Procurement Manager prior to departmental review by; the lead Director, the Head of Litigation and Corporate Law, the Director of Finance, and Chief People Officer. The report must be prepared in accordance with the relevant Protocols (as set out in Part 5 of the Council's Constitution) and specify information regarding the tendering circumstances and the terms of a Contract award sufficient to enable an informed decision to be made. It must also contain any appropriate comments and/or recommendations relating to budgetary provision, the competitive process undertaken, these Regulations, the Financial Regulations, EU Rules, relevant legislation and the Council's policies.
- a.** for Contracts valued between the Low Value Threshold and £500,000, if there have been no departures from the approved procurement strategy and there is available budget then a report, that has been signed-off in accordance with the standard award report template seeking Contract award can be made directly to the Chair of CCB, under delegated powers, without first seeking recommendation from the CCB;
  - b.** for Contracts valued between the Low Value Threshold and £500,000 where there have been departures from the approved procurement route (with the exception of timetable), evaluation approach or additional risks were identified, then a report is required seeking recommendation from the CCB for Contract award by the Chair of CCB, under delegated powers;

- c. or Contracts valued over £500,000 a report is required to the CCB seeking recommendation for Contract award by the Cabinet Member for values up to £5,000,000 and Cabinet for values over £5,000,000.
  - d. for proposed Contract extension periods included as part of the original Contract award, a report to the CCB seeking recommendation for Contract extension by the Chair of CCB, under delegated powers.
- 28.5** The Cabinet, nominated Cabinet Member, and the CCB are the bodies responsible for reviewing Contract matters for the Council.
- 28.6** Subject to the Contract values, recommendations on executive matters will be considered by the nominated Cabinet Member in consultation with the Cabinet Member for Finance and Resources, or where the nominated Cabinet Member is the Cabinet Member for Finance and Resources, in consultation with the Leader.
- 28.7** A list of Contracts awarded by a decision of the nominated Cabinet Member under Regulation 28.4c will be reported to the subsequent Cabinet meeting on a quarterly basis.
- 28.8** In all instances in these Regulations where a nominated Cabinet Member or Cabinet is charged with making an executive decision, Part 5.A of the Council's Constitution – Protocol for Decision Making must be observed.
- 28.9** In the absence of the named officers, deputies may act on their behalf in accordance with the departmental scheme of delegations.

## **29. Contract Pre-conditions and Preliminaries**

- 29.1** A Director must not authorise or permit a contractor to enter on any land or buildings belonging to the Council or to proceed with the Contract or start work on site until a written order to proceed with the Contract has been issued and the following actions are completed:
- a. the contractor has provided proof of insurance;
  - b. the contractor has completed and returned to the Council the contract documents unless the Director can satisfy the Director of Legal Services and the Chair of CCB that the Council's position is otherwise adequately secured;
  - c. where appropriate the performance bond is duly completed;
  - d. all procedures have been completed to the satisfaction of the Director of Legal Services.
- 29.2** Once the actions in Regulation 29.1 are completed then a purchase order must be raised on the Council's financial system, prior to any goods or services being provided. Raising purchase orders, and any permitted exceptions, must be conducted in accordance with the Council's P2P Guidance documentation.

## **30. Extras and Variations**

- 30.1** Any extra, variation (including extension of time) or a contract change control notice to a Contract must be specifically authorised in writing by the Director or

a designated Officer, who must retain a copy of this authorisation as a document relating to the Contract. If the extra, variation or change control notice is likely to result in an increase in the Contract sum, then the Officer must obtain authority for the additional expenditure in accordance with the Financial Regulations. The overall costs must be contained within agreed budgets.

- 30.2** Where the contract supervisors are not Council Officers, the Contract with the supervisors must provide that no tangible change be made to the specification without the prior written consent of the Council.
- 30.3** A report seeking authority for the change to the Contract must be made to the CCB, nominated Cabinet Member or Cabinet as appropriate, where the extra terms or variation will result in the new total value of the contract:
- i.** Exceeding the Low Value Threshold (CCB) or £500,000 (Nominated Cabinet Member) or £5,000,000 (Cabinet);
  - ii.** Exceeding the relevant public procurement threshold (for goods, services or works), as published from time to time by the European Commission.
- or in any case, where the value of the extra/variation (aggregated with previous extras/variations if any) results in the original Contract award value being increased by more than 25% or £1,000,000 (whichever is the lower).
- 30.4** A Key Decision Notice is required and timescales adhered to when the value of the extra/variation either totals or increases the new contract value to £1,000,000 or more and was not subject to a previous Key Decision Notice.
- 30.5** Each Department must have control procedures and audit trails in place to deal with extras, variations and Change Control Notices.

## **Section 5 – Contract Mobilisation**

### **31. Tender Records**

- 31.1** The Head of Strategic Procurement & Governance must ensure that the following information in relation to a Contract is kept:
- a.** Pre-tender research, benchmarking and consultation information;
  - b.** The approved RP2 How we Buy report including any waiver given;
  - c.** The selection and award criteria (as appropriate);
  - d.** Pre-qualification documents sent to and received from applicants (if applicable);
  - e.** Tender and written quotation documents sent to and received from tenderers;
  - f.** Communications with all applicants and tenderers throughout the procurement exercise;
  - g.** Any post-tender clarification information, to include minutes of meetings;
  - h.** The contract documents.

**31.2** Where the Council has used its own e-sourcing system, all electronic records pertaining to the tender and the tendering process must be retained on the system, including an electronic copy of the signed contract.

## **32. Contract Register**

**32.1** Category Managers must ensure that all contracts let are entered onto the Council's Contract Register in accordance with the Local Government Transparency Code. This action can be completed via the Council's e-tendering portal. Where another e-tendering portal has been used the details must be submitted to *www.gov.uk/contracts-finder*. Copies of all signed/sealed contracts must be uploaded into the Contract Management system on the Council's e-tendering portal.

**32.2** When contracts have been varied, extended, novated, assigned, terminated, sub-contractors authorised or changed in any way, Category Managers and Contract Managers must update the Council's Contracts Register with the new details and if required *www.gov.uk/contracts-finder*, and copies of all signed/sealed documentations must be uploaded into the Councils Contract Management system on the Council's e-tendering portal to accompany the original electronic copy Contract.

**32.3** Category Managers and Contract Managers must ensure the timely completion and submission of any Contractor compiled documentation into the Council's Contract Management system on the Council's e-tendering portal (e.g. annual Insurance Certificates) that are required by the Contract.

## **33. Contract Storage**

**33.1** The Director responsible for the service area must ensure that all signed/ sealed Contracts established in accordance with these Regulations are scanned and the scanned copy or a true electronic copy (with signature/ sealed pages scanned accompanying it) is stored on the Council's Contract Management system and that the original copy of the contract has been received by the Deeds team in Croydon Legal Services.

# **Section 6 – Contract Management**

## **34. Managing Contracts**

**34.1** All Directors are to name a Contracts Manager or a person responsible for the management of the contract for all new contracts which are covered by these Regulations. All contracts must have a named Council contract owner (normally the Director of the service area) and Contract Manager for the entirety of the contract term in accordance with the Council's agreed contract management model.

- 34.2** Contract managers must follow the procedures and reporting requirements set out in the Council's Procurement & Contract Management Handbook.
- 34.3** Contract Managers will be responsible for the day to day management and reporting of their contracts. This shall include monitoring and reporting using the Council's Contract Management Tool Kit. For contracts with a value of over £1,000,000 per annum, monitoring of performance will include the timely return of the Balanced Scorecard to [www.Contracthub.com](http://www.Contracthub.com) and full completion of Scorecards and Action Plans.
- 34.4** Contract Performance will be measured against the following minimum criteria but may be subject to change:
- i)** Performance;
  - ii)** Compliance with specification and contract terms;
  - iii)** Finance and costs;
  - iv)** Risk management,
  - v)** Social Value;
  - vi)** Resident satisfaction;
  - vii)** GDPR;
  - viii)** Health and Safety;
  - ix)** Modern Slavery Prevention; and
  - x)** Equalities and Fairness.
- 34.5** For all contracts, it is the responsibility of the Contract Manager to raise any incidents of poor performance immediately with the Contractor and seek rectification through the development of an Action Plan. This Action Plan must be updated to record progress until performance improves to a satisfactory level. At which time the Action Plan may be closed. In instances of particularly poor performance, or persistent poor performance, the Contract Manager should consider the appropriate course of action to take under the contract, taking advice as appropriate.

## **35. Risk Assessment & Contingency Planning**

- 35.1** Provision for resources for the management of the contract, for its entirety, must be identified in the business case and RP2 How we Buy report. CCB should be kept up to date as required via the Council's CCB process.
- 35.2** For all contracts with a value £ at or above the Low Value Threshold, the contract manager must:
- a.** Maintain a risk register during the contract period
  - b.** Undertake appropriate risk assessments and for identified risks
  - c.** Ensure contingency measures and business continuity plans are in place and are regularly reviewed as part of contract management.

## **36. Contract Monitoring, Evaluation & Review**

- 36.1** All contracts valued at or above the Low Value Threshold are to be subject to regular formal reviews with the contractor. An initial review must be done at the

first 3 months of a contract start date and on-going reviews will then be conducted on a regular schedule. The initial review can be done sooner due to the length of contract and should be agreed with CCB.

- 36.2** A formal review process must be applied to all contracts deemed to be High Risk, High Value, or High Profile. This process must be applied at key stages of major procurements and must comply with the Council's Procurement & Contract Management Handbook.
- 36.3** During the life of the contract, the Contract Manager must monitor a contract in accordance with the Council's Procurement & Contract Management Handbook.
- 36.4** During the life of Framework Agreements and DPS, the Contract Manager will update CCB on performance and awards of contracts as agreed by CCB in the report in accordance with Regulation 28.

## Glossary of Terms – Appendix A

Term	Description/Meaning
<b>Amount of an estimate</b>	The sum of money estimated, net of Value Added Tax but inclusive of any other tax or duty. However, the amount of any such tax or duty payable must be stated.
<b>Award Report</b>	A procurement award report in the relevant format (dependant on the Contract value) which is provided to the CCB prior to the award of any Contract, extension for the purposes of providing the necessary approval (subject to the Contract value).
<b>Category Manager</b>	The Council officer responsible for a particular category of spend and who leads on procurement activity. This may include a variety of roles including Strategic Procurement Manager.
<b>Call-off Contracts</b>	Contracts selected and awarded from an existing Framework Agreement or DPS.
<b>Chair of CCB</b>	The Director of Commercial Investment.
<b>CCB</b>	Contracts & Commissioning Board - the board of Council officers designated to manage and act as the decision maker or recommending body within the scope of these Regulations, for Council-wide commissioning and contracting activities (excluding land disposals and property transaction matters).
<b>CCS</b>	Crown Commercial Services
<b>CCR 2016</b>	The Concession Contracts Regulations 2016 and any supersede or replacement legislation
<b>'CDM'</b>	Construction (Design and Management) Regulations 2015.
<b>C&amp;P</b>	Commissioning & Procurement Division responsible for the Council's Tenders and Contracts Regulations
<b>Central Buying Team</b>	The Council's central Buying Team within the Procurement Division responsible for all goods & services procurement below the Low Value Threshold
<b>Central Purchasing Body</b>	A Contracting Authority which provides centralised purchasing activities and which may also provide ancillary purchasing activities — <b>(a)</b> acquires supplies or services intended for one or more contracting authorities; <b>(b)</b> awards public contracts intended for one or more contracting authorities; or <b>(c)</b> concludes framework agreements for work, supplies, or services intended for one or more contracting authorities; <i>(for the avoidance of doubt, this is the same definition as provided in the PCR 2015).</i>



<b>Concession Contract</b>	Concessions are defined in the public sector procurement Directive 2004/17/EC (“the Directive”) as contracts where the consideration for the supplies, works or services to be carried out consists either solely in the right to exploit the supply, work or service, or in this right to exploit together with payment.
<b>Constructionline</b>	Website that has pre-qualified suppliers who provide goods, services and works for Construction related projects
<b>Contract</b>	A contract for the provision (either to or by the Council) of goods, services or works however they may be funded, but excluding those types of contracts or matters referred to at Regulation 3.3.
<b>Contracting Authorities</b>	The State, regional or local authorities, bodies governed by public law or associations formed by one or more such authorities or one or more such bodies governed by public law, and includes central government authorities, but does not include Her Majesty in her private capacity.
<b>Contracts Finder</b>	A web-based portal provided for the purposes of PCR 2015 Part 4 by or on behalf of the Cabinet Office.
<b>Contract Management System</b>	The process of automating Contract Lifecycle Management (previously “Contract Management”), it incorporates the key elements of the buying process, such as commissioning knowledge, specification, requests for quotation/tenders/e-auctions, evaluation/negotiation, contract formulation and management and is contained on the Council’s Tender Portal, Contract Register and Contract Management system.
<b>Contract Manager</b>	The Council officer or external person appointed to manage and/or monitor the tender/contract process on behalf of the Council
<b>Contract Value or Value of a Contract</b>	<p>A value:</p> <p><b>(a)</b> calculated on the basis of the full term of the Contract. i.e. if it is a three year contract with a possibility of a two year extension then the calculation of the contract value must be based on a five year term; <b>and</b></p> <p><b>(b)</b> not value added tax but inclusive of any other tax or duty. Where a Contract is mixed, i.e. has elements of works, supplies and/or services, to establish the type of contract and relevant threshold for the purposes of the PCR 2015, the correct categorisation of the Contract is made by reference to the <b>main subject</b> (the part that has the greatest value) of the Contract.</p> <p>In relation to a Framework Agreement and a DPS, this would be the maximum estimated value, net of Value Added Tax, of all the contracts envisaged for the total term of the Framework Agreement or DPS.</p>

	<b>Note:</b> to set up and access a Framework this will need to be stipulated in the appropriate CCB report to prevent a further and separate report being required; one to set up the Framework and one to access it.
<b>Corporate Director</b>	The Chief Executive; <b>or</b> A head of one of the following departments or any successor to them: Corporate Director Resources; Corporate Director Sustainable Communities, Regeneration & Economic Recovery; Corporate Director Children, Young People & Education; Corporate Director Adult Social Care & Health; Corporate Director Housing; Assistant Chief Executive; Executive Director of Gateway, Strategy & Engagement; who under their scheme of authorisations can exercise the powers referred to in these Regulations.
<b>Council’s approved estimates</b>	The Council’s budget approved annually by full Council and includes estimates of both capital and revenue expenditure
<b>Council’s Declaration of Confidentiality and Interest Form</b>	This form is available on the Council’s intranet: <a href="https://intranet.croydon.gov.uk/working-croydon/finance/commissioning-and-procurement/forms">https://intranet.croydon.gov.uk/working-croydon/finance/commissioning-and-procurement/forms</a>
<b>Council’s Constitution</b>	The articles of the constitution for the London Borough of Croydon, which set out the rules and framework which govern the operation of the council; the responsibility for functions; procedure rules, codes and protocols for specific parts of decision-making processes.
<b>Council’s Financial Regulations</b>	The financial regulations as contained in Part 4.H of the Council’s Constitution.
<b>DPA</b>	Data Protection Act 2018
<b>Director</b>	<b>(a)</b> A Director, a Head of Service or any other Officer currently identified as being a Director, with relevant authority under a departments scheme of authorisations; <b>(b)</b> Corporate Director; <b>(c)</b> A nominated Officer with delegated authority to incur expenditure.
<b>Dynamic Purchasing System (“DPS”)</b>	A completely electronic purchasing system procedure available for contracts for works, services and goods commonly available on the market. <i>For the avoidance of doubt, please refer to Regulation 32 to the PCR 2015 for a more detailed definition</i>
<b>e-sourcing (tendering)</b>	An internet based process wherein the complete tendering process, from advertising to submitting and receiving tender-related information, is done online

<b>EU Rules</b>	Where the EU Rules are referenced, this means it is also to include EU Public Procurement Directives 2015 and EU 2014/24/EU (which and the principles of the Treaty on the Functioning of the European Union as apply to the Contracts as implemented into UK law by regulations
<b>Evaluation criteria</b>	Refers to the measures used in either the SQ or ITT to undertake an assessment of potential providers. i. Criteria used in the SQ are referred to as 'selection criteria'. ii. Criteria used in the ITT are referred to as 'award criteria'
<b>Expression of Interest ("Eoi")</b>	A statement by a prospective provider of their intention to compete for a tendering opportunity for the provision of goods, services and/or works.
<b>Executive function</b>	Matters reserved to the Leader under the Council's Strong Leader Model and as set out in the Leaders Scheme of Delegation.
<b>External Advisors &amp; Consultants</b>	Individuals who are contracted to fulfil a role, not already covered by the Council's establishment, which may be of a specialist nature.
<b>Framework Agreement</b>	An agreement between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged. The phrase 'Framework/s' shall also be construed accordingly. <i>For the avoidance of doubt, this is the definition provided in Regulation 33(2) PCR 2015.</i>
<b>Audit Committee</b>	The Audit Committee constituted under the Council's Constitution and includes any other Council decision making body or individual Member or officer who may from time to time have responsibility for consideration of these Regulations. <b>Note:</b> Audit Committee is a Non-Executive function
<b>Grant</b>	An arrangement where money is given for a stated purpose with or without conditions attached and which is for the benefit of all or a section of the community, but is not a procurement of services
<b>How we Buy Report (RP2)</b>	This the procurement strategy report often referred to as RP2. Template can be found on the Procurement Governance SharePoint page
<b>In Writing</b>	Refers to paper and electronic records
<b>IIOB</b>	The Investing in our Borough report, produced by Commissioning & Procurement for Cabinet listing all RP2 How we Buy and RP3 Contract Award reports that require approving by Cabinet Member or Cabinet etc

<b>ITT (Invitation to Tender)</b>	The step of a competitive tendering process in which suppliers or contractors are invited to submit sealed bids for the supply of specific and clearly defined supplies, services or works during a specified timeframe
<b>KPI</b>	Key Performance Indicator - a type of performance measurement used to evaluate the success of a particular activity carried out by a provider
<b>LGPS</b>	Local Government Pension Scheme
<b>The Leader or nominated Cabinet Member</b>	The Leader of Croydon Council or any nominated Cabinet Member to whom they have delegated authority to exercise their powers referred to in these Regulations.
<b>Light Touch Regime (“LTR”)</b>	The procedure that must be followed in relation to social and other specific services (including healthcare, cultural, educational and legal services) under Regs 74-76 PCR 2015
<b>London Living Wage (“LLW”)</b>	The basic hourly rate before tax and other deductions determined and published by the Greater London Authority from time to time.
<b>Low Value Threshold</b>	£177,898 <sup>1</sup> (such figure to be adjusted in line with periodic changes to the threshold applicable to Supplies and Services in the PCR 2015)
<b>LTR Services</b>	Services subject to the Light-Touch Regime. There is an OJEU advertising requirement and other specific obligations, but a higher financial threshold has introduced for the Light Touch Regime to apply
<b>Make or Buy Report (RP1)</b>	The report is a strategic choice between in-housing the services required and/or buying it externally (outsourcing). It is a discussion document that has to be brought to CCB for agreement.
<b>Most Economically Advantageous Tender (“MEAT”)</b>	The tendering approach used to provide a balance between quality and cost Or 100% assessment of quality to a fixed budget or 100% price where a minimum quality threshold is met.
<b>Nominated Cabinet Member or Member</b>	Cabinet Member within whose portfolio, as identified by the Leaders Scheme of Delegations, the service which is the subject matter of the contract falls
<b>Non-Executive function</b>	Matters reserved to Full Council/Full Committee or matters that are delegated in accordance with the Scheme of Delegation
<b>Officer</b>	An Officer authorised by the appropriate Director or Corporate Director to lead in the requirements for a procurement and comply with these regulations.
<b>OJEU</b>	The Official Journal of the European Union
<b>Output (or Outcome) Based Specification (“OBS”)</b>	A specification that focuses on the desired outputs of a service in business terms, rather than a detailed

<sup>1</sup> This figure applies to all Contracts regardless of whether for goods, services or works

	technical specification of how the service is to be provided.
<b>Parent Company Guarantee</b>	Parent Company Guarantees are provided by either the contractor's immediate parent or other holding company and operate as a guarantee to ensure a Contract is properly performed and completed. In the event of a contractor default, the parent is obliged to remedy the breach.
<b>PCR 2015</b>	The Public Contracts Regulations 2015 and any superseding or replacement legislation
<b>Performance Bond</b>	Performance Bonds are typically provided by banks or insurance companies. They provide a guarantee of payment up to a stated amount of money should a loss be suffered as a result of the contractor's breach of a contractual obligation.
<b>Person</b>	Includes the following: <b>(a)</b> A group of persons; <b>(b)</b> A firm; <b>(c)</b> A partnership <b>(d)</b> An unincorporated association; <b>(e)</b> A company; <b>(f)</b> Another local authority or a group of local authorities <b>(g)</b> A Government Department (as represented by the Secretary of State); <b>(h)</b> A statutory body; <b>(i)</b> A public utility that has been privatised
<b>PIN</b>	Prior Indicative Notice for publishing in the OJEU, to notify the market of a possible opportunity. See PCR 2015 Reg. 48 for further information.
<b>Post Tender Clarification</b>	Tender or bid clarifications that may become necessary during the evaluation of tenders
<b>Post Tender Negotiation</b>	Contact between the buyer and tenderers, separate from Tender Clarification, to refine and improve the bid(s) in order to ensure that prices, delivery or associated terms of the contract are competitive. <b>Note:</b> this process is only available as indicated in these Regulations.
<b>Another 'Public Body'</b>	Any contracting Authority within the meaning of the EU Public Procurement Directives and the Public Contracts Regulations 2015
<b>Regulations</b>	All the Regulations as listed below.
<b>S151 Officer</b>	The Corporate Director Resources and S151 Officer
<b>Scheme of Authorisations</b>	The departmental 'scheme of management' setting out who is authorised to make what decisions within that department
<b>Small and Medium Enterprises SME</b>	The main factors determining whether a company is an SME are: <b>1.</b> number of employees; and

	<p><b>2. either turnover or balance sheet total.</b></p> <table border="1"> <thead> <tr> <th>Company category</th> <th>Employees</th> <th>Turnover</th> <th>Balance sheet total</th> </tr> </thead> <tbody> <tr> <td>Medium-sized</td> <td>&lt; 250</td> <td>≤ € 50 m</td> <td>≤ € 43 m</td> </tr> <tr> <td>Small</td> <td>&lt; 50</td> <td>≤ € 10 m</td> <td>≤ € 10 m</td> </tr> <tr> <td>Micro</td> <td>&lt; 10</td> <td>≤ € 2 m</td> <td>≤ € 2 m</td> </tr> </tbody> </table> <p>These ceilings apply to the figures for individual firms only. A firm which is part of larger grouping may need to include employee / turnover / balance sheet data from that grouping too.</p>	Company category	Employees	Turnover	Balance sheet total	Medium-sized	< 250	≤ € 50 m	≤ € 43 m	Small	< 50	≤ € 10 m	≤ € 10 m	Micro	< 10	≤ € 2 m	≤ € 2 m
Company category	Employees	Turnover	Balance sheet total														
Medium-sized	< 250	≤ € 50 m	≤ € 43 m														
Small	< 50	≤ € 10 m	≤ € 10 m														
Micro	< 10	≤ € 2 m	≤ € 2 m														
<b>Social Value</b>	The process whereby the Council meets its needs for supplies, services, works and utilities in a way that achieves value for money on a whole life basis in terms of generating benefits to society and the economy, whilst minimising damage to the environment. See the Council's Social Value Policy																
<b>Social Value Act</b>	The Public Services (Social Value) Act 2012																
<b>Social Value Toolkit</b>	The document titled 'Inspiring and Creating Social Value in Croydon' which provides advice on the process and best practice principles when trying to lever in great social value in respect of commissioning																
<b>Standstill Period</b>	A period of time when an authority cannot enter into a contract with a supplier until it has concluded, in accordance with Regulation 87 of PCR 2015.																
<b>Strategy Report</b>	A procurement strategy report in the relevant format (dependant on the Contract value) which is then provided to the CCB at the beginning of each procurement exercise. As a minimum, this report should set out the project plan, proposed procurement route, any proposed departures from standard procurement practice, the evaluation approach, risks, timetable, project structure and details of the Contract																
<b>SQ</b>	Supplier Selection Questionnaire a process used to identify potential suppliers that are most capable of performing a contract																
<b>Tendering and submitting a tender</b>	Includes any quotation or action taken by any person seeking to enter into a contract with the Council, which is subject to these Regulations.																
<b>Third Sector</b>	The range of non-statutory service providers set up as not for profit organisations. These encompass the traditional voluntary and community sector, co-operatives, social enterprises and registered social landlords. For the purposes of this document the term 'third sector' is used to denote this group of organisations.																
<b>TUPE</b>	Transfer of Undertakings (Protection of Employment) Regulations 2006																
<b>UK Regulations</b>	The PCR and/or CCR and any national legislation that affects Contracts under these Regulations.																

<b>Value Added Tax (“VAT”)</b>	Value added tax as chargeable under the Value Added Tax Act 1994
<b>(“VfM”)</b>	The term used to assess whether or not the Council has obtained the maximum benefit from the goods, supplies and services it acquires and/ or provides, within the resources available to it. It not only measures the cost of goods, supplies and services, but also takes account of the mix of quality, cost, use of resources, fitness for purpose, timeliness and convenience to judge whether or not, when taken together, they constitute good value. Achieving VfM may be described in terms of the ‘three Es’ - economy, efficiency and effectiveness.
<b>Variant bid</b>	A bid which is different from that specifically requested by the contracting authority in the tender documents. Examples of variant bids are those proposing different pricing structures, or new and innovative ways of delivering a service.
<b>Weightings</b>	The weightings allotted to the criteria chosen to evaluate the SQ / ITT to reflect what is most important in any particular procurement. Weightings may be exact percentages or a specified range, where this is appropriate in view of the subject matter.
<b>Working Day</b>	Any other day other than a Saturday, Sunday and any bank or UK public holidays.

# Procurement Approvals Flowchart – Appendix B

March 2022

