



## Definitions

- 'Appropriate Officer' is the Chief Executive, Strategic Directors, Director, the Chief Financial Officer (S151 Officer) or any other Officer designated by resolution of the Executive.
- 'Authorised Officer' is any Officer permitted by an Appropriate Officer to authorise orders and Contracts as per CSO 2.6.
- 'Below Threshold Contract Details Notice' means the notice that must be published as soon as reasonably practicable in the Central Digital Platform after entering into a Regulated Below Threshold Contract in accordance with Section 87 of the Procurement Act.
- 'Below Threshold Tender Notice' means the notice that must be published in the Central Digital Platform if advertising for the purpose of inviting Tenders for Regulated Below Threshold Contracts in accordance with Section 87 of the Procurement Act.
- 'Best Value' is the optimum combination of whole life costs, quality and benefits, including economic, environmental and social value to meet the customer's requirement.
- 'Bradford District' is the geographical area administered by the Council.
- 'Call Off Contract' is a separate Contract awarded under an existing Framework or DPS that creates a binding Contract.
- 'Central Digital Platform' means the system whereby notices, documents and other information required to be published under the Procurement Act is to be made available.
- 'Centralised Procurement Authority' means a Contracting Authority that is in the business of carrying out procurement for and on behalf of, or for the purpose of the supply of goods, services or works, to other Contracting Authorities.
- 'Competitive Flexible Procedure' means any other Competitive Tendering Procedure which the Council considers appropriate for the purpose of awarding Contracts in accordance with Section 20 of the Procurement Act.
- 'Competitive Tendering Procedure' means either the Open Procedure or the Competitive Flexible Procedure as defined in Section 20 of the Procurement Act.
- 'Concession Contract' means Contracts for pecuniary interest, where (i) at least part of the consideration for that supply is a right for the supplier to exploit the works or services; and (ii) under the Contract the Supplier is exposed to real operating risk as defined in Section 8 of the Procurement Act.
- 'Conditions of Participation' means the conditions that a Supplier must satisfy for the Supplier to be eligible to be awarded the Contract as described in Section 19 of the Procurement Act.

- ‘Contract’ means a formal agreement between the Council and any Supplier for the execution of works, supply of goods or services for pecuniary interest. For the purposes of these CSO’s the definition of “Contract” does not include employment and property Contracts or Grant agreements.
- ‘Contract Award Notice’ means a notice published in the Central Digital Platform in accordance with Section 50 of the Procurement Act.
- ‘Contract Change Notice’ means a notice published in the Central Digital Platform before a Contract is modified in accordance with Section 75 of the Procurement Act.
- ‘Contract Details Notice’ means a notice published in the Central Digital Platform to signal that a Contract has been entered into in accordance with Section 53 of the Procurement Act.
- ‘Contract Termination Notice’ means a notice published on the Central Digital Platform in accordance with Section 80 of the Procurement Act.
- ‘Contract Value’ is, for works, goods or services the total monetary value over the full duration, including any extension options (not the annual value). For Concession Contracts, or other Contracts with low, or nil cost to the Council the total pecuniary value must be considered.
- ‘Contracting Authority’ mean the State, regional or local authorities, bodies governed by public law, associations formed by one or several of such authorities or several of such bodies governed by public law.
- ‘Contracts and Grants Register’ the Council’s database of all Contracts, commissioned activity, purchase orders, Frameworks, and other legally enforceable agreements with a value of £5,000 and above and grants of any value.
- ‘Controlled Entities’ a subsidiary company of the Council where the Council exercises control similar to that over its own departments, the subsidiary carries out at least 80% of its activity for the Council and there is no direct participation of private capital. See Schedule 2(2) of the Procurement Act for further information.
- ‘Convertible Contract’ means a Contract that, as a result of the value of a modification, will take the value of the Contract over the relevant Threshold, such that the contract will become a public contract.
- ‘Corporate Contract’ is an agreement procured in consultation with and for the benefit of more than one Council department. More details can be found on Bradnet.
- ‘Council’ means the City of Bradford Metropolitan District Council.
- ‘CSO’s’ means these Contract Standing Orders (CSO’s) as may be amended from time to time.
- ‘CSO Form’ means the relevant form available on Bradnet to be completed in relation to the proposed procurement activity.

- ‘DPS or Dynamic Purchasing System’ is an electronic procurement process under the PCR for commonly used purchases that are generally available and is open throughout the Contract period to any new Supplier that meets the selection criteria.
- ‘Dynamic Market’ means a list of qualified Suppliers who have met the conditions of membership of the dynamic market who are eligible to participate in future procurements.
- ‘Dynamic Market Notice’ means a notice published in the Central Digital Platform in accordance with Section 39 of the Procurement Act.
- ‘Electronic Auction’ is a procurement process provided for in Regulation 18(3) of the Procurement Regulations whereby suppliers who have submitted admissible tenders can revise their original prices or values during the period of the auction.
- ‘Exempted Contract’ means a Contract falling within Schedule 2 of the Procurement Act or the relevant provisions of the Procurement Regulations (as applicable).
- ‘Framework’ means a contract between a Contracting Authority and one or more Suppliers that provides for the future award of Call Off Contracts by a Contracting Authority to the Supplier or Suppliers as provided for in Sections 45 – 49 of the Procurement Act.
- ‘Grant’ for the purposes of these Contracts Standing Orders means a formal agreement giving financial assistance, generally outside the scope of VAT, to an individual or organisation to assist in meeting its general purpose or objectives but where the specific supply of goods, works or services is not required in return. Repayment of funds can generally only be required by the funder when those funds are misspent or unspent. There should be award criteria, performance targets and conditions on how the money is spent and Officers should monitor these in accordance with the terms of the grant agreement.
- ‘Light Touch Contract’ means a contract wholly or mainly for the supply of services of a kind specified in Regulation 42 of the Regulations, namely certain health, education and other public services.
- ‘Local Supplier’ is any Supplier that provides works, goods or services from a location within the Bradford District or where a substantial number of any employees working directly on the Contract are resident in the Bradford District.
- ‘National Procurement Policy Statement’ means the statutory statement set by the Cabinet Office of the Government to communicate the wider policy objectives to which it expects public procurement to contribute as may be amended from time to time.
- ‘Notifiable Below Threshold Contract’ means a Regulated Below Threshold Contract with an estimated value of not less than £30,000.
- ‘Officer’ means employee(s) of the Council.

- ‘Open Framework’ means a scheme of Frameworks that provides for the award of successive Frameworks on substantially the same terms as defined in Section 49 of the Procurement Act.
- ‘Open Procedure’ means a single stage Competitive Tendering Procedure as provided for under Section 20 of the Procurement Act.
- ‘Pipeline Notice’ means a notice that must be published in the Central Digital Platform in accordance with Section 93 of the Procurement Act.
- ‘Planned Procurement Notice’ means a notice that may be published in the Central Digital Platform to inform the market that the Council intends to publish a Tender Notice in accordance with Section 15 of the Procurement Act.
- ‘Preliminary Market Engagement Notice’ means a notice published in the Central Digital Platform to inform the market that a pre-market engagement exercise will be undertaken in accordance with Section 17 of the Procurement Act.
- ‘Procurement Act’ means the Procurement Act 2023 which comes into force on 24 February 2025 (or such later date as may be specified in secondary legislation).
- ‘Procurement Panel’ means a panel of Officers which acts as a gateway to ensure compliance with these CSOs, the Procurement Act and the Procurement Regulations or Provider Selection Regime as appropriate for all proposed procurements, exceptions to competition and contract variations of £30,000 and above and that there is an approved budget in place for such proposals, prior to making a recommendation to the Chief Financial Officer to proceed.
- ‘Procurement Regulations’ means the Public Contracts Regulations 2015, Concession Contracts Regulations 2016, Utilities Contracts Regulations 2016 (as applicable) and any subsequent statutory amendment or re-enactment, or subordinate legislation that may be in place from time to time.
- ‘Procurement Termination Notice’ means a notice to be published in the Central Digital Platform after publication of a Tender Notice or Transparency Notice where the Council has decided not to award a Contract and to terminate the procurement.
- ‘Provider Selection Regime’ means the Health Care Services (Provider Selection Regime) Regulations 2023 as may be amended from time to time.
- ‘Public Service Mutual’ an organisation that (i) operates for the purpose of delivering public services and mainly for the purposes of delivering one or more reservable light touch services (ii) is run on a not-for-profit basis or provides for the distribution of profits only to members; and (iii) is under the management and control of its employees.
- ‘Regulated Below Threshold Contract’ means a Contract (but does not include Exempted Contracts, Concession Contracts or Utilities Contracts), that has an estimated Contract Value of less than the applicable Procurement Threshold as more particularly described in Part 6 of the Procurement Act.

- ‘Regulations’ means the Procurement Regulations 2024 as may be amended from time to time.
- ‘Qualifying Public Service Mutual’ means a Public Service Mutual that has not entered into a comparable Contract during the period of 3 years ending with the day on which the previous Contract is awarded as described in Section 33 of the Procurement Act.
- ‘Quotation’ a formal written offer to execute works, or provide services or goods at a stated price.
- ‘Spending Panel’ means a panel of Officers which acts as a gateway to ensure Council expenditure of £500 and above is value for money, prior to making a recommendation to the Chief Financial Officer to proceed.
- ‘Supplier’ an individual or organisation that Contracts with the Council to provide works, goods or services.
- ‘Supported Employment Provider’ means an organisation that operates wholly or partly for the purpose of providing employment, or employment-related support to disabled or disadvantaged individuals as described in Section 32 of the Procurement Act.
- ‘Technical Guidance’ means the Technical Guidance to the Procurement Act as published by the Government Commercial Function which can be found at – <https://www.gov.uk/government/collections/procurement-act-2023-guidance-documents>.
- ‘Tender’ a formal written offer to execute works, or provide services or goods at a stated price.
- ‘Tender Notice’ means a notice published in the Central Digital Platform in accordance with Section 21 of the Procurement Act to advertise and commence a Competitive Tendering Procedure.
- ‘Threshold(s)’ are the financial threshold (inclusive of VAT) at which the Procurement Regulations or Procurement Act apply. As of 1<sup>st</sup> January 2024 these are:
  - Works - £5,372,609
  - Goods - £214,904
  - Services - £214,904
  - Light Touch Contracts - £663,540.
  - Concession Contracts and Utilities Contracts (works)- £5,372,609
  - Utilities Contracts (supplies and services) - £429,809
- ‘Transitional Regulations’ means the Procurement Act 2023 (Commencement No. 3 and Transitional and Saving Provisions) Regulations 2024).
- ‘Transparency Notice’ means a notice published in the Central Digital Platform in accordance with Section 44 of the Procurement Act before directly awarding a Contract under Section 41 or Section 43 of the Procurement Act.

- 'Utilities Contracts' means a Contract for the supply of goods, services or works wholly or mainly for the purpose of utility activity.
- 'Variation' is a change made to a Contract in compliance with the Procurement Regulations or Procurement Act (as applicable) and these CSO's.
- 'Whole Life-Cycle Costs' is an estimate of the total costs of works, goods or services over their life. It is a combination of the purchase price, implementation and operating costs, procurement and Contract management costs, disposal costs less any residual value.

## **1 Introduction**

- 1.1 The purpose of Contract Standing Orders (CSO's) is to set clear rules by which the Council spends money on works, goods and services. The rules apply to any Contract entered into by the Council. The procurement process covers the full life cycle of activities starting with the identification of need, through to evaluation, purchasing and contract management. Procurement activity can range from purchasing day to day commodities to purchasing key strategic items such as large capital assets, or commissioning a service or buying an entire service.
- 1.2 Public procurement must be undertaken in accordance with principles enshrined in Procurement Regulations or Procurement Act (as applicable). Unless a direct award justification applies in accordance with Section 41 of the Act, the Council must always act to promote competition and to ensure that each procurement is conducted as an open, transparent and fair competition. The Council must avoid practices which may restrict or distort competition.
- 1.3 All values quoted in these CSO's are inclusive of Value Added Tax (VAT). Please refer to Bradnet for further details.
- 1.4 Any dispute or difference as to the interpretation of these CSO's shall be resolved by the Director of Legal and Governance.
- 1.5 The Chief Financial Officer shall undertake a formal review of these CSO's on an annual basis which will be reported to the Governance and Audit Committee.

### *Procurement Legislation*

- 1.6 Throughout these CSO's references are primarily made to the Procurement Act, which will apply to procurements commenced on/after 24 February 2025 (or such later date as may be specified in secondary legislation). Procurements commenced (and Contracts awarded) before this date will need to be in accordance with the Procurement Regulations and Transitional Regulations as applicable. Where there is any doubt as to the applicable procurement regime for a Contract, Officers must seek advice from the Head of Procurement as appropriate.
- 1.7 Officers must familiarise themselves with and comply with these CSO's and any other policies, guidance, Technical Guidance and relevant legislation including (but not limited to) the Public Contracts Regulations 2015, Concession Contracts Regulations 2016, Utilities Contracts Regulations 2016, Health Care Services (Provider Selection Regime) Regulations 2023, Procurement Act 2023 (Commencement No.3 and Transitional and Saving Provisions) Regulations 2024 where appropriate.
- 1.8 These Contract Standing Orders apply to West Yorkshire Pension Fund (WYPF) to the extent necessary to ensure compliance with the law.

## **2 Compliance with CSO's**



- 2.1 Failure to comply with these CSO's can result in disciplinary action against the Officers concerned.
- 2.2 All Appropriate Officers are responsible for ensuring compliance by their staff and shall report all breaches of these CSO's to the Chief Financial Officer and complete a CSO Form which is available on Bradnet. All instances of non-compliance will be recorded by Procurement Services and be reported to Strategic Directors on a quarterly basis.
- 2.3 Every Contract made by or on behalf of the Council for works, goods and services and all Council employees engaged to act in any capacity to manage or supervise a Contract must comply with (as applicable):-
  - a) Procurement Act (and, where applicable the Regulations)
  - b) Procurement Regulations
  - c) Provider Selection Regime where the Contract concerns health care services
  - d) All relevant statutory provisions including the competition law and public services legislation (e.g. Public Services (Social Value) Act 2012, Care Act 2014)
  - e) The Council's Constitution including these CSO's, the Council's Financial Regulations and the Council's Procurement Policies
  - f) The Council's strategic objectives and policies
- 2.4 All Council Officers and organisations engaged on the Council's behalf shall ensure that all procurement activity is undertaken with regard to high standards of probity and in a manner which avoids any conflicts of interest and shall have regard to the duty to identify conflicts under Section 81 of the Procurement Act, the duty to mitigate conflicts under Section 82 of the Act and the duty to prepare a conflicts assessment under Section 83 of the Procurement Act. The Council's Employee Code of Conduct must be followed at all times. Similarly, Members shall ensure that the Members' Code of Conduct is followed at all times and that all procurement activity which is undertaken has regard to high standards of probity and in a manner which avoids any conflict of interest.
- 2.5 In applying these CSO's, all Officers shall have regard to the duty of Best Value under the Local Government Act 1999.
- 2.6 An Appropriate Officer may permit, with limitations, other Officers to authorise orders and Contracts in their own names on behalf of the Council. Any orders or Contracts made shall remain the responsibility of an Appropriate Officer. Appropriate Officers must maintain an up to date record of Authorised Officers and submit a copy of the list to the Chief Financial Officer on an annual basis at the commencement of the financial year. An executed copy of the contract shall be sent to the CSO email address together with the appropriate completed CSO Form to add to the Contracts and Grants Register.
- 2.7 The Chief Financial Officer may delegate some, or part of their responsibilities set out in these CSO's to Officers in their service area. A written record of this delegation should be kept for transparency and audit purposes.

- 2.8 All expenditure must be approved in advance by the Council's £500+ Spending Panel. All orders for works, goods or services must be placed using the Council's approved systems in advance of the invoice being received and coded to the appropriate account codes. An official Council purchase order must be provided to the Supplier prior to the commencement of the Contract. Suppliers must be informed that all invoices should be sent direct to the Council's Accounts Payable team for processing.
- 2.9 Miscellaneous payments must only be used where the payment is not as a result of a purchase (for example a refund or grant payment). Miscellaneous payments must not be used to:
- a) Pay Suppliers for works, goods or services (including fees in relation to consultancy work and training), or
  - b) To reimburse employee expense claims or petty cash purchases
  - c) Pay loans to entities without consultation with the Chief Financial Officer
- 2.10 Non-compliance with Council's procedures and processes for the use of its requisition, ordering and payment systems may result in the Chief Financial Officer removing Officer access.
- 2.11 These CSO's must be used, other than in exceptional circumstances which must be authorised in writing by either the Chief Financial Officer and the Director of Legal and Governance after considering a report by an Appropriate Officer. The Appropriate Officer must retain written reasons of the decision.
- 2.12 Authorisation under Standing Order 2.11. will be reported to the Governance and Audit Committee by the Head of Procurement on an annual basis.
- 2.13 There are various types of Exempted Contracts set out in the Procurement Regulations (as applicable) and Schedule 2 to the Procurement Act, which are exempt from the (applicable) public procurement rules and which these CSO's also do not apply to which include (but are not limited to):
- a) Vertical arrangements – where the Council contracts with a Controlled Entity and the Controlled Entity performs more than 80% of its activities on behalf of the Council. As an example, this could include a local authority trading company that the Council has established on its own or with other Contracting Authorities;
  - b) Horizontal arrangements – where two or more Contracting Authorities enter into an arrangement to achieve common goals in connection with their public functions that are solely in the public interest and no more than 20% of the activities of that arrangements are intended to be carried out for reasons other than for the purposes of their public functions as set out in Schedule 2(3) of the Procurement Act. As an example, this could include local authorities working to fulfil their waste disposal functions jointly;
  - c) Contracts for the acquisition of land, buildings or any right over them;
  - d) Contracts for financial services;
  - e) Contracts of employment; and
  - f) Contracts for arbitration, mediation or conciliation services or those matters identified in the Procurement Act as "exempt legal services. Note: no legal

services shall be procured without the written approval of the Director of Legal and Governance.

### **3 Social, Economic, Environmental and Ethical Considerations**

- 3.1 In formulating proposals for a Contract, the Authorised Officer must consider the Public Services (Social Value) Act 2012, National Procurement Policy Statement and follow requirements set out in the Council's Social Value Policy.
- 3.2 Where appropriate and always subject to Procurement Regulations or the Procurement Act (as applicable) and CSO 7, the Authorised Officer should consider that all requests for Tenders or Quotes are framed in such a way as to encourage (where relevant) Local Suppliers, small and medium sized companies (SME's) and third sector organisations such as social enterprises to bid. This must include consideration of Section 12 of the Procurement Act in relation to SMEs and the barriers they face with regard to participation and consideration of whether it is appropriate to divide the Contract into lots in accordance with CSO 7.7.

### **4 Procurement Plans**

- 4.1 After Council has agreed the Council's budget and before commencement of the financial year the Authorised Officer must prepare and maintain an annual procurement plan for all procurements of works, goods or services to be undertaken in the forthcoming financial year, having regard to CSO 4.4 and CSO 4.5.
- 4.2 Procurement plans must be sent to the Chief Financial Officer in order that they can publish a Council wide procurement plan on the Council's website prior to the start of the financial year in line with the National Procurement Policy Statement.

#### *Planned Procurement Notices*

- 4.3 The Council must publish a Planned Procurement Notice to give Suppliers advance notice of an upcoming procurement opportunity in accordance with Section 15 of the Procurement Act.

#### *Pipeline Notices*

- 4.4 The Council is required to publish a Pipeline Notice in the Central Digital Platform in accordance with Section 93 of the Procurement Act when it considers it will pay more than £100m (not including Exempted Contracts) in that coming year.
- 4.5 Where the Council intends to publish a Tender Notice or Transparency Notice in respect of a Contract with an estimated value of £2m or more during the reporting period a Pipeline Notice must be published in accordance with Section 93 of the Procurement Act.

### **5 In-House Services and Existing Arrangements**

- 5.1 In all instances the procurement of works, goods or services should be done through existing approved arrangements where they exist and are suitable.

Information relating to the above arrangements will be published regularly on Bradnet and may include:

*In-house Provision*

- 5.2 The Council must seek to use its own resources first. Where the Council has an in-house provision and the estimated Contract Value is less than the relevant Threshold external Suppliers can only be used when the Appropriate Officer providing such in-house provision confirms that they are unable to meet the requirements due to insufficient resources, skills or capacity.
- 5.3 If the estimated Contract Value is more than the relevant Threshold the Appropriate Officer providing such in-house service may also be required to clearly demonstrate that they provide Best Value.

*Corporate Contracts, Frameworks, DPS' or Dynamic Markets awarded/established by the Council*

- 5.4 The use of Council Corporate Contracts / Frameworks /DPS'/Dynamic Markets established by the Council shall be considered in the first instance in consultation with the Head of Procurement for all works, goods and services that have been included in the scope of those arrangements.
- 5.5 Information relating to the above arrangements will be published regularly on Bradnet.
- 5.6 Any requirement to procure IT products or services must first be referred to IT Services within the Council's Corporate Resources (IT Services) via completion of the IT Requirements form. No procurement can take place without the completion of this form and without reference to the Spending Panel and the Procurement Panel as appropriate. The information captured in the IT Requirements form enables IT Services to ensure that the identified products or services align with the Council's IT Strategy, Enterprise Architecture Principles and Security policies, whilst also supporting the commissioning teams with the delivery of these products/services.

This also applies to all cloud-based solutions, as they too must be implemented in collaboration with IT Services to ensure compliance with organisational security standards. This includes Cloud Hosted Questionnaire (CHQ) completion, assurance against the Cyber Assessment Framework (CAF) and adherence to National Cyber Security Centre (NCSC) requirements, assuring that data protection, risk management, and the alignment with best practices across all cloud services.

- 5.7 Any requirement to procure marketing or communications products or services must first be referred to the Marketing and Communications Team in the Office of the Chief Executive to ensure these products or services align with the Council's marketing and communications strategy, and associated policies.
- 5.8 Where an existing arrangement or in-house service exists and the Officer is seeking to procure outside of these arrangements the Officer must consult with the Head of Procurement. The Authorised Officer is required to maintain a documented

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audit trail to demonstrate the correct approval has been obtained to procure outside of these existing arrangements or in-house service.

- 5.9 Other arrangements should be considered and used where it can be evidenced that they provide Best Value:
- a) Contracts, Frameworks, or DPS' or Dynamic Markets established by Centralised Procurement Authorities (Crown Commercial Services, YPO etc.) or other public bodies
  - b) Collaborative or shared service arrangements with another public body
  - c) Alternative delivery vehicles such as Controlled Entities Reserving contracts to Supported Employment Providers and Qualifying Public Service Mutuals in accordance with Sections 32 and 33 of the Procurement Act.

## **6 Estimating Contract Values**

6.1 The method for determining the estimated total value of a Contract must be calculated in accordance with Section 4 and Section 5 as appropriate and Schedule 3 of the Procurement Act as summarised below.

6.2 Estimates should be prepared in advance of inviting Tenders or Quotations.

### *General Contracts*

6.3 The Estimated Value shall be calculated as the maximum amount the Council could expect to pay under the Contract, including where applicable, amounts already paid.

6.4 The estimated amount the Council could expect to pay includes (but is not limited to) the following:

- a) The value of any goods, services or works provided by the Council under the Contract other than for payment;
- b) amounts that would be payable if an option in the Contract to supply additional goods, services or works were exercised;
- c) amounts that would be payable if an option in the Contract to extend or renew the term of the Contract were exercised;
- d) amounts representing premiums, fees, commissions or interest that could be payable under the Contract; and
- e) amounts representing prizes or payments that could be payable to participants in the procurement.

### *Frameworks*

6.5 The Council must estimate the value of a Framework as the sum of the Estimated Values of all the Contracts that have or may be awarded in accordance with the Framework.

6.6 Where a Framework awarded under an Open Framework is concerned the Estimated Value of the Framework is to be treated as including the value of all frameworks awarded, or to be awarded, under the Open Framework.

## *Concession Contracts*

- 6.7 The Council must calculate the Estimated Value of a Concession Contract as the maximum amount the Supplier could expect to receive under or in connection with the Contract including, where applicable, amounts already received.
- 6.8 The amount a Supplier could expect to receive includes (but is not limited to) the following:
- a) amounts representing revenue (whether monetary or non-monetary) receivable pursuant to the exploitation of the works or services to which the contract relates (whether from the Contracting Authority or otherwise);
  - b) the value of any goods, services or works provided by the Contracting Authority under the contract other than for payment;
  - c) amounts that would be receivable if an option in the contract to supply additional services or works were exercised;
  - d) amounts that would be receivable if an option in the contract to extend or renew the term of the contract were exercised;
  - e) amounts representing premiums, fees, commissions or interest that could be receivable under the contract;
  - f) amounts received on the sale of assets held by the Supplier under the contract.
- 6.9 Officers must ensure that estimated values of Contracts must **not** be artificially split (disaggregated) in an attempt to circumvent the application of these CSO's, relevant Procurement Regulations, Procurement Act other legislation or the requirements of the Council's Constitution. Requirements must be calculated based on all Council spend (i.e. the corporate requirement rather than an individual service area's need). However, see CSO 7.7 on the duty to consider lots.
- 6.10 Where a proposed procurement includes a mixture of works, goods or services the procedure followed shall be based on the provision that characterises the main subject of the Contract in question in accordance with Section 5 of the Procurement Act.
- 6.11 Where a proposed procurement involves different categories/types of Contract, i.e. Concession Contract, Utilities Contract or Light Touch Contract, the classification of that Contract will need to be considered in accordance with Section 10 of the Procurement Act.

## **7 Pre-Procurement Requirements**

- 7.1 All procurement processes and documentation will be proportionate to the total value of the Contract and the nature of the works, goods or services.
- 7.2 Before commencing procurement activity for all Contracts valued from £500 or more, the Authorised Officer must seek approval of the £500+ Spending Panel. The approved report shall be attached to the Contracts & Grant Register record.
- 7.3 Before commencing procurement activity for Contracts valued at £30,000 and above the Authorised Officer must also undertake the following:

- a) Provide a signed CSO Form to the Council's Procurement Panel to ensure scrutiny is given to proposed spend, procurement routes and the service's requirements; and
- b) all reports shall be reviewed by the Procurement Panel prior to the panel meeting

7.4 For clarity, preliminary market engagement, as described at CSO 7.5 can be carried out prior to approval being obtained. Please refer to Bradnet for further details.

#### *Market Engagement*

7.5 Carry out, where appropriate, preliminary market engagement with the market (including talking to Suppliers, clients and other stakeholders) to understand the availability, strengths and weaknesses of markets and to develop the specification and the Best Value procurement and contractual approach. Pre-engagement with the market must be done in accordance with Section 16 of the Procurement Act in such a way that ensures the subsequent procurement process remains open, fair and transparent with no Supplier gaining an unfair advantage which would distort competition.

7.6 Advice must be sought from Procurement Services where preliminary market engagement is proposed to be undertaken and the requirement to publish a Preliminary Market Engagement Notice in accordance with Section 17 of the Procurement Act.

#### *Duty to consider lots*

7.7 The Council must also consider, before publishing a Tender Notice, whether the goods, services or works to be supplied under the Contract could be reasonably supplied under more than one contract and whether such contracts could be awarded by reference to lots in accordance with Section 18 of the Procurement Act.

#### *Route to Market*

7.8 Consider the most appropriate route to market including whether a Framework DPS or Dynamic Market or Electronic Auction is appropriate and would deliver Best Value seeking advice from the Head of Procurement where necessary.

#### *Specification Development*

7.9 Be satisfied that a written and clear specification has been prepared which will form the basis of the Contract. Specifications will need to be prepared in accordance with Section 56 of the Procurement Act.

#### *Risk Assessment*

7.10 For all Contracts with an estimated Contract Value of more than the Threshold for goods and services, or works, or where there is a significant supply risk (identified

using a procurement risk assessment form available on Bradnet) a documented risk log must be maintained by Officers.

- 7.11 Any Officer conflict of interests should be dealt with as part of the risk assessment process and in accordance with Sections 81-83 of the Procurement Act.

#### *Equality and Diversity Implications*

- 7.12 Consider at the outset any equality and diversity implications that may require an equality impact assessment to be undertaken. An equality assessment should be undertaken whenever the Council is:

- a) proposing or developing a new policy, strategy, practice, service or function;
- b) reviewing an existing policy, strategy, practice, service or function;
- c) decommissioning, ceasing or removing a policy, strategy, practice, service or function.

- 7.13 The equality assessment should be proportionate to the change in question and may simply lead to a conclusion of no impact with a supporting statement explaining why. Alternatively, a more comprehensive assessment might be required through completion of an Equality Impact Assessment form, which is published on Bradnet.

#### *Service Transfer or Strategic Partnership Development*

- 7.14 Before commencing any process for procuring Contracts, which involves a proposed service transfer or the development of a strategic partnership, the Authorised Officer must consult the Chief Financial Officer.

#### *TUPE Implications*

- 7.15 Consider at the outset any implications under the Transfer of Undertakings (Protection of Employment) Regulations 2006 and schedule in seeking relevant legal and HR assistance.

#### *Data Protection*

- 7.16 Identify all Contracts involving the processing of personal data, information security or data processing implications that may require additional schedules or terms and conditions considering the UK General Data Protection Regulations, the Data Protection Act 2018, and the need to notify the Senior Information Risk Owner (who is the person with overall accountability and responsibility for information governance).

#### *Social Value*

- 7.17 Consider at the outset any implications from the Public Services (Social Value Act) 2012 in accordance with the Council's Social Value Policy and the National Procurement Policy Statement as per CSO 3.2.



### *Whole Life Costings*

- 7.18 Prepare and document an estimate of the Whole Life-Cycle Costs including where appropriate any on-going costs and/or disposal costs and ensure that the cost is within the approved current and future budget provision for both capital and revenue expenditure.

### *Conditions of Participation*

- 7.19 Ensure that all Conditions of Participation are a proportionate means of ensuring that Suppliers have (i) the legal and financial capability to perform the contract; or (ii) the technical ability to perform the Contract in accordance with Section 22 of the Procurement Act 2023. The Conditions of Participation have been determined in advance, put in order of relative importance or weighting and published in the tender documentation. Details of any financial assessment to be undertaken (CSO 7.20) and the form of Contract to be applied (CSO 21 and 23) must be included in the tender documentation.

### *Financial Assessment*

- 7.20 Ensure that Financial Services are consulted to ensure the procurement documentation includes financial assessment criteria (as part of CSO 7.19 and CSO 7.21 that are tailored to and proportionate to the Contract being procured.

### *Award Criteria*

- 7.21 Ensure that all award criteria including sub-criteria have been determined in advance, put in order of relative importance or weighting and published in the tender documentation in accordance with Section 23 of the Procurement Act.

### *Electronic Documentation*

- 7.22 Ensure that electronic versions of all the appropriate and approved forms of procurement documentation are available through an internet portal immediately on publication of any notice required under the Procurement Act.
- 7.23 Authorised Officers are responsible for arrangements to ensure the proper control and use of Council ordering and contracting procedures, in accordance with guidance issued by the Chief Financial Officer and the Director of Legal and Governance.
- 7.24 All procurement activity must be undertaken using the Council's standard template documentation unless prior written approval has been obtained from the Head of Procurement or a Call-Off is proposed under an existing Framework.

## **8 Frameworks, DPS' and Dynamic Markets**

### *Awarding Call Off Contracts under Frameworks or DPS'*

- 8.1. Where a Call-Off Contract is proposed under an existing Frameworks or DPS that has been established by a consortium, collaboration, purchasing organisation or other public body, the Council may consider using this Framework or DPS if;
- a) The Framework or DPS has been established by a Contracting Authority (which includes a Centralised Procurement Authority), and via a process, which permits the Council to access those arrangements lawfully;
  - b) It is in the best interest of the Council to access the Framework or DPS, unless it does not offer Best Value, which must be documented for audit purposes.
- 8.2 Before undertaking a Call-Off under any Framework or DPS, thorough due diligence should be undertaken and advice sought from Procurement Services to confirm it is able to be used and whether it is appropriate to use it for the Council's particular requirements.
- 8.3 Call-Offs must be awarded based on the criteria identified in the Framework or DPS and in accordance with Procurement Regulations or the Procurement Act (as applicable).
- 8.4 Where a Call-Off is undertaken via a direct award process (which is prescribed in the Framework), the Contractor must be requested in writing to supply a written submission, that is verified to confirm it can meet the requirements of the Council in accordance with the terms and conditions and pricing established in the Framework in advance of entering into a Contract unless otherwise prescribed in the Framework direct award call-off procedure.
- 8.5 Subject to the due diligence confirming the suitability of the Framework or DPS, it can be used as a potential route to market without going down one of the procedures outlined at CSO's 10 to 14.

#### *Establishing a Framework*

- 8.6 Where the Council is establishing a Framework which may be accessed by other Contracting Authorities the estimated Contract Value must take account of all potential work that may be put through the agreement and follow the procedures set out in these CSO's.
- 8.7 If the Council is establishing a Framework reference must be made within the procurement documents explaining if the Framework is intended for wider use, and advice should be sought from the Director of Legal and Governance to ensure the terms upon which other Contracting Authorities access those arrangements are clear and offer appropriate protection to the Council. The Framework will also need to be established in accordance with Sections 45-49 of the Procurement Act.
- 8.8 In establishing a Framework, the total duration (including any extensions) cannot exceed four years except in exceptional circumstances relating to the subject matter of the Framework. Any proposal to establish a Framework with a duration exceeding four years should be referred to the Head of Procurement for advice.
- 8.9 Where, taking in to account the above, the estimated value of the Framework is estimated to be above the relevant threshold, the Authorised Officer must ensure

that the names of the other public bodies are included on the Find a Tender notice either individually or by identifiable class.

- 8.10 In establishing a Framework the Council must ensure that the terms of the Framework make the process by which Contracts under the Framework are entered into, and the terms under which they will be entered, is explicitly clear.

#### *Open Frameworks*

- 8.11 Open Frameworks provide for the award of successive Frameworks on substantially the same terms.
- 8.12 Open Frameworks must provide:
- a) for the award of a Framework at least once during—
    - (i) the period of three years beginning with the day of the award of the first Framework in the scheme, and
    - (ii) each period of five years beginning with the day of the award of the second Framework in the scheme;
  - b) for the expiry of one Framework on the award of the next;
  - c) for the final Framework to expire at the end of the period of eight years beginning with the day on which the first Framework under the scheme is awarded.

#### *Establishing a Dynamic Market*

- 8.13 The Council may establish a Dynamic Market to allow for the award of Contracts by reference to Suppliers' participation in those arrangements. Such arrangements must remain open for other Suppliers to join throughout the lifetime of the Dynamic Market.
- 8.14 The Council is required to publish a Dynamic Market Notice in accordance with Section 39 of the Procurement Act before establishing a Dynamic Market (and further notices (as applicable) will also need to be published in accordance with the Procurement Act.
- 8.15 In establishing a Dynamic Market the Council is able to set conditions for membership of the Dynamic Market (or part of it) where those conditions are a proportionate means of ensuring the members:
- a) have the legal and financial capacity to perform Contracts awarded under the Dynamic Market;
  - b) have the technical ability to perform Contracts awarded under the Dynamic Market.
- 8.16 The number of Suppliers on a Dynamic Market cannot be limited and the conditions for membership of a Dynamic Market cannot be modified during the life of the Dynamic Market.
- 8.17 In setting conditions for membership of a Dynamic Market the Council will need to act in accordance with Section 36 of the Procurement Act.

## *Conducting procurements under a Dynamic Market*

- 8.18 Where Contracts are to be awarded by reference to Dynamic Markets they must be done in accordance with Section 34 of the Procurement Act.
- 8.19 The Open Procedure or Direct Award route cannot be used to award a Contract under a Dynamic Market.

## **9 Concession Contracts**

- 9.1 If the Authorised Officer is considering entering into an arrangement which could constitute a Concession Contract, early advice must be sought from Procurement Services and the Director of Legal and Governance.

## **10 Direct Awards**

- 10.1 There are limited circumstances provided for in Sections 41-44 of the Procurement Act where the Council may be able to directly award a Contract to a Supplier without conducting a Competitive Tendering Procedure.
- 10.2 Before utilising the Direct Award route under the Procurement Act to directly award a Contract to a Supplier a Transparency Notice must be published in accordance with Section 44 of the Procurement Act.
- 10.3 Prior to seeking to utilise the Direct Award route under the Procurement Act approval must be obtained in writing from the Head of Procurement.
- 10.4 CSO 15.6 refers to direct awards for contracts procured under the Provider Selection Regime for healthcare services.

## **11 Contracts valued up to £30,000**

- 11.1 Where a Contract has an estimated value up to £30,000, the Authorised Officer must be able to demonstrate Best Value and must select Suppliers from whom to obtain quotes fairly and openly. Local Suppliers must be used wherever possible (where compatible with the Procurement Act, Procurement Regulations (and associated legislation/regulations)) All Quotations must be obtained in writing.
- 11.2 Where the Contract has an estimated value of up to £30,000 the following records must be kept:
- a) £500+ Spending Panel approval if £500 or above;
  - b) A unique reference number for the Contract and the title of the Contract or purchase order details;
  - c) Any invitations to quote and the Quotations received;
  - d) A record of the decision to award the Contract and the reasons for it;
  - e) Communication with the successful Supplier
  - f) The executed contract
- 11.3 To comply with the Local Government Transparency Requirements, details of all Contracts awarded of £5,000 and above must be recorded on the Contracts and

Grants Register. Officers shall retain a written record of actions taken and the reasons using the pro-forma template available on Bradnet.

- 11.4 The pro-forma should be completed and details recorded on the Contracts and Grants Register prior to a purchase order being created.

## **12 Contracts between £30,000 but less than the applicable Threshold**

- 12.1 Contracts that are estimated to be for amounts between £30,000 but less than the applicable Threshold must be let on a competitive basis on the Council's e-sourcing portal and in accordance with the below threshold provisions set out in Section 84-88 of the Procurement Act. The Authorised Officer must seek approval from the £500+ Spending Panel and prepare a signed report regarding the proposed procurement for consideration by the Procurement Panel to ensure scrutiny has been applied regarding spend, procurement routes and requirement. The Procurement Panel is authorised to advise or propose a rejection of any proposals brought to it for scrutiny or make a recommendation to the Strategic Director of Corporate Resources for approval. If the Procurement Panel does not recommend approval the Lead Officer and Authorised Officer will be notified accordingly.
- 12.2 Subject to the recommendations of the Procurement Panel and approval by the Strategic Director of Corporate Resources, the Authorised Officer must either:
- a) use a closed procedure inviting a minimum of four Suppliers registered on the Council's e-sourcing portal including inviting Local Suppliers wherever possible; or
  - b) use an open procedure advertising the opportunity to the open market if advertising for the purpose of inviting Tenders using both the Council's e-sourcing portal and the Central Digital Platform (via publication of a Below Threshold Tender Notice in accordance with Section 87 of the Procurement Act).
- 12.3 When using the closed procedure, if the minimum number of Tenders cannot be obtained owing to insufficient suitable Suppliers prepared to tender, then the Authorised Officer must keep a record of this.

### *Regulated Below Threshold Contracts*

- 12.4 The Council must conduct procurements for Regulated Below Threshold Contracts in accordance with Part 6 of the Procurement Act. In doing so, the duty to have regard to National Procurement Policy Statements and the duty not to discriminate against a treaty Supplier will also apply.
- 12.5 The Council must publish a Below Threshold Tender Notice on the Central Digital Platform if advertising for the purpose of inviting Tenders for Below Threshold Contracts where the Estimated Value of the Contract is no less than £30,000 including VAT. The Below Threshold Tender Notice must be published on the Central Digital Platform before being published elsewhere.
- 12.6 CSO 12.5 (above) does not apply where the Council invites Quotations or Tenders from a closed group of pre-selected suppliers, i.e. via a Framework or from one or

more targeted suppliers provided it does not advertise the procurement in any other way.

12.7 Where the Council invites the submission of Tenders in relation to the award of a Regulated Below Threshold Contract, no pre-qualification questionnaire is permitted during the procurement to restrict the submission of Tenders by reference to an assessment of a supplier's suitability to perform the Contract except where:

a) the contract has an estimated value of not less than £214,904. This is the same as the thresholds for goods and services. This exception is because the works threshold is much higher, and it is appropriate that contracting authorities carrying out procurements for higher value below-threshold works contracts that are still above the goods and services thresholds, are able to include a separate suitability stage before the award stage, if desired.

b) the Contract is awarded in accordance with a Framework.

12.8 Suitability assessment questions to assess eligibility are part of the Council's template procurement documents and can be used as part of the overall quality evaluation. Suitability Assessment Questions may only be included within the procurement where they are:

- a) Relevant to the subject matter of the procurement; and
- b) Proportionate.

12.9 Only the winning bidder(s) will be required to submit certificates and documents as evidence of their legal and financial standing and technical or professional ability in addition to specific requirements relating to insurance, health and safety, equality, environmental management etc in response to the suitability assessment questions.

12.10 As soon as reasonably practicable after entering into a Notifiable Below-Threshold Contract, a Below Threshold Contract Details Notice must be published. This applies to all Notifiable Below Threshold Contracts in accordance with Section 87(3) of the Procurement Act.

### **13 Light Touch Contracts Valued £214,904 to the Light Touch Contract Threshold, Concession Contracts Valued £214,904 to the Concession Threshold, Works Contracts Valued £214,904 to the Works Threshold**

13.1 The procurement of Light Touch Contracts, Concession Contracts and Contracts for works with a value between £214,904 and the relevant Threshold may be undertaken in accordance with procurement procedures as outlined in CSO12.

13.2 Procurement of any such Contracts must, however, be let on a competitive basis, which is advertised to the open market, through the Council's e-sourcing portal and on the Central Digital Platform.

13.3 The Council would also need to consider the below threshold provisions set out in Section 84-88 of the Procurement Act.

### **14 All Contracts valued at or above the relevant Threshold**

- 14.1 The Authorised Officer must seek approval from the £500+ Spending Panel and prepare a signed report regarding the proposed procurement for consideration by the Procurement Panel to ensure scrutiny has been applied regarding spend, procurement routes and requirement. The Procurement Panel is authorised to advise or propose a rejection of any proposals brought to it for scrutiny or make a recommendation to the Strategic Director of Corporate Resources for approval. If the Procurement Panel does not recommend approval the Lead Officer and Authorised Officer will be notified accordingly.
- 14.2 Where the Contract Value meets or exceeds the relevant Threshold it must be tendered in accordance with the Procurement Act and using one of the procedures under CSO 15, unless:
- a) it is to be procured through an existing Framework or DPS that has been established via a compliant public procurement process in accordance with Section 45 of the Procurement Act; or
  - b) utilising the Direct Award procedure in accordance with Sections 41 or 43 of the Procurement Act.
- 14.3 All Tenders must be advertised on the Council's e-sourcing portal and the Central Digital Platform. Standard template documentation must be used.
- 14.4 All Tenders above the relevant Threshold require the publication of notices in accordance with the Procurement Act (as applicable).

#### *Procurement Principles*

- 14.5 In conducting a procurement that falls within the scope of the Procurement Act, the Council must have regard to the importance of:
- a) Delivering value for money;
  - b) Maximising public benefit;
  - c) Sharing information for the purpose of allowing suppliers and others to understand the Council's procurement policies and decisions;
  - d) Acting, and being seen to act, with integrity.
- 14.6 In carrying out procurements under the Procurement Act:
- a) The Council must treat suppliers the same unless a difference between the suppliers justifies different treatment;
  - b) If the Council considers that different treatment is justified in a particular case, it must take all reasonable steps to ensure it does not put a supplier at an unfair advantage or disadvantage.

## **15 Procurement Procedures**

- 15.1 All Contracts, including Light Touch Contracts (Section 9 of the Procurement Act), Concession Contracts (Section 8 of the Procurement Act) and Utilities Contracts (Section 8 of the Procurement Act) must be procured using one of the two Competitive Tendering Procedures provided for under Sections 19-20 of the Procurement Act:

- a) The **Open Procedure** under which all those interested may respond to the advertisement by submitting a Tender. This is often the most expedient system and enables all of the Suppliers in the market that wish to engage in the process to submit a Tender. There is no pre-qualification or short-listing stage prior to invitation to tender (ITT).
- b) The **Competitive Flexible Procedure** which covers any other competitive tendering procedure, i.e. multi-staged process with dialogue/negotiation as the Council considers appropriate based on the Contract opportunity.

#### *Conditions of Participation*

15.2 The Council is able to set Conditions of Participation to perform the Contract under the procurement procedures referred to above in accordance with Section 22 of the Procurement Act which relate to:

- a) legal and financial capacity or;
- b) technical ability

to perform the Contract.

15.3 Conditions of Participation must be a proportionate means of ensuring the relevant capacity or ability, having regard to the nature, complexity and cost of the Contract.

#### **Provider Selection Regime**

15.4 For Contracts for Healthcare Services for the purpose of the health service in England and other goods and services that are procured together with those health care services, joint commissions with NHS bodies, and contracts fully or partially funded from NHS budgets where it is proposed to procure under the flexibilities of the Provider Selection Regime the Head of Procurement must be consulted at the earliest possible opportunity. The Authorised Officer must seek approval from the £500+ Spending Panel and prepare a signed report regarding the proposed procurement for consideration by the Procurement Panel to ensure scrutiny has been applied regarding spend, procurement routes and requirement. The Procurement Panel is authorised to advise or propose a rejection of any proposals brought to it for scrutiny or make a recommendation to the Strategic Director of Corporate Resources for approval. If the Procurement Panel does not recommend approval the Lead Officer and Authorised Officer will be notified accordingly.

15.5 When procuring under the Provider Selection Regime regard must be given to the Provider Selection Regime Statutory Guidance and the Council is required to follow one of the processes summarised below.

#### *Direct Award Processes*

15.6 Awarding Contracts to providers when there is limited or no reason to seek to change from the existing provider; or to assess providers against one another, because:

- a) *Direct Award Process A* – the existing provider is the only provider that can deliver the health care services;



- b) *Direct Award Process B* – patients have a choice of providers and the number of providers is not restricted by the Council; or
- c) *Direct Award Process C* – the existing provider is satisfying its existing contract, will likely satisfy the new contract to a sufficient standard, and the proposed contracting arrangements are not changing considerably.

#### *Most Suitable Provider Process*

- 15.7 Awarding a Contract to providers without running a competitive process because the Council can identify the most suitable provider.

#### *Competitive Process*

- 15.8 Running a competitive process to award a Contract.
- 15.9 Where Contracts are to be awarded under the Provider Selection Regime the following criteria must all be evaluated:
- a) Quality and innovation
  - b) Value
  - c) Integration, collaboration, and service sustainability
  - d) Improving access, reducing health inequalities, and facilitating choice; and
  - e) Social value.
- 15.10 The procedure to be undertaken as identified in this CSO 15 must be explained from the outset in the procurement documentation and adhered to throughout.

## **16 Submitting and Opening Tenders and Quotations**

- 16.1 Every invitation to Tender or request for a Quotation must state that a Tender or Quotation will only be considered if it is received by the specified closing date and time via the Council's e-sourcing portal, or for quotes below £30,000, at the specified date and time.
- 16.2 All Tenders or Quotations for each Contract must be opened by the Officer appointed by the Authorised Officer at a prescribed time.
- 16.3 The Authorised Officer must keep a written record of all Tenders and Quotations.
- 16.4 The Authorised Officer shall after consultation with the Head of Procurement disqualify a Tender or Quotation which fails to comply with the requirements of this CSO 16.1 and must inform the Supplier as soon as possible, stating the reason for the disqualification.

## **17 Evaluation**

- 17.1 An evaluation panel must be convened for all evaluation processes undertaken. Representation on the panel must be from people who have knowledge of the subject area and be proportionate to the size and value of the procurement being undertaken.

- 17.2 For all Contracts, regardless of value, no person with a personal or financial interest in any of the bidders submitting a proposal should be involved in evaluating Tenders or involved in any way in influencing the decision as to which bidder is to be awarded a Contract. A declaration of interest form must be completed prior to the commencement of the evaluation process, held on file by the Authorised Officer and included in the risk assessment under CSO 7.11 and in accordance with Sections 81-83 of the Procurement Act.
- 17.3 The evaluation of Tenders must be in accordance with the evaluation criteria specified in the original procurement documents. Under no circumstance should there be a deviation away from this.

#### *Exclusions*

- 17.4 Suppliers are not permitted to participate in procurements, have their Tender considered or be awarded a Contract falling under the Procurement Act, where they are “excluded” or “excludable” (as defined in Sections 57 and 58 of the Procurement Act).
- 17.5 An “Excluded Supplier” is a Supplier (or associated person) to which (i) a mandatory exclusion ground applies and (ii) the circumstances giving rise to the application of that exclusion ground are continuing or likely to occur again; or (iii) the Supplier (or associated person) is on the debarment list by virtue of a mandatory exclusion ground.
- 17.6 An “Excludable Supplier” is a Supplier (or associated person) to which (i) a discretionary exclusion ground applies; and (ii) the circumstances giving rise to the application of that exclusion ground are continuing or likely to occur again; or (iii) the Supplier (or associated person) is on the debarment list by virtue of a mandatory exclusion ground
- 17.6 The mandatory and discretionary exclusion grounds are contained in Schedule 6 and 7 to the Procurement Act.
- 17.7 “Associated person” is defined in Section 26(4) of the Procurement Act.
- 17.8 The manner in which the exclusion grounds must be considered and applied is set out in Sections 26 and 27 of the Procurement Act. Sections 28 and 29 of the Procurement Act also set out excluding suppliers with references to a connected person, associated person or subcontractors and on a discretionary basis for national security reasons.
- 17.9 Where a supplier is a “excluded” or “excludable” supplier by virtue of an “associated person” being an “excluded” or “excludable” supplier, the Council must, before disregarding a Tender:
- a) Notify the supplier of its intention to disregard; and
  - b) Give the supplier reasonable opportunity to replace the “associated person”.
- 17.10 When considering excluding a Supplier advice should be sought from [the Head of Procurement].

17.11 In the event a Supplier is excluded the Council will need to act in accordance with Sections 58 and 59 of the Procurement Act.

### *Debarment*

17.12 Suppliers entered onto the debarment list (in accordance with Section 62 of the Procurement Act) may prevent it from participating in procurements or being awarded Contracts under the Procurement Act.

17.13 The debarment provisions are set out in Sections 59 – 66 of the Procurement Act.

17.14 The Council must check the debarment list in each procurement. Where a Supplier is on the debarment list in relation to a mandatory exclusion ground, the Council must not allow the Supplier to bid in a Competitive Flexible Procedure or be awarded a Contract in any Competitive Tendering Procedure or be awarded a Contract via the Direct Award route. The Council must also disregard any Tender submitted by a Supplier on the debarment list except where:

- a) a Supplier is on the debarment list on national security grounds for a particular type of Contract, as the debarment does not affect their eligibility to bid for other types of Contracts; or
- b) procurements by Direct Award where there is an overriding public interest in awarding the Contract to that Supplier. This includes cases where there is an extreme and unavoidable urgency.

### *Abnormally Low Tenders*

17.15 Where a Tender received appears to be abnormally low, the Council is required to investigate that Tender and provide the Supplier with an opportunity to demonstrate that it is able to perform the Contract for the price proposed. Identifying and dealing with abnormally low bids shall be the responsibility of the Authorised Officer. The Council may reject an abnormally low bid, where the justification doesn't satisfactorily account for the low level of price. Where consideration is being made to the rejection of a bid on these grounds, advice must be sought from the Head of Procurement and Director of Legal and Governance.

## **18 Approval and Acceptance of Tenders and Quotations**

18.1 For every Contract or Framework over the relevant Threshold of £2 million and above in value (whichever is lower) a tender evaluation report must be produced which includes details of:

- a) the winning bid,
- b) the Suppliers involved,
- c) results of any selection process,
- d) the value and subject matter of the Contract,
- e) justification for using any negotiated type procedure,

- f) any decision not to award,
- g) reasons for not using electronic communications,
- h) any conflict of interest,
- i) reasons for rejecting abnormally low bids.

- 18.2 The tender evaluation report must be approved by an Officer with the appropriate authority and the Head of Procurement prior to notification letters referred to at CSO 18.4 being issued.
- 18.3 The Authorised Officer can only accept the most advantageous Tender or Quotation and must record the reasons for acceptance.
- 18.4 All Suppliers who submit a Tender or Quotation should be notified in writing of their success or failure in a timely manner using the standard documents. All notifications should be signed by the relevant Authorised Officer.
- 18.5 For procurements concerning Contracts with values above the relevant Thresholds the following sections apply.

#### *Assessment Summaries*

- 18.6 Before publishing a Contract Award Notice and entering into a Contract the Council is required to provide an assessment summary to each Supplier that submitted an assessed Tender in accordance with Section 50 of the Procurement Act.
- 18.7 The assessment summary must contain the information required in Regulation 31 of the Regulations (including but not limited to):
- a) the award criteria, including the assessment methodology;
  - b) the score for the bidder determined for each award criteria (and sub-criteria) along with an explanation for the scores;
  - c) the score for the winning bidder for each award criteria (and sub-criteria) along with an explanation for the scores

#### *Contract Award Notice*

- 18.8 Prior to entering into a Contract a Contract Award Notice must be published in accordance with Section 50 of the Procurement Act.
- 18.9 For all Contracts covered by the Procurement Act, a minimum 8 working day standstill period is required beginning with the day on which the Contract Award Notice is published.
- 18.10 The standstill period referred to above is not a legal requirement for Contracts falling within Section 51(3) of the Procurement Act, which includes (but is not limited to) Contracts awarded in accordance with a Framework, a Dynamic Market or Light Touch Contracts. However, it is normal practice and the Council may allow for a voluntary standstill period for Below Threshold procurements, Light Touch Contracts, Call Contracts awarded under a Framework, DPS or Dynamic Market.
- 18.11 Before entering into any Contract, the Authorised Officer must:

- a) be sure that they have the necessary authority to enter into the Contract and that these CSO's, the Council's Financial Regulations and procurement advice have been complied with, and that the proposed Contract represents Best Value
- b) be satisfied that the Supplier meets all of the Conditions of Participation to be awarded the Contract; and
- c) where a significant supply risk has been identified (in accordance with CSO 7.10 and for all Contracts of £214,904 per annum and above, or £214,904 (if the Contract is for less than 1 year) for works, goods or services consult with the Chief Financial Officer to agree appropriate checks on the financial and resource capacity of the Supplier to perform the Contract and to agree what, if any, security should be provided for performing the Contract. Forms of security include such as: parent company guarantee, Director's guarantee and performance bonds.

18.12 All Contracts awarded of £30,000 and above must be recorded on the Council's e-sourcing portal and all Contracts valued at £30,000 and above also require the publication of a Below Threshold Contract Details Notice (where advertising occurs for the purposes of inviting Tenders) or Contract Details Notice (as applicable).

18.13 For every Contract, Framework, Call Off Contract under a Framework or DPS over the relevant Threshold or £2 million and above in value (whichever is lower) which is proposed to be abandoned a tender evaluation report, indicating the reasons for the abandonment, must be approved by the Authorised Officer and the Head of Procurement prior to abandonment notification letters being issued.

18.14 Where, after publishing a Tender Notice or Transparency Notice in respect of a Contract, the Council decides not to award a Contract, it will need to publish a Procurement Termination Notice in accordance with Section 55 of the Procurement Act.

## **19 Exceptions**

19.1 Subject to the statutory requirements for procurement processes above Thresholds no competitive procurement process is required where one or more of the following exceptions apply:

- a) the execution of works or the supply of goods or services are controlled by a statutory body
- b) special education, health or social care Contracts, if, it is considered in the Council's interests and to meet its obligations under relevant legislation;
- c) to allow for the continuation of a contractual arrangement with a Supplier beyond the terms of a Contract, in exceptional circumstances subject to the approval of the Spending Panel and Procurement Panel in accordance with CSO 20.1 to 20.10 to be assessed on a case-by-case basis.

19.2 For all exceptions with a total value of £30,000 and above require the Authorised Officer must prepare the appropriate CSO Form available on Bradnet regarding the proposed exception for consideration by the Procurement Panel to ensure scrutiny has been applied and the exception is compliant with the CSOs. The Procurement Panel is authorised to advise or propose a rejection of any proposals brought to it for scrutiny or make a recommendation to the Strategic Director of Corporate

Resources for approval. If the Procurement Panel does not recommend approval the Lead Officer and Authorised Officer will be notified accordingly.

- 19.3 The Authorised Officer must ensure that the market for a proposed Contract has been investigated, and that the Authorised Officer can demonstrate that departure from these CSO's is justifiable and provides overall value for money.
- 19.4 The Authorised Officer must retain written reasons justifying the decision to use this CSO 19 and be able to demonstrate that Best Value has been obtained.

## **20 Contract Extensions, Variations, Novation or Termination**

### Contract Extensions

- 20.1 For all Contract extensions with a total value of £500 and above the Authorised Officer must seek the approval of the £500+ Spending Panel and for all contract extensions of £30,000 and above also prepare an appropriate CSO Form regarding the proposed extension for consideration by the Procurement Panel to ensure scrutiny has been applied and the extension is compliant with the CSOs. The Procurement Panel is authorised to advise or propose a rejection of any proposals brought to it for scrutiny or make a recommendation to the Strategic Director of Corporate Resources for approval. If the Procurement Panel does not recommend approval the Lead Officer and Authorised Officer will be notified accordingly. A Contract can only be extended subject to the extension being permitted within the scope and terms of the original procurement and Contract and before the expiry date.
- 20.2 An options appraisal must be undertaken to determine if the Contract extension represents Best Value to extend the Contract.
- 20.3 The Authorised Officer must make every effort to negotiate improved terms, at the point of extending the Contract, with regard to the cost and quality of the goods or services.

### *Contract Variations*

- 20.4 All Contract Variations must be carried out within the scope of the original Contract and must not materially affect or change the Contract.
- 20.5 There are significant limitations upon the Council being able to make such modifications, especially where the Procurement Regulations or Procurement Act applies.
- 20.6 When considering a Variation or modification of an existing Contract valued at £500 and above, the Authorised Officer must seek the approval of the £500+ Spending Panel and for variations valued £30,000 and above, advice must be sought in advance from the Head of Procurement and the Director of Legal and Governance. The Authorised Officer must complete and sign an appropriate CSO Form in relation to the variation or modification prior to submission to the Procurement Panel. If the panel does not recommend approval to the Strategic Director of Corporate Resources this will be referred to the Lead Officer and Authorised

Officer. The Authorised Officer may be directed to seek further legal advice from the Director of Legal and Governance following the Procurement Panel meeting.

- 20.7 Following the approval of any Variation the relevant notices described at CSO 20.9 must be updated and any further notifications required to comply with Procurement Regulations or Procurement Act (as applicable).
- 20.8 Any extension or Variation where the new total Contract Value is above a relevant Threshold will become a Convertible Contract and should be reported at the time of the extension / Variation.
- 20.9 Where a Variation is made to a Contract that falls within the scope of the Procurement Act (including where, as a result of the Variation a Contract becomes a Convertible Contract), the Council is required to publish a Contract Change Notice in accordance with Section 75 of the Procurement Act prior to modifying the Contract.
- 20.10 The Council will need to consider the publication requirements set out in Section 77 of the Procurement Act in respect of Variations to Contracts.

#### *Contract Novations*

- 20.11 In the event that a novation of a Contract is required because a Supplier ceases to provide the work, goods or services whether as a result of insolvency, company restructuring, company purchase, termination of the Contract or any other reason the Authorised Officer must consult with the Chief Financial Officer and Director of Legal and Governance before novating or assigning the Contract to a new Supplier.

#### *Contract Termination*

- 20.12 Before commencing a process of terminating a Contract with a Supplier for a breach of Contract the Authorised Officer must consult the Chief Financial Officer and Director of Legal and Governance.
- 20.13 Where a Contract falling within the Procurement Act is concerned, a Contract Termination Notice will need to be published in accordance with Section 80 of the Procurement Act. This requirement does not apply to Light Touch Contracts awarded under Section 41 of the Procurement Act by reference to paragraph 15 of Schedule 5; direct award: user choice contracts.

## **21 Written Contracts**

- 21.1 The Authorised Officer must ensure every Contract is in writing.
- 21.2 Every Contract with a Contract Value of £2 million or above must be executed under seal as a Deed with the common seal of the Council by the Director of Legal and Governance. Any exception must be agreed by the Director of Legal and Governance.
- 21.3 Every Contract with a Contract Value of less than £2 million should be executed under seal as a Deed with the common seal of the Council by the Director of Legal and Governance in the following circumstances:

Contract Standing Orders

- a) the Council wishes to enforce the Contract for more than 6 years after its end (e.g. for land or works); or
- b) it is required by parties to the Contract; or
- c) the price paid or received under the Contract is a nominal price and does not reflect the value of the goods/services.

21.4 Otherwise the following rules for signature apply:

- a) where the total Contract Value is below £100,000 an Authorised Officer can sign within the limits specified by an Appropriate Officer as per CSO 2.6.
- b) any Contract with a total value between £100,000 and £2 million must be signed by an Assistant Director or above
- c) any Contract with a total value of over £2million must be signed by an Appropriate Officer

### *Electronic Signatures*

21.5.1 Authorised Officer or Appropriate Officer signatures may be affixed to a Contract either using physical, handwritten means or by way of an electronic signature using a secured electronic signature system, and in accordance with any legal requirements.

21.5.2 Where electronic signatures are affixed to a Contract by either party, a written statement must be made to confirm the parties agree to the use of electronic signatures and intend to be bound by the same as if it were a handwritten signature.

21.6 Letters of Intent should not be used unless approved by an Authorised Officer following consultation with the Director of Legal and Governance and the Chief Financial Officer.

21.7 All Contracts with the exception of one-off purchases below £5,000 must be recorded on the Contracts and Grants Register.

21.8 All relevant CSO Forms for planned procurements must be submitted to the Procurement Service together with all Spending Panel approvals.

## **22 Professional Services, Consultants and Intermediary Employment**

22.1 An Authorised Officer may only appoint external consultants providing professional or consulting services if such services are not available within the Council or if Council Officers providing them do not have the resources to meet the needs of the Authorised Officer. Approval of the Consultancy and Contractor Procurement Process must be obtained before seeking Quotations or Tenders.

22.2 In line with HMRC IR35 and CIS rules the Authorised Officer must consider guidance available on Bradnet and identify the employment status of the Supplier for tax purposes for the Contract entered into, and notify the Chief Financial Officer. Although not a definitive list, Suppliers providing works or services in the following instances must be considered:



- a) Services delivered personally by the Supplier
- b) Consultancy work
- c) Self employed contractors or Suppliers
- d) The engagement of a worker through a limited company or other body
- e) The use of a Personal Services Company
- f) The engagement of a CIS registered contractor

22.3 For Contracts identified as being within the scope of the IR35 payments can only be made in compliance with IR35 legislation.

22.4 The Authorised Officer must consult the Chief Financial Officer for all Construction Industry Scheme (CIS) Contractor appointments and payments.

## **23 Contract Conditions**

23.1 The Council's standard terms and conditions should be used for all Contracts subject to CSO23.2. Any exception must be agreed in consultation with the Director of Legal and Governance **before** entering in to Contract.

23.2 The above rule shall not apply to:

- a) UK government standard documentation or government sponsored schemes such as Academies and amendments may be made for Best Value or project specific reasons.
- b) Construction and/or engineering Contracts where bespoke conditions based on accepted industry practice are used eg JCT, NEC or ICE
- c) Where Frameworks, DPS' or Dynamic Markets are being used.

### *Implied Terms*

23.3 Contracts falling within the scope of the Procurement Act have various implied terms as set out in Section 67, 68, 78 and 79 of the Procurement Act.

23.4 Information will also need to be published in relation to payments made for Contracts subject to the Procurement Act in accordance with Sections 69 and 70 of the Procurement Act.

## **24 Contract Management**

24.1 The Authorised Officer is responsible for contractual spend over the duration of a Contract, and must scrutinise and challenge Supplier performance, costs and progress, and must take appropriate measures and sanctions to improve Supplier poor performance.

24.2 The Authorised Officer must ensure that an Officer is assigned to manage every Contract. This must be recorded on the Contracts and Grants Register.

24.3 The Authorised Officer must ensure that Contract specifications contain suitable key performance indicators to incentivise appropriate service delivery and to highlight poor performance.

24.4 The Authorised Officer must undertake suitable due diligence checks of a Supplier's technical and organisational measures to fulfil their obligations as Data Processors under the General Data Protection Regulation.

24.5 Any Officer designated with responsibility for managing a Contract should complete the Government Commercial College Foundation Contract Management Training.

#### *Assessment of Contract Performance*

24.6 Contracts subject to the Procurement Act which include KPI's in accordance with Section 52(1) of the Procurement Act will need to be considered in accordance with the requirements set out in Section 71 of the Procurement Act.

### **25 Leases and Other Credit Agreements**

25.1 The Authorised Officer must ensure that prior to entering into any lease or credit arrangement which has a capital cost, the cost must first be approved for inclusion in the Capital Investment Plan in accordance with Financial Regulations relating to capital expenditure.

### **26 Grants**

26.1 The Authorised Officer must follow the principles, processes and template documents of these CSO's as appropriate for awarding grants prior to entering into any Grant arrangements.

26.2 Grant funding arrangements should be considered carefully to decide whether they are in fact a procurement and need to be awarded in accordance with these Contracts Standing Orders. A genuine Grant funding arrangement is not a procurement. However, Officers should consider whether the purpose that the Grant is being provided for could be achieved through a procurement process. Advice should be sought from the Head of Procurement as to whether the Procurement Act applies in relation to any proposed Grant.

26.3 Before awarding any Grant with an estimated value of £100,000 and above, the Authorised Officer must consult the Chief Financial Officer.

26.4 For the purpose of the UK Subsidy Control Regime a 'grant award' proforma must be completed for all Grants regardless of value and returned to Procurement Services, prior to award of the Grant, who will update the national BEIS database with details of the grant.

26.5 All Grant agreements shall be recorded in the Contracts and Grants Register.

### **27 Payment Outside of Standard Procure to Pay Procedures**

27.1 The Chief Financial Officer will make payments on account only on certificates (or other forms approved by the Chief Financial Officer) which have been issued by the Authorised Officer, or the architect/engineer/supervising officer appointed to deal with a particular Contract.

- 27.2 An Authorised Officer may where there has been written agreement with the Chief Financial Officer (setting out the parameters) make purchases and payments via a purchasing card. Purchasing cards must only be used in accordance with the Council's Purchasing Card Compliance Policy, any exception to the Policy must be agreed in advance with the Chief Financial Officer.
- 27.3 The Chief Financial Officer will withdraw the use of purchasing cards should the above not be complied with. Instances of non-compliance can result in disciplinary action in accordance with CSO 2.1.
- 27.4 Payment for goods, works and services are not to be made in advance of delivery other than in a low Contract Value and low risk situation or where it is industry practice to do so that has been agreed in writing with the Appropriate Officer.

## **28 Claims**

- 28.1 The Authorised Officer must inform the Director of Legal and Governance of all claims by or against Suppliers which are the subject of formal dispute resolution or litigation between the Council and the Supplier.

**TABLE 1**

<b>Value Band</b>	<b>Total Contract Value</b>	<b>Procurement Options</b>	<b>Additional procedures</b>
1	£0 - £30,000	<p><b>CSO Section 11</b></p> <ul style="list-style-type: none"> <li>• Must demonstrate Best Value</li> <li>• Must use in-house or Corporate Contract where applicable unless otherwise agreed with the Head of Procurement</li> <li>• Use Local Supplier where possible (where compatible with the Procurement Act, Procurement Regulations (and associated legislation/regulations))</li> <li>• Consider using purchasing card for low value, low risk purchases</li> </ul>	<ul style="list-style-type: none"> <li>• All quotes in writing</li> <li>• Contracts of £5,000 and above must be recorded on the Council's e-sourcing portal</li> <li>• All Contracts of £5,000 and above to be entered in the Contracts &amp; Grants Register</li> </ul>
2	£30,000 – Threshold for Goods and Services	<p><b>CSO Section 12</b></p> <ul style="list-style-type: none"> <li>• Must use in-house or Corporate Contract where applicable unless otherwise agreed with the Head of Procurement</li> <li>• Consider availability of an existing suitable Framework or DPS</li> <li>• seek minimum of four quotes inviting local Suppliers, if available (where compatible with the Procurement Act, Procurement Regulations (and associated legislation/regulations)) <b>or</b></li> <li>• Open Tender process where advertising occurs for the purposes of inviting Tenders</li> </ul>	<ul style="list-style-type: none"> <li>• Consider all pre-procurement requirements and Regulated Below Threshold Contract requirements (where applicable)</li> <li>• All quotes in writing</li> <li>• Use the Council's e-sourcing portal for quotes or formal Tender</li> <li>• All Contracts to be entered in the Contract &amp; Grants Register</li> </ul>
3	Light Touch Contracts, Concession Contracts and Works Contracts £214,904 to relevant Threshold	<p><b>CSO Section 13</b></p> <ul style="list-style-type: none"> <li>• Must use in-house or Corporate Contract where applicable unless otherwise agreed with the Head of Procurement</li> <li>• Consider availability of an existing suitable Framework or DPS</li> <li>• Open Tender process or process agreed by the Head of Procurement.</li> </ul>	<ul style="list-style-type: none"> <li>• Consider all pre-procurement requirements and Regulated Below Threshold Contract requirements (where applicable)</li> <li>• Use the Council's e-sourcing portal for quotes or formal Tender</li> <li>• All Contracts to be entered in the Contracts and Grants Register</li> </ul>
4	Above relevant Threshold	<p><b>CSO Section 14</b></p> <ul style="list-style-type: none"> <li>• Must use in-house or Corporate Contract where applicable unless otherwise agreed with the Head of Procurement</li> <li>• Consider availability of an existing suitable Framework or DPS (call-off)</li> <li>• Formal Tender process</li> <li>• Full Tender process with advert published in Central Digital Platform in accordance with Thresholds</li> </ul>	<ul style="list-style-type: none"> <li>• All proposed Contracts must be referred to Procurement Services</li> <li>• Consider all pre-procurement requirements</li> <li>• Use the Council's e-sourcing portal for formal Tender</li> <li>• Complete Tender Evaluation Report for Contract award</li> <li>• All Contracts to be entered in the Contracts &amp; Grants</li> </ul>

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