

# Croydon Council

For General Release

<b>REPORT TO:</b>	<b>FULL COUNCIL</b> <b>1 JULY 2013</b>
<b>AGENDA ITEM:</b>	<b>12</b>
<b>SUBJECT:</b>	<b>REVISED TENDERS AND CONTRACTS REGULATIONS</b>
<b>LEAD OFFICER:</b>	<b>Nathan Elvery, Interim Chief Executive</b>
<b>CABINET MEMBER:</b>	<b>Cllr Steve O'Connell, Cabinet Member for Finance and Performance Management</b> <i>And:</i> <b>Cllr Dudley Mead Cabinet Member - Deputy Leader and Cabinet Member for Capital Budget and Asset Management</b>
<b>WARDS:</b>	<b>All</b>
<b>CORPORATE PRIORITY/POLICY CONTEXT:</b>	
<b>FINANCIAL IMPACT:</b> <b>There are no direct financial impacts</b>	
<b>KEY DECISION REFERENCE NO.:</b> This is not a key decision	

## 1. RECOMMENDATIONS

1.1 The Tenders and Contracts Regulations are part of the Council's constitution. Agreeing revisions to the Tenders and Contracts Regulations is a non-executive function. The Council is asked to accept the Recommendations of the Corporate Services Committee to approve the revisions.

## 2. EXECUTIVE SUMMARY

2.1 The Council's reviews all of its regulations and procedures periodically to ensure that they remain fit for purpose and reflect the current internal and external environment. Over the last two years the Council has undergone significant change, as well as growing in experience as a 'commissioning-led' council. There has been an increase in commissioning activity and, subsequently, to the level of procurement projects, making it all the more important that good governance is maintained.

- 2.2 While the award of contracts is an executive function, Regulation 2 (Sch.1(l)(38)) of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended under the Local Government Act 2000) provides that the power to make standing orders as to contracts i.e. the Tenders and Contracts Regulations, is not to be the responsibility of the Executive. The power must, therefore, be exercised as a non-executive function. The Council's Tenders and Contracts Regulations are part of the Constitution, so any changes proposed will require the agreement of Full Council on the recommendation of the Corporate Services Committee.
- 2.3 In light of the increase in activity and an extensive capital programme officers have reviewed the Council's Tenders and Contracts Regulations and Financial Regulations to ensure they still remain fit for purpose in this new environment these are detailed at Appendix 1.

### **3. DETAIL**

- 3.1 The key changes to the Tenders and Contract Regulations are detailed below. Details of all the other changes are listed at Appendix 2:
- Introduction of Capital Gateway Review Panel into the Regulations
  - To reinforce the Commissioning strategy and support to the Third Sector and Small and medium sized businesses the inclusion of third Sector commissioning process and the reflection of the Council approach to securing social value.
  - In light of the introduction of the interim chief executive arrangements the Director of Strategy, Commissioning, Procurement & Performance to be delegated to approve the award of contracts between £100k and £500k on the recommendation of the Contracts and Commissioning Board.
  - The requirement for all tenders being awarded under Most Economically Advantageous Tender (MEAT), to be split between 60% cost and 40% quality. Where deemed not appropriate, the use of an alternative percentage split must be reviewed by the Contracts and Commissioning Board (Regulation 24.7).
  - To improved clarity and accessibility to the regulations the absorption into the main body of the document of nearly 50 additional 'information notes' that have been added over time as footnotes to the original Tenders and Contracts Regulations for reasons of new regulatory requirements, legislation or professional codes of practice being published, or where changes to Council governance arrangements or structures impact or where clarifications became necessary.
  - Extension of Introduction to include wording on Croydon's commitment to corporate social responsibility.
  - Amalgamation of Regulations 18A and 19 to form Regulation 21 – Tendering by reference to a schedule of rates and making use of framework agreements – giving clearer guidance on the use of both;
- 3.2 Other detailed changes are covered in Appendix 1 of this report. Minor changes have

been made to update wording.

- 3.3 Members will note that in reference to the advice to comply with guidance on a 60/40% split in evaluation between price and quality (Regulation 24.7) officers will be bound by restrictions when using certain pre-agreed Frameworks; these are often set at, for example, 50/50% or 40/60%. In such cases the Contracts and Commissioning Board will review continuing value for money in use of the Framework.

#### **4. REASONS FOR RECOMMENDATIONS/PROPOSED DECISION**

- 4.1 The Tenders and Contracts Regulations are part of Croydon Council's constitution. Revisions to the Tenders and Contracts Regulations have been made in order to bring them into line with current national and European regulation and guidance and to provide greater clarity to decision-makers.

#### **5. ANY OPTIONS CONSIDERED AND REJECTED**

- 5.1 The option to continue with out of date Tenders and Contracts Regulations with a growing number of correcting notes is felt to lead to greater risk of error in process and decision-making and has been rejected in favour of bringing a revised document forward.

#### **6. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS**

- 6.1 One of the main aims of the Tenders and Contracts Regulations is to reduce the financial and other risks involved in tendering and contracting by prescribing and controlling how it is done. Keeping the Regulations up to date will reduce financial risks. There are no changes which are considered to increase financial risk to the Council and there are no anticipated direct financial considerations.

#### **7. COMMENTS OF THE COUNCIL SOLICITOR AND MONITORING OFFICER**

- 7.1 The Council Solicitor comments that under the Local Authorities (Functions and Responsibilities) (England) Regulations 2000, while award of contracts is an executive function, the power to make standing orders as to contracts i.e. the Tenders and Contracts Regulations, is a non-executive function.
- 7.2 As the Council's Tenders and Contracts Regulations form part of the Constitution changes to them can only be made by Full Council on a recommendation from this Committee. .

(Approved by: Gabriel MacGregor, Head of Corporate Law on behalf of the Council Solicitor & Monitoring Officer)

#### **8. HUMAN RESOURCES IMPACT**

- 8.1 There are no HR impacts resulting from this report. Approved by: Heather Daley, Deputy Director of Workforce

## **9. EQUALITIES IMPACT**

- 9.1 The changes represent an improvement in understanding and accessibility. The inclusion of paragraphs reflecting changes to legislation, including Community Right to Challenge and Public Services (Social Value) Act 201, will positively enable the community sector and small business to participate in tenders and contracts.

## **10. FREEDOM OF INFORMATION (FoI) / DATA PROTECTION CONSIDERATIONS**

- 10.1 The Council's Procurement Strategy and Tenders & Contracts Regulations are accessible under the Freedom of Information Act 2000 as part of the Council's Publication Scheme.

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**CONTACT OFFICER:** Sarah Ireland

### **APPENDICES:**

- 1. List of changes to Tenders and Contracts Regulations**
- 2. Revised Tenders and Contracts Regulations (2013) [draft]**

## **APPENDIX 1: List of changes to Tenders and Contracts Regulations**

- Glossary of terms updated to include:
  - a. Approved List
  - b. Call-off Contracts
  - c. CCB or GRP List
  - d. CDM
  - e. Community Right to Challenge;
  - f. Evaluation Criteria;
  - g. Expression of Interest;
  - h. EU Rules;
  - i. External Advisors & Consultants;
  - j. Gateway Review Panel (GRP);
  - k. Invitation to Tender (ITT);
  - l. KPI
  - m. Most Economically Advantageous Tender (MEAT);
  - n. Part A Service;
  - o. Part B Service;
  - p. Post Tender Clarification;
  - q. Post Tender Negotiation;
  - r. Pre-Qualification Questionnaire (PQQ)
  - s. Scheme of Authorisation;
  - t. Single Source Procurement;
  - u. SMEs (small and medium-sized enterprises
  - v. Social Value
  - w. Third Sector
  - x. Value for Money
  - y. Variant Bid

z. Weightings

- Inclusion of Urgency Reports (1.18)
- Addition of use of Nationally recognised Framework Agreements and the use of abridged strategy report to CCB or GRP as appropriate (Regulation 21.22)
- Addition of Commissioning Small Businesses and the Voluntary and Community Sector (primarily Regulation 22) to reflect the Public Services (Social Value) Act 2012;
- Addition of Community Right to Challenge (Regulation 32 and Appendix D)
- Addition of Appendix C – Executive Director Delegated Authority to provide guidance on spend under £100,000.

**APPENDIX 2: Revised Tenders and Contracts Regulations**

These Regulations form part of the Constitution of the London Borough of Croydon

## **INTRODUCTION**

### **KEY TENDERING AND CONTRACTS PRINCIPLES**

The Tenders and Contracts Regulations are designed to ensure that contracts awarded will be cost effective, efficient and add value to life experiences of the people and communities of Croydon, particularly Croydon's commitment to:

- Demonstrate an understanding of local needs and priorities of local citizens and communities
- Identify services that promote the social, emotional and physical wellbeing of citizens
- Be cost effective, flexible and sustainable
- Promote responsible procurement in terms of addressing social, economic and environmental issues, local sustainability and equality and diversity
- Address local economic regeneration by ensuring access to public contracts by local business, particularly local small and medium enterprises and third sector organisations

The key principles of Croydon's procurement regime are:

- to achieve good value for money and deliver social value wherever possible
- the need for a competitive process
- non-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

The Tenders and Contracts Regulations are designed to achieve these key procurement and contracting principles.



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### GROUP A BEFORE THE TENDERING PROCESS

#### 1. GENERAL INFORMATION

##### i) Glossary of Terms

1.1. In these Regulations terms are defined as follows:

Terms	Description/Meaning
'amount of an estimate'	The sum of money estimated, net of Value Added Tax or any other Tax or Duty. However, the amount of any such Tax or Duty payable must be stated.
"Approved List"	A list of providers that have been selected by the Council through a non-OJEU tendering process or as a Part B service (under the 2006 Public Procurement Regulations) from which the Council may select, by way of a mini competition, to contract with to provide services for the Council
Call off Contracts	Contracts selected and awarded from an existing framework agreement.
CCB	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).
"CCB or GRP List"	The list of contracts proposed for award through CCB or GRP, which has previously been reported and agreed by CSC.
'CDM'	Construction (Design and Management) Regulations 2007.
Community Right to Challenge	The Community Right to Challenge is part of the Localism Act 2011. It gives voluntary and community groups, parish councils and local authority employees the right to submit an Expression of Interest ('EoI') in taking over and running a local authority service.
contract value' or 'value of a contract'	A value: <ol style="list-style-type: none"> <li>a) 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;</li> </ol>

Terms	Description/Meaning
	<p style="text-align: center;"><b>and</b></p> <p>b) that is net of Value Added Tax or any other Tax or Duty. However, the amount of any such Tax or Duty payable must be stated separately in the both the tender and the award report.</p>
CSC	Corporate Services 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 contract, finance and/or property management proposals.
'the Council's approved estimates'	The Council's budget approved annually by full Council and includes estimates of both capital and revenue expenditure.
'Director'	<p><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;</p> <p><b>b</b> A nominated Officer with delegated authority to incur expenditure.</p>
'evaluation criteria'	<p>Refers to the measures used in either the PQQ or ITT to undertake an assessment of potential providers.</p> <p>i. Criteria used in the PQQ are referred to as 'selection criteria'.</p> <p>ii. Criteria used in the ITT are referred to as 'award criteria'.</p> <p>The two are not interchangeable and there should be no repetition from one stage to the next.</p>
Expression of Interest (Eoi)	A statement by a prospective provider of their intention to compete for a tendering opportunity for the provision of goods, services and/or works:
'e-Tendering'	An internet based process wherein the complete tendering process, from advertising to submitting and receiving tender-related information, is done online.
EU Rules	Where the EU Rules are referenced, it is also to include EU Public Procurement Directives, Regulations and those enacted into UK legislation.

Terms	Description/Meaning
“Executive Director”	<p>The Chief Executive;  <b>or</b>                      Interim Chief Executive;  <b>or</b>                      A head of one of the following departments or any successor to them:                      Executive Director of Corporate Resources and Customer Services;                      Executive Director of Children, Families and Learning;                      Executive Director of Adult Services, Health and Housing;                      Executive Director of Planning and Environment;                      who under their scheme of authorisations can exercise the powers referred to in these Regulations.</p>
External Advisors & Consultants	Individuals who are contracted to fulfil a role, not already covered by the Council’s establishment, which may be of a specialist nature.
‘Framework Agreement’	An agreement subject to the EU legislation 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.
“Gateway Review Panel (GRP)”	The panel of Council officers designated to consider contracts related to capital spend and projects financed by capital monies.
ITT (Invitation to Tender)	The step of a competitive tendering process in which qualified suppliers or contractors are invited to submit sealed bids for the supply of specific and clearly defined goods, services or works during a specified timeframe.
KPI	Key Performance Indicator - a type of performance measurement used to evaluate the success of a particular activity carried out by a provider.
The Leader or nominated Cabinet Member	Means 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
Most Economically Advantageous Tender (MEAT)	The tendering approach used to provide a balance between quality and cost.
‘The Officer responsible’	An Officer authorised by the appropriate Executive Director

Terms	Description/Meaning
	or Director to act on their behalf under these Regulations.
An Output (or Outcome) Based Specification (OBS)	A specification that focuses on the desired outputs of a service in business terms, rather than a detailed technical specification of how the service is to be provided.
Part A Service	These services are subject to the full weight of the Public Contract Regulations 2006 and need to be advertised across the EU where the level of expenditure meets or exceeds the EU Procurement Thresholds.
Part B Service	These services are not subject to the full weight of the Public Contract Regulations 2006 and need not be advertised across the EU but an award notice must be published via the OJEU for expenditure above the EU Procurement Thresholds
'person'	Includes the following: <ul style="list-style-type: none"> <li>a) A group of persons</li> <li>b) A firm</li> <li>c) A partnership</li> <li>d) An unincorporated association</li> <li>e) A company</li> <li>f) Another local authority or a group of local authorities</li> <li>g) A Government Department (as represented by the Secretary of State)</li> <li>h) A statutory body</li> <li>i) A public utility that has been privatised</li> </ul>
Post Tender Clarification	Tender or bid clarifications that may become necessary during the evaluation of tenders.
Post Tender Negotiation (PTN)	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.
PQQ (Pre-Qualification Questionnaire)	The process used to identify potential suppliers that are most capable of performing a contract.
'Professional Director'	The most senior Council Officer with responsibility for a particular area of expertise or a professional discipline.
'Public Body'	Any contracting Authority within the meaning of the EU Public Procurement Directives and the Public Contracts Regulations 2006.
'these Regulations'	All the Regulations as listed below.
'this Regulation'	The particular numbered Regulation

Terms	Description/Meaning																				
Scheme of Authorisations	The 'scheme of management' for a department setting out who is authorised to make what decisions within that department																				
Single Source Procurement	The award for the provision of goods or services that can only be purchased from one supplier because of its specialised or unique characteristics. Also called sole-sourcing or single sourcing.																				
Small and Medium Enterprises SME	<p>The main factors determining whether a company is an SME are:</p> <ol style="list-style-type: none"> <li>1. number of employees <u>and</u></li> <li>2. either turnover <b>or</b> balance sheet total.</li> </ol> <table border="1" data-bbox="566 929 1588 1120"> <thead> <tr> <th>Company category</th> <th>Employees</th> <th>Turnover</th> <th>or</th> <th>Balance sheet total</th> </tr> </thead> <tbody> <tr> <td>Medium-sized</td> <td>&lt; 250</td> <td>≤ € 50 m</td> <td></td> <td>≤ € 43 m</td> </tr> <tr> <td>Small</td> <td>&lt; 50</td> <td>≤ € 10 m</td> <td></td> <td>≤ € 10 m</td> </tr> <tr> <td>Micro</td> <td>&lt; 10</td> <td>≤ € 2 m</td> <td></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	or	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	or	Balance sheet total																	
Medium-sized	< 250	≤ € 50 m		≤ € 43 m																	
Small	< 50	≤ € 10 m		≤ € 10 m																	
Micro	< 10	≤ € 2 m		≤ € 2 m																	
'Supervising Officer'	The Council officer or external person appointed to manage and/or monitor the tender/contract process on behalf of the Council																				
Social Value	The process whereby the Council meets its needs for goods, 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																				
'tendering' and 'submitting a tender'	Includes any quotation or action taken by any person seeking to enter into a contract with the Council, which is subject to these Regulations.																				
Third Sector	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.																				

Terms	Description/Meaning
'TUPE'	Transfer of Undertakings (Protection of Employment) Regulations 2006.
Value for Money (VfM)	<p>Value for Money (VfM) is the term used to assess whether or not the Council has obtained the maximum benefit from the goods and services it acquires and/ or provides, within the resources available to it.</p> <p>It not only measures the cost of goods 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</p>
Variant bid	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.
Weightings	The weightings allotted to the criteria chosen to evaluate the PQQ / 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.
'in writing'	Refers to paper and electronic records.



**ii) The Legislation Governing these Rules**

- 1.2. 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.
- 1.3. These Regulations are subject to Parts I and II of the Local Government Act 1988. If there is a conflict or any additional requirement, the Act takes precedence and any additional statutory requirement must be followed.
- 1.4. These Regulations do not limit the Council's powers to carry out its functions according to Section 101 of the Local Government Act 1972, Section 2 of the Local Government Act 2000, Section 81 of the Localism Act 2011 or any subsequent qualifying or amending legislation.
- 1.5. These Regulations are part of the Constitution of the London Borough of Croydon and govern all contracts (including grant funded agreements) with an estimated total value of £100,000 and over. They form part of the financial administration framework of the Council which is organised in accordance with Section 151 of the Local Government Act 1972.
- 1.6. Any EU Directive or change to national legislation, which affects contracts under these Regulations, takes precedence.
- 1.7. Anyone operating these Regulations must also follow the Council's Financial Regulations. In case of any conflict between the two sets of Regulations, the Corporate Services Committee (CSC) must decide which ones prevail.
- 1.8. These Regulations will be regularly reviewed by the Executive Director of Corporate Resources and Customer Services and Deputy Chief Executive and proposed amendments recommended to Full Council for approval.
- 1.9. Public Services (Social Values) Act 2012.
- 1.10. Failure to adhere to these Regulations could result in disciplinary proceedings.

**iii) General principles for these Regulations**

- 1.11. The principle for the operation of these Regulations is that there must be competition for any Contract. This is particularly relevant with any action taken under 'Number of Tenders' (Regulation 13) and 'Choosing the Tendering Approach' (Regulation 15).
- 1.12. This principle can only be disregarded in exceptional circumstances if the CSC or where appropriate the CCB has granted an exception.
- 1.13. The CSC may vary any of the sums mentioned in these Regulations in accordance with their delegated authority.
- 1.14. Director Responsibilities - Under these Regulations, the Director is the person responsible for:
  - a. ensuring that these Regulations are followed and enforced within their Department;
  - b. making staff aware of the requirements;
  - c. in accordance with Regulation 2.1, ensuring the Leader, nominated Cabinet Member or officer, and the CCB or GRP (as appropriate) are advised in advance of the purpose of any contract that falls within these Regulations, including the tendering process to be followed to secure the contract and of any anticipated issues for the tendering process, with particular regard to any service implications arising;
  - d. considering any advice given by CCB or GRP (as appropriate);
  - e. monitoring compliance and investigating any non-compliance with the Regulations;
  - f. ensuring that any third party participating in the procurement or supervising a Council contract agrees, in writing, to comply with these Regulations as if they were Officers of the Council;
  - g. accepting or authorising acceptance of tenders under £100,000 without other authority.
- 1.15. The Officer responsible must ensure that their behaviour is not anti-competitive.
- 1.16. Declaration of Interest:
  - 1.16.1. Any Officer must declare to their Executive Director and the Director of Democratic & Legal Services any personal interest in a matter they are dealing with, including one, which may impinge on their impartiality to apply these Regulations. Any arrangements, which might, in the long term, prevent the effective operation of fair competition, must be avoided. Further advice on the Declaration of Interests and the appropriate form to use can be obtained from the Director of Democratic and Legal Services.

- 1.17. Every contractual and property transaction matter, whether executive or non-executive, shall as appropriate be the subject of a formal report:
- a. for contracts valued at £100,000 or more and below £500,000 to the CCB seeking recommendation for contract award by the Director of Strategy, Commissioning, Procurement and Performance under delegated powers;
  - b. for contracts valued at £500,000 and above, to the CSC, after review of the report by the CCB.
  - c. for contracts using capital budget monies and valued at above £500,000 to the Gateway Review Panel (GRP) seeking recommendation for contract award by the CSC;
- 1.17.1. The CSC and the CCB or GRP as appropriate are the bodies responsible for reviewing contract matters for the Council.
- 1.17.2. CSC recommendations on executive matters will then be considered by the Leader or nominated Cabinet Member for formal approval or referral to the Cabinet for decision.
- 1.17.3. Subject to the provisions of 1.17.4 below, the authority to award contracts valued at £100,000 or more and less than £500,000 is delegated to the Director of Strategy, Commissioning, Procurement and Performance, in strict accordance with the Officer Decision Making protocols as referenced in Part 4.G – Delegations to Executive Directors Decision Making Procedure Rules and Part 5.A – Protocol for Decision Making (Constitution of the London Borough of Croydon). This authority is subject to the inclusion of a contract to be awarded on the CCB Forward Plan List, and that List having been reported to CSC prior to the award of that contract.
- 1.17.4. Where the use of a framework agreement or Approved List has been agreed (following the submission and approval of a strategy report to either the CCB or GRP – please also see Regulation 21.22), and where it is proposed to award a contract under that approved framework agreement or Approved List for a value between £100,000 and £500,000, no further strategy report is required. Director of Strategy, Commissioning, Procurement and Performance is authorised to award the contract by way of an award report to either CCB or GRP as appropriate.
- 1.17.5. However, providing the total contract value (including extensions) was originally approved through CSC, and where a potential for such extension was included in the original agreement to award, the extension of a contract valued above £500,000 may be agreed through CCB or GRP as appropriate.
- 1.17.6. In all instances in these Regulations where the CSC is charged with reviewing a contract matter and which requires an executive decision, the Cabinet Protocol must be observed  
[http://www.croydon.gov.uk/contents/departments/democracy/pdf/599085/November\\_2012/part05a.pdf](http://www.croydon.gov.uk/contents/departments/democracy/pdf/599085/November_2012/part05a.pdf)
- 1.17.7. Property contract matters are outside the terms of reference for the CCB and GRP.

**1.18. Urgency Reports:**

1.18.1. Subject to the Chair of CCB being satisfied that all reasonable measures were taken to avoid its use, for contracts valued between £100,000 and £500,000 an award report may be accepted for urgent consideration. Agreement in writing by CCB Board members approving the award report will be acceptable under these Regulations.

1.18.2. At any time when the CSC is unavailable to award a non-executive contract or conduct a review of an executive contract under Regulation 1.17 and the terms of a proposed contract require urgent consideration to avoid a situation prejudicial to the interests of the Council:

a. the Chief Executive, or any Executive Director designated to act in their absence, may review that contract in consultation with the Chair of the CSC and award it (if a non-executive matter) or recommend its award or otherwise (if an executive matter) to the Leader or nominated Cabinet Member;

or

b. subject to the Chair of the CSC and the Leader or nominated Cabinet Member both being unavailable, the Chief Executive or any Executive Director designated to act in their absence may award that contract.

subject to the CSC (in all cases) being advised at their next ordinary meetings of the circumstances of the contract award.

1.18.3. In the case of contracts valued at £100,000 or more and below £500,000 if the CCB is unavailable, the Head of Commissioning & Procurement in consultation and agreement with the Director of Democratic and Legal Services may recommend for award to the Director of Strategy, Commissioning, Procurement and Performance.

1.18.4. In the absence of the named officers, deputies may act on their behalf in accordance with the departmental scheme of delegations.

**1.19. TUPE:**

1.19.1. The Officer responsible for tendering must consider if TUPE may apply to a contract. If the Officer responsible thinks that TUPE may apply, they must notify contractors and advise them to seek their own independent professional advice. Advice **must** be sought from Legal Services and Workforce and Community Relations on the detailed implications if TUPE is likely to apply.

**1.20. Packaging (Aggregation):**

1.20.1. The Officer responsible may not divide any contract ordinarily treated as a single contract into two or more contracts, solely in order to reduce the value to below any of the sums mentioned in any of these Regulations. The Officer responsible may not arrange to purchase separately any goods, 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 the subject of the existing contract to fulfil the Council's needs, **UNLESS** it can be clearly demonstrated to the satisfaction of the Head of Commissioning & Procurement 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. Any contracts split artificially to get below the threshold of the EU rules may be considered contrary to the EU 'Aggregation Rules' and could result in the Council being subjected to legal challenge.

- 1.21. There must be a clear audit trail of evidence to support the tendering and contracts decisions made. A formal record must be kept.

**iv) Applying these Regulations**

- 1.22. The Officer responsible must check the section titled “**WHERE THESE REGULATIONS DO NOT APPLY**” before proceeding with any application of these Regulations.

**WHERE THESE REGULATIONS DO APPLY**

- 1.23. Unless the context otherwise requires, these Regulations only apply if the estimated total contract value (including any optional periods of extension) for the purchase of supplies, services or works (or if the estimated total value of any contract of any other kind) is £100,000 or more.

- 1.24. Income Generation - Notional Value:

- 1.24.1. If a contract involves generating income, the contract may have a 'notional value' to the successful contractor. The Officer responsible must make an estimate of the value of the contract and use these Regulations if the value is estimated to be £100,000 or more. The estimated 'notional value' should be calculated early in the process. If there is any doubt about this calculation, contact the Director of Strategy, Commissioning, Procurement and Performance for assistance.

- 1.25. These Regulations always apply:

- a. where the Council enters into any agreement, written or otherwise, with another person to provide supplies, services **or** works to the Council;
- b. where work is carried out for the Council or through a Council contract and irrespective of who provides the funding;
- c. to any activity covered by the following: purchases, contracts, Approved Lists, hiring, renting, leasing and joint partnerships;
- d. when seeking authorisation when entering into a contract or an agreement with a company via a contract or agreement previously procured and awarded through one of the organisations or consortium listed in Regulation 1.30;
- e. to funding received by the Council, for example through Government Grant, the Big Lottery Fund or Transport for London.

- 1.26. These Regulations also apply to any sale by the Council of:

- a. supplies;
- b. services;
- c. works by the Council; and
- d. land or facilities that generate income.

**WHERE THESE REGULATIONS DO NOT APPLY (EXCEPTIONS)**

- 1.27. These Regulations do not apply if the estimated total value for a contract for the purchase of supplies, services or works, or for a contract for any other purpose, is less than £100,000. Please see advice in Appendix C for advice on Low Value Expenditure. (See also Regulations 1.31 and 1.32).
- 1.28. These Regulations are subject to all relevant legislative provisions (for example EU Procurement Directives), any general exceptions provided for by these Regulations e.g. Regulation 9 Disasters and Emergencies and any specific exception granted by the CCB or CSC under Regulation 3.
- 1.29. They do not apply where the Council carries out work by arrangement with the owner of any property but in exercise of the Council's statutory default powers.
- 1.30. Under the Local Government Act 1972, these Regulations need not be applied to direct contracts or agreements that are not subject to the EU Public Procurement Directives with the following organisations:
  - a. another local authority/consortium of local authorities;
  - b. a Government department;
  - c. a statutory body.

However, the Officer responsible must obtain the most favourable terms possible for the Council and may therefore submit these organisations to a competitive process under these Regulations.

**v) The Procurement Handbook**

- 1.31. The Procurement Handbook provides guidance for all procurement activity where the estimated total value of a contract is less than £100,000 subject to requirements placed on Directors by the CSC.
- 1.32. The Executive Director for Corporate Resources and Customer Services and Deputy Chief Executive shall provide procedures for:
  - a. securing quotations;
  - b. placing orders;
  - c. keeping of records;
  - d. other appropriate incidental matters.

**2. PRELIMINARIES AND ESTIMATES**

- 2.1. The Officer responsible should submit a procurement strategy report in the format provided to the CCB or GRP at the beginning of each procurement exercise. No advertisement should be placed or invitation to tender made prior to CCB Approval. The report should set out the project plan, the proposed procurement route, evaluation approach, risks, timetable and project structure.
- 2.2. The Officer responsible cannot invite any tenders unless:
- a. the Executive Director of the relevant Department has included adequate budget for the expenditure in the Council's approved estimates for the year in which it is to be incurred;
- or**
- b. the Executive Director has included adequate budget in approved draft budget estimates for the next financial year, i.e. the year in which the expenditure will be incurred;
- or**
- c. alternative financial provision is made by the Council under the Financial Regulations.
- 2.3. No tender can be invited unless the Director responsible has previously prepared an estimate. This estimate must be recorded for audit purposes. In some cases preparing an estimate may not be easy. The Director must make a reasonable attempt to prepare the best available estimate.
- 2.4. The Director must prepare any estimate not more than three months before the invitation of tenders. They must be satisfied that any estimate prepared earlier remains accurate, i.e. is it subject to any percentage increase or decrease that may reflect increases or decreases in costs?
- 2.5. A Director must take reasonable steps to verify the accuracy or validity of their own estimate. If this involves obtaining external verification, it must be made clear to the contractor that this is not a tender and cannot be accepted as such.
- 2.6. Unless otherwise allowed for in the tender documentation for a competitive bidding exercise, if no bid has been accepted within the periods stated below, commencing from the opening of sealed bids, then the action stated against each period must be observed by the Officer responsible:
- a. **between 6 and 12 calendar months** - obtain new tender prices from all persons who submitted a bid, having regard to the need to apply any relevant price indices;
  - b. **12 calendar months and over** - declare the existing bids void and obtain new bids from the marketplace through a new competitive tendering exercise.



Any proposal otherwise must be referred to the Head of Commissioning & Procurement for consideration.

- 2.7. The Officer responsible must submit the procurement strategy report to the CCB or GRP advising of the following:
- a. any proposed significant changes to the existing terms of a current contract;
  - b. any proposal to extend a contract and a summary of the performance review undertaken leading to that proposal.

Prior to making any decision to renew, amend, extend or terminate a contract, the Officer responsible must conduct a review of performance over the whole term of the contract. Advice from the Head of Commissioning & Procurement must be sought, as necessary.

Prior to re-tendering or extending an existing contract, the Officer responsible must review alternative arrangements to ensure that the final procurement route is the most appropriate for the services, supplies or works sought, provides Value For Money and Best Value for the Council and delivers social value wherever possible. Advice from the Head of Commissioning & Procurement must be sought, as necessary.

**3. EXCEPTIONS**

- 3.1. Besides the exceptions permitted by this Regulation, no exception to these Regulations will be permitted.
- 3.2. The CSC may consider and agree any exception sought to these Regulations. The reasons for seeking the exception must have been previously approved by the CCB and be clearly stated in the report to the Committee.
- 3.3. The CCB may consider any exception to these Regulations where the contract value is below £500,000 and if appropriate recommend it to the Director of Strategy, Commissioning, Procurement and Performance. The reasons for seeking the exception must be clearly stated in the report to the CCB.
- 3.4. Where these Regulations apply to a procurement process, that process may not begin where any breaches of or departures from these Regulations have not been subject to prior consultation with the Head of Commissioning & Procurement and prior authorisation under paragraphs 3.2 or 3.3 above. This restriction cannot be avoided by seeking authorisation of an exception with retrospective effect, unless it is confirmed that it was not reasonably practicable to obtain prior authority.
- 3.5. Value for Money:
  - 3.5.1. Where a Director seeks to achieve value for money through new approaches to procuring supplies, services or works using Council funding, this Regulation will apply. Approval of any requests for an exception to facilitate new approaches must be sought from either the CCB or the CSC as appropriate to the contract value. The report must also justify the approach and the reasons for seeking the exception.

#### **4. PREPARATION OF SPECIFICATION**

- 4.1. The Director must prepare a clear and unambiguous specification. Wherever possible, this must be output-based and must include any necessary plans, sections, drawings and bills of quantities (in cases of tendering with reference to a schedule of rates, the Officer responsible must apply Regulation 21 but only to the extent permitted).
- 4.2. 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 Supervising Officer.
- 4.3. If the specification is for a contract for works, the Officer responsible must include provision within the budget for contingencies.
- 4.4. Brand Names (particular source) in Specifications:
  - 1) Unless it is considered to be essential in describing what is required, the Officer responsible must not include references to particular brands, sources or processes that have the effect of favouring or eliminating some contractors or suppliers;
  - 2) If brand naming does occur, the term 'or equivalent' must always follow the name, supported by phrasing in the preamble to the specification to the effect that equivalent brands, sources or processes are acceptable alternatives to any names that do appear;
  - 3) The brand name or equivalent proposed in a successful tender can be stated in the final contract in order to prevent the substitution of an inferior product.
- 4.5. Local Requirement:
  - 4.5.1. In contract specifications, the Officer responsible must not include the requirement that supplies, services or works must be local as it is illegal to restrict 'free trade'. However, where there is an essential service requirement or a reasonable requirement to comply with a Council policy, requirements such as: 'the contractor must be available to attend complaints at short notice' or 'transportation within the Borough is to be minimised', may be used. These requirements should be noted in the procurement strategy report (Regulation 2.1).
- 4.6. The Public Services (Social Value) Act 2012:
  - 4.6.1. This Act places a requirement on commissioners to consider the economic, environmental and social benefits of their approaches to procurement before the process starts. The Act requires authorities to make the following considerations at the pre-procurement stage:

- 1) How, what is proposed to be procured, might improve the economic, social and environmental well being of the 'relevant area';
  - 2) 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.
- 4.7. Commissioners can use the Act to re-think outcomes and the types of services to commission before starting the procurement process. When considering how a procurement process might improve the social, economic or environmental wellbeing of a relevant area the authority must only consider matters that are relevant to what is proposed to be procured. The authority must only consider those matters to the extent to which it is proportionate, in all the circumstances, to take those matters into account.
- 4.8. Contracts for goods and works are not covered by the Act. Contracts where there is a mixture of services, goods or works are not covered where the value of the goods exceeds the value of the services or where the works are more than incidental to the main purpose of the contract. Contracts below the relevant monetary thresholds in the Public Contracts Regulations 2006 are not covered by the Act. Call-off Contracts from framework agreements are not covered by the Act.
- 4.9. Although these contracts are not covered under the Act commissioners, as a matter of good practice, should consider economic, social and environmental wellbeing in order to obtain maximum value for money. This may be particularly relevant in lower value contracts where services for citizens (such as welfare, social and health services) are being commissioned and procured.
- 4.10. See: <http://www.legislation.gov.uk/ukpga/2012/3/enacted> and 15.3 of these Regulations

## **5. ENVIRONMENTAL CONSIDERATIONS / HEALTH AND SAFETY ISSUES**

- 5.1. Products, substances or services will not be used:
- a. where they are known to be particularly harmful to the environment or could be a danger to health;  
or
  - b. where there is strong evidence to believe they could be particularly harmful to the environment or could be a danger to health;  
or
  - c. where there are adequate and economic alternatives;  
or
  - d. where they contravene the Council's Environmental Policies.

- 5.1.1. This must include any processes or procedures likely to present an undue risk or hazard to the Council, its employees, Council property or the public while using Council facilities.
  - 5.1.2. All purchasing must be made according to the Council's Environmental Procurement Policy and any codes of practice issued as a result (e.g. Green Guide to Purchasing, use and disposal of IT equipment, and general disposal policy. This involves assessing contracts for their environmental impacts and managing damaging impacts on the environment through the development and design of the contract. Issues, which need to be considered, include waste minimisation, resource efficiency (including water) reducing carbon emissions, improving environmental quality/biodiversity and reducing/preventing pollution (including air pollution from vehicles).
  - 5.1.3. Procurement decisions must comply with the Council's Green Commitment to promote environmental sustainability through its purchasing decisions.
  - 5.1.4. The environmental performance of bidders should be considered at the earliest opportunity in the procurement. Environmental specifications should be included within the tender documents and contract as appropriate and monitoring arrangements should be put in place as necessary.
- 5.2. The Officer responsible for the specification must, wherever possible, specify types of products, substances and services which contribute to Croydon Council's Green Commitment and:
- a. ensure that the specification does not include the use of products, substances or services which have been withdrawn from use under the provisions of Regulation 5.1 as listed above;  
**and**
  - b. take into account whole life costs of products (for example energy efficient lighting may have a slightly higher upfront cost but will actually save a considerable amount of money over the life of the product through reduced energy costs. Similarly waste disposal costs for products that are harmful to the environment or have a lot of packaging will be higher and this may offset any initial cost savings);  
**and**
  - c. wherever possible materials from sustainable sources must be used. If the costs are prohibitive or unknown, incorporate variants in the tender documentation.

- 5.3. Where applicable, specifications and/or bills of quantities for construction works must allow for the full implication of the Construction (Design and Management) Regulations 2007 and comply with the following:
- a. the Director must appoint a competent CDM co-ordinator and provide the same with all necessary information relating to the health and safety file;  
**and**
  - b. the Director must check competence and resources of all appointees;  
**and**
  - c. the Director must ensure that sufficient time and resources are allowed for all stages;  
**and**
  - d. the officer responsible must ensure there are suitable management arrangements for the project welfare facilities;  
**and**
  - e. the Officer responsible for contracting must ensure that suitable contract clauses are included within the specification and/or Bills of Quantities;  
**and**
  - f. pre-construction information must be provided to designers and contractors;  
**and**
  - g. the Officer responsible must ensure that all contractors invited to tender are competent to act as Contractors and Principal Contractors as defined by the CDM Regulations;  
**and**
  - h. the officer responsible must ensure that construction work does not start unless a construction phase plan is in place and there are adequate welfare facilities on site. (As specified in the Regulations);  
**and**
  - i. on completion of the works, the CDM co-ordinator must hand over the Health & Safety file comprising information supplied by the Principal Contractor.
- 5.4. Environmental Protection
- 5.4.1. The Officer responsible for a project on any construction site with an estimated cost greater than £300,000 excluding VAT must ensure that a site waste management plan conforming to The Site Waste Management Plans Regulations 2008 is in place before construction work begins and the plan:
- a. must identify the client, the principal contractor and the person who drafted it;
  - b. must describe the construction work proposed, including the location of

the site and the estimated cost of the project;

- c.** must record any decision taken before the site waste management plan was drafted on the nature of the project, its design, construction method or materials employed in order to minimise the quantity of waste produced on site;
- d.** must describe each waste type expected to be produced in the course of the project; estimate the quantity of each different waste type expected to be produced and identify the waste management action proposed to each different waste type, including re-using, recycling, recovery and disposal;
- e.** must contain a declaration that the Council and the principal contractor will take all reasonable steps to ensure that: all waste from the site is dealt with in accordance with waste duty of care in section 34 of the Environmental Protection Act 1990(a) and the Environmental Protection (Duty of Care) Regulations 1991(b); and materials will be handled efficiently and waste managed appropriately;
- f.** must:
  - give reasonable directions to any contractor so far as is necessary to enable the principal contractor to comply with the Regulations;
  - ensure that both they and the principal contractor review, revise and refine the waste management plan as necessary, to ensure that any changes in respective roles and responsibilities are clearly communicated to those affected; and
  - ensure that both they and the principal contractor take reasonable steps to ensure that sufficient site security measures are in place to prevent the illegal disposal of waste from the site.
- g.** if using one or more contractors for any project to which these Regulations apply the officer must appoint a contractor as the principal contractor.

**GROUP B SPECIAL CIRCUMSTANCES****6. AGENCY WORK FOR OTHER ORGANISATIONS**

- 6.1. This Regulation applies whenever the Council carries out any work or other action on behalf of another Local Authority/consortium of Local Authorities, Government Department or Statutory Body.
- 6.2. The Council must be satisfied that its interests will not be prejudiced by any such action. Prior to the opening of discussions or the submission of a bid for such work by the Council, approval to proceed must be obtained either from the CCB, GRP or the CSC as appropriate.
- 6.3. The following conditions apply:
  - a. there must be sufficient budget for the work in the Council's own estimates;  
**and**
  - b. the contracting authority must authorise any additional requirements, variations or departures;  
**and**
  - c. the contracting authority must first confirm that it accepts financial responsibility for the work.
- 6.4. Officers should refer to the requirements of the Financial Regulations, particularly Regulation 17.



**7. EXTERNAL ADVISERS AND CONSULTANTS (PROFESSIONAL SERVICES)**

- 7.1. Appointing an external adviser or a consultant is the procurement of a service and must comply with these Regulations and the Council's Financial Regulations. In addition, the following matters are considered to represent best practice in the commissioning and management of all external advisers/consultants, and the principles set out in this section of these Regulations, shall be followed for the appointment of all external advisers and consultants.
- 7.2. The provider of professional services is usually the Council's Professional Director. However, a Director (Client) may feel that they can best meet their need for such services from outside the Council's service. If this is the case, then the Client Director and the Professional Director must discuss the matter and agree whether or not the Council should employ external services. A lead Director should be agreed at this stage.

No external adviser or consultant shall be engaged unless:

- a. It has been established that specialist skills, expertise or capacity is not available from in-house sources;

**or**

- b. any in-house proposal is not competitive;

**or**

- c. an external independent review or opinion is required.

- 7.3. The appointment and briefing of the consultant should be the responsibility of the lead Director.
- 7.4. To instruct an appropriate external adviser or consultant, the lead Director must first apply Regulation 2.1 and in any event select the appropriate tender process either for the task as a whole, or the rate that will be applicable.
- 7.5. The lead Director has the responsibility to ensure that:
- a. the external adviser's or consultant's accounts are certified;
- and**
- b. the scope of contact between the Director and the external adviser or consultant is agreed;
- and**
- c. the external adviser's or consultant's professional indemnity insurance is both adequate and current and that said professional indemnity insurance is renewed and presented for inspection should the expiry date fall before the end of the engagement;
- and**
- d. the phases or stages of any project are recognised and that any appointment takes into account aggregation principles over the full term of the project;

**and**

- e. the external advisers or consultant is properly and precisely briefed. As with any other project, tenders or quotations from external advisers or consultants should always be sought based on a brief or specification that the council has prepared beforehand. External advisers and consultants should not be invited to prepare their own brief;

**and**

- f. both parties agree terms in writing. As with any other project, tenders or quotations from external advisers or consultants should always be sought based on contract terms that the Council has prepared beforehand. External advisers and consultants own contract terms should not be used unless these have been approved by the Director of Democratic and Legal Services;

**and**

- g. the conditions of contract, even if procuring for example from a government framework agreement or other approved contract source, are in a form acceptable to the Director of Democratic and Legal Services;

**and**

- h. the external adviser or consultant is supplied with all necessary data.

- 7.6. A Director, after taking into account aggregation implications, may wish to select a consultant who has previously been selected to advise, represent or act for the Council. Here, the Director must be sure that a second or further selection of that person (as opposed to the selection of any other) is reasonable and offers the best value for money to the Council.
- 7.7. The fee, or the precise basis for the fee calculation, must be agreed prior to appointment. This must include the basis on which the consultant may charge, when payment is due, whether the consultant may claim any additional disbursements or expenses and if so which must be clear in the contract documents.
- 7.8. The performance of all appointed external advisers and consultants must be rigorously monitored to ensure service delivery against the specified requirement. As with any other contract, there should be sound arrangements to monitor performance, control costs and ensure that any changes in instructions are properly agreed and recorded.
- 7.9. It is vital that the Council learns from its engagement of external advisers and consultants and the expertise that it has procured, therefore reducing the need to procure from external advisors and consultants in the future. Therefore where appropriate, there shall be a requirement for the external advisor or consultants to provide as part of their commission, a transfer to the Council of specialist knowledge and skills relating to the expertise procured.

**8. SPECIALIST WORK AND SINGLE SOURCE PROCUREMENT.**

- 8.1. Subject to the requirements of the EU Public Procurement Directives, where the number of specialist providers is known to be so few as to make a competitive tendering exercise within the general marketplace impractical, subject to the application of this regulation, the Officer responsible need not undertake a competitive exercise through public notice.
- 8.2. The Officer responsible, after taking all necessary steps to establish the number and identity of providers able and willing to submit tenders, and after assessing all Value for Money and Best Value considerations, must seek agreement from CCB to apply the provisions of this Regulation.
- 8.3. Subject to Regulation 8.2 above the Officer responsible may invite tenders from any one or more of the providers. The Officer must report the prior approval of CCB to the use of the Regulation in the subsequent contract award report.
- 8.4. If the CCB is satisfied that only a single person can feasibly carry out the requirements of the contract and that the particular specialism is the only suitable option available, it may authorise the negotiation of a price for the work.
  - 8.4.1. An invitation to tender under this Regulation may invite:
    - a. the submission of a quotation or estimate;
    - or**
    - b. the negotiation of a priceand, in the latter case, the Officer responsible does not need to go through a formal tendering process (Regulation 23). However, all requirements of these Regulations relating to the approval to award still remain.
- 8.5. Subject to Regulation 8.2 above, the Officer must report the prior approval of CCB to the negotiation of a price in the subsequent contract award report.

**9. DISASTERS AND EMERGENCIES**

9.1. This Regulation applies in case of:

- a. natural or any other disaster;
- b. civil or war emergency

where it is necessary for the Council, in carrying out its statutory duties, to obtain supplies, services or works and/or carry out any work by contract in order to:

- i. save or preserve life or property;
- ii. carry out any service in the public interest for the relief of distress;
- iii. as part of service recovery in response to a significant incident as defined in the Council's Emergency Plan.

9.2. Where this Regulation applies, any Director may place an order for supplies, services or works as the circumstances require after either:

- a. having requested approval from the CCB or if applicable, CSC, and having obtained the authority of the Director of Strategy, Commissioning, Procurement and Performance or, if applicable, the Leader or nominated Cabinet Member, immediately upon the occasion arising, if the situation permits;

**or if it does not**

- b. submit a report of any action taken and any expenditure incurred to the next available meeting of the CCB and if applicable, CSC for endorsement.

9.3. The Officer responsible does not have to follow the requirements for obtaining competitive tenders prior to placing an order under this Regulation. However, the Officer concerned must be satisfied that any expenditure incurred will be reasonable given the urgency of the situation.

**10. NOMINATED OR NAMED SUB-CONTRACTORS AND SUPPLIERS**

- 10.1. Where a Director nominates or names a sub-contractor or supplier to a main contractor, the following paragraphs apply.
- 10.2. A Director may, in appropriate cases, nominate or name a sub-contractor or supplier in the specification of a contract. Tenders for the nomination or naming of the sub-contractors or suppliers must be invited in accordance with these Regulations. These tenders must be received and opened in the same way as any other tenders under these Regulations.
- 10.2.1. The terms of the invitation must require from the selected tenderer an undertaking that the selected tenderer be willing to enter into a contract with the main contractor:
- a. indemnifying the main contractor against the main contractor's own obligations under the main contract in relation to supplies, services or works included in the sub-contract
  - b. subject to the terms of any applicable standard form of sub-contract
- and**
- c. subject to such other conditions as may be specified.
- 10.3. The Director or designated Officer must nominate or name to the main contractor the person whose tender is considered to be the most satisfactory. In cases of doubt, the Officer may seek advice or instructions from the CCB or GRP and if applicable CSC.
- 10.4. Where anyone nominates or names to the main contractor a tender other than the lowest received, they must report this to the next meeting of the CCB or GRP and if applicable CSC or the Cabinet.
- 10.5. Where the value of the sub-contract exceeds the sum allowed in the main contract, the Director must not make the nomination unless compensating savings have been achieved elsewhere in the main contract. If no such savings have been identified, the authority for the additional expenditure must be obtained under the Financial Regulations.
- 10.6. In accordance with Croydon's commitment to developing the local supply base and proactively implementing the Public Services (Social Value) Act 2012, sub-contracting can provide a useful tool for engaging small businesses, voluntary organisations and the community sector in the supply of goods and services.
- 10.7. Purchasers should consider whether the inclusion of sub-contracting clauses is appropriate for their commissioning activity.
- 10.8. Potential providers can secure value for money in procurement by engaging with small businesses directly via sub-contracting.

**GROUP C TENDERING****11. DEALINGS WITH OR THROUGH OTHER PUBLIC BODIES**

11.1. Subject to the requirements of the European Public Procurement Directives, the Officer responsible can place orders with or through the following organisations, if they can obtain equivalent or more advantageous terms than by inviting competitive tenders:

- a. another Local Authority/consortium of local authorities;
- b. Government Department / Purchasing Organisation which has been approved by the Head of Commissioning & Procurement;
- c. Statutory Body;
- d. Utility Undertaking (public or previously public).

However, the Officer responsible must obtain the most favourable terms possible for the Council and must be able to demonstrate that Best Value under the terms of Section 3 of the Local Government Act 1999 has been achieved for the Council, where there is more than one provider. The lead officer must decide when Regulation 1.22 applies and if so submit a report to either the CCB or the CSC, (dependant on the value), for recommendation of award.

- 11.2. The relevant Director must report to the CCB, for approval by the Director of Strategy, Commissioning, Procurement and Performance for proposed expenditure of between £100,000 and £500,000 or, for proposed expenditure of £500,000 or more, to CSC, for approval by the Leader or nominated Cabinet Member, a maximum contract sum which is proposed to be spent through the other Public Body during the period of the contract. The Director may then authorise orders from time to time to a total value not exceeding the approved contract sum.
- 11.3. The relevant Director is responsible for reviewing expenditure under this Regulation. They must decide whether the terms continue to be more advantageous to the Council.
- 11.4. The Director may stop ordering in this way if they believe that a competitive tender process would be more advantageous. Regulation 2.1 will apply.
- 11.5. A Director is responsible for all orders issued on their behalf from their Department (Regulation 30.3) and should refer to their Departmental scheme of authorisations for the financial limits that apply to individual Officers

**12. THE COUNCIL'S E-TENDERING SYSTEM**

- 12.1. Use of the Council's e-Tendering System is a critical method of ensuring transparency, fairness and accountability in procurement processes. As such, all tendering processes run on behalf of the Council must use the Council's e-Tendering System under the supervision of the Head of Commissioning & Procurement or one of their nominated officers. Other tendering methods may be used only with prior authorisation from the CCB.
- 12.2. The relevant Director for each tender process is responsible for ensuring that no tenders are arranged or let other than using the Council's e-Tendering System.
- 12.3. The relevant Director must ensure that all information required by the Procurement Division to commence and continue the e-Tendering 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.
- 12.4. The details of each tendering process to be recorded on the e-Tendering system include:
- a. the name of the contract proposed;
  - b. the nature of the supplies, services or works sought;
  - c. budget information including:
    - i. the Cabinet's approved estimates, showing provision for the expenditure;
    - ii. confirmation that sufficient budget remains to cover the expenditure;
  - d. the Director's written estimate (Regulation 2);
  - e. the method of tendering to be used, citing any necessary authority or instructions;
  - f. the last date and time for the receipt of tenders;
  - g. the names of the persons that were invited or entitled to tender
  - h. whether any named person is to be a nominated/named sub-contractor and the reason for this;
  - i. the date and time that each tender is received;
  - j. the date and time that each tender is opened;
  - k. the amount or amounts of each tender received;
  - l. the name of the person in whose presence the tenders were opened;
  - m. the tender which was accepted (if any) and by whom it was accepted;
  - n. the reason/s for acceptance, where the Director did not accept the lowest priced (or, where appropriate, the highest scoring) bid (Regulation 28.7) depending on whether the tender was evaluated on the basis of Lowest Price or Most Economically Advantageous (i.e. quality and price);
  - o. whether any tender has been returned to the sender because it was received

after the deadline (Regulation 13);

- p. any approved variation of these Regulations (Regulation 3);
- q. a record and copy of the advertisement, if the contract was advertised in the EU Official Journal and the date where applicable.

- 12.5. The Head of Commissioning & Procurement or a nominated officer from the procurement and commissioning team must ensure that the record of every tender process is kept.
- 12.6. The Executive Director of Corporate Resources and Customer Services and Deputy Chief Executive is responsible for and has custody of the records of all e-Tender processes undertaken on behalf of the Council and may issue detailed supplementary instructions as to their use and the completion of the details referred to above in paragraph 12.4.

### **13. NUMBER OF TENDERS**

- 13.1. The relevant Director responsible for a tendering process must ensure, as far as possible, the greatest advantage for the Council in:
- a. competitiveness of pricing;
- and**
- b. economy and efficiency in the administration of these Regulations.

This Regulation will always apply, unless these Regulations declare otherwise.

- 13.2. The Officer responsible must invite not less than four tenders. If fewer than four persons have applied at either the Expression of Interest stage or the Pre-Qualification stage, the Officer responsible must consider alternatives before proceeding. If the Officer responsible decides to proceed, they must send an invitation to all tenderers that meet the Council's minimum standard.
- 13.3. Where there is a Professional Code of Conduct that gives guidance on the number of tenders, this may be taken into account. The minimum number of tenderers may be different for contracts covered by European Regulations and the Officer should seek guidance from the Head of Commissioning & Procurement where necessary.



**14. RECEIPT AND OPENING OF TENDERS**

- 14.1. Subject to the provisions of Regulation 11, only tenders received through the Council's E-Tendering Portal will be accepted and opened. Where a technological problem prevents the receipt or opening of a tender, the Head of Commissioning & Procurement shall agree an alternative method of receipt or opening of the tender, and shall communicate this to the Officer responsible and to bidders that are affected.
- 14.2. Every tender must be received by a secure method approved by the Head of Commissioning & Procurement.
- 14.3. Generally, no extension of time will be allowed for the receipt of any tender beyond the deadline notified to bidders, although tenders will still be received up to the point at which the formal opening process commences. No extension of time for the receipt of a tender will be allowed after the opening of tenders has commenced.

In exceptional circumstances, where tenders have been received, but before any tenders have been opened, and in agreement with the Head of Commissioning and Procurement, the Officer responsible may extend the deadline for receipt notified to bidders but must ensure that all the tenderers are informed of the changes and that no tenderer is disadvantaged by the extension.

- 14.4. The Head of Commissioning & Procurement must arrange for all tenders for any one contract to be opened at the same time. Any tender received after the opening of tenders has commenced shall be rejected, and the relevant tenderer advised.
- 14.5. The Head of Commissioning & Procurement must ensure, for audit and information purposes, that tenders received, whether using the e-Tendering system or otherwise:
- An electronic record is retained of the date and time of opening and of the names of the two officers present; and
  - An electronic record of all tenders received is retained

## 15. CHOOSING THE TENDERING APPROACH

- 15.1. The Officer responsible may consider the procurement approaches described in these Regulations, depending on the circumstances of the proposed contract and the Council's requirements. Under Regulation 2.1, approval of chosen approach must be sought from CCB or GRP prior to placing any advertisement or invitation to tender being made.

The approaches are:

- a. Purchasing through another Public Body (Regulation 11);
- b. Specialist Work and Single Source Procurement. (subject to Regulation 8);
- c. Open Tendering (subject to Regulation 16);
- d. Restricted Tendering (subject to Regulation 17);
- e. Negotiated Procedure including Tendering for Design & Build Contracts (subject to Regulation 18);
- f. Approved Lists (subject to Regulation 20);
- g. Tendering by Reference to a Schedule of Rates and making use of Framework Agreements (subject to Regulation 21);
- h. Competitive Dialogue (subject to Regulation 19);
- i. Commissioning Small Businesses and the Voluntary and the Community Sector (subject to Regulation 22).

When using e-tendering (including the use of e-auction), all prospective bidders must be made aware of this at the outset of the procurement. All e-tendering activities (including the use of e-auctions), must be undertaken under the supervision of the Strategy, Commissioning, Procurement & Performance (SCPP) division

- 15.2. When using e-Tendering then the e-Tendering solution must be as approved by the Head of Commissioning & Procurement. The solution must as a minimum include;
- a. an internet solution requiring access user names and passwords for both Council officers and bidders;  
**and**
  - b. 'tender boxes' which are time and password protected;  
**and**
  - c. the ability to exchange Invitation to tender documents electronically;  
**and**
  - d. an online log representing both the Council's and the bidders' activities;  
**and**
  - e. the ability to be used for any type of electronic document or file size as applicable to the tender (and in-line with the Council's ICT policy).

- 15.3. Croydon's Social Value Toolkit outlines the advantages of different tendering approaches in terms of deriving the optimum social value. Determining the best approach must be done on a case-by-case basis. Croydon Council expects to be able to achieve social value, particularly through service contracts. Each contract must be looked at on its own merits and many different factors will be relevant when deciding how to proceed. These include:
- i. The value of the contract (contracts over the value of £1m are subject to Council policy around apprenticeships and work placements)
  - ii. What types of organisations might be interested in the contract (i.e. whether extremely complex and/or high value or smaller services contract).
- 15.4. The Councils, CCB or the CSC may, if they wish, give their own directions as to the method of tendering.
- 15.5. In this Regulation, 'contract' includes 'sub-contract'.
- 15.6. The Director must ensure that, whatever method of tendering is chosen, financial appraisals of contractors are obtained.

## **16. OPEN TENDERING**

- 16.1. The Officer responsible must publish an advertisement/contract notice in suitable media to ensure an appropriate response - as a minimum on the Council's Procurement Internet Site. The advertisement/contract notice must state the place where interested providers may obtain e-Tender documents and the last date when Tenders will be received.
- 16.2. The Officer responsible must allow reasonable time between the published date of any advertisement/contract notice and the last date for receipt of tenders but no less than 10 working days.
- 16.3. Where Social Value considerations will form part of the evaluation, it is a requirement to make all potential providers aware of this from the outset (see section 22 for standard social value contract clauses).
- 16.4. Open tendering should not normally be used where an approved list of contractors is already in place.

**17. RESTRICTED TENDERING**

17.1. Before inviting tenders for any such contract, the Officer responsible must publish an advertisement/contract notice requesting Expressions of Interest in suitable media to ensure an appropriate response - as a minimum on the Council's Procurement Internet Site.

The advertisement/contract notice must give details of:

a. the particulars of the contract;

**and**

b. how interested persons may apply for permission to tender, i.e. how to receive Pre-Qualification/business questionnaires.

17.1.1. The Officer responsible may also send a copy of the notice to all persons whose names appear on any relevant Approved List of Tenderers (Regulation 18).

17.1.2. The Officer responsible must allow reasonable time between the published date of any advertisement/contract notice and the deadline for expressions of interest but no less than 10 working days.

17.2. Persons make an "Expression of Interest" by submitting a request via the e-Tendering portal. They will be then asked to complete and return the appropriate Pre-Qualification/business questionnaire. These questionnaires will then be used to shortlist for the next stage of the tender exercise. The Officer responsible must not invite tenders before shortlisting has been completed.

17.3. After the Officer responsible has finished shortlisting, they may send out invitations to tender to those persons on the shortlist and must allow reasonable time for the last date for receipt of tenders but not less than 10 working days.

**18. NEGOTIATED PROCEDURE INCLUDING TENDERING FOR DESIGN & BUILD CONTRACTS**

- 18.1. Regulation 8 (Specialist Work and Single Source Procurement.) will still apply in circumstances where the number of specialist providers is known to be so few, including the existence of only one supplier, as to make a competitive tendering exercise within the general marketplace impractical, except for those contracts which are subject to the EU Public Procurement Rules, which permit the use of a negotiated procedure in certain limited circumstances.
- 18.2. This Regulation 18 will apply in those instances where there are deemed to be an adequate number of suppliers but where negotiation can be shown to be the best procurement route, given the Council's particular requirements, and in particular, where a design and build contract is required. Under Regulation 2.1, approval of use of the negotiated procedure must be sought from CCB or GRP prior to placing any advertisement or invitation to tender being made.
- 18.3. The Officer responsible must:
- a. establish that another form of competitive tendering is not the best procurement route in the particular circumstances of the proposed contract;
  - b. ensure that Value for Money and Best Value for the Council are best served by the use of the negotiated procedure rather than another tender process;
  - c. establish a team of suitably skilled council officers, including a member of the SCPP, with whom to conduct the negotiated procedure;
  - d. observe all other Regulations relating to the bidding and approval processes, including advertising for expressions of interest, requiring the completion of a pre-qualification questionnaire, and shortlisting a minimum of 4 candidates to be invited to submit proposals thereafter;
- and**
- e. observe the EU Regulations, where relevant which prescribe strict conditions for the use of the EU Negotiated Procedure.
- 18.4. Subject to Regulations 18.3 and 18.5, the Officer responsible may not, by him/herself conduct the negotiated procedure or negotiate direct with any bidder. All contact with the bidders must be conducted through the Council's e-tendering portal or in face-to-face minuted meetings attended by at least two members of the team appointed to conduct the negotiated procedure.
- 18.5. If the negotiations will involve a significant partnership arrangement and/or affect key decisions of the Council, before negotiations commence, the Leader, or nominated Cabinet Member - on a recommendation from CSC, must approve:
- i. the service and budgetary implications prior to negotiations commencing;
- and**
- ii. the shortlist prior to 'Best and Final Offer' being requested from the contractors concerned.

## 19. COMPETITIVE DIALOGUE

19.1. This Regulation may only be used for particularly complex contracts where the Council is not able:

**a** to objectively define the technical means capable of satisfying the needs or objectives;

**and/or**

**b** to objectively specify the legal and/or financial make-up of a project.

The Officer responsible must establish that another form of tendering is not the best procurement route in the particular circumstances of the proposed contract

19.2. Before inviting tenders for any such contract, the Officer responsible must publish an advertisement/contract notice requesting expressions of interest in suitable media to ensure an appropriate response. As a minimum the Officer responsible must publish an advertisement/contract notice on the Council's Procurement Internet Site.

The Advertisement/contract notice must give details of:

**a** the particulars of the contract

**and**

**b** how potential tenderers may express an interest to tender, i.e. how to receive and submit Pre-Qualification/business questionnaires.

19.3. Potential tenderers make an "expression of interest" by completing and returning the appropriate Pre-Qualification/business questionnaire. These questionnaires will then be used to shortlist. The Officer responsible must not invite participation in competitive dialogue before the deadline specified in the advertisement/contract notice has passed.

19.4. After the Officer responsible has finished short listing, and with regard to Regulation 14, they may send out invitations to participate in competitive dialogue to those persons on the shortlist

19.5. If the competitive dialogue is in successive stages, less suitable tenderers or tenders may be dropped from the dialogue at each stage. Officers must ensure that this proposal is clearly stated in the advertisement/contract notice.

19.6. Croydon's Social Value Toolkit refers to the power of competitive dialogue as the most sophisticated and flexible of the four procedures available to contracting authorities under the Procurement Regulations. 'In contrast to a more restricted procedure, the Competitive Dialogue procedure offers more flexibility during the dialogue stage to discuss the fulfilment of social benefit objectives as a two-way dialogue matching the authority's aspirations with each bidder's capabilities.'

19.7. Irrespective of the value of the contract, if competitive dialogue is used, it must be conducted in accordance with European Procurement Regulations.

**20. APPROVED LIST OF PROVIDERS**

- 20.1. This Regulation 20 may not be used for any procurement, which is subject to the requirements of the EU Public Procurement requirements. Such procurements are referred to in Regulation 21 (Tendering by reference to a Schedules of Rates and making use of Framework Agreements).
- 20.2. Wherever there is a foreseen need for regular tendering covered by these Regulations within similar categories of supplies, services or works, then, the Officer responsible may establish an Approved List.
- 20.3. As an alternative to establishing or using a Council Approved List, Providers may be selected for invitation to tender from the Approved List of a Local Government or Government organisation, (e.g. Constructionline).
- 20.4. Before deciding to establish a new Approved List of Providers (Approved List) for the provision of supplies, services, or works, the Officer responsible must check and obtain authorisation from the CCB (Regulation 2).
- 20.5. In the case of Approved Lists to be established by the Council, the Officer responsible must arrange for notices inviting applications over a period of not less than four weeks, for inclusion on the List to be published in suitable media to ensure an appropriate response. As a minimum the Officer responsible must publish an advertisement/contract notice on the Council's Procurement Internet Site.
- 20.6. Any recommendations for appointment to an Approved List established by the Council under this Regulation will:
- a** be approved by the Leader, or nominated Cabinet Member upon the recommendation of the CSC;
  - b** contain the names of all persons who have applied to be included in it and who meet the Council standards;
  - c** show whether an included Provider is approved for contracts for all or only some specified categories, value or amounts.
- 20.7. Where an Approved List has been created or authorised for use, wherever these Regulations require the invitation of tenders, then only providers on the Approved List may be invited to tender for the services to which the Approved List applies.
- 20.8. An Approved List must be reviewed from time to time to demonstrate Best Value and re-formed at intervals not exceeding four years.
- 20.9. The Officer responsible must allow sufficient time prior to each review to ensure that providers whose names appear on the List are asked whether or not they wish their name to remain on the List. The approval of the CCB must be sought if pending its being re-formed, an extension of more than twelve weeks to the four-year life of any Council-created Approved List is necessary.

- 20.10. The officer responsible must obtain satisfactory financial and other relevant references. A joint report from the Executive Director of the relevant Department and the Head of Commissioning & Procurement must be submitted to the CSC for approval of the List
- 20.11. The Officer responsible for an Approved List for a specified category of works, supplies or, services may only invite Providers whose names appear on the List to tender for contracts in that category.
- 20.12. The Officer responsible must send invitations to tender for such contracts to at least four of the Providers whose names appear on the List. When there are fewer than four such Providers, invitations must be sent to all of them.
- 20.13. If there are four or more Providers on the list, the Officer responsible must send any invitations in rotation or in another manner agreed by the CSC or either generally or in relation to a particular contract or to a category of contracts. The CSC may give directions, which will permit the Officer responsible to send invitations to Providers on the list who are known to offer competitive prices or who have specialist capabilities.
- 20.14. A recommendation to the Head of Commissioning & Procurement to delete a Provider from an Approved List can be made at any time if the Director for the list is satisfied that deletion from the list be applied because of:
- a** financial instability;
  - or**
  - b** unsatisfactory performance of a contract;
  - or**
  - c** where the Provider has failed to return tender documents on three occasions without a satisfactory explanation;
  - or**
  - d** other compelling circumstances.

The decision to delete the name of any Provider from an Approved List shall be made by the Head of Commissioning & Procurement after a review of the recommendation.

- 20.15. If deletions to a List are made under Regulations 20.14, the Officer responsible shall report the amendments annually to the CSC.



**21. TENDERING BY REFERENCE TO A SCHEDULE OF RATES AND MAKING USE OF FRAMEWORK AGREEMENTS****SCHEDULE OF RATES**

- 21.1. When provision has been made in the Council's approved budget estimates for supplies, services or works of a recurring nature, the Officer responsible may decide to use a 'schedule of rates' and this Regulation shall apply.
- 21.2. The Officer responsible may invite persons to tender for supplies, services or works by reference to a Schedule of Rates in the format of either individual items or categories of items. The Officer responsible must publish an advertisement in suitable media to ensure an appropriate response - as a minimum on the Council's Procurement Internet Site.
- 21.3. In preparing the specification (Regulation 4), the appropriate Director may require tenderers to submit prices against either a detailed specification, a general description or against a combination of the two, as necessary. However, in order to obtain best value for money, the Officer responsible must provide indicative volumes to tenderers; must request information on discounted prices for higher volumes; and must consider whether better value is available through volume purchasing.
- 21.4. The Officer responsible must select the tenderers who submit the lowest acceptable prices and meet the specification's quality standards:
- a** sufficient to execute all of the work and/or supplies, services or works in that financial year;
  - and**
  - b** chosen by referring to the Contractor's estimated capacity to complete all orders assigned.
- 21.5. The appropriate Director may from time to time place orders with each of the selected providers, according to their estimated capacity to provide supplies, services or works.
- 21.6. The Officer responsible must not place orders whose total value exceeds the amount agreed in any one financial year in the Council's approved budgets.
- 21.7. The Officer responsible must maintain a record of all orders placed in a manner approved by the Council's Internal Audit Section.
- 21.8. Every order placed must be in a form approved by the Director of Corporate Resources and Customer Services and is also subject to the standard clauses as set out in Regulation 24. In their tender, every tenderer must signify their willingness to comply with these clauses.
- 21.9. Individual orders from a Schedule of Rates must not exceed £100,000, unless the Director obtains approval for the proposed purchase from the Leader or nominated Member, following a report to the CSC, which demonstrates that the proposal will

provide value for money for the Council.

- 21.10. Every order placed under this Regulation must be in writing and must be signed on behalf of the appropriate Director.
- 21.11. For the purposes of these Regulations, the value of the contract must be taken as the total amount of the Council's approved estimates for the categories of supplies, services or works in question.
- 21.12. If the CSC or, where appropriate, the CCB, based upon the overall contract value, consider it appropriate, they may make any one or more of the following directions, subject to the provisions of the EU Public Procurement Directives:
- a** no further orders be placed with any one or more or all of the selected tenderers;
  - b** revised rates be approved when they are satisfied that such revision is justified in regard to the general level of prices or costs;
  - c** no further action be taken under this Regulation but that competitive tenders be sought in accordance with any other of these Regulations, as considered appropriate.

## **FRAMEWORK AGREEMENTS**

- 21.13. As an alternative to tendering by reference to a schedule of rates, it may be deemed more appropriate to invite bids via the use of a Framework Agreement.
- 21.14. Subject to the EU Public Procurement Directives, the Officer responsible may either:
- a. Invite tenders to be appointed to a Framework Agreement, using one of the tender processes permitted under the EU Public Procurement Directives;
  - or**
  - b. Seek to join an existing Framework Agreement put in place by a Government Department (e.g. GPS), another local authority or other statutory body, where:
    - i) the subject matter of the Framework Agreement meets the procurement needs of the Council; and
    - ii) the requirements of the EU Public Procurement Directives have been met.
- 21.15. In order to ensure competitive tendering of prices, framework agreements must not be set up for less than one year or more than four years. The CSC or where appropriate the CCB or GRP may agree a longer period in exceptional circumstances. Where applicable the maximum term of the framework must be in accordance with European Procurement Regulations.

- 21.16. In order to mitigate the possibility of collusion when awarding preferred supplier status under the terms of a framework agreement the Officer responsible must appointment to either a single provider or a minimum of three; there cannot be only two providers on a framework agreement.
- 21.17. Where appropriate, the Officer responsible may attach additional stipulations and conditions to an order placed under a framework agreement. In such a case the tenderer must signify in writing their acceptance of this before commencing to fulfil the order. These additional stipulations and conditions cannot fundamentally change the conditions under which they were appointed to the framework agreement in the first instance.
- 21.18. Where the need arises, the name of any one or more of the tenderers not originally awarded preferred supplier status may be substituted for any one or more of those appointed under the terms of the framework agreement, provided that such an eventuality has been provided for in the tender documents and that any such substitution be done within 4 calendar months of the decision to award the relevant preferred supplier status.
- 21.19. Where the Officer responsible chooses to use an existing Framework Agreement, they must first ensure that condition b (i) and (ii) of Regulations 21.14 have been met.
- 21.20. The use of an existing framework may be an appropriate tendering approach under Regulation 15.1 but if a new framework agreement is being set up then the Officer responsible must seek approval of this approach by way of a Strategy Report to CCB or GRP.
- 21.21. If the overall value of contracts to be called off over the whole term of the framework agreement is likely to be in excess of £500,000 then, following the tender process, establishment of and appointments to the framework agreement must be approved through CSC by way of an award report.
- 21.22. Further to Regulation 1.17.4, when making use of a nationally approved framework agreement (i.e. one let by either Government Procurement Services (GPS); Eastern Shires Purchasing Organisation (ESPO); Yorkshire Purchasing Organisation (YPO); The Essex Procurement Hub (Braintree District Council); TFL Engineering & Project Management Framework; Homes & Community Agency (HCA); and/or Partnership for Schools/Education Funding Agency) an abridged strategy report, seeking approval of the tendering approach, will be acceptable to the CCB or GRP as appropriate.
- 21.23. Approval of a call-off above £500,000 in value will still need to be approved through CSC after review by the CCB or GRP.

**22. COMMISSIONING SMALL BUSINESSES AND THE VOLUNTARY AND COMMUNITY SECTOR**

- 22.1. The Public Services (Social Value) Act 2012 requires councils to achieve community benefits through procurement by actively engaging with a diverse range of suppliers including SMEs, the voluntary sector and community organisations.
- 22.2. The London Borough of Croydon is committed to using a mixed supply base to help stimulate innovation and value for money, and is committed to developing an environment that recognises that there is a place in the market for developing Croydon's local business base. In order to get best value and promote local competition purchasers are expected to assess Croydon's local business offer and provide fair access to public contracts.
- 22.3. While the third sector cannot be treated more or less favourably than other potential providers, there are circumstances where the Council may consider using the commissioning process set out below which is specifically tailored towards enabling third sector providers to contribute towards the provision of quality public services.
- 22.4. Before using the third sector commissioning process, the Officer responsible must confirm that this is the appropriate mechanism by reviewing the proposed procurement with the Head of Commissioning & Procurement. The key considerations are:
- a. Whether the service they are seeking to commission is a service which the Council has a statutory duty to provide;
  - b. If the market for this service is competitive, whether it consists of a mixture of private sector organisations and third sector organisations or whether all potential providers belong to the third sector;
  - c. If there are only a few potential providers of the service, whether they should proceed on the basis of the available market or whether it is in the interests of the service to try to develop a stronger market;
  - d. Whether they require the ability to enforce the service provider's obligations against the service provider;
  - e. To what extent they require the flexibility to amend the terms of the service in question;
  - f. Any steps that should be taken, e.g. to identify potential providers, prior to selecting the third sector commissioning process.

- 22.5. On selecting the third sector commissioning process, as a minimum, the Officer responsible must publish an advertisement on the Council's internet site and circulate the link to this advertisement to the major third sector infrastructure organisations in Croydon (for distribution to their members) and to all organisations on the Council's third sector database. The advertisement must give details of:
- a. The strategic context of the commissioning;
  - b. The name and contact details of the commissioner;
  - c. The service specification/ how the service has to be specified;
  - d. The priorities to be addressed and outcomes to be met/how the outcomes should be developed;
  - e. The budget for the whole fund per annum and the range of bid accepted;
  - f. The dates when funding would start and end;
  - g. How to make a bid and the support available to do so;
  - h. How to submit a bid and the deadline for doing so;
  - i. How the bids would be evaluated and when bidders would be informed of the outcome;
  - j. The Council's standard funding agreement;
  - k. The Officer responsible must allow reasonable time between the published date of any advertisement and the deadline for submission;
  - l. but no less than 40 working days (as agreed in the Croydon Compact).
- 22.6. Third sector organisations must make bids by completing and submitting an appropriate application form. These application forms will then be used to shortlist the organisations. The Officer responsible must not accept application forms after the deadline specified in the advertisement has passed. They must ensure that all bids are scored using the same assessment criteria and use these scores to make recommendations to the evaluation panel established for the specific tendering exercise. The evaluation panel will review the assessments and make recommendations to the Officer responsible that will make the final decision or recommendation dependent on the financial value. This Officer must have the necessary powers to do so, as identified in the Council's scheme of authorisation.
- 22.7. A report making a recommendation to award a funding agreement must be made through:
- a. The Contracts and Commissioning Board, if any of the individual funding agreements are to be for more than £100,000 (for the term of the agreement);
  - b. The Corporate Services Committee, if any of the individual funding agreements are to be for more than £500,000 (for the term of the agreement).

- 22.8. The Officer responsible must inform all bidders; both successful and unsuccessful, of the results of their applications at least three months before funding will commence.
- 22.9. The Officer responsible must ensure that a funding agreement is signed by each successful organisation and a Council officer with the necessary powers before funding commences. This funding agreement must include:
- i.** The services specification;
  - ii.** The start and end dates of the service;
  - iii.** Payment dates;
  - iv.** How the service will be monitored.

**23. TENDERING INSTRUCTIONS**

- 23.1. The Officer responsible must issue tendering instructions to every person:
- a** invited to tender following a short-listing process;
  - or**
  - b** who requests the supply of tender documents under open tendering (Regulation 16).
- 23.2. The Officer responsible must advise every person submitting a tender that:
- a.** generally, no extension of time will be allowed for the receipt of any tender;
  - b.** that tenders received after the date and time specified for receipt may be disregarded;
  - c.** that any departure from the Tendering Instructions may lead to the tender being disregarded;
  - and**
  - d.** that the Council do 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 the tender has been accepted, then the agreement becomes legally binding;
  - f.** tender documents to be in electronic format.;;
  - g.** before accepting any tender, officers must comply with Regulation 28;
  - h.** the bidders signed form of tender cannot be different in detail to that submitted in the e-Tendering process.
- 23.3. Standard contract clauses must be stated (Regulation 24). Every person who submits a tender must be willing to enter into a contract containing these clauses.
- 23.4. The Officer responsible must specify the date, time and place for the receipt of tenders. They must also specify the period for which the tender will be kept open for acceptance.
- 23.5. Tenders must be submitted electronically or by such other form of acceptance agreed by the Head of Commissioning & Procurement.
- 23.6. Where the Officer responsible requires work or services to be carried out in occupied property, or if other special conditions apply to the site, they must state that fact in the tendering instructions.
- 23.7. The Officer responsible must ensure that every tender is submitted on a firm price basis unless:
- a** the CSC or the Cabinet or where appropriate the CCB or GRP direct otherwise
  - or**

- b** the documentation grants otherwise where it is the recognised practice of the trade to tender on any other basis.

Where contracts have a duration of more than twelve months, tenders may be submitted on a fluctuating price basis following any appropriate formula or indices.

23.8. Every tender must specify:

- a** the amount of the tender and any discounts or deductions allowable and the terms for any such allowance;

**and**

- b** the time or times within which the contract is to be performed or completed.

23.9. 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.

23.10. When a bidder 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

23.11. The Officer responsible must check that every tender sum is stated net of Value Added Tax or any other Tax or Duty. However, check that the amount of any such Tax or Duty payable is stated.

## **24. EVALUATION CRITERIA**

24.1. The composition of and assessment of the PQQ and ITT must be carried out in line with the EU Treaty principles of transparency, non-discrimination and equal treatment.

24.2. Criteria stipulated in the PQQ (selection criteria) cannot be a repetition of what will be asked in the ITT.

24.3. The PQQ is evaluated by assessing the financial status and technical or professional ability and integrity of potential suppliers; considering issues such as their experience and qualifications of their staff.

24.4. 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, that is directly related and proportionate to the Council's requirements.

The following may be appropriate:

- i) Capability;
- ii) Capacity;
- iii) Technical merit;



- iv) Aesthetic and functional characteristics;
- v) Performance standards, quality control, self-monitoring and complaints;
- vi) Sustainability issues and environmental characteristics;
- vii) Skills level of the workforce;
- viii) After-sales service;
- ix) Technical assistance;
- x) Delivery date or period and ability to deliver;
- xi) Continuous improvement;
- xii) Customer care policies;

- 24.5. Criteria stipulated in the ITT (award criteria) cannot be a repetition of what was used in the PQQ.
- 24.6. The award criteria and weightings must be disclosed in the PQQ / ITT documentation.
- 24.7. When awarding on the basis of Most Economically Advantageous Tender, the split between cost and quality is to be 60% cost and 40% quality. Where the Officer responsible does not consider this split appropriate, the reasons for use of an alternative percentage split must be substantiated in the strategy report in accordance with Regulation 2.1 for approval by CCB / GRP as appropriate.

## **25. STANDARD CONTRACT CLAUSES**

- 25.1. All contracts valued in excess of the £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.
- 25.2. The Officer responsible must include the following standard clauses in every written contract.
- 25.3. 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 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.

- d. 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."
- e. 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.
- 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.

25.4. Standard contract clauses for securing social value are set out in the social value toolkit. The officer responsible should refer to this toolkit to ensure the appropriate clauses are used

25.5. Use of Bonds - the Officer responsible must consider the use of a bond in the following circumstances:

- a all contracts, which exceed £1,000,000, must include a bond or other form of security. Where circumstances, such as the nature of the contract, make a bond unnecessary, and following a risk assessment, a report must be made to CSC including a recommendation that approval be sought from the Leader or nominated Cabinet Member not to require a bond, and the reasons for this request must be clearly set out. A bond or other security may be necessary even if supplies, services or works are to be supplied at no monetary cost to the Council.
- b Bonds are not required for contracts below £1,000,000. Alternative ways of protecting the Council's interests are available and should be sought, for example:
  - ensuring goods / services are to a satisfactory standard before payment
  - manufacturers' guarantees of insurance cover
  - use of retentions and stage payments, particularly for works and development contracts
  - parent company guarantee
- c All contracts under £1,000,000 must have a risk assessment to determine if there is a need for a bond or other security, or one of the alternative actions in (b) above. The results of the risk assessment are to be presented in the award report to CCB or GRP.

25.6. The Officer responsible must check to see if there is an appropriate and current:

- a British Standard Specification
- or**
- b British Standard Code of Practice
- or**

**c** European equivalent

at the date of the tender.

If so, every contract must dictate the following:

**d** all supplies and materials supplied

**or**

**e** all supplies and materials used

**and**

**f** all work carried out

is in accordance with **a - c** above, unless this specification requires a higher standard.

25.7. In every written contract, the Officer responsible must insert the following clause:

The Council is empowered to cancel the contract and recover from the contractor the amount of any loss resulting from such a cancellation if the contractor has offered, or given, or agreed to give to any person any gift, or consideration of any kind as an inducement or reward for doing, or forbearing to do, or having done or forborne to do any action in relation to the obtaining of the Contract or any other contract with the Council, or for showing or forbearing to show favour or disfavour to any person in relation to the Contract or any other contract with the Council, or if any similar acts shall have been done by any person employed by the Contractor or acting on the Contractor's behalf (whether with or without the knowledge of the Contractor), or if in relation to the Contract or any other contract with the Council 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

This will come into force where:

**a** the act has been carried out by any person employed by the contractor or acting on the Contractor's behalf (whether with or without their knowledge);

**or**

**b** in relation to any contract with the Council, the contractor or any person employed by them acting on the Contractor's behalf, has committed any offence under the Bribery Act 2010; **or**

**c** in relation to any contract with the Council, the contractor or any person employed by them acting on the Contractor's behalf, has given any fee or reward, the receipt of which is an offence under Section 117(2) of the Local Government Act 1972.

25.8. Every contract, which will or may involve the removal and disposal of debris, must

stipulate that the contractor and/or any sub-contractor employed are responsible for its disposal. The Director must ensure that this is properly regulated according to the Director's requirements and satisfaction.

25.9. For every contract for works after the contract documentation has been finalised, the contractor must submit their best estimate of:

**a** the programme of working;

**and**

**b** the valuation of work for each month of the contract

and immediately notify the contract's Supervising Officer of any variations that become necessary to either of the above.

25.10. Every contract must have a clause requiring the contractor to obtain adequate public liability and employer's liability insurance and any other insurance required by the contract. The contractor must provide reasonable proof of this before work is commenced.

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.

25.11. Every contract must have a clause requiring all parties to comply with the provisions of the Data Protection Act 1998 ('DPA')

25.12. 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')

25.13. Every contract must name the Supervising Officer.

25.14. 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.

25.15. Every written contract must incorporate the specification and any drawings and bills of quantities.



25.16. Every contract for the purchase of goods, services or works 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 goods, 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.

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

This may be for the whole contract or any stage or part of it.

25.17. Every contract awarded by the Council should consider the feasibility of asking the contractor to provide apprenticeships and training opportunities for local people (this should be a consideration discussed in the original strategy report so that CCB or GRP can consider if this is a reasonable request to include in the contract requirements from the contractor selected as the successful contractor.

**GROUP D ACCEPTING TENDERS AND POST TENDER****26. PRICING DOCUMENTS**

- 26.1. Where the Director receives a pricing document in relation to a tender, they must check it for arithmetical and technical accuracy before recommending its acceptance. The Director must inform the CSC or the CCB or GRP as appropriate, as part of the general report, of any errors found. They must also report on any feature, which could result in additional cost.
- 26.2. The Director must check that any pricing document is complete before accepting it. The Regulation relating to tendering instructions (Regulation 23) must be followed.

**27. DISREGARDING TENDERS**

- 27.1. The Director may disregard tenders where the tenders:
- a** do not comply with tendering instructions
  - or**
  - b** do not comply with the provisions of these Regulations
  - or**
  - c** are subject to any reservation, qualification or condition.

**28. POST TENDER CLARIFICATION / NEGOTIATION**

- 28.1. The Director responsible must authorise the general principle of any communication and enquiries with tenderers after the receipt of the tenders but before the acceptance of any tender.
- 28.2. After the receipt of tenders, Officers may need to contact tenderers as part of the evaluation process to clarify technical and contractual information (for example, where there are aspects of the bids that are unclear or contain minor errors. Clarification may also be sought from tenderers on matters of quality performance or particular terms and conditions of contracts). Any communication of this nature must be confidential and recorded in writing. The Officers must maintain a written record of the reason for contact and any decisions taken. All documentation must be available for audit. If an e-Tender process is being utilised, this can be recorded on the system in the messaging area. Negotiations in relation to price or other areas where improvements may be possible should not take place.
- 28.3. All tenderers who are able to meet the requirements of the specification should be given the same opportunity to engage in tender/bid clarification. Extreme caution and care must be exercised to avoid either unfairness to potential tenderers or the impression of unfairness to some tenderers.

- 28.4. Where the contact with tenderers leads to changes in the tender price or original specification, Officers must regard this contact as post tender negotiations and must follow the procedures set out in Appendix A.
- 28.5. The Director must include the rules of post tender negotiation in all invitations to tender.

## **29. ACCEPTANCE OF TENDERS (AWARD OF CONTRACTS)**

- 29.1. Subject to the provision of this regulation below:
- a) the relevant Executive Director may accept a tender for a contract valued at less than £100,000 for their relevant authorisations;
  - b) the Director of Strategy, Commissioning, Procurement and Performance may accept any tender for a contract valued at less than £500,000 in accordance with Regulation 1.17;
  - c) the Leader, or nominated Cabinet Member upon the recommendation of the CSC, may accept any tender for a contract, if:
    - i there are sufficient financial resources in the relevant budget
    - and**
    - ii the tender meets the original specification.

If, in any way, the tender does not meet the specification, then the Director concerned must report to the CCB, GRP or CSC as appropriate for further instruction.

- 29.2. A contract may not be awarded before the relevant Director has submitted a full report on the tenders received for the relevant contract.
- If the Officer responsible has not previously provided a report on financial references at the short-listing stage, they must include them in the report seeking acceptance of a tender.

Where the financial appraisal of a contractor gives an 'extreme caution' rating, the contractor must not be used unless the Director reports on:

- a any mitigating circumstances
  - and/or**
  - b why they wish to appoint that contractor.
- 29.3. Every report seeking acceptance of a tender for a contract valued at £100,000 or more must be reviewed first by the Head of Commissioning and Procurement and the Head of Corporate Law. The report must be prepared in accordance with the relevant Protocols in the 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, the Tenders and Contracts Regulations, the Financial Regulations, national and EU legislation and the Council's policies. In particular, every report must state the considerations relating to legal issues, equalities, environment, human resources, crime & disorder, freedom of information and data protection.

- 29.4. The Director must also draw to the attention of the CSC, CCB or GRP, as appropriate, any case where a tender other than the highest scoring bid has been accepted. Where a tender was advertised to be awarded on Lowest Price basis, the highest scoring bid should be that with the lowest cost. Where a tender was advertised on the basis of Most Economically Advantageous Tender (MEAT), the highest scoring bid will be determined via the evaluation criteria as stipulated in the Invitation to Tender (ITT). For a contract where the cost is recoverable under law from another person, the Officer responsible must (generally) choose the tender that is the most cost-effective and meets the specification requirements
- 29.5. When an Executive Director accepts a tender without the need to submit an exception or an award report, they must bear in mind the same considerations as if they were reporting to the CSC, CCB or GRP as appropriate.
- 29.6. Unless the Director, in evaluating the tender, finds that the tenderer cannot meet the specification, the following must apply:
- a where the Council is incurring expenditure, the Director must accept the most economically advantageous tender
  - b where the Council is receiving income, the Director must accept the highest tender.
- 29.7. The Director must not accept any tender that is more than the amount specified in the Council's approved estimates, unless they have previously made alternative financial provision under the Financial Regulations.
- 29.8. After accepting a tender, the Director must ensure that any authority to proceed with works is subject to Regulation 30 (Orders Given Under Contract).
- 29.9. The Director must inform unsuccessful tenderers as soon as possible that their bid has been unsuccessful. If any contractor requests information about other tenders received, the Officer responsible must supply the following information:
- a the amount (£) or evaluation score of the successful bid only
  - b the name of the winning contractor or contractors
  - c where the unsuccessful bidder came in relation to the winning bid.
- 29.10. Officers must meet the requirements of the Council's Key Decision making process and the requirements of the Stand still period when contracting via EU Procurement rules
- 29.11. In the case of awards made following an EU tendering process, The Director must inform/debrief all companies that submitted an offer or who applied to be included amongst the companies to be selected to tender for or to negotiate the contract the decision, the Officer responsible must supply the following information:

- a. the criteria for the award of the contract or agreement;
- b. the name of the winning contractor or contractors;  
and where practicable;
- c. the amount (in Pounds Sterling) or evaluation score of the winning contractor or contractors;
- d. the amount (in Pounds Sterling) or evaluation score of the company being informed;
- e. Under the new Remedies Directive 2009, the officer must also provide a precise statement of when the standstill period will expire or the date before which a contract will not be entered into, further to this the officer must also provide a complete breakdown of scores and supporting narrative explanation which should be sufficient enough to allow the unsuccessful bidder to determine whether the decision was well founded
- f. A contract award notice must always be submitted to the OJEU within 48 days of the award of any contract awarded via an EU tendering process. For advice on this or any further matter on the Regulations above please Contact the Head of Commissioning & Procurement and follow [http://www.ogc.gov.uk/documents/Remedies Guidance Part 3 Remedies Rules\(1\).pdf](http://www.ogc.gov.uk/documents/Remedies%20Guidance%20Part%203%20Remedies%20Rules(1).pdf)

### **30. FORM OF CONTRACT**

- 30.1. Every contract must be in writing and in a form approved by the Director of Democratic and Legal Services.
- 30.2. The Director of Democratic and Legal Services, the Heads of Legal Services or other person authorised by the Director of Democratic and Legal Services must sign every written contract valued at £100,000 and above 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 £100,000 and above if specifically authorised in writing to do so by the Director of Democratic and Legal Services
- 30.3. Where a standard form of contract is issued by the regulatory body, trade industry or profession, the Officer responsible must use this in conjunction with these Regulations. The Officer responsible must ensure that the contract is approved and executed by the Director of Democratic and Legal Services.
- 30.4. The relevant Director may establish a contract for less than £100,000 by placing and signing a written order in the approved form. This is subject to any provisions under Regulation 30 (Orders Given Under Contracts).
- 30.5. Every contract with a value of £100,000 and above must be executed under the Common Seal of the Council or 'under hand' as the Director of Democratic and Legal Services may determine.

- 30.6. Where appropriate, the Officer responsible may use the standard form of contract as issued by the regulatory body, trade industry or profession.

### **31. ORDERS GIVEN UNDER CONTRACTS**

- 31.1. A Director, or their delegated consultant, 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 Democratic and Legal Services and the Director of Strategy, Commissioning, Procurement and Performance 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 Democratic and Legal Services.
- 31.2. The Director is responsible for all orders issued on their behalf from their Department.
- 31.3. The Director must ensure that all orders for supplies, services or works must be in writing on numbered and controlled official order forms. All orders must be in writing on numbered official order forms or in compliance with the Council's 'e'-procurement system.
- 31.4. Upon completion of the contract, the Officer responsible must submit to the Head of Commissioning & Procurement the final signed contract. This relates to all contracts with a term of longer than one year.

### **32. EXTRAS AND VARIATIONS**

- 32.1. Where the criterion for award is that of the most economically advantageous tender, tenderers may be authorised to submit variants.
- 32.2. Officers must indicate in the contract notice whether or not they authorise variants: variants shall not be authorised without this indication.
- 32.3. Officer must state in the tender documents the minimum requirements to be met by the variants and any specific requirements for their presentation. Only variants meeting the minimum requirements laid down by these contracting authorities shall be taken into consideration
- 32.4. Any extra or variation 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 or variation 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.

- 32.5. 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.
- 32.6. A report seeking authority for the change to the contract must be made to the CCB, GRP or the CSC, as appropriate, where the extra terms or variation will result in the new total value of the contract:
- a. Exceeding £100,000;
  - b. Exceeding the relevant EU Public procurement threshold (for goods, services or works), as published from time to time by the European Commission.

Or in any case, the original contract value will be increased by more than 10%.

- 32.7. Each Department must have control procedures and audit trails in place to deal with extras and variations.

### GROUP E LOCALISM ACT 2011

#### 33. COMMUNITY RIGHT TO CHALLENGE

- 33.1. The Localism Act 2011 contained a number of measures designed to enable local communities to have more opportunity to influence the way that services in their areas are delivered. Those measures include the right for communities to bid for assets of community value, to lead development under the community right to build, the introduction of 'neighbourhood plans' and the community right to challenge.
- 33.2. The Right to Challenge allows voluntary and community organisations, charities, parish councils, and groups of local authority employees to challenge the running of local authority services through the submission of an 'Expression of Interest' (Eoi). Those groups can express an interest in taking over the running of part or all of a Council service. Where the Council receives an Eoi in running one its services, it is first required to determine whether the Eoi is valid or if it should be rejected. If an Eoi is considered to be valid, the Council is then required to undertake a suitable procurement exercise for that service, where the Eoi will be considered in competition with other bidders.
- 33.3. The introduction of the Right to Challenge has the potential to impact on the way that the Council provides or commissions its services. Details of where there may be an impact, or where there are exclusions, are set out below:

<b>EXCLUDED SERVICES</b>	The Right to Challenge can only be used to challenge services that are delivered or commissioned by Croydon Council. On that basis, services such as schools are excluded as the responsibility for a school lies with its Governing Body. There are also specific exclusions relating to services that are jointly commissioned with the NHS and individual care packages.
<b>EXCLUSION OF FUNCTIONS</b>	The Right to Challenge only applies to Council services and not to its functions. Functions can be summarised as duties or powers that require formal decision making to take place, such as planning applications, school admissions or assessment of social care needs. Using the planning application example, the Right to Challenge extends to services that support the delivery of a function, such as processing planning applications, but does not allow for the delegation of functions, such as determining planning applications.
<b>ALTERNATIVE PROVISION</b>	The Right to Challenge is designed to allow groups expressing an interest in running a service to suggest new and different ways in which that service is provided, and to ensure that those ideas are fully considered. While it remains in the Council's gift to specify how a service should be delivered within its commissioning procedures, this process will allow groups to suggest how they would like to deliver a particular service.

<b>SOCIAL BENEFIT</b>	The Right to Challenge also specifically asks groups expressing an interest to demonstrate how any service that they run will promote or improve the social, economic or environmental well-being of the area.
<b>SHARED SERVICES</b>	Where the Council is planning to commission services in conjunction with one or more other Local Authorities, agreement will need to be reached on how expressions of interest in those services are dealt with.

- 33.4. The Head of Commissioning and Procurement will be required to respond to the EoI within thirty days by acknowledging receipt of the EoI and stating the timescale for consideration and determination of the EoI in full.
- 33.5. The Head of Commissioning and Procurement will then, in consultation with service departments, decide whether to accept, accept with modifications or reject the expression of interest within that timescale based on the criteria set out in Appendix D. The decision and the reasons for the decision will be notified both to the group submitting the EoI and publicly on the Council’s website.
- 33.6. If the EoI is accepted, the Head of Commissioning and Procurement will be required to undertake a procurement exercise for the service and publicly notify the group of when the procurement exercise will begin.

**GROUP F APPENDICES****APPENDIX A****POST TENDER CLARIFICATION / NEGOTIATION****POST-TENDER CLARIFICATION**

- 1) The Director must allow all tenderers, who meet the basic/minimum specification requirements, to participate unless clarifications are specifically with the lowest tenderer.
- 2) The Director must maintain a detailed written record of all post tender clarifications detailing all contact with the tenderer after the submission date. This must include documentation of the decision making process and why contractors were selected for post tender clarification.
- 3) Directors must ensure that they conduct all post tender clarifications in a way that is open and accountable. Therefore:
  - clarifications with the tenderers must be recorded in writing;
  - where it is necessary to conduct oral clarifications, there must be at least two Council Officers present;
  - a written note of any oral clarification must be kept: the Council Officers present must sign this note as a true record;
  - whether or not they reach an agreement, the Officers must record in writing and submit the outcome of any oral clarification to the tenderer;
  - where they reach agreement, the Officers must submit revisions to prices and tender documents to the tenderer for confirmation.
- 4) For tenders of £100,000 and above, the Director must report to the CSC, CCB or GRP as appropriate any amendments to tender prices and the reasons for them.
- 5) For tenders of less than £100,000, the Director must report on the Register of Tenders Form any amendment to tender prices and the reason for them.
- 6) It is not necessary to contact all the tenderers where an error or omission involves one tenderer.
- 7) Directors may amend tender prices under post tender negotiation in exceptional 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 Head of Commissioning & Procurement to determine if there are exceptional 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, this may restrict price negotiation and must be taken into consideration.

- 8) 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 companies that submitted a tender.
- 9) The contractor must subsequently confirm, in writing, any alterations to a tender before the Director may consider all the tenders received.
- 10) All post tender negotiation must be available for audit.

## **POST-TENDER NEGOTIATIONS**

- 11) The potential areas for negotiation will differ for every contract but typical topics might be: the terms of payment; quality of goods or services; supply and cost of spare parts; earlier delivery or completion dates; warranties and guarantees; documentation requirements; expediting and inspection procedures; maintenance and support, repair or after-sales service; compensation for failure to meet specified requirements (e.g. of delivery, quality etc); and procedures for remedial action for unsatisfactory service. This list is not meant to be exhaustive.
- 12) At all stages the competing tenderers will be treated in an honest, fair and ethical manner, whilst retaining confidentiality of their bids. Post Tender Negotiations seek to



make each individual bid as competitive as possible, without reference to any other bids. For example, Buyers must not unfairly trade off one bid against another by using the lowest bid to seek a reduction in costs from the other bidders.

- 13) The key point is that Buyers are required not to act in a manner that is likely to distort competition. It is important that all post-tender communication, whether in the form of clarification or negotiation, is meticulously recorded and, above all, that proceedings are conducted in a manner which is not only fair, but which is seen to be fair by the relevant parties.

**APPENDIX B****CONTRACT SIGN-OFF AND MONITORING SHEET**

**In order to add this information to the corporate Contracts Database, please provide the following additional information, and send, via email, to the Strategy, Commissioning, Procurement & Performance (SCPP) division:**

[Thebuyingteam@croydon.gov.uk](mailto:Thebuyingteam@croydon.gov.uk)

Contract Title	
Description of the supply/service being procured	
Name of successful Contractor(s)	
Start Date of Contract	
End Date of Contract	
Contract Term (no. of yrs)	
Extension Years possible (no. of yrs)	
Contract Type	Supplies / Services / Works
Annual Contract value	
Amount of Liquidated Damages (if applicable)	
Client Contact Name for this contract & Phone no.	

### APPENDIX C

### LOW VALUE EXPENDITURE

#### Executive Director Delegated Authority

<ul style="list-style-type: none"> <li>• <b>Under £5,000</b></li> </ul>	1 written quote required but preferable to have more
<ul style="list-style-type: none"> <li>• <b>£5,000 – £20,000</b></li> </ul>	3 written quotes required
<ul style="list-style-type: none"> <li>• <b>£20,000 - £100,000</b></li> </ul>	Formal Tendering. Note: must have formal documents and terms and conditions for all contracts valued at £100,000 and above signed off by Legal Services
<ul style="list-style-type: none"> <li>• <b>Using only one supplier</b> should be done only in <b>exceptional circumstances</b> and should be supported by a business case demonstrating why this represents value for money. All decisions require a signed delegated authority sheet from the appropriate Executive Director.</li> </ul>	

## APPENDIX D

## COMMUNITY RIGHT TO CHALLENGE — GUIDANCE

**What is the community right to challenge?**

The community right to challenge is a provision in the Localism Act 2011 that allows some voluntary and community organisations, charities, parish councils, and groups of local authority employees to submit expressions of interest in taking over the running of part or all of a local authority service.

If a local authority receives an expression of interest, it must be evaluated according to the criteria in the Localism Act 2011. If the expression of interest is accepted, the local authority must enter into an appropriate procurement exercise for that service. The group that submits the expression of interest may then bid in the procurement exercise, although there is no guarantee that they will be successful and be awarded the contract for the service.

**What kinds of organisations can submit expressions of interest?**

Only charities, parish councils, two or more employees of the local authority, or a voluntary or community organisation, can submit expressions of interest.

'Voluntary or community body' covers a wide range of organisations and includes, but is not limited to:

- community benefit societies
- co-operatives whose activities are primarily for the benefit of the community
- community interest companies
- charitable incorporated organisations and other incorporated forms of body such as companies limited by guarantee or shares (where the company's Memorandum and/or Articles of Association state that the company's objects are in the interest of the community, rather than to make a profit for shareholders).

Some voluntary and community bodies may be unincorporated at the stage of submitting an expression of interest, and become incorporated before a procurement exercise begins.

Whilst only the groups listed above are eligible to submit an expression of interest, they may do so in partnership with other organisations not listed.

Groups must be able to demonstrate that they have the financial resources and the capacity to run the service should a procurement exercise be triggered and they make a bid.

**Can expressions of interest be submitted for all services?**

No, the following services are excluded from the community right to challenge:

- a service commissioned or provided in respect of a named person with complex individual health or social care needs
- until 1 April 2014, a relevant service commissioned in conjunction with one or more health services (e.g. a Sure Start children's centre commissioned jointly by the local authority and the NHS)
- until 1 April 2014, a relevant service commissioned by an NHS body on behalf of a relevant authority (e.g. a Sure Start children's centre being commissioned by the NHS on behalf of the local authority).

Direct payments do not fall under the scope of the right either. This is because the individuals or their representatives, as opposed to the local authority, commission the services.

Please note that only services, not functions, are eligible to be challenged. The right does not provide for the delegation of the functions of a local authority (e.g. functions such as determining planning applications).

### **Can expressions of interest be submitted at any time?**

The Council will accept expressions of interest between 6 and 3 months prior to the commencement of any planned procurement exercise. In cases of very large and highly complex contracts, this window of opportunity may be changed to a period of time more than 6 to 3 months prior to the commencement of the procurement exercise. Such cases will be by exception only and details will be published within the Council's commissioning timetable.

### **Acceptance or rejection of expressions of interest**

The Council may accept an expression of interest, accept it with modifications or reject an expression of interest. Potential reasons for rejection are listed below:

- if the expression of interest does not meet the requirements of the service, or is outside the regulations that the council must comply with
- if the information presented in the expression of interest is inaccurate or is inadequate to be fully considered
- the organisation submitting the expression of interest is not suitable to provide the service
- the expression of interest relates to a service where a decision has been made to stop providing that service
- the expression of interest relates to a service which falls outside of the Localism Act 2011 because it is an exempt service
- the expression of interest relates to a services which is already the subject of a procurement exercise
- the expression of interest relates to a services for which negotiations are already under way
- the expression of interest is frivolous or vexatious
- acceptance of the expression of interest is likely to lead to a breach of the law or a statutory duty.

If the Council rejects an expression of interest, it will let the group know in writing and will explain the reasons why the expression was rejected. Details of the decision will also be published on the Council's website.

### **How long will it take to evaluate an expression of interest?**

Within 30 days of receiving an expression of interest from an organisation, the council must contact the organisation in writing to notify timescales.

The length of time taken to evaluate an expression of interest will depend on the complexity, nature and scale of the service and the complexity of the expression of interest itself.

**How to submit an expression of interest**

Those intending to submit an expression of interest will first be advised to use the guidance to ensure their eligibility to do so and that the service they wish to challenge is not excluded. They will then be advised of the need to complete the Expression of Interest form

**Statutory guidance**

The Department for Communities and Local Government has produced statutory guidance about the community right to challenge