

General Purposes Committee Supplementary Agenda No.2



7. **Proposed Changes to the Constitution Relating to Tenders and Contract Regulations** (Pages 3 - 110)

To agree the proposed changes to the Constitution relating to Tenders and Contract Regulations

Report and Appendices.

Katherine Kerswell
Chief Executive
London Borough of Croydon
Bernard Weatherill House
8 Mint Walk, Croydon CR0 1EA

Kenny Uzodike, Democratic Services
020 8726 6000
kenny.uzodike@croydon.gov.uk
www.croydon.gov.uk/meetings

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LONDON BOROUGH OF CROYDON

REPORT:	GENERAL PURPOSES COMMITTEE	
DATE OF DECISION	3rd April 2024	
REPORT TITLE:	Proposed Changes to the Constitution Relating to Tenders & Contracts Regulations	
CORPORATE DIRECTOR	Jane West, Corporate Director of Resources & Section 151 Officer	
LEAD OFFICER:	Scott Funnell, Head of Strategic Procurement & Governance	
LEAD MEMBER:	Cllr Jason Cummings, Cabinet Member for Finance	
DECISION TAKER:	Full Council Following Consideration By The General Purposes Committee	
AUTHORITY TO TAKE DECISION:	The Terms of Reference for the General Purposes Committee (See Part 3 of the Constitution, Responsibility for Functions) Allow it to Conduct Periodic Reviews of the Constitution and Consider Changes to the Constitution Recommended by the Constitution Working Group and to Refer Any Proposals to Full Council for Approval.	
KEY DECISION?	NO	N/A
CONTAINS EXEMPT INFORMATION?	NO	PUBLIC
WARDS AFFECTED:	ALL	

1 SUMMARY OF REPORT

- 1.1 The Tenders and Contracts Regulations (TCR's) form part of the Council's Constitution and set clear rules for the procurement of goods, works and services for the Council, following the requirements under Section 135 of the Local Government Act 1972
- 1.2 The Executive Mayor's Business Plan 2022-26 focusses on transforming the Council to deliver sound and sustainable services by being financially sustainable, ensuring good governance, having greater collaboration with the VCFSE sector and building closer partnerships with the local community and businesses.
- 1.3 The exit strategy from the Improvement and Assurance Panel (IAP) included a requirement for a streamlined, robust and responsive procurement function to ensure governance and central procurement resource is in line with contract criticality and value.

- 1.4 MTFSS savings for 2024 – 2026 identified a need to reduce resources across the Council, with a £290,000 saving identified for the procurement service over the next two years.
- 1.5 The current TCR's establish lengthy processes above and beyond the requirement from national procurement legislation, and from what other local authorities have established within their procurement rules.
- 1.6 The Council recognises the need to deploy its procurement resources to focus on its more strategic contracts.
- 1.7 Appendix A is a proposed version of the TCR's with the proposed changes updated within and Appendix B contains the track changes from the 2022 version of the TCR's. Appendix C contains a draft Procurement Strategy 2024-26 which details the planned improvement journey for the Council.
- 1.8 The principal changes reflect:
 - New governance thresholds and delegations for procurement processes and contract decisions as set out in the Procurement Gateway Authorisation Table within Appendix A.
 - Removal of the requirement for Contracts and Commissioning Board (CCB) to review procurement reports and to recommend decisions relating to procurement strategies, and the award, extension and variation of contracts, all such responsibilities transferring to the Chair of CCB.
 - Replacement of the London Living Wage to the Real Living Wage within clause 13 of the TCR's, and in the Glossary of Terms within Appendix A.
 - Some minor amends to update changes to specific policy items, such as reflecting the Council change to an Executive Mayor and removal of reference to EU legislation.

2 RECOMMENDATIONS

For the reasons set out in the report and its appendices, the General Purposes Committee is recommended to:

- 2.1 consider the revised Tenders and Contracts Regulations (TCRs) at Appendix A and the tracked changes at Appendix B;
- 2.2 to recommend to Full Council the adoption of the revised TCRs at Appendix A and that the Monitoring Officer be authorised to update the Constitution and make any consequential changes.
- 2.3 note that changes to thresholds and delegations and replacing the London Living Wage with the Real Living Wage are an executive function of the Council; and
- 2.4 note that a further revision to the TCRs will be brought to the Constitution Working Group and the General Purposes Committee once the impact of the Procurement Act 2023 is established.

1. REASONS FOR RECOMMENDATIONS

- 3.1 New thresholds for procurement processes and contract decisions are expected to eliminate unnecessary bureaucracy, speed up contract renewals and bring the Council in line with other local authorities.
- 3.2 The current authorisation regime creates delays in the process and draws resource across the Council away from other activities.
- 3.3 A more efficient process is expected to enable the Council to focus on the more strategic contracts and reduce procurement officer involvement on low value contracts.
- 3.4 Removing specific jobs roles in the decision-making process will allow the Council to be more flexible when improving approval processes, and future proof the regulations in the event of Council re-structures or general re-naming of job roles.
- 3.5 Replacing the London Living Wage with the Real Living Wage will allow flexibility in pricing and best value for contracts that are performed outside of London.
- 3.6 Minor wording updates to the regulations will reflect the latest terminology in use without any impact upon the nature of the regulations.
- 3.6 The Procurement Act 2023 will come into effect from October 2024 and will place additional responsibilities on Local Authorities which are likely to require further amendments to the Councils TCR's. Once the Council fully understands the impact of these changes, a further revision to the TCR's will be brought to the Constitution Working Group and the General Purposes Committee.

2. BACKGROUND AND DETAILS

- 4.1 The Government appointed Improvement and Assurance Panel has provided the Council with an exit strategy with the following procurement related objective:

Objectives	Actions and outcomes by March 2024
A streamlined, robust and responsive procurement function with clear roles and responsibilities focused on supporting affordable service delivery across the Council's activities.	<ul style="list-style-type: none">• Review existing processes to ensure governance is in line with contract criticality and value.• Review processes in conjunction with Finance to clearly define where responsibility for tasks should sit.• Identify further process improvements through better integration with Oracle.• Develop an improvement plan and a suite of performance metrics and targets to allow the function's improvement to be tracked and compared with sector best practice.

- 4.2 The recommendations within this report are the result of a review into the existing process, which is recommending a revision to the governance process and aligning to contract criticality and value. The Council has prepared a draft procurement strategy setting out the interdependent activities that will be taken as required by the IAP exit strategy, some of which require changes to the Council constitution to implement.
- 4.3 Currently, all tenders above £9,999 are managed by the Council's procurement service. Whilst this provides a high level of control, it uses resource from the Procurement Service that could be better utilised to provide strategic and commercial support for higher value procurements. A desktop analysis demonstrated that most other Councils in London do not use procurement staff resource at the £9,999 threshold, and instead have a higher threshold.
- 4.4 Therefore it is proposed to amend the requirements of each financial banding to ensure that governance reflects contract criticality and value and to ensure a streamlined yet robust process.
- 4.5 The key items to note within each financial banding are as follows:

- **The first financial banding of £0 – £24,999.**

This first banding requires budget holder approval for tenders up to £24,999 and recommends three written competitive quotes. The procurement service will continue to have no involvement in the first banding.

The reason that £24,999 is recommended as the first ceiling for this banding is that it reflects the requirements in the new Procurement Act (due to commence in October 2024) for publication of notices above this value.

- **The second financial banding of £25,000 - £Low Value Threshold.**

This second banding requires Head of Service approval for tenders from £25,000 up to the Low Value Threshold (LVT) for supplies and services under the Public Contracts Regulations 2015. This threshold is currently £179,087 (ex-VAT) and is updated every 2 years.

For this banding, it will no longer be mandatory for procurement staff to manage procurements, and instead officers across the Council will be able to manage a process and receive quotations for simple contracts, although procurement staff will still be available to advise and support if requested.

A low value training programme will be required to be undertaken for officers ahead of them managing low value procurements, and guidance will be available in the form of toolkits and handbooks. The current checks in the system will remain to ensure that contracts are not let without following a compliant process.

- **The third financial banding of £Low Value Threshold – Key Decision**

The third banding requires Director approval for tenders from the LVT up to the Key Decision Value. A Key Decision is an executive decision which is likely to:

- (i) result in the Council incurring expenditure, or making savings, of more than £1,000,000; or
- (ii) be significant in terms of its effects on communities living or working in an area comprising two or more Wards in the Borough.

Procurements within this banding will be managed by the Council's procurement service and will require governance approval in the form of reports approved by the Director of the Service with inputs from relevant Council departments such as finance, legal and equalities.

All procurements above the LVT are required to be entered onto the Councils Procurement Pipeline which is presented quarterly to Cabinet.

- **The fourth financial banding of Key Decision and above**

The final banding requires Corporate Director and Lead Member approval for tenders with a value at or above the Key Decision Value.

Procurements within this banding will be managed by the Council's procurement service and will require governance approval in the form of reports approved by Lead Member and the Corporate Director of the Service with inputs from relevant Council departments such as finance, legal and equalities.

Whilst there are a similar number of pipeline entries above the LVT as there are for below, the collective value is significantly higher for above threshold entries. Therefore, there is greater strategic value to prioritising resource for this threshold band.

4.6 Other key proposed changes are as follows:

4.6.1 **Contracts and Commissioning Board (CCB)**

Currently, members of the CCB are required to review and authorise each governance report above the LVT, which adds unnecessary time into the process but little additional value. Relevant officers, such as finance, legal, equalities etc will continue to review and to input into reports, but once approved by these departments they will no longer be circulated for review by CCB and instead will proceed directly to be reviewed by the Chair of CCB to recommend to the relevant approver as indicated in the Gateway Authorisation Table.

4.6.2 **London Living Wage to the Real Living Wage**

Replacing the London Living Wage with the Real Living Wage will allow flexibility in pricing and best value for contracts that are performed outside of London, whilst retaining the requirement to pay London contracts the London Living Wage. The Real Living Wage rate is calculated based on the cost of living. There is a higher rate for workers in London to reflect the greater cost of living for people in the capital. The Real Living Wage is £12 across the UK and £13.15 in London (the LLW).

4.6.3 **Minor amendments**

The proposed changes also include some minor amendments to update changes to specific policy items, such as reflecting the Council change to an Executive Mayor model and removal of reference to EU legislation, which are no longer relevant following Brexit.

4.6.4 **Approval delegations**

It is proposed to amend the Executive Mayor's Scheme of Delegation so that approvals for contract decisions default to the relevant officer or member as set out in the Procurement Gateway Authorisation Table appendix within the revised TCRs.

Currently, the Procurement Pipeline which is approved at Cabinet each quarter recommends an approval delegation per contract decision, whereas it is more efficient to establish standard approvals based on contract criticality and value.

The Executive Mayor will always retain the option to make any individual executive decisions for contracts/ procurements or revise delegations, if considered appropriate.

The proposed change in thresholds would affect the following number of contracts and pipeline events (data correct as of February 2024):

Contract Value Bands	Number of Pipeline entries (18 months ahead)	Pipeline Value (18 months ahead)
£0k - <£24,999	28	£186,276
£25k - <£179,087	76	£7,362,908
£179,087+ (GPA threshold) and above	99	£1,529,672,529

4.6.5 Consequential amendments to the Constitution

The proposed changes to the TCRs will result in some consequential changes being required to the Council Constitution, including within the Financial Regulations. As such, the proposed recommendations to Full Council include the Monitoring Officer being authorised to update the Constitution and make any consequential changes.

4.7 Other key improvement proposals:

4.7.2 The draft Procurement Strategy at Appendix D includes other improvement proposals and ambitions of the Procurement Service.

4.7.3 A focus on strategic contracts, resource will be deployed on other key areas of procurement, including:

- Evaluation of the commercial options within the business case
- Supporting the development of contract management plans
- Improving performance and management information
- Delivery of key procurement policies, such as the Social Value policy, Equalities etc.

4.7.4 It is also proposed to develop a procurement governance specific template to improve the quality of governance reporting and assist with the streamlined and robust approach.

3. ALTERNATIVE OPTIONS CONSIDERED

5.1. Procurement Thresholds & Delegations

To meet the procurement objectives from the Executive Mayor’s Business Plan, the IAP exit strategy and the MTFSS savings plan, the following procurement operating models have been considered.

Advisory Service	Full Service	Transactional Service (current)	Strategic Service (recommended)
No procurement threshold	>£10k procurement value threshold	>£10k procurement value threshold	LVT and above
Procurement activity is devolved with a small central strategic team advising.	Central procurement delivers all elements of the procurement process, including pre- and post-procurement activity for high and low value tenders.	Central procurement manages high and low value procurements, limited pre- or post-procurement support.	Central procurement offers strategic support for pre- and post-procurement (contract management) stages and manage high value/critical procurements.
Pros: low-cost central procurement service Cons: high value/critical procurements at greater risk of challenges and value for money opportunities missed.	Pros: Risk of challenges greatly reduced and value for money optimised. Cons: procurement resourcing costs for low value procurements disproportionate to risks mitigated and value gained.	Pros: Risk of challenges greatly reduced and value for money achieved during the competitive process. Cons: procurement resourcing costs for low value procurements disproportionate to risks mitigated and value gained.	Pros: Small risk of challenge. Procurement resourcing costs proportionate to value and risk. Cons: Some risk of challenge and some opportunities in optimising value for money (for sub-LVT procurements) missed.
Not recommended	Not recommended	Not recommended	Recommended

5.2 Removal of the requirement for Contracts and Commissioning Board (CCB) to review procurement reports and to recommend decisions relating to procurement strategies.

Retain requirement for CCB to review procurement reports	Remove requirement for CCB to review procurement reports
Pros: Additional reviewers may highlight areas of improvement within reports	Pros: Significantly accelerate approval processes and reduce unnecessary bureaucracy.
Cons: Multiple reviewers add little additional value yet significantly increases approval times for reports	Cons: Less oversight and scrutiny on an individual report level.
Not recommended	Recommended

5.3 Wage rate policy for employees assigned to Council contractors.

Minimum Wage (21 years old and older) - £10.18/hr	National Living Wage - £10.42/hr	Real Living Wage - £12 across UK £13.15 in London (LLW)
Pros: Cost savings and meets legal requirements	Pros: Cost savings and meets legal requirements	Pros: Savings for contracts performed outside of greater London
Cons: There is no London Weighting; does not meet the national living wage; doesn't meet the objective within the Executive Mayor's Business Plan.	Cons: There is no London Weighting; doesn't meet the objective within the Executive Mayor's Business Plan.	Cons: Contractor employees would not benefit from being paid LLW when performing service outside of greater London.
Not recommended	Not recommended	Recommended

4. CONSULTATION

6.1. Consultation has taken place with several stakeholders including Corporate Management Team (CMT), CCB, the Improvement Panel and the Constitution Working Group.

7. CONTRIBUTION TO COUNCIL PRIORITIES

- 7.1 The revisions proposed in this report will contribute to the Executive Mayor's business plan concerning the provision of sound and sustainable services by being financially sustainable and ensuring good governance.
- 7.2 The proposed revisions to the TCR's will contribute to the MTFS savings plan for 2024 – 2026. The Procurement service savings over this period is £290,000.
- 7.3 The proposed revisions will meet the procurement objective in the exit strategy that the IAP requires, which is to ensure a streamlined, robust and responsive procurement function is in place.

8. IMPLICATIONS

8.1 FINANCIAL IMPLICATIONS

- 8.1.1 There are no direct financial costs arising from this decision. This decision will enable £290k MTFS savings on procurement staffing costs.
- 8.1.2 In addition to direct savings, this will create opportunities for contract savings through improved strategic procurement support for high value and critical contracts.
- 8.1.3 Comments approved by the Interim Head of Corporate Finance on behalf of the Director of Finance. (Date 21/03/2024)

8.2 LEGAL IMPLICATIONS

- 8.2.1 Under Section 135 of the Local Government Act 1972 the Council must make standing orders concerning the supply of goods or works and may make standing orders for all other procurement and contract matters. Furthermore, the Public Contracts Regulations 2015 requires all contracting authorities (such as the Council) to treat suppliers equally and without discrimination in a transparent and proportionate manner. The Council's revised TCRs are intended to achieve these requirements and assist the Council in securing best value in its procurement activities while complying with its legal duties.
- 8.2.2 In overall terms, agreeing changes to TCRs (i.e. rules and procedures for procuring supplies, services and the execution of works and related contract matters) is a Full Council function. However, changes to thresholds and delegations and policy decisions bearing upon the awarding of contracts, such as replacing the London Living Wage with the Real Living Wage, are an executive function of the Council. Approval for these changes will be sought in accordance with constitutional arrangements for the discharge of executive functions of the Council.

- 8.2.3 Adopting changes to the Council’s Constitution is a non-executive function reserved to Full Council after the General Purposes Committee has considered the proposed changes and made a recommendation.
- 8.2.4 According to s9P of the Local Government Act 2000 the Council must keep its Constitution up to date.
- 8.2.5 Comments approved by the Head of Commercial & Property Law on behalf of the Director of Legal Services and Monitoring Officer. (Date 27/05/2024)

8.3 EQUALITIES IMPLICATIONS

- 8.3.1 The Council has a statutory duty, when exercising its functions, to comply with the provisions set out in Section 149 of the Equality Act 2010. The Council must, in the performance of its functions, have due regard to the need to:
 - 8.3.2 Eliminate discrimination, harassment, victimisation, and any other conduct that is prohibited by or under this Act.
 - 8.3.3 Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.
 - 8.3.4 Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
 - 8.3.5 There are unlikely to be specific equalities impacts arising from the specific changes outlined in this report, however the Council’s wider procurement policies and decisions will be kept in review with regards to their impact on equalities.
- 8.3.6 Comments approved by Helen Reeves, Head of Strategy & Policy 21/03/2024

8.4. OTHER IMPLICATIONS

- 8.4.1. If the Council does not approve the threshold and delegation changes, it will limit the Procurement team from providing strategic and commercial focus on critical and high value contracts leading to improved value and affordable service delivery.
- 8.4.2. Updating the procurement thresholds will also allow a planned approach to the procurement pipeline and improve procurement regulation compliance.
- 8.4.3. Approved by: Huw Rhys-Lewis Interim Director of Commercial Investment & Capital (Date 27/03/2024).

9. APPENDICES

- 9.1.1 Appendix A – Draft Tenders and Contract Regulations (2024)

Appendix B – Draft Tenders and Contract Regulations (2024) with track changes from the 2022 version

Appendix C - Draft Procurement Strategy 2024-26

10. BACKGROUND DOCUMENTS

N/A

11. URGENCY

N/A

Part 4.1 of the Council Constitution

Tenders and Contracts Regulations 2024

These Regulations form part of the Constitution and were adopted by Council on 17th April 2024

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Background

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

www.croydon.gov.uk › [final-mayors-business-plan-2022-to-2026](#)

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

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

The principles of these regulations are:

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

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

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

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

Section 1 – General

1. The Legislation Governing these Rules

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

2. Glossary of Terms is provided at Appendix A

3. Application of the Regulations

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

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

4. Officer Responsibilities

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

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

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

4.2 Officers must:

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

(signed and/or sealed, as required) before placing an order or raising a purchase order for any supplies, services or works;

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

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

5. Director Responsibilities

5.1 Directors must:

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

- f. Consider any advice given by CCB;
- g. Monitor compliance and investigate any non-compliance with the regulations and report any findings to the Director of Commercial Investment as Chair of the Contracts and Commissioning Board;
- h. Ensure 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;
- i. Approve the award and spend of written quotations under the Low Value Threshold in consultation with the Head of Strategic Procurement, and in accordance with Regulation 11 to ensure value for money.
- j. Ensure their contract managers have kept contract documentation in line with Croydon's document retention policy and uploaded onto the Council's contract management system.

5.2 Advice and guidance on TUPE must be sought at an early stage from the relevant departmental HR Lead. The Pensions team must also be notified as early as possible so that the implications relating to pensions may be considered.

6. Declaration of Interest:

6.1 Any Officer must declare to their Director or Corporate Director any personal interest in a matter they are dealing with, including one, which may impinge on their impartiality to apply these Regulations.

6.2 No Member, Officer or agent of the Council shall improperly use his or her position to obtain any personal or private benefit from any contract entered into by the Council.

6.3 It is a requirement that all officers and external advisors complete the Declaration of Confidentiality and Interest Form and comply with the Council's Code of Conduct prior to any involvement in drafting of Council's Tender Documents, Quotations or any involvement in evaluation of tenders and the management of the contract. This is to ensure that the Council's procedures including confidentiality are complied with in accordance with these Regulations.

6.4 In the event that a conflict of interest arises during the life of the contract, all Council officers must notify their Director or Corporate Director, in writing, as soon as is reasonably practicable. This not only includes personal conflicts, but also extends to any suspected/known conflicts of interests in relation to any internal or external matters/personnel

Section 2 – Business Case

7. Pre Procurement

- 7.1** Any new commissioning of services including existing services where the contract is due to end, must consider the Business case decision, in line with the Council's' Commissioning Framework and guidance in the Procurement and Contract Management Handbook. This is a director decision as set out in the Procurement Gateway Authorisation Table (Appendix B).
- 7.2** Consideration must be given to what procurement method is most likely to achieve the commissioning and procurement objectives, including packaging (Lots) strategies, internal or external sourcing, shared services, partnering arrangements and collaborative procurement arrangements with other local authorities and government departments. Officers will also consider working with CCGs, statutory undertakers and Central Purchasing Bodies. They may also consider the establishment of separate trading entities.
- 7.3** The relevant Officer must refer to the Procurement & Contract Management Handbook for further details on process and requirements before instigating any procurement exercise.

Section 3 – How we Buy - Approach and Principles

8. How we Buy

- 8.1** The service responsible must submit a How we Buy (Route to Market) Report to the Chair of CCB, setting out commissioning intentions and sourcing strategy, (in the format required), for all proposed Contract awards for goods and services with an estimated total Contract value at or above the Low Value Threshold. Where it is intended to complete a mini competition or call off for works from an existing Council contract or an OJEU procured framework as advertised for works, then a report is not required up to an estimated total contract value of £500,000.
- 8.2** An 18 month Procurement Pipeline will be presented to Cabinet on a quarterly basis to provide visibility on forthcoming procurements, and this will include a summary report on contract awards, extensions and variations approved since the last report.
- 8.3** No advertisement should be placed or invitation to tender made prior to approval of Procurement reports report in accordance with Regulation 11.

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

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

10. Contract Value, Aggregation and Existing Council Contracts

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

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

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

11.2 Procurement below the Low Value Threshold:

11.2.1 For all contracts with an estimated value of below the Low Value Threshold please see Appendix B

11.2.2 For values over the Low Value Threshold quotations and tenders should be processed through the Central Buying Team using the Council's e-tendering system. Quotations for values below the Low Value Threshold must be processed in accordance with the information provided in the Procurement Handbook.

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

11.3 Formal Tendering (Low Value Threshold and above)

11.3.1 For all contracts with an estimated value at or above the Low Value Threshold please see Appendix B for requirements and authorisation levels. No procurement can commence without prior approval of a How We Buy report. Where approval is sought from a Cabinet Member then it is in consultation with the Cabinet Member for Finance. The Lead Cabinet member and the Cabinet Member for Finance must be consulted on all procurement reports above the Low Value Threshold prior to approval.

11.3.2 Unless as otherwise specified in these Regulations, the approval of strategies and awards relating to Framework Agreements and the establishment/initial appointment of providers to a DPS shall be subject to the requirements and procedures applicable to Contracts, by reference to the estimated value of contracts to be called off over the life of the Framework or DPS.

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

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

12. Pre-Tender Market Consultation

- 12.1** Before submitting a procurement strategy to CCB, the officer responsible for the procurement and in consultation with the relevant Category Manager, may issue a Prior Indicative Notice (PIN) or conduct market consultations with a view to informing the eventual procurement approach, scope of contract, specification etc. and/or to communicate to prospective applicants and tenderers the Council's procurement plans and requirements such as the nature, level and standard of the provision, contract packaging, timescales and other relevant matters.
- 12.2** For this purpose, the officer responsible may, for example, seek or accept advice from independent experts, other authorities or from market participants.
- 12.3** Such advice may be used in the planning and the proposed procurement procedure, provided that it does not have the effect of distorting competition (by giving those who participate in the pre-tender market consultation an unfair advantage over others in relation to future procurement opportunities) and does not result in a violation of the UK Rules transparency and furthermore, is conducted in line with the UK Regulations.

13. Real Living Wage (RLW)

- 13.1** The Council will include a requirement for all staff to be paid no less than the RLW, as defined by the Living Wage Foundation. For these purposes the scope and applicable rate will be as defined by the Living Wage Foundation. For 'staff' means all persons employed by the contractor to perform its obligations under the relevant Council contract together with the Provider's servants, agents, suppliers and subcontractors used in the performance of its obligations under that Contract.

14. The Public Services (Social Value) Act 2012

- 14.1** This Act places a requirement on commissioners to consider the economic, environmental and social benefits of their approaches to commissioning and procurement before the process starts. The Act requires authorities to make the following considerations at the pre-procurement (commissioning) stage:
- a)** How, what is proposed to be procured, might improve the economic, social and environmental well-being of the 'relevant area';
 - b)** How in conducting a procurement process, the Authority might act with a view to securing that improvement and whether to undertake a consultation on these matters.
- 14.2** Commissioners should use this Act, including any updates to it and the Council's Social Value Policy to consider outcomes and the types of services to commission before starting the procurement process. When considering how a procurement process may improve the social, economic or environmental well-being of a relevant area, the Council must only consider matters that are relevant to what is proposed to be procured. The Council must only consider

those matters to the extent to which it is proportionate, in all the circumstances, to take those matters into account. See:
<http://www.legislation.gov.uk/ukpga/2012/3/enacted>

15. Nominated or Named Sub-contractors and Suppliers

- 15.1** In accordance with Croydon's commitment to developing the local supply base and proactively implementing the Social Value Act, sub-contracting can provide a useful tool for engaging small businesses, voluntary organisations and the community sector in the supply of goods, supplies and services.
- 15.2** Officers should consider whether the inclusion of sub-contracting clauses is appropriate for their commissioning activity.
- 15.3** Where a Director nominates or names a sub-contractor or supplier to a main contractor, they must ensure the compliance with RLW, Modern Day Slavery, Council's Equality and Diversity policy, data protection legislation and any other such policy or legislation relevant to the goods, services or works being contracted for is included in that supplier's agreement. They must seek approval from the Chair of CCB prior to engagement with the sub-contractor or supplier.

16. Collaboration

- 16.1** In order to secure value for money, the Council may enter into a procurement arrangement with a Central Purchasing Body (CPB) such as Crown Commercial Services (CCS) or another such body. These agreements should include (where possible) compliance with the Council's policy and procedures, and must be approved in accordance with Regulation 11. The terms and conditions of the CPB must be fully complied with, including any requirement to undertake competition between providers, roles and responsibilities and liabilities must be clearly set out in all Call-off and contract documentation when using these agreements.
- 16.2** In order to secure value for money, the Council may enter into collaborative procurement arrangements with another local authority, government department, Clinical Commissioning Groups (CCG) and health providers, statutory undertaker or other contracting authority. These arrangements must be approved in accordance with Regulation 11 and must ensure that roles and responsibility and liability has been clearly set out within the documentation.

17. Provision of Services and Works for Other Organisations

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

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

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

18. Tendering with or through other Public Bodies

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

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

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

19. Waivers and Emergencies

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

19.2 Over and above this, the Chair of CCB (exercising delegated non-executive powers) can waive any requirements contained within these Tenders and Contracts Regulations for specific projects. Any such waivers granted with a

value at or above the Low Value Threshold must be reported to Cabinet at its next meeting.

- 19.3** For Disasters and Emergencies where there is a clear need to provide a service or product immediately in the instance of a sudden unforeseen crisis or the immediate risk is to health, life, property or environment, compliance when these regulations may not be feasible. Any Director may place an order for supplies, services or works as the circumstances require after seeking approval from the Chair of CCB, clearly stating the immediate procurements required. If that is not feasible for example due to outside of normal working hours then immediately after when reasonably feasible. A report of contracts awarded and any future procurements required will require approval by the Chair of CCB and if applicable Cabinet at the next available meeting after the event.
- 19.4** For emergency placements (Placement) relating to children or vulnerable adults, where it is not possible to arrange the Placement through an existing Council Contract, the relevant Director may authorise an order for the Placement. As soon as practical the Director shall review the Placement to satisfy themselves that it is and continues to be appropriate to the circumstances and provides value for money.
- 19.5** A monthly report of all Placements and other emergency orders made under this Regulation 19 in the relevant month shall be presented to CCB, Cabinet Member or Cabinet as appropriate (by reference to regulation 28 in accordance with the value of award and reporting protocols). Where the Director making the Placement or emergency order is not a Corporate Director such report shall also be provided to the relevant Corporate Director.
- 19.6** All waivers against any of these regulations, including the reasons for them and the period for which the waiver is valid must be recorded and approved. Where a waiver is to be sought, the procurement process may not begin before approval has been granted. This restriction cannot be avoided by seeking approval of a waiver with retrospective effect, unless it is confirmed that it was not reasonably practicable to obtain it prior to approval. All requirements of these Regulations relating to the approval to award still remain.

20. Preparation of a Specification

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

specification. This is subject to the requirement that any such work is carried out under the direct supervision of and on the written authority of the Officer responsible.

- 20.3** If the specification is for a contract for works, the Officer responsible must include provision within the budget for contingencies.

21. Advertising and the Number of Tenders

- 21.1** One of the principles of Croydon's commissioning framework is to let contracts via an open and transparent competitive process.

- 21.2** Officers shall ensure that all tender processes that are to be advertised are done so in a sufficiently accessible manner and where proposed Contracts, irrespective of their total Contract value, might be of interest to potential suppliers located in other member states of the EU, a sufficiently accessible advertisement is published. Generally, the greater the interest of the Contract to potential suppliers the wider the coverage of the advertisement should be. Advertisements for tenders must as a minimum be placed as follows:

- a.** Where the value exceeds the current thresholds for goods, service and works Contracts, tender advertisement rules must be followed in accordance with the current UK Regulations;
- b.** For procurement activity of any value, Officers must use the Council's own e-tendering portal and website(s). They may use additional advertisements in national official journals, specialist trade papers or websites, if relevant and if affordable.

- 21.3** As a minimum, any advertisement must state the place where interested providers may obtain the procurement documents and the deadline for receipt of submissions. As appropriate and as an alternative to advertising; tenderers may be selected either via an accepted framework (Croydon's own, via an established CPO or authorised 3rd party) or via an approved list such as 'Constructionline'. Details should be provided in the RP2 How we Buy report.

22. Standards and Evaluation Criteria

- 22.1** Where the value is at or above the Low Value Threshold the Director for whom the procurement is being undertaken must ascertain the relevant UK, European or international standards which apply to the subject matter of the contract. The Officer must include those standards which are necessary to properly describe the required quality and obligations under the contract. Advice from the Head of Strategic Procurement & Governance must be sought, as necessary.

- 22.2** The composition of and assessment of the SQ and ITT must be carried out in line with the UK Regulations which provides for transparency, non-discrimination, equal treatment, mutual recognition and proportionality amongst the freedom of movement of goods, freedom of establishment and freedom to provide services.

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

23. Standard Contract Clauses

- 23.1** All Contracts valued at or in excess of £100,000 must be in writing and signed by an Authorised Signatory on behalf the Council, or sealed with the Council's Seal in the presence of an Authorised Signatory.
- 23.2** The Officer responsible must include the following standard clauses in every written Contract. Any proposed changes to the standard clauses are subject to legal advice and approval by the Director of Commercial Investment if not included in a RP2 How we Buy Report.
- 23.3** All Contracts must include:
- a.** Default procedures. These may include charges for defaults.

- b.** A clause enabling the Council to claim actual or liquidated damages or an appropriate combination, depending upon the nature of the contract. Where a liquidated damages clause is used, there must also be included a clause for an extension of the time for completion. Appropriate advice must be sought on the type of damages clause suitable for each proposed contract.
- c.** A genuine pre-estimate of liquidated damages must be quoted in the contract to be valid. Liquidated damages clauses generally yield limited sums in damages and, therefore, the risks of adopting a liquidated damages clause should be assessed in each case.
- d.** A clause requiring the Contractor to maintain and test a business continuity plan at least annually and to keep the Council informed of how that plan would be deployed to protect the Council's interests, in the event of any interruption in the delivery of goods, services or works.
- e.** A clause setting out the arrangements by which the contract will be managed and monitored by the Council, including arrangements for regular liaison between the parties, in compliance with the Council's standard requirements for contract management and monitoring.
- f.** An extension of the 'time for completion' clause to protect the Council and allow for liquidated damages to be claimed in the event that the Council is responsible to any extent for a delay.
- g.** A clause permitting the termination of the Contract in whole or in part, and without penalty, where the Council elects to do so.
- h.** A clause that entitles the Council to terminate a Contract without penalty where it has been subject to a substantial modification by the provider without prior consultation and agreement.
- i.** A provision requiring the Council to pay undisputed invoices, within 30 days of receipt of a valid invoice (subject to any contractual or statutory obligation to pay earlier).
- j.** Provision that any significant deviation from the tender proposal shall constitute a default in the same manner as a deviation from the Specification and may constitute grounds upon which to terminate the contract.
- k.** Suitable clauses to enable the Council to cancel the contract and recover any loss due to the cancellation of the contract if the Contractor or any person employed by the Contractor or acting on the Contractor's behalf shall have committed any offence under the Bribery Act 2010 or shall have given any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972 or shall have given any fee or reward to any member or officer of the Council which shall have been exacted or accepted by such officer by virtue of office or employment and is otherwise than such officer's proper remuneration.
- l.** A clause that states the Council will require all staff engaged by the Contractor in the delivery of services or works under the Contract be paid the RLW.
- m.** Where appropriate a clause that states the Contractor must comply with the Modern Day Slavery policy.
- n.** Where appropriate a clause that states the Contractor will ensure they maintain their compliance with Council policies that are relevant to the services that the Council are procuring.

- a. wording in which the contractor agrees to indemnify the Council for all claims proceedings, actions and other matters relating to the contract, except where the Council is found to be legally liable;
- and**
- b. a clause in which the contractor agrees to certain service levels while dealing with claims, etc;
- and**
- c. a clause requiring the full range of relevant insurances to be provided by the contractor, advice on this must be taken from the Risk and Insurance Officer;
- and**
- d. the need for any self-employed person or consultant to have their own insurance, particularly where services are provided by employment agencies.
- 23.13** Every Contract must have a clause requiring all parties to comply with the provisions of the Data Protection Act 2018 ('DPA').
- 23.14** Every contract must ensure that the contractor acknowledges that the Contract and the information associated with it is subject to the Freedom of Information Act 2000 ('FoIA').
- 23.15** Every Contract must name the supervising person/s.
- 23.16** Every Contract must have a clause requiring the contractor to observe statutory requirements as to the manner in which work is to be carried out.
- 23.17** Every Contract must incorporate the specification and any drawings and bills of quantities as required/relevant.
- 23.18** Every Contract must contain a provision enabling the Council to deal with cases where the contractor, without good reason, either wholly or partly fails to complete delivery of the supplies, services or works, the subject of the Contract, to the contract standard or at all. The provision must enable the Council, if so desired, to:
- a. engage an alternative provider, and in situations of urgency, without notice to the original contractor;
 - b. arrange for the delivery of necessary supplies or materials from an alternative source;
 - c. change quality or quantity of supplies, services or works required;
 - d. recharge to the original contractor the costs of re-procurement and/or associated administrative and legal costs, and any costs incurred in excess of the original tendered price of the contractor to complete the delivery of the supply the subject of the contract, including the costs of any changes required to that supply, resulting from the contractor's default.

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

24. Form of Contract for all Awards

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

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

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

25. Invitations to Tender and Quotations/Tendering Instructions

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

a. invited to tender following a short-listing process;

or

b. who is listed on the relevant Framework, Framework lot or DPS and who is capable and willing to tender;

or

c. who requests the supply of tender documents under open tendering.

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

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

25.4 All Invitations to tender shall include the following:

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

b. A requirement for tenderers to declare that the tender content, price or any other figure or particulars concerning the tender have not been disclosed by the tenderer to any other party (except where such a disclosure is made in confidence for a necessary purpose);

c. A requirement for tenderers to complete fully and sign all tender documents including a form of tender and certificates relating to canvassing and non-collusion;

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

26. Submission, Receipt and Opening of Tenders/Quotations

- 26.1** Every tender must be received by a secure method using the Council's e-tendering portal or an approved e-sourcing system.
- 26.2** Suppliers or providers who have expressed interest in a tender must be given an adequate period in which to prepare and submit a proper tender, consistent with the complexity of the contract requirement. PCR 2015 or CCR 2016 includes specific tendering time periods.
- 26.3** Officers must notify all suppliers of the correct tender return instructions, including the date, time and place (details of the e-sourcing system).
- 26.4** In exceptional circumstances, the deadline for receipt of tenders may be extended, but only with the agreement of the Head of Strategic Procurement & Governance and only if such extension of time will not disadvantage a tenderer. No extension to the deadline can be given once the original deadline has passed and the seal has been broken on the e-tendering portal.
- 26.5** The Head of Strategic Procurement and Governance must arrange for all tenders for any one Contract to be opened at the same time. All tenders received via the Council's e-tendering portal should be opened by those listed below providing they are not involved in the tender exercise:
- Category Manager from outside of the service area leading the tender exercise;
 - the Strategic Procurement Manager of the Central Buying Team;
 - the Senior Procurement Governance Officer.
- 26.6** In exceptional circumstances, the Director of Commercial Investment following advice from the Head of Strategic Procurement and Governance may approve the delegation of the opening of tenders received via the Council's e-tendering portal to the Senior Procurement Systems Officer or a Procurement Officer from outside the service area leading the tender exercise.
- 26.7** Any tender that does not comply with the Council's requirement as set out in the tender invitation e.g. arrives late, should normally be excluded from consideration, with the circumstances recorded on the Council e-tendering portal. Officers may, however, seek the agreement of the Chair of CCB to amend these requirements in appropriate circumstances. Any such relaxation shall be identified when seeking any necessary authorities required before the acceptance of a tender.
- 26.8** The Head of Strategic Procurement and Governance must ensure, for audit and information purposes that for all tenders received via the Council's e-tendering portal:
- a)** An electronic record is retained of the date and time of opening and the name of the Officer involved.; and
 - b)** An electronic record of all tenders received is retained

27. Post SQ and Tender Clarifications

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

- 27.6** All post tender negotiation must be available for audit and recorded via the Council's e-tendering portal.

Section 4 – Contract Award

28. Contract Award

- 28.1** A Contract with a value at or above the Low Value Threshold may not be awarded before the relevant Director has submitted a RP3 Contract Award report on the tenders received for the relevant contract and the appropriate acceptance in accordance with Regulation 28.4a-d.
- 28.2** The Officer responsible must provide a report on financial references in the report seeking acceptance of a tender.
- 28.3** Where the financial appraisal of a contractor gives an 'extreme caution' rating, the contractor must not be used unless the Director or Officer reports on and seeks approval from the Council's Section 151 Officer:
- a.** any mitigating circumstances;
 - and/or**
 - b.** why they wish to appoint that contractor.
- 28.4** Prior to the submission to the Chair of CCB every report seeking a recommendation from the Chair of CCB in accordance with these regulations, must be reviewed by all departments relevant to the decision including Procurement, Legal, Finance and Equalities. Reports must be in compliance with the requirements of the Council's Constitution and in any event must specify information regarding the relevant circumstances and the terms of a Contract decision sufficient to enable an informed decision to be made. It must also contain any appropriate comments and/or recommendations relating to budgetary provision, any competitive process undertaken, these Regulations, the Financial Regulations, Procurement Regulations, relevant legislation and the Council's policies.
- 28.5** The decision makers listed in Appendix B are responsible for reviewing Contract matters for the Council.
- 28.6** Subject to the Contract values, recommendations on executive matters will be considered by the nominated Cabinet Member in consultation with the Cabinet Member for Finance and Resources.
- 28.7** Part 5.A of the Council's Constitution – Protocol for Decision Making must be observed whenever a 'relevant decision' (as defined within that Protocol) is to be taken.
- 28.8** In the absence of the named officers, deputies may act on their behalf in accordance with the departmental scheme of delegations.

29. Contract Pre-conditions and Preliminaries

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

30. Extras and Variations

- 30.1** Any extra, variation (including extension of time) or a contract change control notice to a Contract must be specifically authorised in writing by the Director or a designated Officer, who must retain a copy of this authorisation as a document relating to the Contract. If the extra, variation or change control notice is likely to result in an increase in the Contract sum, then the Officer must obtain authority for the additional expenditure in accordance with the Financial Regulations. The overall costs must be contained within agreed budgets.
- 30.2** Where the contract supervisors are not Council Officers, the Contract with the supervisors must provide that no tangible change be made to the specification without the prior written consent of the Council.
- 30.3** A report seeking authority for the change to the Contract must be made to the relevant Director or Corporate Director (as determined in accordance with Appendix B) where the extra terms or variation will in of itself result in the new total value of the contract:
- i.** totalling or exceeding the Low Value Threshold or Key Decision ; or
 - ii.** Exceeding the relevant public procurement threshold (for goods, services or works), as published.
- or in any case, where the value of the extra/variation (aggregated with previous extras/variations if any) results in the original Contract award value being increased by more than 25% or £1,000,000 (whichever is the lower).
- 30.4** A Key Decision Notice is required and timescales adhered to when the value of the extra/variation either totals or increases the new contract value to £1,000,000 or more.

- 30.5** Each Department must have control procedures and audit trails in place to deal with extras, variations and Change Control Notices.

Section 5 – Contract Mobilisation

31. Tender Records

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

32. Contract Register

- 32.1** Category Managers must ensure that all contracts let are entered onto the Council's Contract Register in accordance with the Local Government Transparency Code. This action can be completed via the Council's e-tendering portal. Where another e-tendering portal has been used the details must be submitted to www.gov.uk/contracts-finder. Copies of all signed/sealed contracts must be uploaded into the Contract Management system on the Council's e-tendering portal.
- 32.2** When contracts have been varied, extended, novated, assigned, terminated, sub-contractors authorised or changed in any way, Category Managers and Contract Managers must update the Council's Contracts Register with the new details and if required www.gov.uk/contracts-finder, and copies of all signed/sealed documentations must be uploaded into the Councils Contract Management system on the Council's e-tendering portal to accompany the original electronic copy Contract.
- 32.3** Category Managers and Contract Managers must ensure the timely completion and submission of any Contractor compiled documentation into the Council's

Contract Management system on the Council's e-tendering portal (e.g. annual Insurance Certificates) that are required by the Contract.

33. Contract Storage

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

Section 6 – Contract Management

34. Managing Contracts

- 34.1** All Directors are to name a Contracts Manager or a person responsible for the management of the contract for all new contracts which are covered by these Regulations. All contracts must have a named Council contract owner (normally the Director of the service area) and Contract Manager for the entirety of the contract term in accordance with the Council's agreed contract management model.
- 34.2** Contract managers must follow the procedures and reporting requirements set out in the Council's Procurement & Contract Management Handbook.
- 34.3** Contract Managers will be responsible for the day to day management and reporting of their contracts. This shall include monitoring and reporting using the Council's Contract Management Tool Kit. For contracts with a value of over £1,000,000 per annum, monitoring of performance will include the timely return of the Balanced Scorecard to *www.Contracthub.com* and full completion of Scorecards and Action Plans.
- 34.4** Contract Performance will be measured against the following minimum criteria but may be subject to change:
- i)** Performance; **ii)** Compliance with specification and contract terms; **iii)** Finance and costs; **iv)** Risk management, **v)** Social Value; **vi)** Resident satisfaction; **vii)** GDPR; **viii)** Health and Safety; **ix)** Modern Slavery Prevention; and **x)** Equalities and Fairness.
- 34.5** For all contracts, it is the responsibility of the Contract Manager to raise any incidents of poor performance immediately with the Contractor and seek rectification through the development of an Action Plan. This Action Plan must be updated to record progress until performance improves to a satisfactory level. At which time the Action Plan may be closed. In instances of particularly poor performance, or persistent poor performance, the Contract Manager

should consider the appropriate course of action to take under the contract, taking advice as appropriate.

35. Risk Assessment & Contingency Planning

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

36. Contract Monitoring, Evaluation & Review

- 36.1** All contracts valued at or above the Low Value Threshold are to be subject to regular formal reviews with the contractor. An initial review must be done at the first 3 months of a contract start date and on-going reviews will then be conducted on a regular schedule. The initial review can be done sooner due to the length of contract and should be agreed with CCB.
- 36.2** A formal review process must be applied to all contracts deemed to be High Risk, High Value, or High Profile. This process must be applied at key stages of major procurements and must comply with the Council's Procurement & Contract Management Handbook.
- 36.3** During the life of the contract, the Contract Manager must monitor a contract in accordance with the Council's Procurement & Contract Management Handbook.
- 36.4** During the life of Framework Agreements and DPS, the Contract Manager will update CCB on performance and awards of contracts as agreed by CCB in the report in accordance with Regulation 28.

Glossary of Terms – Appendix A

Term	
Amount of an estimate	The sum of money estimated, net of Value Added Tax but inclusive of any other tax or duty. However, the amount of any such tax or duty payable must be stated.
Award Report	A procurement award report in the relevant format (dependant on the Contract value) which is provided to the CCB prior to the award of any Contract, extension for the purposes of providing the necessary approval (subject to the Contract value).
Category Manager	The Council officer responsible for a particular category of spend and who leads on procurement activity. This may include a variety of roles including Strategic Procurement Manager.
Call-off Contracts	Contracts selected and awarded from an existing Framework Agreement or DPS.
Chair of CCB	The Director of Commercial Investment.
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).
CCS	Crown Commercial Services
CCR 2016	The Concession Contracts Regulations 2016 and any supersede or replacement legislation
‘CDM’	Construction (Design and Management) Regulations 2015.
C&P	Commissioning & Procurement Division responsible for the Council’s Tenders and Contracts Regulations
Central Buying Team	The Council’s central Buying Team within the Procurement Division responsible for all goods & services procurement below the Low Value Threshold

Central Purchasing Body	A Contracting Authority which provides centralised purchasing activities and which may also provide ancillary purchasing activities — (a) acquires supplies or services intended for one or more contracting authorities; (b) awards public contracts intended for one or more contracting authorities; or (c) concludes framework agreements for work, supplies, or services intended for one or more contracting authorities; <i>(for the avoidance of doubt, this is the same definition as provided in the PCR 2015).</i>
Concession Contract	Concessions are defined in the public sector procurement Directive 2004/17/EC (“the Directive”) as contracts where the consideration for the supplies, works or services to be carried out consists either solely in the right to exploit the supply, work or service, or in this right to exploit together with payment.
Constructionline	Website that has pre-qualified suppliers who provide goods, services and works for Construction related projects
Contract	A contract for the provision (either to or by the Council) of goods, services or works however they may be funded, but excluding those types of contracts or matters referred to at Regulation 3.3.
Contracting Authorities	The State, regional or local authorities, bodies governed by public law or associations formed by one or more such authorities or one or more such bodies governed by public law, and includes central government authorities, but does not include Her Majesty in her private capacity.
Contracts Finder	A web-based portal provided for the purposes of PCR 2015 Part 4 by or on behalf of the Cabinet Office.
Contract Management System	The process of automating Contract Lifecycle Management (previously “Contract Management”), it incorporates the key elements of the buying process, such as commissioning knowledge, specification, requests for quotation/tenders/e-auctions, evaluation/negotiation, contract formulation and management and is contained on the Council’s Tender Portal, Contract Register and Contract Management system.
Contract Manager	The Council officer or external person appointed to manage and/or monitor the tender/contract process on behalf of the Council

Contract Value or Value of a Contract	<p>A value:</p> <p>(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; and</p> <p>(b) not value added tax but inclusive of any other tax or duty. Where a Contract is mixed, i.e. has elements of works, supplies and/or services, to establish the type of contract and relevant threshold for the purposes of the PCR 2015, the correct categorisation of the Contract is made by reference to the main subject (the part that has the greatest value) of the Contract.</p> <p>In relation to a Framework Agreement and a DPS, this would be the maximum estimated value, net of Value Added Tax, of all the contracts envisaged for the total term of the Framework Agreement or DPS.</p>
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	<p>Note: to set up and access a Framework this will need to be stipulated in the appropriate CCB report to prevent a further and separate report being required; one to set up the Framework and one to access it.</p>
Corporate Director	<p>The Chief Executive; or A head of one of the following departments or any successor to them: Corporate Director Resources; Corporate Director Sustainable Communities, Regeneration & Economic Recovery; Corporate Director Children, Young People & Education; Corporate Director Adult Social Care & Health; Corporate Director Housing; Assistant Chief Executive; Executive Director of Gateway, Strategy & Engagement; who under their scheme of authorisations can exercise the powers referred to in these Regulations.</p>
Council's approved estimates	<p>The Council's budget approved annually by full Council and includes estimates of both capital and revenue expenditure</p>
Council's Declaration of Confidentiality and Interest Form	<p>This form is available on the Council's intranet: https://intranet.croydon.gov.uk/workingcroydon/finance/commissioning-andprocurement/forms</p>

Council's Constitution	The articles of the constitution for the London Borough of Croydon, which set out the rules and framework which govern the operation of the council; the responsibility for functions; procedure rules, codes and protocols for specific parts of decision-making processes.
Council's Financial Regulations	The financial regulations as contained in Part 4.H of the Council's Constitution.
DPA	Data Protection Act 2018
Director	<p>(a) 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) Corporate Director;</p> <p>(c) A nominated Officer with delegated authority to incur expenditure.</p>
Dynamic Purchasing System ("DPS")	A completely electronic purchasing system procedure available for contracts for works, services and goods commonly available on the market. <i>For the avoidance of doubt, please refer to Regulation 32 to the PCR 2015 for a more detailed definition</i>
e-sourcing (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, this means it is also to include EU Public Procurement Directives 2015 and EU 2014/24/EU (which and the principles of the Treaty on the Functioning of the European Union as apply to the Contracts as implemented into UK law by regulations
Evaluation criteria	Refers to the measures used in either the SQ or ITT to undertake an assessment of potential providers. <p>i. Criteria used in the SQ are referred to as 'selection criteria'.</p> <p>ii. Criteria used in the ITT are referred to as 'award criteria'</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.
Executive function	Matters reserved to the Executive Mayor and as set out in the Mayor's Scheme of Delegation.

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 between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged. The phrase 'Framework/s' shall also be construed accordingly. <i>For the avoidance of doubt, this is the definition provided in Regulation 33(2) PCR 2015.</i>
Audit Committee	The Audit Committee constituted under the Council's Constitution and includes any other Council decision making body or individual Member or officer who may from time to time have responsibility for consideration of these Regulations. Note: Audit Committee is a NonExecutive function
Grant	An arrangement where money is given for a stated purpose with or without conditions attached and which is for the benefit of all or a section of the community, but is not a procurement of services
How we Buy Report (RP2)	This the procurement strategy report often referred to as RP2. Template can be found on the Procurement Governance SharePoint page
In Writing	Refers to paper and electronic records
IIOB	The Investing in our Borough report, produced by Commissioning & Procurement for Cabinet listing all RP2 How we Buy and RP3 Contract Award reports that require approving by Cabinet Member or Cabinet etc
ITT (Invitation to Tender)	The step of a competitive tendering process in which suppliers or contractors are invited to submit sealed bids for the supply of specific and clearly defined supplies, services or works during a specified timeframe
KPI	Key Performance Indicator - a type of performance measurement used to evaluate the success of a particular activity carried out by a provider
LGPS	Local Government Pension Scheme

Light Touch Regime (“LTR”)	The procedure that must be followed in relation to social and other specific services (including healthcare, cultural, educational and legal services) under Regs 74-76 PCR 2015
Low Value Threshold	£177,898 ¹ (such figure to be adjusted in line with periodic changes to the threshold applicable to Supplies and Services in the PCR 2015)
LTR Services	Services subject to the Light-Touch Regime. There is an OJEU advertising requirement and other specific obligations, but a higher financial threshold has introduced for the Light Touch Regime to apply
Make or Buy Report (RP1)	The report is a strategic choice between in-housing the services required and/or buying it externally (outsourcing). It is a discussion document that has to be brought to CCB for agreement.
Most Economically Advantageous Tender (“MEAT”)	The tendering approach used to provide a balance between quality and cost Or 100% assessment of quality to a fixed budget or 100% price where a minimum quality threshold is met.
Nominated Cabinet Member or Member	Cabinet Member within whose portfolio, as identified by the Mayor’s Scheme of Delegations, the service which is the subject matter of the contract falls
Non-Executive function	Matters reserved to Full Council/Full Committee or matters that are delegated in accordance with the Scheme of Delegation
Officer	An Officer authorised by the appropriate Director or Corporate Director to lead in the requirements for a procurement and comply with these regulations.
OJEU	The Official Journal of the European Union
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.
Parent Company Guarantee	Parent Company Guarantees are provided by either the contractor’s immediate parent or other holding company and operate as a guarantee to ensure a Contract is properly performed and completed. In the event of a contractor default, the parent is obliged to remedy the breach.

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

PCR 2015	The Public Contracts Regulations 2015 and any superseding or replacement legislation
Performance Bond	Performance Bonds are typically provided by banks or insurance companies. They provide a guarantee of payment up to a stated amount of money should a loss be suffered as a result of the contractor's breach of a contractual obligation.
Person	Includes the following: (a) A group of persons; (b) A firm; (c) A partnership (d) An unincorporated association; (e) A company; (f) Another local authority or a group of local authorities (g) A Government Department (as represented by the Secretary of State); (h) A statutory body; (i) A public utility that has been privatised
PIN	Prior Indicative Notice for publishing in the OJEU, to notify the market of a possible opportunity. See PCR 2015 Reg. 48 for further information.
Post Tender Clarification	Tender or bid clarifications that may become necessary during the evaluation of tenders
Post Tender Negotiation	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. Note: this process is only available as indicated in these Regulations.
Procurement Board	Means CCB
Another 'Public Body'	Any contracting Authority within the meaning of the EU Public Procurement Directives and the Public Contracts Regulations 2015
Real Living Wage ("RLW")	The basic hourly rate before tax and other deductions determined and published The Living Wage Foundation
Regulations	All the Regulations as listed below.

The Mayor or nominated Cabinet Member	The Executive Mayor of Croydon Council or any nominated Cabinet Member to whom they have delegated authority to exercise their powers referred to in these Regulations.
S151 Officer	The Corporate Director Resources and S151 Officer
Scheme of Authorisations	The departmental 'scheme of management' setting out who is authorised to make what decisions within that department
Small and Medium Enterprises SME	The main factors determining whether a company is an SME are: 1. number of employees; and

	<p>2. either turnover or balance sheet total.</p> <table border="1"> <thead> <tr> <th>Company category</th> <th>Employees</th> <th>Turnover</th> <th>Balance sheet total</th> </tr> </thead> <tbody> <tr> <td>Medium-sized</td> <td>< 250</td> <td>≤ € 50 m</td> <td>≤ € 43 m</td> </tr> <tr> <td>Small</td> <td>< 50</td> <td>≤ € 10 m</td> <td>≤ € 10 m</td> </tr> <tr> <td>Micro</td> <td>< 10</td> <td>≤ € 2 m</td> <td>≤ € 2 m</td> </tr> </tbody> </table> <p>These ceilings apply to the figures for individual firms only. A firm which is part of larger grouping may need to include employee / turnover / balance sheet data from that grouping too.</p>	Company category	Employees	Turnover	Balance sheet total	Medium-sized	< 250	≤ € 50 m	≤ € 43 m	Small	< 50	≤ € 10 m	≤ € 10 m	Micro	< 10	≤ € 2 m	≤ € 2 m
Company category	Employees	Turnover	Balance sheet total														
Medium-sized	< 250	≤ € 50 m	≤ € 43 m														
Small	< 50	≤ € 10 m	≤ € 10 m														
Micro	< 10	≤ € 2 m	≤ € 2 m														
Social Value	The process whereby the Council meets its needs for supplies, services, works and utilities in a way that achieves value for money on a whole life basis in terms of generating benefits to society and the economy, whilst minimising damage to the environment. See the Council's Social Value Policy																
Social Value Act	The Public Services (Social Value) Act 2012																
Social Value Toolkit	The document titled 'Inspiring and Creating Social Value in Croydon' which provides advice on the process and best practice principles when trying to lever in great social value in respect of commissioning																
Standstill Period	A period of time when an authority cannot enter into a contract with a supplier until it has concluded, in accordance with Regulation 87 of PCR 2015.																
Strategy Report	A procurement strategy report in the relevant format (dependant on the Contract value) which is then provided to the CCB at the beginning of each procurement exercise. As a minimum, this report should set out the project plan, proposed procurement route, any proposed departures from standard procurement practice, the evaluation approach, risks, timetable, project structure and details of the Contract																

SQ	Supplier Selection Questionnaire a process used to identify potential suppliers that are most capable of performing a contract
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, cooperatives, social enterprises and registered social landlords. For the purposes of this document the term 'third sector' is used to denote this group of organisations.
TUPE	Transfer of Undertakings (Protection of Employment) Regulations 2006
UK Regulations	The PCR and/or CCR and any national legislation that affects Contracts under these Regulations.
Value Added Tax ("VAT")	Value added tax as chargeable under the Value Added Tax Act 1994
("VfM")	The term used to assess whether or not the Council has obtained the maximum benefit from the goods, supplies and services it acquires and/ or provides, within the resources available to it. It not only measures the cost of goods, supplies and services, but also takes account of the mix of quality, cost, use of resources, fitness for purpose, timeliness and convenience to judge whether or not, when taken together, they constitute good value. Achieving VfM may be described in terms of the 'three Es' - economy, efficiency and effectiveness.
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 SQ / ITT to reflect what is most important in any particular procurement. Weightings may be exact percentages or a specified range, where this is appropriate in view of the subject matter.
Working Day	Any other day other than a Saturday, Sunday and any bank or UK public holidays.

APPENDIX B – PROCUREMENT GATEWAY AUTHORISATION TABLE

	Procurement Threshold Value (ex-VAT)	Pre-procurement - Business Case		Route to Market		Post Procurement - Contract Award		Permitted Extension		Contract Variation	
		Authorisation	Requirement	Authorisation	Requirement	Authorisation	Requirement	Authorisation	Requirement	Authorisation	Requirement
A	Low Value (0-£25k)	n/a	n/a	n/a	Ideally 3 written competitive quotations	Budget Holder	PO with quotations attached PO terms and conditions	Budget Holder	PO change order	Budget Holder OR Move to next threshold	PO change order
B	£25k up to LOW VALUE THRESHOLD	Head of Service	LV Business Case	Head of Service	Minimum 3 written competitive quotations OR Portal Tender Publish Notices	Head of Service	PO with suitable evidence of Signed Contract (If over £100,000 instruct Legal Services to sign) Publish Notices	Head of Service	PO change order Publish Notices	Head of Service OR Move to next threshold	PO change order Publish Notices
C	LOW VALUE THRESHOLD – Key Decision Value	Director	Business Case	Chair of Procurement Board recommendation to Director	Route to Market gateway report Procurement tender to be run via portal Publish Notices	Chair of Procurement Board recommendation to Director	Contract Award Report Instruct Legal Services to sign contract. PO with suitable evidence of signed contract Publish Notices	Chair of Procurement Board recommendation to Director	Procurement Extension Report PO change order Publish Notices	Chair of Procurement Board recommendation to Director OR Move to next threshold	Procurement Variation Report (refer to Reg 30.3) Publish Notices
		Corporate Director	KDN	Chair of Procurement Board recommendation to Lead Cabinet Member	Route to Market gateway report Procurement tender to be run via portal Publish Notices	Chair of Procurement Board recommendation to Corporate Director	Contract Award Report KDN Instruct Legal Services to sign contract. PO with suitable evidence of signed contract Publish Notices	Chair of Procurement Board recommendation to Corporate Director	Procurement Extension Report PO change order Publish Notices	Chair of Procurement Board recommendation to Corporate Director	Procurement Variation Report (refer to Reg 30.3) PO change order KDN (if applies) Publish Notices
D	Key Decision Value and above (or as required by Constitution)	Corporate Director	Business Case KDN	Chair of Procurement Board recommendation to Lead Cabinet Member	Route to Market gateway report Procurement tender to be run via portal Publish Notices	Chair of Procurement Board recommendation to Corporate Director	Contract Award Report KDN Instruct Legal Services to sign contract. PO with suitable evidence of signed contract Publish Notices	Chair of Procurement Board recommendation to Corporate Director	Procurement Extension Report PO change order Publish Notices	Chair of Procurement Board recommendation to Corporate Director	Procurement Variation Report (refer to Reg 30.3) PO change order KDN (if applies) Publish Notices

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Part 4.I of the Council Constitution

Tenders and Contracts Regulations 2024

These Regulations form part of the Constitution and were adopted by Council on **17th April 2024**

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Background

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

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www.croydon.gov.uk › [final-mayors-business-plan-2022-to-2026](#)

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

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

The principles of these regulations are:

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

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

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

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

Section 1 – General

1. The Legislation Governing these Rules

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

2. Glossary of Terms is provided at Appendix A

3. Application of the Regulations

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

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

4. Officer Responsibilities

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

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

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

4.2 Officers must:

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

(signed and/or sealed, as required) before placing an order or raising a purchase order for any supplies, services or works;

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

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

5. Director Responsibilities

5.1 Directors must:

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

- f. Consider any advice given by CCB;
 - g. Monitor compliance and investigate any non-compliance with the regulations and report any findings to the Director of Commercial Investment as Chair of the Contracts and Commissioning Board;
 - h. Ensure 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;
 - i. Approve the award and spend of written quotations under the Low Value Threshold in consultation with the Head of Strategic Procurement, and in accordance with Regulation 11 to ensure value for money.
 - j. Ensure their contract managers have kept contract documentation in line with Croydon's document retention policy and uploaded onto the Council's contract management system.
- 5.2** Advice and guidance on TUPE must be sought at an early stage from the relevant departmental HR Lead. The Pensions team must also be notified as early as possible so that the implications relating to pensions may be considered.
- 6. Declaration of Interest:**
- 6.1** Any Officer must declare to their Director or Corporate Director any personal interest in a matter they are dealing with, including one, which may impinge on their impartiality to apply these Regulations.
- 6.2** No Member, Officer or agent of the Council shall improperly use his or her position to obtain any personal or private benefit from any contract entered into by the Council.
- 6.3** It is a requirement that all officers and external advisors complete the Declaration of Confidentiality and Interest Form and comply with the Council's Code of Conduct prior to any involvement in drafting of Council's Tender Documents, Quotations or any involvement in evaluation of tenders and the management of the contract. This is to ensure that the Council's procedures including confidentiality are complied with in accordance with these Regulations.
- 6.4** In the event that a conflict of interest arises during the life of the contract, all Council officers must notify their Director or Corporate Director, in writing, as soon as is reasonably practicable. This not only includes personal conflicts, but also extends to any suspected/known conflicts of interests in relation to any internal or external matters/personnel

Section 2 – Business Case

7. Pre Procurement

- 7.1** Any new commissioning of services including existing services where the contract is due to end, must consider the Business case decision, in line with the Council's' Commissioning Framework and guidance in the Procurement and Contract Management Handbook. This is a director decision as set out in the Procurement Gateway Authorisation Table (Appendix B)
- 7.2** Consideration must be given to what procurement method is most likely to achieve the commissioning and procurement objectives, including packaging (Lots) strategies, internal or external sourcing, shared services, partnering arrangements and collaborative procurement arrangements with other local authorities and government departments. Officers will also consider working with CCGs, statutory undertakers and Central Purchasing Bodies. They may also consider the establishment of separate trading entities.
- 7.3** The relevant Officer must refer to the Procurement & Contract Management Handbook for further details on process and requirements before instigating any procurement exercise.

Section 3 – How we Buy - Approach and Principles

8. How we Buy

- 8.1** The service responsible must submit a How we Buy (Route to Market) Report to the Chair of CCB, setting out commissioning intentions and sourcing strategy, (in the format required), for all proposed Contract awards for goods and services with an estimated total Contract value at or above the Low Value Threshold. Where it is intended to complete a mini competition or call off for works from an existing Council contract or an OJEU procured framework as advertised for works, then a report is not required up to an estimated total contract value of £500,000.
- 8.2** An 18 month Procurement Pipeline will be presented to Cabinet on a quarterly basis to provide visibility on forthcoming procurements, and this will include a summary report on contract awards, extensions and variations approved since the last report.
- 8.3**
- 8.4** No advertisement should be placed or invitation to tender made prior to approval of Procurement reports report in accordance with Regulation 11.

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

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

10. Contract Value, Aggregation and Existing Council Contracts

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

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

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

11.2 Procurement below the Low Value Threshold

11.2.1 For all contracts with an estimated value of below the Low Value Threshold please see Appendix B

11.2.2 For values over the Low Value Threshold quotations and tenders should be processed through the Central Buying Team using the Council's e-tendering system. Quotations for values below the Low Value Threshold must be processed in accordance with the information provided in the Procurement Handbook.

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

11.3 Formal Tendering (Low Value Threshold and above)

11.3.1 For all contracts with an estimated value at or above the Low Value Threshold please see Appendix B for requirements and authorisation levels. No procurement can commence without prior approval of a How We Buy report. Where approval is sought from a Cabinet Member then it is in consultation with the Cabinet Member for Finance. The Lead Cabinet member and the Cabinet Member for Finance must be consulted on all procurement reports above the Low Value Threshold prior to approval.

11.3.2 Unless as otherwise specified in these Regulations, the approval of strategies and awards relating to Framework Agreements and the establishment/initial appointment of providers to a DPS shall be subject to the requirements and procedures applicable to Contracts, by reference to the estimated value of contracts to be called off over the life of the Framework or DPS.

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

Agreement or establishment/initial appointment of providers to a DPS ('Framework/DPS Award report').

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

12. Pre Tender Market Consultation

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

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

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

13. Real Living Wage (RLW)

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

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

14. The Public Services (Social Value) Act 2012

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

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

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

15. Nominated or Named Sub-contractors and Suppliers

- 15.1** In accordance with Croydon's commitment to developing the local supply base and proactively implementing the Social Value Act, sub-contracting can provide a useful tool for engaging small businesses, voluntary organisations and the community sector in the supply of goods, supplies and services.
- 15.2** Officers should consider whether the inclusion of sub-contracting clauses is appropriate for their commissioning activity.
- 15.3** Where a Director nominates or names a sub-contractor or supplier to a main contractor, they must ensure the compliance with RLW, Modern Day Slavery, Council's Equality and Diversity policy, data protection legislation and any other such policy or legislation relevant to the goods, services or works being contracted for is included in that suppliers agreement. They must seek approval from the Chair of CCB prior to engagement with the sub-contractor or supplier.

16. Collaboration

- 16.1** In order to secure value for money, the Council may enter into a procurement arrangement with a Central Purchasing Body (CPB) such as Crown Commercial Services (CCS) or another such body. These agreements should include (where possible) compliance with the Council's policy and procedures, and must be approved in accordance with Regulation 11. The terms and conditions of the CPB must be fully complied with, including any requirement to undertake competition between providers, roles and responsibilities and liabilities must be clearly set out in all Call-off and contract documentation when using these agreements.
- 16.2** In order to secure value for money, the Council may enter into collaborative procurement arrangements with another local authority, government department, Clinical Commissioning Groups (CCG) and health providers,

statutory undertaker or other contracting authority. These arrangements must be approved in accordance with Regulation 11 and must ensure that roles and responsibility and liability has been clearly set out within the documentation.

17. Provision of Services and Works for Other Organisations

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

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

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

18. Tendering with or through other Public Bodies

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

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

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

19. Waivers and Emergencies

- 19.1** Where the value is under the Low Value Threshold any waivers must be signed by the relevant Director of the service area in consultation with either the Head of Strategic Procurement or Sourcing Managers of the Central Buying Team.
- 19.2** Over and above this, the Chair of CCB (exercising delegated non-executive powers) can waive any requirements contained within these Tenders and Contracts Regulations for specific projects. Any such waivers granted with a value at or above the Low Value Threshold must be reported to Cabinet at its next meeting.
- 19.3** For Disasters and Emergencies where there is a clear need to provide a service or product immediately in the instance of a sudden unforeseen crisis or the immediate risk is to health, life, property or environment, compliance when these regulations may not be feasible. Any Director may place an order for supplies, services or works as the circumstances require after seeking approval from the Chair of CCB, clearly stating the immediate procurements required. If that is not feasible for example due to outside of normal working hours then immediately after when reasonably feasible. A report of contracts awarded and any future procurements required will require approval by the Chair of CCB and if applicable Cabinet at the next available meeting after the event.
- 19.4** For emergency placements (Placement) relating to children or vulnerable adults, where it is not possible to arrange the Placement through an existing Council Contract, the relevant Director may authorise an order for the Placement. As soon as practical the Director shall review the Placement to satisfy themselves that it is and continues to be appropriate to the circumstances and provides value for money.
- 19.5** A monthly report of all Placements and other emergency orders made under this Regulation 19 in the relevant month shall be presented to CCB, Cabinet Member or Cabinet as appropriate (by reference to regulation 28 in accordance with the value of award and reporting protocols). Where the Director making the Placement or emergency order is not a Corporate Director such report shall also be provided to the relevant Corporate Director.
- 19.6** All waivers against any of these regulations, including the reasons for them and the period for which the waiver is valid must be recorded and approved. Where a waiver is to be sought, the procurement process may not begin before approval has been granted. This restriction cannot be avoided by seeking approval of a waiver with retrospective effect, unless it is confirmed that it was not reasonably practicable to obtain it prior to approval. All requirements of these Regulations relating to the approval to award still remain.

20. Preparation of a Specification

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

21. Advertising and the Number of Tenders

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

22. Standards and Evaluation Criteria

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

23. Standard Contract Clauses

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

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

23.3 All Contracts must include:

- a.** Default procedures. These may include charges for defaults.
- b.** A clause enabling the Council to claim actual or liquidated damages or an appropriate combination, depending upon the nature of the contract. Where a liquidated damages clause is used, there must also be included a clause for an extension of the time for completion. Appropriate advice must be sought on the type of damages clause suitable for each proposed contract.
- c.** A genuine pre-estimate of liquidated damages must be quoted in the contract to be valid. Liquidated damages clauses generally yield limited sums in damages and, therefore, the risks of adopting a liquidated damages clause should be assessed in each case.
- d.** A clause requiring the Contractor to maintain and test a business continuity plan at least annually and to keep the Council informed of how that plan would be deployed to protect the Council's interests, in the event of any interruption in the delivery of goods, services or works.
- e.** A clause setting out the arrangements by which the contract will be managed and monitored by the Council, including arrangements for regular liaison between the parties, in compliance with the Council's standard requirements for contract management and monitoring.
- f.** An extension of the 'time for completion' clause to protect the Council and allow for liquidated damages to be claimed in the event that the Council is responsible to any extent for a delay.
- g.** A clause permitting the termination of the Contract in whole or in part, and without penalty, where the Council elects to do so.
- h.** A clause that entitles the Council to terminate a Contract without penalty where it has been subject to a substantial modification by the provider without prior consultation and agreement.
- i.** A provision requiring the Council to pay undisputed invoices, within 30 days of receipt of a valid invoice (subject to any contractual or statutory obligation to pay earlier).
- j.** Provision that any significant deviation from the tender proposal shall constitute a default in the same manner as a deviation from the Specification and may constitute grounds upon which to terminate the contract.
- k.** Suitable clauses to enable the Council to cancel the contract and recover any loss due to the cancellation of the contract if the Contractor or any person employed by the Contractor or acting on the Contractor's behalf shall have committed any offence under the Bribery Act 2010 or shall have given any fee or reward the receipt of which is an offence under Section 117(2) of the

Local Government Act 1972 or shall have given any fee or reward to any member or officer of the Council which shall have been exacted or accepted by such officer by virtue of office or employment and is otherwise than such officer's proper remuneration.

l. A clause that states the Council will require all staff engaged by the Contractor in the delivery of services or works under the Contract be paid the RLW.

m. Where appropriate a clause that states the Contractor must comply with the Modern Day Slavery policy.

n. Where appropriate a clause that states the Contractor will ensure they maintain their compliance with Council policies that are relevant to the services that the Council are procuring.

o. Where personal data is being used within the delivery of the services, the appropriate data protection provision is made including that the Contractor must indemnify the Council against any relevant liabilities applicable to the Contractor's responsibilities.

p. Where appropriate, relevant safeguarding provisions must be included.

23.4 Standard contract clauses for securing social value are set out in the Social Value Framework. The Officer responsible should refer to this framework to ensure the appropriate clauses are used. Every Contract awarded by the Council must have a commitment on social value.

23.5 The Officer responsible must consider the obligation to require tenderers to provide a Performance Bond and/or Parent Company Guarantee where a contractor is a subsidiary of a parent company, as a Contract requirement in the following circumstances:

(i) the award is based on evaluation of the parent company;

(ii) the financial status of the contractor (having regard, inter alia, to the proposed contract) warrants the same; and or

(iii) the S151 Officer recommends;

(iv) where it is proposed to make stage or other payments in advance of receiving the whole of the subject matter of the Contract.

23.6 The decision to require a Performance Bond and/or Parent Company Guarantee as a Contract requirement should be detailed in the RP2 How we Buy report.

23.7 If during the tendering exercise it becomes a requirement for a tenderer to provide a Performance Bond and/or Parent Company Guarantee as a Contract requirement - perhaps to support a financial standing issue, then this requirement, if different from that stated in the procurement should be reported in the eventual award report.

23.8 If required, advice should be sought from the relevant Finance Head of Service and included as part of the RP2 How we Buy report or Contract Award report for approval by the Chair of CCB.

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

- a. engage an alternative provider, and in situations of urgency, without notice to the original contractor;
- b. arrange for the delivery of necessary supplies or materials from an alternative source;
- c. change quality or quantity of supplies, services or works required;
- d. recharge to the original contractor the costs of re-procurement and/or associated administrative and legal costs, and any costs incurred in excess of the original tendered price of the contractor to complete the delivery of the supply the subject of the contract, including the costs of any changes required to that supply, resulting from the contractor's default.

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

24. Form of Contract for all Awards

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

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

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

25. Invitations to Tender and Quotations/Tendering Instructions

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

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

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

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

- 25.10** The Officer responsible must check that every tender sum has been calculated by reference to the minimum specification required and stipulated in the tender. If they discover any departure from the specification, they can treat it as grounds for disregarding the tender.
- 25.11** When a tenderer proposes a variant bid, they must have demonstrated, by way of a compliant bid, that the Council's minimum standard has been met before a variant bid can be considered.
- 25.12** The Officer responsible must check that every tender sum is stated net of Value Added Tax or any other Tax or Duty.

26. Submission, Receipt and Opening of Tenders/Quotations

- 26.1** Every tender must be received by a secure method using the Council's e-tendering portal or an approved e-sourcing system.
- 26.2** Suppliers or providers who have expressed interest in a tender must be given an adequate period in which to prepare and submit a proper tender, consistent with the complexity of the contract requirement. PCR 2015 or CCR 2016 includes specific tendering time periods.
- 26.3** Officers must notify all suppliers of the correct tender return instructions, including the date, time and place (details of the e-sourcing system).
- 26.4** In exceptional circumstances, the deadline for receipt of tenders may be extended, but only with the agreement of the Head of Strategic Procurement & Governance and only if such extension of time will not disadvantage a tenderer. No extension to the deadline can be given once the original deadline has passed and the seal has been broken on the e-tendering portal.
- 26.5** The Head of Strategic Procurement and Governance must arrange for all tenders for any one Contract to be opened at the same time. All tenders received via the Council's e-tendering portal should be opened by those listed below providing they are not involved in the tender exercise:
- Category Manager from outside of the service area leading the tender exercise;
 - the Strategic Procurement Manager of the Central Buying Team;
 - the Senior Procurement Governance Officer.
- 26.6** In exceptional circumstances, the Director of Commercial Investment following advice from the Head of Strategic Procurement and Governance may approve the delegation of the opening of tenders received via the Council's e-tendering portal to the Senior Procurement Systems Officer or a Procurement Officer from outside the service area leading the tender exercise.
- 26.7** Any tender that does not comply with the Council's requirement as set out in the tender invitation e.g. arrives late, should normally be excluded from consideration, with the circumstances recorded on the Council e-tendering portal. Officers may, however, seek the agreement of the Chair of CCB to

amend these requirements in appropriate circumstances. Any such relaxation shall be identified when seeking any necessary authorities required before the acceptance of a tender.

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

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

27. Post SQ and Tender Clarifications

27.1 The Director must maintain a detailed written record and clear audit trail of all post SQ and tender clarifications detailing all contact with the tenderer. All such communications must be recorded via the Council's e-tendering portal.

27.2 The Director must report to the CCB or the nominated Cabinet Member or Cabinet as appropriate (based on Contract value) any amendments to tender prices arising from post tender clarification and the reasons for them.

27.3 Directors may amend tender prices under post tender clarification, providing it does not disadvantage any other tenderer and in accordance with PCR 2015 and CCR 2016, in the following circumstances only:

- a. if, between the submission of tenders and the Contract being awarded, a tenderer seeks to reduce the price without changing the original specification, then the Director must consult with the Chair for CCB to determine if there are reasons for accepting the new price and, if appropriate, offer the same opportunity to all the other tenderers. Opportunities to other tenderers to revise their bid prices would not normally be given to those previously eliminated for reasons other than cost or where a tenderer rectifies a mathematical error;

or

- b. if there are errors in totals;

or

- c. if the tender price is so low, the Director believes that the tenderer may have made an error and that acceptance might lead to difficulties of performance;

or

- d. where the lowest tenderer agrees to reduce their price (without varying the specification) after negotiation because:

- i) the original tender was unacceptably high;

or ii) the schedule covers a range of requirements and, although lowest overall, negotiations might allow further savings to the Council.

- e. where, for a particular requirement:

- i) the lowest tender exceeds the Department's allocation;

or

- ii) where it offers an alternative specification and negotiation would permit an assessment of the scope for savings.
 - f. If there is a Professional or local Code of Practice, that may restrict price negotiation and must be taken into consideration.
- 27.4** If the Director amends the original specification or the acceptable alternative differs from the original specification, then they must give similar opportunities to all other tenderers that submitted a tender.
- 27.5** The tenderer must subsequently confirm, in writing, any alterations to a tender before the Director may consider all the tenders received.
- 27.6** All post tender negotiation must be available for audit and recorded via the Council's e-tendering portal.

Section 4 – Contract Award

28. Contract Award

- 28.1** A Contract with a value at or above the Low Value Threshold may not be awarded before the relevant Director has submitted a RP3 Contract Award report on the tenders received for the relevant contract and the appropriate acceptance in accordance with Regulation 28.4a-d.
- 28.2** The Officer responsible must provide a report on financial references in the report seeking acceptance of a tender.
- 28.3** Where the financial appraisal of a contractor gives an 'extreme caution' rating, the contractor must not be used unless the Director or Officer reports on and seeks approval from the Council's Section 151 Officer:
- a. any mitigating circumstances;
 - and/or**
 - b. why they wish to appoint that contractor.
- 28.4** Prior to the submission to the Chair of CCB every report seeking a recommendation from the Chair of CCB in accordance with these regulations, must be reviewed by all departments relevant to the decision including Procurement, Legal, Finance and Equalities. Reports must be in compliance with the requirements of the Council's Constitution and in any event must specify information regarding the relevant circumstances and the terms of a Contract decision sufficient to enable an informed decision to be made. It must also contain any appropriate comments and/or recommendations relating to budgetary provision, any competitive process undertaken, these Regulations, the Financial Regulations, Procurement Regulations, relevant legislation and the Council's policies .

- 28.5** The decision makers listed in Appendix Bare responsible for reviewing Contract matters for the Council.
- 28.6** Subject to the Contract values, recommendations on executive matters will be considered by the nominated Cabinet Member in consultation with the Cabinet Member for Finance and Resources,
- 28.7** .
- 28.8** Part 5.A of the Council’s Constitution – Protocol for Decision Making must be observed whenever a ‘relevant decision’ (as defined within that Protocol) is to be taken
- 28.9** In the absence of the named officers, deputies may act on their behalf in accordance with the departmental scheme of delegations.

29. Contract Pre-conditions and Preliminaries

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

30. Extras and Variations

- 30.1** Any extra, variation (including extension of time) or a contract change control notice to a Contract must be specifically authorised in writing by the Director or a designated Officer, who must retain a copy of this authorisation as a document relating to the Contract. If the extra, variation or change control notice is likely to result in an increase in the Contract sum, then the Officer must obtain authority for the additional expenditure in accordance with the Financial Regulations. The overall costs must be contained within agreed budgets.

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

Section 5 – Contract Mobilisation

31. Tender Records

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

32. Contract Register

- 32.1** Category Managers must ensure that all contracts let are entered onto the Council's Contract Register in accordance with the Local Government Transparency Code. This action can be completed via the Council's e-tendering portal. Where another e-tendering portal has been used the details must be submitted to www.gov.uk/contracts-finder. Copies of all signed/sealed contracts must be uploaded into the Contract Management system on the Council's e-tendering portal.
- 32.2** When contracts have been varied, extended, novated, assigned, terminated, sub-contractors authorised or changed in any way, Category Managers and Contract Managers must update the Council's Contracts Register with the new details and if required www.gov.uk/contracts-finder, and copies of all signed/sealed documentations must be uploaded into the Councils Contract Management system on the Council's e-tendering portal to accompany the original electronic copy Contract.
- 32.3** Category Managers and Contract Managers must ensure the timely completion and submission of any Contractor compiled documentation into the Council's Contract Management system on the Council's e-tendering portal (e.g. annual Insurance Certificates) that are required by the Contract.

33. Contract Storage

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

Section 6 – Contract Management

34. Managing Contracts

- 34.1** All Directors are to name a Contracts Manager or a person responsible for the management of the contract for all new contracts which are covered by these Regulations. All contracts must have a named Council contract owner (normally the Director of the service area) and Contract Manager for the entirety of the contract term in accordance with the Council's agreed contract management model.
- 34.2** Contract managers must follow the procedures and reporting requirements set out in the Council's Procurement & Contract Management Handbook.

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

35. Risk Assessment & Contingency Planning

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

36. Contract Monitoring, Evaluation & Review

- 36.1** All contracts valued at or above the Low Value Threshold are to be subject to regular formal reviews with the contractor. An initial review must be done at the first 3 months of a contract start date and on-going reviews will then be conducted on a regular schedule. The initial review can be done sooner due to the length of contract and should be agreed with CCB.
- 36.2** A formal review process must be applied to all contracts deemed to be High Risk, High Value, or High Profile. This process must be applied at key stages

of major procurements and must comply with the Council's Procurement & Contract Management Handbook.

- 36.3** During the life of the contract, the Contract Manager must monitor a contract in accordance with the Council's Procurement & Contract Management Handbook.
- 36.4** During the life of Framework Agreements and DPS, the Contract Manager will update CCB on performance and awards of contracts as agreed by CCB in the report in accordance with Regulation 28.

Glossary of Terms – Appendix A

Term	
Amount of an estimate	The sum of money estimated, net of Value Added Tax but inclusive of any other tax or duty. However, the amount of any such tax or duty payable must be stated.
Award Report	A procurement award report in the relevant format (dependant on the Contract value) which is provided to the CCB prior to the award of any Contract, extension for the purposes of providing the necessary approval (subject to the Contract value).
Category Manager	The Council officer responsible for a particular category of spend and who leads on procurement activity. This may include a variety of roles including Strategic Procurement Manager.
Call-off Contracts	Contracts selected and awarded from an existing Framework Agreement or DPS.
Chair of CCB	The Director of Commercial Investment.
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).
CCS	Crown Commercial Services
CCR 2016	The Concession Contracts Regulations 2016 and any supersede or replacement legislation
‘CDM’	Construction (Design and Management) Regulations 2015.
C&P	Commissioning & Procurement Division responsible for the Council’s Tenders and Contracts Regulations
Central Buying Team	The Council’s central Buying Team within the Procurement Division responsible for all goods & services procurement below the Low Value Threshold

Central Purchasing Body	A Contracting Authority which provides centralised purchasing activities and which may also provide ancillary purchasing activities — (a) acquires supplies or services intended for one or more contracting authorities; (b) awards public contracts intended for one or more contracting authorities; or (c) concludes framework agreements for work, supplies, or services intended for one or more contracting authorities; <i>(for the avoidance of doubt, this is the same definition as provided in the PCR 2015).</i>
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Concession Contract	Concessions are defined in the public sector procurement Directive 2004/17/EC (“the Directive”) as contracts where the consideration for the supplies, works or services to be carried out consists either solely in the right to exploit the supply, work or service, or in this right to exploit together with payment.
Constructionline	Website that has pre-qualified suppliers who provide goods, services and works for Construction related projects
Contract	A contract for the provision (either to or by the Council) of goods, services or works however they may be funded, but excluding those types of contracts or matters referred to at Regulation 3.3.
Contracting Authorities	The State, regional or local authorities, bodies governed by public law or associations formed by one or more such authorities or one or more such bodies governed by public law, and includes central government authorities, but does not include Her Majesty in her private capacity.
Contracts Finder	A web-based portal provided for the purposes of PCR 2015 Part 4 by or on behalf of the Cabinet Office.
Contract Management System	The process of automating Contract Lifecycle Management (previously “Contract Management”), it incorporates the key elements of the buying process, such as commissioning knowledge, specification, requests for quotation/tenders/e-auctions, evaluation/negotiation, contract formulation and management and is contained on the Council’s Tender Portal, Contract Register and Contract Management system.
Contract Manager	The Council officer or external person appointed to manage and/or monitor the tender/contract process on behalf of the Council

<p>Contract Value or Value of a Contract</p>	<p>A value:</p> <p>(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; and</p> <p>(b) not value added tax but inclusive of any other tax or duty. Where a Contract is mixed, i.e. has elements of works, supplies and/or services, to establish the type of contract and relevant threshold for the purposes of the PCR 2015, the correct categorisation of the Contract is made by reference to the main subject (the part that has the greatest value) of the Contract.</p> <p>In relation to a Framework Agreement and a DPS, this would be the maximum estimated value, net of Value Added Tax, of all the contracts envisaged for the total term of the Framework Agreement or DPS.</p>
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	<p>Note: to set up and access a Framework this will need to be stipulated in the appropriate CCB report to prevent a further and separate report being required; one to set up the Framework and one to access it.</p>
<p>Corporate Director</p>	<p>The Chief Executive; or A head of one of the following departments or any successor to them: Corporate Director Resources; Corporate Director Sustainable Communities, Regeneration & Economic Recovery; Corporate Director Children, Young People & Education; Corporate Director Adult Social Care & Health; Corporate Director Housing; Assistant Chief Executive; Executive Director of Gateway, Strategy & Engagement; who under their scheme of authorisations can exercise the powers referred to in these Regulations.</p>
<p>Council's approved estimates</p>	<p>The Council's budget approved annually by full Council and includes estimates of both capital and revenue expenditure</p>
<p>Council's Declaration of Confidentiality and Interest Form</p>	<p>This form is available on the Council's intranet: https://intranet.croydon.gov.uk/workingcroydon/finance/commissioning-andprocurement/forms</p>

Council's Constitution	The articles of the constitution for the London Borough of Croydon, which set out the rules and framework which govern the operation of the council; the responsibility for functions; procedure rules, codes and protocols for specific parts of decision-making processes.
Council's Financial Regulations	The financial regulations as contained in Part 4.H of the Council's Constitution.
DPA	Data Protection Act 2018
Director	<p>(a) 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) Corporate Director;</p> <p>(c) A nominated Officer with delegated authority to incur expenditure.</p>
Dynamic Purchasing System ("DPS")	A completely electronic purchasing system procedure available for contracts for works, services and goods commonly available on the market. <i>For the avoidance of doubt, please refer to Regulation 32 to the PCR 2015 for a more detailed definition</i>
e-sourcing (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, this means it is also to include EU Public Procurement Directives 2015 and EU 2014/24/EU (which and the principles of the Treaty on the Functioning of the European Union as apply to the Contracts as implemented into UK law by regulations
Evaluation criteria	Refers to the measures used in either the SQ or ITT to undertake an assessment of potential providers. <p>i. Criteria used in the SQ are referred to as 'selection criteria'.</p> <p>ii. Criteria used in the ITT are referred to as 'award criteria'</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.
Executive function	Matters reserved to the Executive Mayor and as set out in the Mayor's Scheme of Delegation.

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 between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged. The phrase 'Framework/s' shall also be construed accordingly. <i>For the avoidance of doubt, this is the definition provided in Regulation 33(2) PCR 2015.</i>
Audit Committee	The Audit Committee constituted under the Council's Constitution and includes any other Council decision making body or individual Member or officer who may from time to time have responsibility for consideration of these Regulations. Note: Audit Committee is a NonExecutive function
Grant	An arrangement where money is given for a stated purpose with or without conditions attached and which is for the benefit of all or a section of the community, but is not a procurement of services
How we Buy Report (RP2)	This the procurement strategy report often referred to as RP2. Template can be found on the Procurement Governance SharePoint page
In Writing	Refers to paper and electronic records
IIOB	The Investing in our Borough report, produced by Commissioning & Procurement for Cabinet listing all RP2 How we Buy and RP3 Contract Award reports that require approving by Cabinet Member or Cabinet etc
ITT (Invitation to Tender)	The step of a competitive tendering process in which suppliers or contractors are invited to submit sealed bids for the supply of specific and clearly defined supplies, services or works during a specified timeframe
KPI	Key Performance Indicator - a type of performance measurement used to evaluate the success of a particular activity carried out by a provider
LGPS	Local Government Pension Scheme

Light Touch Regime (“LTR”)	The procedure that must be followed in relation to social and other specific services (including healthcare, cultural, educational and legal services) under Regs 74-76 PCR 2015
Low Value Threshold	£177,898 ¹ (such figure to be adjusted in line with periodic changes to the threshold applicable to Supplies and Services in the PCR 2015)
LTR Services	Services subject to the Light-Touch Regime. There is an OJEU advertising requirement and other specific obligations, but a higher financial threshold has introduced for the Light Touch Regime to apply
Make or Buy Report (RP1)	The report is a strategic choice between in-housing the services required and/or buying it externally (outsourcing). It is a discussion document that has to be brought to CCB for agreement.
Most Economically Advantageous Tender (“MEAT”)	The tendering approach used to provide a balance between quality and cost Or 100% assessment of quality to a fixed budget or 100% price where a minimum quality threshold is met.
Nominated Cabinet Member or Member	Cabinet Member within whose portfolio, as identified by the Mayor’s Scheme of Delegations, the service which is the subject matter of the contract falls
Non-Executive function	Matters reserved to Full Council/Full Committee or matters that are delegated in accordance with the Scheme of Delegation
Officer	An Officer authorised by the appropriate Director or Corporate Director to lead in the requirements for a procurement and comply with these regulations.
OJEU	The Official Journal of the European Union
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.
Parent Company Guarantee	Parent Company Guarantees are provided by either the contractor’s immediate parent or other holding company and operate as a guarantee to ensure a Contract is properly performed and completed. In the event of a contractor default, the parent is obliged to remedy the breach.

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

PCR 2015	The Public Contracts Regulations 2015 and any superseding or replacement legislation
Performance Bond	Performance Bonds are typically provided by banks or insurance companies. They provide a guarantee of payment up to a stated amount of money should a loss be suffered as a result of the contractor's breach of a contractual obligation.
Person	Includes the following: (a) A group of persons; (b) A firm; (c) A partnership (d) An unincorporated association; (e) A company; (f) Another local authority or a group of local authorities (g) A Government Department (as represented by the Secretary of State); (h) A statutory body; (i) A public utility that has been privatised
PIN	Prior Indicative Notice for publishing in the OJEU, to notify the market of a possible opportunity. See PCR 2015 Reg. 48 for further information.
Post Tender Clarification	Tender or bid clarifications that may become necessary during the evaluation of tenders
Post Tender Negotiation	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. Note: this process is only available as indicated in these Regulations.
Procurement Board	Means CCB
Another 'Public Body'	Any contracting Authority within the meaning of the EU Public Procurement Directives and the Public Contracts Regulations 2015
Real Living Wage ("RLW")	The basic hourly rate before tax and other deductions determined and published The Living Wage Foundation
Regulations	All the Regulations as listed below.

The Mayor or nominated Cabinet Member	The Executive Mayor of Croydon Council or any nominated Cabinet Member to whom they have delegated authority to exercise their powers referred to in these Regulations.
S151 Officer	The Corporate Director Resources and S151 Officer
Scheme of Authorisations	The departmental 'scheme of management' setting out who is authorised to make what decisions within that department
Small and Medium Enterprises SME	The main factors determining whether a company is an SME are: 1. number of employees; and

	<p>2. either turnover or balance sheet total.</p> <table border="1"> <thead> <tr> <th>Company category</th> <th>Employees</th> <th>Turnover</th> <th>Balance sheet total</th> </tr> </thead> <tbody> <tr> <td>Medium-sized</td> <td>< 250</td> <td>≤ € 50 m</td> <td>≤ € 43 m</td> </tr> <tr> <td>Small</td> <td>< 50</td> <td>≤ € 10 m</td> <td>≤ € 10 m</td> </tr> <tr> <td>Micro</td> <td>< 10</td> <td>≤ € 2 m</td> <td>≤ € 2 m</td> </tr> </tbody> </table> <p>These ceilings apply to the figures for individual firms only. A firm which is part of larger grouping may need to include employee / turnover / balance sheet data from that grouping too.</p>	Company category	Employees	Turnover	Balance sheet total	Medium-sized	< 250	≤ € 50 m	≤ € 43 m	Small	< 50	≤ € 10 m	≤ € 10 m	Micro	< 10	≤ € 2 m	≤ € 2 m
Company category	Employees	Turnover	Balance sheet total														
Medium-sized	< 250	≤ € 50 m	≤ € 43 m														
Small	< 50	≤ € 10 m	≤ € 10 m														
Micro	< 10	≤ € 2 m	≤ € 2 m														

Social Value	The process whereby the Council meets its needs for supplies, services, works and utilities in a way that achieves value for money on a whole life basis in terms of generating benefits to society and the economy, whilst minimising damage to the environment. See the Council's Social Value Policy
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Social Value Act	The Public Services (Social Value) Act 2012
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Social Value Toolkit	The document titled 'Inspiring and Creating Social Value in Croydon' which provides advice on the process and best practice principles when trying to lever in great social value in respect of commissioning
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Standstill Period	A period of time when an authority cannot enter into a contract with a supplier until it has concluded, in accordance with Regulation 87 of PCR 2015.
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Strategy Report	A procurement strategy report in the relevant format (dependant on the Contract value) which is then provided to the CCB at the beginning of each procurement exercise. As a minimum, this report should set out the project plan, proposed procurement route, any proposed departures from standard procurement practice, the evaluation approach, risks, timetable, project structure and details of the Contract
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SQ	Supplier Selection Questionnaire a process used to identify potential suppliers that are most capable of performing a contract
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, cooperatives, social enterprises and registered social landlords. For the purposes of this document the term 'third sector' is used to denote this group of organisations.
TUPE	Transfer of Undertakings (Protection of Employment) Regulations 2006
UK Regulations	The PCR and/or CCR and any national legislation that affects Contracts under these Regulations.
Value Added Tax ("VAT")	Value added tax as chargeable under the Value Added Tax Act 1994
("VfM")	The term used to assess whether or not the Council has obtained the maximum benefit from the goods, supplies and services it acquires and/ or provides, within the resources available to it. It not only measures the cost of goods, supplies and services, but also takes account of the mix of quality, cost, use of resources, fitness for purpose, timeliness and convenience to judge whether or not, when taken together, they constitute good value. Achieving VfM may be described in terms of the 'three Es' - economy, efficiency and effectiveness.
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 SQ / ITT to reflect what is most important in any particular procurement. Weightings may be exact percentages or a specified range, where this is appropriate in view of the subject matter.
Working Day	Any other day other than a Saturday, Sunday and any bank or UK public holidays.

APPENDIX B – PROCUREMENT GATEWAY AUTHORISATION TABLE

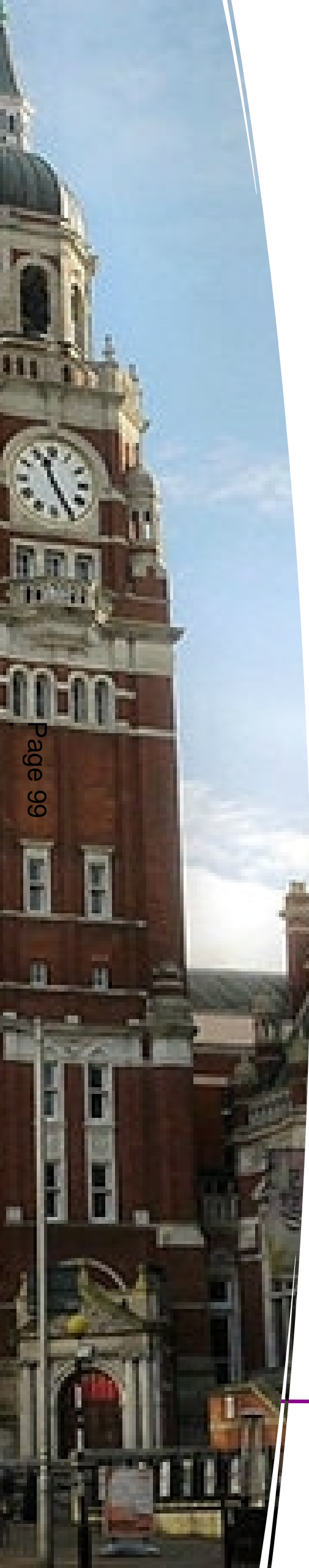
	Procurement Threshold Value (ex-VAT)	Pre-procurement - Business Case		Route to Market		Post Procurement - Contract Award		Permitted Extension		Contract Variation	
		Authorisation	Requirement	Authorisation	Requirement	Authorisation	Requirement	Authorisation	Requirement	Authorisation	Requirement
A	Low Value (0-£25k)	n/a	n/a	n/a	Ideally 3 written competitive quotations	Budget Holder	PO with quotations attached PO terms and conditions	Budget Holder	PO change order	Budget Holder OR Move to next threshold	PO change order
B	£25k up to LOW VALUE THRESHOLD	Head of Service	LV Business Case	Head of Service	Minimum 3 written competitive quotations OR Portal Tender Publish Notices	Head of Service	PO with suitable evidence of Signed Contract (If over £100,000 instruct Legal Services to sign) Publish Notices	Head of Service	PO change order Publish Notices	Head of Service OR Move to next threshold	PO change order Publish Notices
C	LOW VALUE THRESHOLD – Key Decision Value	Director	Business Case	Chair of Procurement Board recommendation to Director	Route to Market gateway report Procurement tender to be run via portal Publish Notices	Chair of Procurement Board recommendation to Director	Contract Award Report Instruct Legal Services to sign contract. PO with suitable evidence of signed contract Publish Notices	Chair of Procurement Board recommendation to Director	Procurement Extension Report PO change order Publish Notices	Chair of Procurement Board recommendation to Director OR Move to next threshold	Procurement Variation Report (refer to Reg 30.3) Publish Notices
D	Key Decision Value and above (or as required by Constitution)	Corporate Director	Business Case KDN	Chair of Procurement Board recommendation to Lead Cabinet Member	Route to Market gateway report Procurement tender to be run via portal Publish Notices	Chair of Procurement Board recommendation to Corporate Director	Contract Award Report KDN Instruct Legal Services to sign contract. PO with suitable evidence of signed contract Publish Notices	Chair of Procurement Board recommendation to Corporate Director	Procurement Extension Report PO change order Publish Notices	Chair of Procurement Board recommendation to Corporate Director	Procurement Variation Report (refer to Reg 30.3) PO change order KDN (if applies) Publish Notices

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Croydon Council

Procurement Strategy to 2024 to 2026



Procurement Strategy 2024-26

Introduction from Head of Strategic Procurement

I am proud to be introducing our Procurement Strategy.

It has never been more important that procurement delivers excellent value for money for our residents.

To do this successfully we must develop & harness the collective skills and knowledge of our staff, so this is rightly a key focus of the Strategy.

To drive improvements, we also need to deliver high quality, well researched and insightful commercial strategies as part of our business cases.

At the same time, we have to ensure that robust contract and supplier management arrangements are in place to ensure the value captured through the above is not eroded in the delivery of our contracts.

Importantly, the Strategy provides a direct link to the Mayor's priorities as set out in his Business Plan, particularly Social Value. It also takes addresses the Improvement and Assurance Panel's (IAP) Exit Strategy requirements to ensure we are delivering our best value duty.

We want to be able to measure ourselves against the best so as well as a range of specific performance measures we will benchmark our progress nationally using the Local Government Association's framework.

This Strategy is grouped into **six themes**, a number of which I have highlighted above. Within each we set out our ambitions, the outcomes we will achieve and the specific tasks we will deliver to enable this.

It must remain a live document; as the environment in which we work changes, then so may our priorities. We will therefore regularly review and modify it as required.

Scott Funnell, Head of Strategic Procurement and Governance

Strategy Themes

Theme 1: Commercial Engagement

Theme 2: Contract & Supplier Management

Theme 3: Social Value

Theme 4: Skills Development

Theme 5: Governance & Assurance

Theme 6: System & Process Development



Ambition

It is paramount we use our spending power with suppliers wisely and strategically to deliver savings and wider benefits for our residents.

Early commercial involvement in the procurement process, as business cases are being developed, provides the best opportunity to extract most value.

The Procurement team will use its knowledge of markets, lessons learned from suppliers and collaboration with other authorities to inform the viability of delivery options under consideration.

It will focus on our key procurements, where most value, risk and complexity resides. This is where they will have greatest impact.

Target Outcomes

- The Procurement team's remit and structure is designed so it focuses on the council's key procurements with lower value, routine procurements being handled by the wider business (with Procurement support provided where required).

- Future requirements are communicated to the market using a variety of channels including publication of pipeline information and engagement events.
- Routine early engagement with bidders on significant projects is in place to encourage innovative solutions.
- High quality market & business intelligence is used to make important contributions to options appraisals and to provide ideas for savings in the forward planning process.

Actions

- 1.1** Develop and apply a savings/benefits methodology.
- 1.2** Develop a Support offer to Services for low value sourcing including training, 'How to' guide and templates.
- 1.3** Implement revised Procurement staff structure and job profiles.
- 1.4** Provide a series of market events sharing pipeline information with specific sectors to allow them to plan their engagement with the council.



Ambition

The Council uses suppliers to deliver many of our services. We therefore need to ensure that our contracts with them deliver on time, to the right quality and without cost overruns; we need to effectively manage their performance, risks & supplier relationships. Otherwise gains secured at the procurement stage also risk erosion through the life of the contract.

Our key contracts (classified as platinum and gold) make up 15% of the total number of contracts in the Council but account for 90% of total contract value. We will therefore take a proportionate approach, initially focusing on these key contracts.

Target Outcomes

- Contract managers are operating to an appropriate standard based on the risk, value and complexity of their contracts in line with best practice guidance.
- Contract managers have access to the necessary guidance, systems, tools & training to support this.
- Required contract management resource is routinely identified and engaged early in the procurement process to ensure lessons learned are applied.

- Dedicated commercial resource is in place to ensure contracts deliver against objectives in the business case and to support on key commercial issues.
- Relationships with strategic suppliers are developed to drive further value & innovation from contracts.
- A complete contracts register & repository exist and are accessible to all appropriate staff so they can use to inform forward planning and to access key documentation.

Actions

- 2.1** Conduct initial assessment of key contracts to assess contract management status versus required standards and to identify key themes affecting performance.
- 2.2** Develop materials to support contract managers including handbook and key template documents.
- 2.3** Finalise a complete contract register, referencing it against expenditure from the purchasing system to identify any gaps.
- 2.4** Following on from 2.1 undertake a series of 'deep dives' on individual contracts to improve performance.
- 2.5** Develop and populate a contract repository to ensure all key contract documentation resides in a central, accessible location.
- 2.6** Develop and communicate a Supplier Charter to set out expectations of suppliers and what they can expect from the council.
- 2.7** Commence implementation of a Supplier Relationship Management (SRM) programme for strategic suppliers.



Ambition

We will look to use our procurement activity to maximise the economic, social and environmental benefits to the local community.

The Council will use Social Value through the procurement process to support its priorities within the Mayor's Business Plan

Spend with SMEs, VCSEs and micro businesses can make a significant contribution to local growth and we will support this through their early engagement in the procurement process and making our procurements as accessible as possible for them.

We will work with local providers and seek out best practice elsewhere to implement innovative procurement solutions that support SMEs, VCSEs and micro businesses.

Target Outcome

- Social Value considerations are embedded at the early stages of the commissioning cycle.
- Metrics are in place to quantify Social Value delivered through our procurements.
- Regular reporting tracks the delivery of Social Value through the lifecycle of our contracts.

- Staff and suppliers are clear on how to apply Social Value.
- SMEs, micro businesses and VCSEs understand how to respond to council requirements (including successfully incorporating social value into their bids) and have visibility of relevant upcoming opportunities.

Actions

- 3.1** Develop and agree an updated Social Value Policy that outlines key ambitions and deliverables over the next three years.
- 3.2** Develop approach for VCSEs to deliver social value via larger council contractors as part of policy.
- 3.3** Implement a tool to support measurement of desired Social Value outcomes to enable more robust comparison of bids and delivery of Social Value through the contract.
- 3.4** Review opportunities that the Procurement Act offers to reduce barriers for local supplier participation.
- 3.5** Deliver Social Value & Equalities training and toolkit for commissioners, contract managers and procurement staff to support improved design of our procurements and subsequent monitoring of delivery of commitments.
- 3.6** Deliver Social Value training, particularly for VCSEs, micro and SMEs to support them in bid submissions.
- 3.7** Baseline existing Scope 3 carbon emissions (from our supply base) and pilot delivery of reductions across key areas.
- 3.8** Categorise Modern Slavery risk in procurements. Build improvement plans with high risk suppliers & audit.



Ambition

Having the right people in place, with the right skills, will play a key part in ensuring the successful delivery of this strategy.

We will ensure our procurement staff develop the right blend of commercial & technical expertise and will provide wider support to build the necessary commercial skills & awareness across the Council.

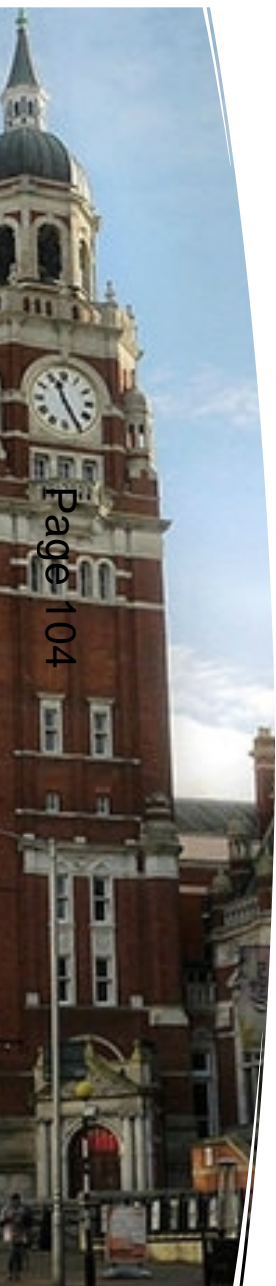
We will also support the development of contract management skills across the Council to ensure that risks and performance are effectively managed throughout the contract lifecycle.

Target Outcomes

- The Procurement team have the necessary skills to make a significant commercial impact at all stages of the procurement process.
- Similarly contract managers have the appropriate skills to successfully manage their assigned contracts, recognising these will vary depending on value, complexity and risk.
- All staff involved in procurements are competent to input effectively.

Actions

- 4.1** Develop procurement and contract management competency frameworks.
- 4.2** Implement a Chartered Institute of Purchasing Supply (CIPS) apprenticeship training programme to develop more junior members of staff. Develop an apprenticeship programme as a key part of a 'grow our own' approach.
- 4.3** Develop & deliver a training programme for the procurement team to support more strategic role and in line with required competencies.
- 4.4** Develop & deliver training for contract managers to address key skills gaps.
- 4.5** Develop & deliver procurement training across the council for senior managers & all those involved sourcing activities.
- 4.6** Define competencies required of stakeholders to successfully input into the procurement process, identify key gaps and develop required training to support.
- 4.7** Develop partnerships with other councils to jointly improve skills.



Ambition

An efficient and proportionate governance structure will ensure appropriate oversight of the Council's procurement operations.

It will help drive best value from our procurements as well as ensuring compliance to legal and regulatory requirements and the principles of fairness and transparency.

The Procurement Service will use good quality management information to provide assurance on the extent to which the Council is effectively planning its procurements, adhering to the tender and contracts regulations (TCRs) and managing its contracts.

Target Outcomes

- Performance dashboards are in place that provide rich management information to inform good decision making across the Council. This includes the delivery of commercial and social benefits through procurements/contracts, contract performance against Key Performance Indicators, and level of compliance to purchasing processes.

- All those across the Council involved in the procurement process are clear what is expected of them to participate effectively.
- Our governance provides the necessary controls to ensure high quality decision making but is streamlined to eliminate activities that do not add value or duplicate.

Actions

- 5.1** Define key stakeholder roles and responsibilities for each procurement activity, supported by guidance and training.
- 5.2** Develop simplified, proportionate TCRs that take account of the Procurement Act.
- 5.3** Deliver Purchasing reporting to support compliance & decision making.
- 5.4** Revise template documents for each key gateway in the procurement process (from business case onwards) to prevent duplication and to ensure only relevant areas are scrutinised.
- 5.5** Commence assurance reporting of the performance of contracts at Corporate/DMT level.
- 5.6** Implement Purchasing, Procurement & Contract Management Dashboards, drawing data from a variety of systems to give Directorates a holistic view of performance in their areas.



Ambition

Improved efficiencies in our purchasing processes, alongside communication & support reinforcing the importance of compliance, will ensure that purchasing transactions are raised 'right first time'. Unnecessary duplication and manual working will be eliminated speeding up the supplier registration and invoicing process.

Better use of strategic procurement systems to support the end to end procurement process will aid effective planning, reductions in reactive procurements, the removal of unnecessary manual processes, improved visibility of contract performance and stronger controls on contract spend.

More powerful management information will support the development of our strategies and provide focus on areas for improvement.

Target Outcomes

- Integrated pipeline management, e-sourcing, Purchase to Pay and contract management systems are in place and accessible & easy to use for staff and suppliers who will benefit from them.
- The Procurement team proactively uses this information to work with Directorates/Services to address performance issues it highlights.

- Guidance & learning is embedded into our purchasing systems to support compliance.

Actions

- 6.1** Implement supplier system self-registration to speed up the supplier set up process.
- 6.2** Deliver embedded guided learning to support the purchasing process within Oracle Fusion. Deliver revised learning materials for new starters.
- 6.3** Implement e-invoicing with all suppliers.
- 6.4** Roll out Blanket Purchasing Agreements to support control of contract spend.
- 6.5** Implement contract management system roll out for platinum and gold contracts.
- 6.6** Go live with pipeline management system to support planning process.
- 6.7** Roll out of electronic signatures for all contracts.



Measuring Successful Delivery

Overall, we will compare the procurement function with sector best practice by using two frameworks:

- LGA National Procurement Strategy (NPS)
- Cabinet Office Commercial Continuous Improvement Assessment Framework (CCIAF)

Our minimum target is to be operating at mature level across all measures in the LGA National Procurement Strategy (and at equivalent Good Level across the CCIAF framework) by Mar 25.

More specific measures are detailed below:

Themes	Success Measure
Commercial Engagement	<p>Cashable and non-cashable benefits (including social value) to be captured from Apr 24. From Apr 25 annual forecast target savings to be included (based on future pipeline of planned procurements). Thereafter savings to be recorded and tracked against the annual targets.</p> <p>% of procurements added to forward plan after it has been ‘frozen’ to be captured from Apr 24.</p>
Contract and Supplier Management	<p>% of Gold and Platinum contracts with overall KPI RAG status at Red or Amber to be measured from Sep 24.</p> <p>% of Platinum and Gold contracts operating to agreed contract management standards to be tracked from Jun 24.</p> <p>Percentage of Council spend covered by active contracts to be tracked from Apr 24</p>
Social Value	<p>Quantified Social Value captured. % spend with local SMEs and VCSEs to be tracked from Sep 24</p>
Skills Development	<p>Procurement staff to be operating at the required competencies for their role within the new operating model (in line with agreed competency framework) by Mar 25.</p> <p>Contract Managers for Platinum and Gold contracts to be competent to a level that enables a ‘Good’ standard (CCIAF) by Apr 25. Targets for ‘Better’/’Best’ improvements and associated competencies to be agreed at this point.</p>
Governance	<p>Number of waivers as a % of total procurements to be baselined for 23-24 and numbers for 24-25 tracked against this.</p> <p>% of Route to Market reports submitted to Procurement Board with less than 3 & 6 months of existing contract left.</p>
System & Process Development	<p>Number of purchase orders received after invoice date to be tracked from Apr 24.</p> <p>Supplier set up & approval times for transactions to be tracked from Apr 24.</p> <p>End to end procurement timescales to be tracked from Apr 24.</p>

APPENDIX: Summary of Actions and Target Dates

Theme 1: Commercial Engagement

Ref	Action	Target Date
1.1	Develop and apply a savings/benefits methodology.	Apr 24
1.2	Develop Support offer to Services for low value sourcing including training, 'How to' guide and templates.	Apr 24
1.3	Implement revised Procurement staff structure and job profiles.	May 24
1.4	Provide a series of market events sharing pipeline information with specific sectors to allow them to plan their engagement with the council.	Sep 24 onwards

Theme 2: Contract Management

Ref	Action	Target Date
2.1	Conduct initial assessment of key contracts (Platinum & Gold) to assess contract management status versus required standards and to identify key themes affecting performance (with recommendations to address).	Mar 24
2.2	Develop materials to support contract managers including handbook and key template documents	Mar 24
2.3	Finalise complete contract register, referencing it against expenditure from the purchasing system to identify any gaps.	Mar 24
2.4	Following on from 2.1 undertake a series of 'deep dives' on individual contracts to improve performance.	May 24- Mar 25
2.5	Develop and populate contract repository to ensure all key contract documentation resides in a central, accessible location.	Sep 24
2.6	Develop and communicate Supplier charter to set out expectations of suppliers and what they can expect from the council.	Sep 25
2.7	Commence implementation of Supplier Relationship Management (SRM) programme for strategic suppliers.	Sep 25

Theme 3: Social value

Ref	Action	Target Date
3.1	Develop and agree an updated Social Value Policy that outlines key ambitions and deliverables over the next 3 years	Jul 24
3.2	Develop approach for VCSEs to deliver social value via larger council contractors as part of policy.	Jul 24
3.3	implement tool that will support measurement of desired social value outcomes to enable more robust comparison of bids and delivery of Social Value through the contract	Sep 24
3.4	Review opportunities that the Procurement Act offers to reduce barriers for local supplier participation	Sep 24
3.5	Deliver Social Value & Equalities training for commissioners, contract managers and procurement staff to support improved design of our procurements and subsequent monitoring of delivery of commitments	Sep 24
3.6	Deliver social value training for suppliers to support them in bid submissions	Oct 24
3.7	Baseline existing Scope 3 carbon emissions (from our supply base) and pilot delivery of reductions across key areas	Mar 25
3.8	Categorise Modern Slavery risk upfront in procurements. Build improvement plans with high risk suppliers and audit contracts	Sep 25

Theme 4: Skills Development

Ref	Action	Target Date
4.1	Develop procurement and contract management competency frameworks	Mar 24
4.2	Implement Chartered Institute of Purchasing Supply (CIPS) apprenticeship training programme to develop more junior members of staff. Develop an apprenticeship programme as a key part of a 'grow our own' approach	Apr 24
4.3	Develop & deliver training programme for procurement team to support more strategic role and in line with required competencies	Jun 24
4.4	Develop & deliver training for contract managers to address key skills gaps	Mar 25
4.5	Develop & deliver procurement training across the council for senior managers & all those involved sourcing activities.	Dec 24
4.6	Define competencies required of stakeholders to successfully input into the procurement process, identify key gaps and develop required training to support	Sep 25
4.7	Develop partnerships with other councils to jointly improve skills.	Mar 25

Theme 5: Governance & Assurance

Ref	Action	Target Date
5.1	Across the Council, roles and responsibilities in the end to end procurement process are defined, supported by guidance and training.	Apr 24
5.2	Develop simplified, proportionate CSOs that take account of the Procurement Act (with training, guidance and templates to support revisions)	Apr 24 (phase 1) Oct 24 (phase 2)
5.3	Deliver Purchasing reporting to support compliance & decision making	May 24
5.4	Revise templates documents for each key gateway in the procurement process (from business case onwards) to prevent duplication and to ensure only relevant areas are scrutinised.	Jun 24
5.5	Commence assurance reporting of performance of contracts at Corporate/DMT level.	Sep 24
5.6	Implement Purchasing, Procurement & Contract Management Dashboard drawing data from a variety of systems	Oct 25

Theme 6: System & Process Development

Ref	Action	Target Date
6.1	Go live with supplier self-registration to speed up the supplier set up process	Aug 24
6.2	Deliver embedded guided learning to support the purchasing process within Fusion. Deliver revised learning materials for new starters.	Oct 24
6.3	Complete implementation of e-invoicing with all suppliers	Apr 25
6.4	Complete implementation of Blanket Purchasing Agreements to support control of contract spend	May 25
6.5	Complete contract management system roll out for platinum and gold contracts	Apr 25
6.6	Go live with pipeline management system to support planning process	Sep 24
6.7	Complete roll out of electronic signatures for all contracts	Sep 25