

CONSTITUTION OF THE LONDON BOROUGH OF CROYDON

Part 4.I – Tenders and Contracts Regulations

**These Regulations form part of the Constitution of the London Borough of Croydon
and were adopted by Full Council on 23 May 2016**

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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, efficient and add value to life experiences of the people and communities of Croydon, particularly Croydon's commitment to:

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

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.

The principles of Croydon's commissioning regime are:

- to achieve good value for money and deliver social value wherever possible;
- the need for a competitive process;
- non-discrimination, with fair and transparent procedures, and equal treatment of all potential suppliers;
- to encourage and ensure continuous improvement in the delivery of Council services through the application of value for money principles;
- to incorporate effective and best practice procedures;
- to publish clear and understandable rules;
- to minimise risks and to protect the Council's interests and reputation;
- to ensure controls and accountability, and always to act within the law
- to maintain an auditable trail of all tender activity;
- to be responsive to any weaknesses identified by internal/external audit;
- to ensure that regulations reflect the current procurement environment;
- to effectively support the delivery of direct services;
- to have regulations with which everyone complies.

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

SECTION 1 – GENERAL

1. The Legislation Governing these Rules

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.

These Regulations are part of the Council's Constitution and govern all relevant Contracts (including agreements funded by way of grant given or received by the Council) with an estimated total Contract value of £100,000 and over.

Any change to the EU Rules, national legislation and related PCR 2015, which affects contracts under these Regulations, takes precedence.

These Regulations are subject to any general waivers agreed or provided for by these Regulations e.g. Regulation 18

Anyone operating these Regulations must also follow the Council's Financial Regulations.

These Regulations support the Public Services (Social Values) Act 2012 which allow for specific non-commercial considerations to be taken into account in contracting decisions.

2. Glossary of Terms is provided at Appendix 1

3. Application of the Regulations

These Regulations apply if the Council intends to enter into a contract either as a purchaser or as a provider with another entity and the estimated contract value (including any optional periods of extension) of the contract is £100,000 or more.

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 £100,000 or more.

Contracts to which these Regulations apply include arrangements for:

- a. The supply and/or purchase of products or goods
- b. The undertaking of works and construction
- c. The hire, rental or lease of goods or equipment
- d. The provision or purchase of consultancy or other professional services
- e. The delivery or purchase of services, including (but not limited to) those related to land and property transactions and some financial and consultancy services

Contracts that are not covered by these Regulations include:

- a. Contracts for the purchase of supplies, services or works, or for a Contract for any other purpose (including 'sales'), the value of which is less than £100,000. Such contracts below this threshold need to comply with Part 4 PCR 2015 and

further advice on the application of these Regulations in relation to Low Value Expenditure can be found in the relevant guidance document.

- b. Contracts of employment which make an individual a direct employee of the Authority
- c. Fines
- d. Payment of taxes
- e. 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;
- f. Agreements directly associated with the acquisition, disposal, or transfer of assets or land (to which the Financial Regulations shall apply)
- g. Section 75 Agreement (s.75) – agreements made under section 75 of the National Health Services Act 2006 between a local authority and an NHS body in England.

4. Officer Responsibilities

Officers involved in the commissioning and procurement process must comply with these Regulations, the Council's Financial Regulations, the Council's Staff Code of Conduct, the Council's Gifts & Hospitality Procedures and Anti-Bribery policy, arrangements for declaring conflicts of interest and Council's Scheme of Delegation and with all UK and European Union binding legal requirements. 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.

Officers must:

- a. Have proper regard for all necessary legal, financial and professional advice
- b. Declare any personal financial interest in a contract. Corruption is a criminal offence
- c. Report any offers of bribes or inducements
- d. Conduct any relevant value for money review
- e. Ensure that there is adequate budget provision for the procurement being undertaken
- f. Check whether there is an existing contract that can be used before undergoing a competitive process
- g. not advertise a contracting opportunity or invite any tenders for a relevant Contract unless approval of the procurement/commissioning strategy has been given
- h. Allow sufficient time for the submission of bids
- i. Keep all supplier bids confidential
- j. Keep records of all dealings with suppliers
- k. The project manager should ensure the safe keeping of contract documentation in line with Croydon's document retention policy.
- l. Obtain all required approvals at the correct point in the procurement process as advised by these Regulations and complete a written contract (and sealed, as required) before placing an order or raising a purchase order for any supplies, services or works
- m. Where appropriate, not award a contract until the standstill period is over
- n. Enter all purchase order information onto the Oracle financial system

- o. Based on the Scheme of Delegation, identify a senior manager 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 may also be appointed
- p. Not divide up any contract in order to avoid any rules set out in the Contract Standing Orders
- q. Throughout, ensure that the procurement exercise delivers against the Outcomes Framework as set out in the Council's Commissioning Framework and Community Strategy

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 - TUPE) issues are considered along with any issues related to employees' membership of the LGPS, and Teachers Pension Scheme.

5. Director Responsibilities

- a. ensuring that these Regulations are followed and enforced within their areas of responsibility;
- b. making staff aware of the requirements;
- c. ensuring the Leader, nominated Cabinet Member, 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;
- d. considering any advice given by CCB;
- e. monitoring compliance and investigating any non-compliance with the Regulations and reporting findings to the Head of SCC Resources as Chair of the Contracts and Commissioning Board.
- f. ensuring that any third party participating in the procurement or supervising a Council Contract agrees, in writing, to comply with these Regulations as if they were Officers of the Council;
- g. accepting or authorising acceptance of tenders under £100,000 without other authority and in doing so ensures value for money.

6. Declaration of Interest:

Any Officer must declare to their Executive Director and the Council Solicitor any personal interest in a matter they are dealing with, including one, which may impinge on their impartiality to apply these Regulations.

It is a requirement that all Council officers and external advisors complete the Declaration of Confidentiality and Interest Form prior to any involvement in any drafting of Tender Documents or any involvement in evaluation of applicants or tenderers. This is to ensure that the Council's procedures including confidentiality are complied with in accordance with these Regulations.

In the event that a conflict of interest arises all Council officers must notify their Executive Director and the Council Solicitor, 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 – GENERAL APPROACH AND PRINCIPLES

7. Aggregation

The Officer responsible may not divide any Contract ordinarily treated as a single Contract into two or more Contracts or phases, solely in order to reduce the value to below any of the sums mentioned in any of these Regulations.

The value of any Contract to be undertaken in phases is the aggregated value of all phases combined. Any Contracts split artificially to reduce below the threshold of the EU rules may be considered contrary to the EU 'Aggregation Rules' and could result in the Council being subjected to legal challenge.

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 the subject of the existing contract to fulfil the Council's needs, UNLESS it can be clearly demonstrated to the satisfaction of the Head of SCC Resources 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.

Failure to comply with these regulations may result in disciplinary action.

8. Procedures and approval process for the Council's tendering and request for quotation activities

The following table shows the procedures and approval process for the Council's tendering and request for quotation activities:

| Total Aggregated value | Procedure | Approval Route | Essential Requirement |
|-------------------------------|--|---|--|
| Under £5,000 | One written quote required but preferable to have | Under the Scheme of Financial Delegation. | The selected quote must represent best value for money |
| £5,000 to £25,000 | Invite a minimum of three quotes (one local) via the Council's e-sourcing portal | Under the Scheme of Financial Delegation | The selected quote must represent best value for money |
| £25,000 to below £100,000 | Formal Tendering via an e-sourcing portal or if justified then the invitation of quotations (as row above) can be adopted. | Under the Scheme of Financial Delegation | Formal tendering preferred using the content of these Regulations as best practice. If tendering is not adopted then an audit trail of the reasons why not must be kept. If advertised – tenders and quotes above £25,000 must be published on the Council website and |

| | | | |
|--------------------|---|--|--|
| | | | Contracts Finder. No two stage process permitted. A minimum of 3 quotations/tenders should be sought |
| £100,000 and above | Formal Tendering via an e-sourcing portal Depending upon value, tendering processes will be undertaken in accordance with the requirements of the Public Contract Regulations 2015. | In accordance with these Regulations. The procurement strategy is to be approved by CCB (<£5m) or Cabinet (>£5m). Contract award: <£500k; Director of SCC. >£500k<£5m; nominated Cabinet Member* >£5m; Cabinet | No two stage process permitted below the relevant EU Threshold. No procurement to begin without prior approval of CCB and where appropriate Cabinet. |

*in consultation with the Cabinet Member for Finance and Treasury or where the Nominated Cabinet Member is the Cabinet Member for Finance and Treasury, then the decision should be taken in consultation with the Leader of the Council

9. Pre Tender Market Consultation

Before submitting a procurement strategy to CCB, the officer responsible for the procurement may 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.

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

Such advice may be used in the planning and conduct of the procurement procedure, provided that it does not have the effect of distorting competition (by giving those who participate in the pre-tender market consultation an unfair advantage over others in relation to future procurement opportunities) and does not result in a violation of the EU Rules and transparency and furthermore, is conducted in line with the PCR 2015.

10. London Living Wage (LLW)

The Council shall seek to include, insofar as is possible, a requirement for all staff to be paid no less than the LLW where the contractor's staff are engaged with the delivery of services and works to the Council. For this purposes, 'staff' means all persons employed by the contractor to perform its obligations under the relevant Council contract together with the Provider's servants, agents, suppliers and sub-contractors used in the performance of its obligations under that Contract.

11. The Social Value Act

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:

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

Commissioners should use the Act to reconsider 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.

Contracts for goods and works are not covered by the Act. Contracts where there is a mixture of services, supplies or works are not covered where the value of the goods exceeds the value of the services or where the works are more than incidental to the main purpose of the contract. Furthermore, Contracts below the relevant monetary thresholds as set out in the Public Contracts Regulations 2015 are not covered by the Act. Likewise, call-off Contracts from framework agreements are not covered by the Act.

Although the above contracts do not fall within the remit of the Act commissioners, as a matter of good practice, should consider economic, social and environmental wellbeing in order to obtain maximum Value for Money. This may be particularly relevant in lower value contracts where services for citizens (such as welfare, social and health services) are being commissioned and procured.

See: <http://www.legislation.gov.uk/ukpga/2012/3/enacted>

12. Nominated or named sub-contractors and suppliers

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.

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

Potential providers can secure value for money in procurement by engaging with small businesses directly via sub-contracting.

Where a Director nominates or names a sub-contractor or supplier to a main contractor, the following paragraphs apply.

A Director may, in appropriate cases, nominate or name a sub-contractor or supplier in the specification of a Contract. Tenders for the nomination or naming of the sub-contractors or suppliers must be invited in accordance with these Regulations.

The terms of the invitation must require from the selected tenderer an undertaking that the selected tenderer will be willing to enter into a Contract with the main contractor:

- a. indemnifying the main contractor against the main contractor's own obligations under the main contract in relation to supplies, services or works included in the sub-contract;
- b. subject to the terms of any applicable standard form of sub contract; and;
- c. subject to such other conditions as may be specified.

The Director or designated Officer must nominate or name to the main contractor the person whose tender is considered to be the most satisfactory. In cases of doubt, the Officer may seek advice or instructions from the CCB and if applicable (based upon value) the nominated Cabinet Member.

Where anyone nominates or names to the main contractor a tender other than the lowest received, they must report this to the next meeting of the CCB and if applicable the nominated Cabinet Member.

Where the value of the sub-contract exceeds the sum allowed in the main contract, the Director must not make the nomination unless compensating savings have been achieved elsewhere in the main contract. If no such savings have been identified, the authority for the additional expenditure must be obtained under the Financial Regulations.

13. Collaboration.

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 Eastern Shires Purchasing Organisation (ESPO). The terms and conditions of the CPB must be fully complied with, including any requirement to undertake competition between providers.

In order to secure value for money, the Authority may enter into collaborative procurement arrangements with another local authority, government department, primary care trust, statutory undertaker or other contracting authority.

14. Use of e-sourcing (tendering)

Use of an e-Tendering System is a critical method of ensuring transparency, fairness and accountability in procurement processes. As such, all tendering processes for Relevant Contracts run by the Council or on behalf of the Council must use the an e-Tendering System under the supervision of the Head of SCC Resources or a nominated Procurement Officer. Any other tendering method may be used only with prior authorisation from the CCB via a Waiver request.

Where a tender is run using the Council's electronic procurement system, there is no requirement for hard copies of the supplier's bid to be returned. All electronic tender documentation will be securely accessed and retained on the Council's e-procurement website.

The relevant Director must ensure that all information required by the Procurement Division/Officer to commence and continue the e-Tendering process effectively, and to provide a full audit trail for the process, is provided, including details of evaluation criteria, their weightings and the way in which evaluation scores will be calculated.

15. Provision of services and works for other organisations

This Regulation applies whenever the Council carries out 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.

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 Contracting Authority 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**
- d. the Contracting Authority must first confirm that it accepts financial responsibility for the provision of services or work.

Approval must be sought from the CCB via a procurement strategy report prior to any notable commitment of Council resources or budget

16. Tendering with or through other Public Bodies

Subject to the requirements of EU Rules, PCR 2015 and any other applicable legislation, regulation, policy and/or guidance document the Officer responsible can place orders with or through the following organisations, provided that they can obtain equivalent or more advantageous terms than by inviting competitive tenders:

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

However, the Officer responsible must obtain the most favourable terms possible for the Council and must be able to demonstrate Best Value for Money under Section 3 of the Local Government Act 1999. An award report via CCB to the Director of Strategy, Communities and Commissioning, or the nominated Cabinet Member or Cabinet, (dependant on the value), will be required recommending any award.

SECTION 3 - STEPS PRIOR TO PROCUREMENT

17. General

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 Primary Care Trusts, statutory undertakers and Central Purchasing Bodies.

The relevant Officer must refer to the Procurement Governance Handbook for further details on process and requirements before instigating any procurement exercise

The Director responsible must submit a procurement Strategy Report setting out commissioning intentions and sourcing strategy, in the format provided to the CCB, prior to start of each procurement exercise which will lead to the award of an agreement or Contract for goods and services estimated at £100k or above. A higher threshold of £500k applies to agreements and Contracts for works where it is intended to call-off from an existing Council contract or an OJEU compliant framework.

A procurement Strategy Report must be presented to Cabinet (via the CCB) for approval where the eventual Contract value is estimated at £5m or above unless the service strategy to which it relates has already been reported and agreed by Cabinet. In these cases the Leader has delegated the authority to agree the strategy to the relevant Cabinet Member. The strategy report should, as a minimum, set out the project plan, the proposed procurement route, any proposed departures from standard procurement practice, the evaluation approach, risks, timetable, project structure and details of the Contract, e.g. term, value and any other relevant information.

No advertisement should be placed or invitation to tender made prior to CCB or the approval of the procurement strategy in accordance with the current Leaders Scheme of Authorisation. Exceptions may be granted in circumstances where urgency can be clearly evidenced. However this must be justified and agreed with the Head of SCC Resources before the procurement process commences.

Where a Croydon Council pre-approved framework agreement or Dynamic Purchasing System is to be used to source services, works or goods included in the scope of the original award of the framework agreement or DPS, a procurement strategy is not required.

18.Waivers

Subject to the requirements of EU Rules, PCR 2015 and any other applicable legislation or Regulation; the Director of Strategy Communities and Commissioning (exercising delegated non-executive powers) can waive any requirements contained within these Tenders and Contracts Regulations for specific projects, following a recommendation from the Contracts and Commissioning Board. Any such waivers granted must be reported to Cabinet at its next meeting after contract award.

Normally the circumstances under which a waiver can be agreed are:

- a. **Single Sourcing (Sole Supplier):** it can be sufficiently proven that there is only one provider who can feasibly deliver the products, services or works and this is clearly demonstrated in the report to the Contracts and Commissioning Board;
or

- b. **Innovative approach to achieve Value for Money:** it can be demonstrated that it is in the Council's best interest and this is clearly demonstrated in the report to the Contracts and Commissioning Board; or
- c. **Disasters and Emergencies:** There is a clear need to provide a service or product immediately in the instance of a sudden unforeseen crisis; the immediate risk is to health, life, property or environment. Normal competitive processes are not feasible. Where this Regulation applies, any Director may place an order for supplies, services or works as the circumstances require after either:
 - i. having requested approval from the Director of Strategy Communities and Commissioning, in consultation with the Chief Executive or, if applicable, the Leader or nominated Cabinet Member, immediately upon the occasion arising, if the situation permits;
 - or if it does not:**
 - ii. submit a report of any action taken and any expenditure incurred to the next available meeting of the CCB and if applicable, Cabinet for endorsement.
- d. **Time-limited funding agreements:** there is a need to meet timescales prescribed by an external funding body and the usual approval routes will not achieve this.

All waivers, 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.

19. Preparation of a specification

The Responsible Officer must prepare a clear and unambiguous specification. In keeping with the Council's focus on commissioning outcomes, this must be outcome-based and must include any necessary outputs, plans, sections, drawings and bills of quantities.

Sometimes, because of the type of work, the Officer responsible may not consider it practical or possible to prepare a detailed specification of every item of work necessary for the contract to be carried out. Here, the Officer responsible may include, in general words, provision for such works in the specification. This is subject to the requirement that any such work is carried out under the direct supervision of and on the written authority of the Supervising Officer.

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

20. Advertising and the number of Tenders

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

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. For procurements valued up to £25,000, Officers are not obliged to formally advertise a tender opportunity but officers may do so using the Council's public website and the government supplier portal Contracts Finder website. Procurement at this value is more likely to involve a more informal process of request for quotations (Quick Quotes); Officers must, if interest and numbers allow, invite a minimum of 3 quotations which is to include at least 1 local provider;
- b. For procurements valued from £25,000 up to £100,000, Officers must advertise the tender opportunity via an e-tendering portal and the government supplier portal Contracts Finder. Officers must, if interest and numbers allow, invite a minimum of 3 tenders;
- c. Where the value exceeds the current EU thresholds for goods, service and works Contracts, tender advertisement rules must be followed in accordance with the current EU Rules and PCR 2015 ;
- d. For procurement activity of any value Officers may use additional advertisements in national official journals, specialist trade papers or websites, if relevant and if affordable

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 would be provided in your procurement strategy report.

21. Standards and Evaluation Criteria

The Director for whom the procurement is being undertaken must ascertain the relevant EU, UK, European or international standards which apply to the subject matter of the contract. The Officer must include those standards which are necessary to properly describe the required quality and obligations under the contract. Advice from the Head of SCC Resources or relevant Category Manager must be sought, as necessary.

The composition of and assessment of the PQQ and ITT must be carried out in line with the EU Rules 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.

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. The evaluation criteria chosen must, where relevant, be compliant and in accordance with the PCR 2015. The basic criteria shall be:

- i. MEAT - where price and quality elements are considered. This may include 100% assessment of quality to a fixed budget and 100% price where a minimum quality threshold is met;

- ii. Highest Price – if payment is to be received for sale or disposal.

When awarding on the basis of MEAT, the split between cost and quality is to be 60% cost and 40% quality. Where the Officer responsible does not consider this split appropriate, the reasons for the use of an alternative percentage split must be substantiated in the Strategy Report in accordance with Regulation 17 for approval by the CCB. Where, under the MEAT approach, quality is adopted as a criterion, it must be further defined by reference to sub-criteria. There is no definitive list of quality criteria that should be applied to all procurements, but they must be linked to the subject matter of the contract and proportionate.

Such criteria may comprise, for example:

- a. quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, social, environmental and innovative characteristics and trading and its conditions;
- b. organisation, qualification and experience of staff assigned to performing the contract, where the quality of the staff assigned can have a significant impact on the level of performance of the contract; or
- c. after-sales service and technical assistance, delivery conditions such as delivery date, delivery process and delivery period or period of completion. The evaluation criteria and weightings must be disclosed in the PQQ / ITT documentation as appropriate and in accordance with the PCR 2015.

The Director must ensure that, whatever method of tendering is chosen, financial appraisals of contractors are part of the selection/award process

Where the criterion for award is that of the most economically advantageous tender, tenderers may be authorised to submit variants.

Officers must indicate in the contract notice whether or not they authorise variants: variants shall not be authorised without this indication.

Officer must state in the tender documents the minimum requirements to be met by the variants and any specific requirements for their presentation. Only variants meeting the minimum requirements laid down by these contracting authorities shall be taken into consideration

22. Standard Contract Clauses

All Contracts and Agreements valued 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.

The Officer responsible must include the following standard clauses in every written contract.

All relevant 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 (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

Where appropriate, relevant safeguarding clauses must also be included.

Standard contract clauses for securing social value are set out in the Social Value Toolkit. The Officer responsible should refer to this toolkit to ensure the appropriate clauses are used. Every Contract awarded by the Council should consider the feasibility of asking the contractor to provide apprenticeships and training opportunities for local people (this should be a consideration discussed in the original Strategy Report so that CCB can consider if this is a reasonable request to include in the contract requirements from the contractor selected as the successful contractor).

The Officer responsible must consider the obligation to require tenderers to provide a Performance Bond and/or Parent Company Guarantee as a Contract requirement in the following circumstances:

- a. all contracts, which exceed £1,000,000,

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

The decision to require a Performance Bond and/or Parent Company Guarantee as a Contract requirement should be detailed in the procurement Strategy.

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.

If required, advice should be sought from the Head of SCC Resources or CCB as part of the Procurement Strategy report or Contract Award report.

In all cases where relevant, the Officer responsible, as appropriate, must discuss the need for the provision of a Pension Bond with the Head of Pensions and Treasury.

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.

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.

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.

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

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')
Every Contract must name the supervising person/s.

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.

Every Contract must incorporate the specification and any drawings and bills of quantities.

Every Contract for the purchase of supplies, services or works must contain a provision enabling the Council to deal with cases where the contractor, without good reason, either wholly or partly fails to complete delivery of the 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.

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

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

23. Form of Contract for all Contracts

Every Contract must be in writing and in a form approved by the Council Solicitor .

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

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 Democratic and Legal Services.

The relevant Director may establish a contract for less than £100,000 by placing and signing a written order in the approved form. Contracts valued less than £100,000 should be let using the Council's standard terms or conditions of purchase. If the Council's standard terms are not used then the relevant Director must be satisfied that the terms proposed are satisfactory and do not place undue risk on the Council

24. Invitations to Tender and Quotations/Tendering Instructions

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

- 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

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

All persons invited to tender or quote 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.

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

The Officer responsible must advise every person submitting a tender that:

- a. generally, no extension of time will be allowed for the receipt of any tender;
- b. that tenders received after the date and time specified for receipt may be rejected;
- c. that any departure from the Tendering Instructions may lead to the tender being rejected;
and
- d. that the Council do not bind themselves to accept the lowest or any tender or to accept any tender in full;
- e. as soon as the Council has advised that (subject to contract) the tender has been accepted, then the agreement becomes legally binding;
- f. tender documents to be in electronic format.;
- g. the bidders signed form of tender cannot be different in detail to that provided as part of the e-Tendering process.

Standard contract clauses must be stated (Regulation 22). Every person who submits a tender must be willing to enter into a contract containing these clauses.

The Officer responsible must also specify the period for which the tender will be kept open for acceptance. The normal minimum provision will be 60 days.

Tenders must be submitted electronically or by such other form of acceptance agreed by the Head of SCC Resources.

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.

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.

When a bidder proposes a variant bid, they must have demonstrated, by way of a compliant bid, that the Council's minimum standard has been met before a variant bid can be considered

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

25. Submission, receipt and opening of tenders/quotations

Every tender must be received by a secure method approved by the Head of SCC Resources. Tenders of £100,000 or greater must be returned using an approved e-sourcing system.

Suppliers or providers who have expressed interest in a tender must be given an adequate period in which to prepare and submit a proper quotation or tender, consistent with the complexity of the contract requirement. The EU Directive on public procurement includes specific tendering time periods.

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

In exceptional circumstances, the deadline for receipt of tenders may be extended, but only with the agreement of the lead Category Manager or Head of SCC Resources 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 **UNLESS** no tenders have been received.

The Head of SCC Resources 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 system should be opened by an officer from the Procurement and Commissioning team of SCC, or if not available, an SCC Category Manager from outside of the service area leading the tender exercise.

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-procurement system. Officers may, however, seek the agreement of the Head of SCC Resources to relax these requirements in appropriate circumstances. Any such relaxation shall be identified when seeking any necessary authorities required before the acceptance of a tender.

The Head of SCC Resources must ensure, for audit and information purposes that for all tenders received via the Council's e-sourcing system:

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

26. Post PQQ and Tender clarification

The Director must maintain a detailed written record and clear audit trail of all post PQQ & tender clarifications detailing all contact with the applicant or tenderer.

For tenders of £100,000 and above, 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.

Directors may amend tender prices under post tender clarification 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 Head of SCC Resources 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, this may restrict price negotiation and must be taken into consideration.

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.

The tenderer must subsequently confirm, in writing, any alterations to a tender before the Director may consider all the tenders received.

All post tender negotiation must be available for audit.

27. Contract Award

A Contract may not be awarded before the relevant Director has submitted a full report on the tenders received for the relevant contract and the appropriate acceptance in accordance with Regulation 27a-d.

The Officer responsible must provide a report on financial references in the report seeking acceptance of a tender.

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

- a. any mitigating circumstances;
- and/or**
- b. why they wish to appoint that contractor.

Prior to the submission to CCB or to the Director of Strategy, Communities and Commissioning, every report seeking acceptance of a tender for a Contract valued at £100,000 or more must be reviewed first by the responsible service Category Manager prior to departmental review by; the lead Director, the Head of Corporate Law, the Head of Finance, Human Resources, the Head of SCC relevant to the report. The report must be prepared in accordance with the relevant Protocols (as set out in Part 5 of the Council's Constitution) and specify information regarding the tendering circumstances and the terms of a Contract award sufficient to enable an informed decision to be made. It must also contain any appropriate comments and/or recommendations relating to budgetary provision, the competitive process undertaken, these Regulations, the Financial Regulations, EU Rules, relevant legislation and the Council's policies.

- a. for Contracts valued between £100,000 and £500,000, if there have been no departures from the approved procurement strategy and there is available budget then a report, that has been signed-off by the relevant Head of SCC, (using the standard award report template) seeking Contract award can be made directly to the Director of Strategy, Communities and Commissioning, under delegated powers, without first seeking endorsement from the CCB;
- b. for Contracts valued between £100,000 and £500,000 where there have been departures from the approved procurement route (with the exception of timetable), evaluation approach or any additional risks to be considered, then a report is required to the CCB seeking recommendation for Contract award by the Director of Strategy, Communities and Commissioning, under delegated powers;
- c. for Contracts valued over £500,000 a report is required to the CCB seeking recommendation for Contract award by the authorised person(s) in accordance with the Leaders current Scheme of Authorisation.

- d. for proposed Contract extension periods included as part of the original Contract award, a report to the CCB seeking recommendation for Contract extension by the Director of Strategy, Communities and Commissioning, under delegated powers.

The Cabinet, nominated Cabinet Member, and the CCB are the bodies responsible for reviewing Contract matters for the Council.

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 Treasury, or where the nominated Cabinet Member is the Cabinet Member for Finance and Treasury, in consultation with the Leader.

A list of Contracts to be recommended under Regulation 27c will be reported to the Cabinet meeting immediately preceding the anticipated date for consideration and decision to award.

In all instances in these Regulations where a nominated Cabinet Member or Cabinet is charged with making an executive decision, Part 5.A of the Council's Constitution – Protocol for Decision Making must be observed.

In the case of Contracts valued at £100,000 or more and below £500,000 that are required to be reported to CCB, if the CCB is unavailable, the Head of SCC Resources in consultation and agreement with the Council Solicitor may recommend award to the Director of Strategy, Communities and Commissioning.

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

28. Contract pre-conditions and preliminaries

A Director, or their delegated consultant, must not authorise or permit a contractor to enter on any land or buildings belonging to the Council or to proceed with the Contract or start work on site until a written order to proceed with the Contract has been issued and the following actions are completed:

- a. the contractor has provided proof of insurance;
- b. the contractor has completed and returned to the Council the contract documents unless the Director can satisfy the Council Solicitor and the Director of SCC 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 Council Solicitor

The Director is responsible for all orders issued on the Council Solicitor on their behalf from their Department.

29. Extras and variations

Any extra or variation to a Contract must be specifically authorised in writing by the Director or a designated Officer, who must retain a copy of this authorisation as a

document relating to the Contract. If the extra or variation is likely to result in an increase in the Contract sum, then the Officer must obtain authority for the additional expenditure in accordance with the Financial Regulations. The overall costs must be contained within agreed budgets.

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.

A report seeking authority for the change to the Contract must be made to the CCB, nominated Cabinet Member or Cabinet as appropriate, where the extra terms or variation will result in the new total value of the contract:

- i. Exceeding £100,000 or £500,000 or £5,000,000;
- ii. Exceeding the relevant public procurement threshold (for goods, services or works), as published from time to time by the European Commission.

Or in any case, the original Contract value will be increased by more than 25%.

The reporting requirements of Regulation 27 do not apply to Change Control Notices (CCN - normally in relation to service contracts) and Additional Instructions/ Compensation Events (AI/CE normally in relation to works contracts) issued under an existing Contract and where the CCN or AI/CE is in accordance with the contract terms and specification and there is adequate budget for the expenditure.

Each Department must have control procedures and audit trails in place to deal with extras, variations and CCN, AI and CE.

SECTION 4 – CONTRACT RECORDS

30. Tender records

The Head of SCC Resources must ensure that the following information in relation to a Relevant Contract is kept:

- a. Pre-tender research, benchmarking and consultation information
- b. The approved procurement strategy report including any waiver given
- e. The selection and award criteria (as appropriate)
- f. Pre-qualification documents sent to and received from applicants (if applicable)
- f. Tender documents sent to and received from tenderers
- g. Communications with all applicants and tenderers throughout the procurement exercise
- h. Any post-tender clarification information, to include minutes of meetings
- i. The contract documents

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.

31. Contract Register

All contracts let must be entered onto the Council's Contract Register. The Officer responsible must provide the information requested on the Contracts Register Update Form to the Commissioning and Procurement Governance team upon award of contract.

32. Contract Storage

The Director responsible for the service area must ensure that all Contracts established in accordance with these Regulations are scanned and the scanned copy sent to the Commissioning and Procurement Governance Team in SCC.

SECTION 5: CONTRACT MANAGEMENT

33. Managing Contracts

All Directors are to name Supervising Officer 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 in accordance with the Council's agreed contract management model

Contract managers must follow the procedures set out in the Council's Contract Standing Orders.

34. Risk Assessment & Contingency Planning

Provision for resources for the management of the contract, for its entirety, must be identified in the business case.

For all contracts with a value of £100,000 and greater, 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

35. Contract Monitoring, Evaluation & Review

All contracts valued at £100,000 and greater 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.

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.

During the life of the contract, the Officer must monitor a contract in respect of:

- a. Performance and compliance with specification and contract
- b. Cost and any value for money requirements
- c. User satisfaction and risk management

| Terms | Description/Meaning |
|-------------------------|---|
| amount of an estimate | The sum of money estimated, net of Value Added Tax or any other tax or duty. However, the amount of any such tax or duty payable must be stated. |
| 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 commissioning and procurement activity |
| Call off Contracts | Contracts selected and awarded from an existing Framework Agreement. |
| CCB | Contracts & Commissioning Board - the board of Council officers designated to manage and act as the decision maker or recommending body within the scope of these Regulations, for Council-wide commissioning and contracting activities (excluding land disposals and property transaction matters). |
| CCS | Crown Commercial Services |
| 'CDM' | Construction (Design and Management) Regulations 2015. |
| Central Purchasing Body | means 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 | A concession contract is an agreement between a contracting authority and suppliers (mostly private companies) where suppliers are given the right to exploit supplies, works or services provided for their own gain. OR 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 |

| Terms | Description/Meaning |
|--|--|
| | <p>consists either solely in the right to exploit the supply, work or service, or in this right to exploit together with payment.</p> <p>Works concessions and services concessions are dealt with differently under the Directive. Works concessions are subject to specific provisions in the Directive covering the way in which they are awarded. Services concessions are excluded from the coverage of the Directive although Treaty principles will apply to the award of service concessions where there is potential cross-border interest in the contract.</p> |
| 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 value or value of a contract | <p>A value:</p> <ul style="list-style-type: none"> 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 b) that is net of Value Added Tax or any other tax or duty. <p>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> <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> |
| Council's approved estimates | The Council's budget approved annually by full Council and includes estimates of both capital and revenue expenditure. |
| Council's Declaration of Confidentiality and Interest Form | This form is available on the Council's intranet: https://intranet.croydon.gov.uk/working-croydon/finance/commissioning-and-procurement/forms |
| Council's Constitution | means 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 |

| Terms | Description/Meaning |
|-----------------------------------|--|
| Council's Financial Regulations | means the financial regulations as contained in Part 4.H of the Council's Constitution. |
| 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 A nominated Officer with delegated authority to incur expenditure.</p> |
| Dynamic Purchasing System ("DPS") | <p>means a completely electronic purchasing system procedure available for contracts for works, services and goods commonly available on the market.</p> <p><i>For the avoidance of doubt, please refer to Regulation 32 to the PCR 2015 for a more detailed definition</i></p> |
| e-sourcing (tendering) | An internet based process wherein the complete tendering process, from advertising to submitting and receiving tender- related information, is done online. |
| Electronic reverse auction | <p>The procedure enables suppliers/providers to adjust their tender price in the light of information from the tender prices submitted by competing suppliers/providers. Alterations will be accepted as permitted by the auction process.</p> <p>A web based negotiation tool considered an efficient way of negotiating the price element of a contract as it allows multiple bids to be received in a short amount of time.</p> |
| EU Rules | Where the EU Rules are referenced, it is also to include EU Public Procurement Directives 2006 and 2014 and the principles of the Treat on the Functioning of the European Union as implemented into UK law by regulations. |
| Evaluation criteria | <p>Refers to the measures used in either the PQQ or ITT to undertake an assessment of potential providers.</p> <p>i. Criteria used in the PQQ are referred to as 'selection criteria'.</p> <p>ii. Criteria used in the ITT are referred to as 'award criteria'.</p> |
| 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 Director | <p>The Chief Executive;</p> <p>or</p> <p>Assistant Chief Executive;</p> <p>or</p> <p>A head of one of the following departments or any successor to them:</p> <p>Executive Director of Resources ;</p> <p>Executive Director of Place;</p> <p>Executive Director/DCS Children, Families & Education Executive Director/DASS Health Wellbeing & Adults Executive Director Gateway Strategy and Engagement</p> <p>who under their scheme of authorisations can exercise the powers referred to in these Regulations.</p> |

| Terms | Description/Meaning |
|--|--|
| Executive function | Matters reserved to the Leader under the Council's Strong Leader Model and as set out in the Leaders 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 | <p>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.</p> <p>The phrase 'Framework/s' shall also be construed accordingly.</p> <p><i>For the avoidance of doubt, this is the definition provided in Regulation 33(2) PCR 2015</i></p> |
| GPAC | <p>The General Purposes and 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.</p> <p>Note: GPAC is a Non-Executive function.</p> |
| Grant | A form of funding used to fund an activity of an organisation whose work complements that of the Council but where the Council wishes to have a degree of control over or imposes restrictions on the use of the funding. . |
| 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 |
| The Leader or nominated Cabinet Member | Means the Leader of Croydon Council or any nominated Cabinet Member to whom they have delegated authority to exercise their powers referred to in these Regulations |
| 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 |
| London Living Wage ("LLW") | means the basic hourly rate before tax and other deductions determined and published by the Greater London Authority from time to time |
| Low Value Expenditure | means expenditure which is below £100,000 in value and to which Appendix C applies. |
| LTR Services | Services subject to the Light-Touch Regime. There is an OJEU advertising requirement and other specific obligations, but a higher |

| Terms | Description/Meaning |
|---|--|
| | financial threshold has introduced for the Light Touch Regime to apply. |
| Most Economically Advantageous Tender ("MEAT") | The tendering approach used to provide a balance between quality and cost. |
| Nominated Cabinet Member | Cabinet Member within whose portfolio, as identified by the Leaders 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 responsible or Responsible Officer | An Officer authorised by the appropriate Executive Director to act on their behalf under these Regulations. |
| OJEU | means 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 |
| PCR 2015 | means the Public Contracts Regulations 2015 |
| 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. |
| 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 |

| Terms | Description/Meaning | | | | | | | | | | | | | | | | | | | | |
|--|---|------------------|-----------|-------------|----|-------------|--------------|-------|----------|--|----------|-------|------|----------|--|----------|-------|------|---------|--|---------|
| | Regulations | | | | | | | | | | | | | | | | | | | | |
| PQQ (Pre-Qualification Questionnaire inc PAS 91) | The process used to identify potential suppliers that are most capable of performing a contract. | | | | | | | | | | | | | | | | | | | | |
| Professional Director | The most senior Council Officer with responsibility for a particular area of expertise or a professional discipline. | | | | | | | | | | | | | | | | | | | | |
| Another 'Public Body' | Any contracting Authority within the meaning of the EU Public Procurement Directives and the Public Contracts Regulations 2015. | | | | | | | | | | | | | | | | | | | | |
| Regulations | All the Regulations as listed below. | | | | | | | | | | | | | | | | | | | | |
| Relevant Contract | Relevant Contract | | | | | | | | | | | | | | | | | | | | |
| Scheme of Authorisations | The departmental 'scheme of management' setting out who is authorised to make what decisions within that department. | | | | | | | | | | | | | | | | | | | | |
| Single Source Procurement | The award for the provision of, products, services or works where it can be sufficiently proven that there is only one provider who can feasibly deliver. Also called sole-sourcing or single sourcing. | | | | | | | | | | | | | | | | | | | | |
| Small and Medium Enterprises SME | <div>The main factors determining whether a company is an SME are:<div><div>1. number of employees; <u>and</u></div><div>2. either turnover or balance sheet total.</div></div><table><tr><td>Company category</td><td>Employees</td><td>Turnover</td><td>or</td><td>Balance she</td></tr><tr><td>Medium-sized</td><td>< 250</td><td>≤ € 50 m</td><td></td><td>≤ € 43 m</td></tr><tr><td>Small</td><td>< 50</td><td>≤ € 10 m</td><td></td><td>≤ € 10 m</td></tr><tr><td>Micro</td><td>< 10</td><td>≤ € 2 m</td><td></td><td>≤ € 2 m</td></tr></table><div>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.</div></div> | Company category | Employees | Turnover | or | Balance she | Medium-sized | < 250 | ≤ € 50 m | | ≤ € 43 m | Small | < 50 | ≤ € 10 m | | ≤ € 10 m | Micro | < 10 | ≤ € 2 m | | ≤ € 2 m |
| Company category | Employees | Turnover | or | Balance she | | | | | | | | | | | | | | | | | |
| 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 | | | | | | | | | | | | | | | | | | | | |
| Social Value Act | The Public Services (Social Value) Act 2012 | | | | | | | | | | | | | | | | | | | | |
| Social Value Toolkit | means 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. | | | | | | | | | | | | | | | | | | | | |
| Supervising Officer | The Council officer or external person appointed to manage and/or monitor the tender/contract process on behalf of the Council | | | | | | | | | | | | | | | | | | | | |
| 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 | | | | | | | | | | | | | | | | | | | | |

| Terms | Description/Meaning |
|-----------------------------------|---|
| | route, any proposed departures from standard procurement practice, the evaluation approach, risks, timetable, project structure and details of the 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, co-operatives, social enterprises and registered social landlords. For the purposes of this document the term 'third sector' is used to denote this group of organisations. |
| TUPE | Transfer of Undertakings (Protection of Employment) Regulations 2006. |
| Value Added Tax ("VAT") | means value added tax as chargeable under the Value Added Tax Act 1994 |
| Value for Money ("VfM") | is 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 PQQ / ITT to reflect what is most important in any particular procurement. Weightings may be exact percentages or a specified range, where this is appropriate in view of the subject matter. |
| Working Day | Any other day other than a Saturday, Sunday and any bank or UK public holidays. |
| in writing | Refers to paper and electronic records. |